IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-320

No. COA21-86

Filed 3 May 2022

Moore County, No. 17-CVD-1015

CRAIG MICHAEL JOHNSON, Plaintiff,

v.

TONI ANN GYURISKO f/k/a TONI ANN JOHNSON, Defendant.

Appeal by plaintiff from order entered 9 September 2020 by Judge Tiffany Bartholomew in Moore County District Court. Heard in the Court of Appeals 2 November 2021.

Pro-se plaintiff-appellant.

Arthur M. Blue for defendant-appellee.

GORE, Judge.

¶ 1 Plaintiff Craig Michael Johnson appeals from a Child Custody Modification Order, arguing that the trial court erred (1) by finding there had been a substantial change of circumstances, (2) by finding the alleged substantial change of circumstances affected the minor child, and (3) by granting defendant Toni Ann Gyurisko primary decision-making authority. We hold the trial court's findings are insufficient to support a conclusion the substantial change of circumstances affected

the minor child and, therefore, we reverse the trial court's order.

I. Background

¶ 2 Mr. Johnson and Ms. Gyurisko were married on 23 August 2008, separated on 22 August 2016, and divorced 8 January 2018. During their marriage, the couple had one child, born on 3 June 2012. On 13 September 2017, Mr. Johnson filed a complaint seeking absolute divorce and equitable distribution of the marital property. Ms. Gyurisko filed an answer and counterclaim on 17 November 2017, seeking temporary and permanent primary custody of the minor child, child support, equitable distribution, post separation support and permanent alimony, and attorney fees.

¶ 3 The parties entered into a Settlement Agreement and presented the trial court with a Consent Order for Child Custody and Child Support and Consent Judgment for Equitable Distribution on 20 February 2018 ("Consent Order"). The Consent Order provided, in pertinent part, the parties shall have joint legal custody of and joint legal authority to make decisions for their minor child, Ms. Gyurisko shall have primary physical custody, and established a schedule for the minor child to split the summer and holidays between the parties.

¶ 4 In April 2020, Ms. Gyurisko arranged for the minor child to visit Mr. Johnson's mother in Virginia (where the grandmother lives), despite both North Carolina and Virginia being subject to COVID-19 related Stay at Home Orders at the time. In response to these events, Mr. Johnson filed an Emergency Motion for Temporary

Order to Modify Terms of Custody on 13 April 2020. The Emergency Motion sought to compel Ms. Gyurisko to comply with the applicable Stay at Home Order.

¶ 5 Due to the COVID-19 pandemic, the public school the minor child attended adopted a hybrid schedule (partial in-person instruction and partial remote instruction) before the 2020-2021 academic year. Ms. Gyurisko sought alternative schooling options for the minor child because of the public school's hybrid schedule. Ms. Gyurisko sought to enroll the minor child in Grace Christian School, which offered full in-person instruction. Mr. Johnson opposed the minor child attending Grace Christian School because he alleged the school did not follow the COVID-19 related recommendations for schools set out by the Center for Disease Control.

¶ 6 On 28 July 2020, Ms. Gyurisko filed a Motion to Allow School Enrollment requesting the trial court enter an order allowing the minor child to attend Grace Christian School. The trial court did not allow this motion. However, Ms. Gyurisko subsequently filed a Motion to Modify Custody on 6 August 2020. The Motion to Modify Custody requested the trial court adjudicate Ms. Gyurisko as primary custodian of the minor child and grant Ms. Gyurisko final decision-making authority.

¶ 7 Ms. Gyurisko's Motion to Modify Custody came on for hearing on 24 August 2020. At the hearing both parties testified and Mr. Johnson offered evidence including text messages and emails between the parties, the minor child's report cards from the public school, and the application for the minor child to attend Grace

Christian School. On 9 September 2020, the trial court entered a Child Custody Modification Order. The order found there was a substantial change in circumstances that materially affects the welfare of the minor child and that allowing Ms. Gyurisko final decision-making authority would be in the minor child's best interest. Thus, the trial court modified custody so that both parties retained joint legal custody with Ms. Gyruisko having final decision-making authority.

II. Modification of Child Custody

¶ 8 "It is well established in this jurisdiction that a trial court may order a modification of an existing child custody order between two natural parents if the party moving for modification shows that a substantial change of circumstances affecting the welfare of the child warrants a change in custody." *Shipman v. Shipman*, 357 N.C. 471, 473, 586 S.E.2d 250, 253 (2003) (cleaned up). The substantial change in circumstances may be either adverse or beneficial to the welfare of the child. *Pulliam v. Smith*, 348 N.C. 616, 620, 501 S.E.2d 898, 900 (1998).

¶ 9 Our Supreme Court summarized the analysis a trial court must conduct when considering a modification of an existing child custody order in *Shipman*:

> The trial court must determine whether there was a change in circumstances and then must examine whether such a change affected the minor child. If the trial court concludes either that a substantial change has not occurred or that a substantial change did occur but that it did not affect the minor child's welfare, the court's examination ends, and no modification can be ordered. If, however, the

> trial court determines that there has been a substantial change in circumstances and that the change affected the welfare of the child the court must then examine whether change in custody is in the child's best interests. If the trial court concludes that modification is in the child's best interests, only then may the court order a modification of the original custody order.

Shipman, 357 N.C. at 474, 586 S.E.2d at 253.

¶ 10 "When reviewing a trial court's decision to grant or deny a motion for the modification of an existing child custody order, the appellate courts must examine the trial court's findings of fact to determine whether they are supported by substantial evidence." *Id.* (citing *Pulliam*, 348 N.C. at 625, 501 S.E.2d at 903). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* (citation omitted). "In addition to evaluating whether a trial court's findings of fact are supported by substantial evidence, this Court must determine if the trial court's factual findings support its conclusions of law." *Id.* at 475, 586 S.E.2d at 254 (citation omitted).

> If we determine that the trial court has properly concluded that the facts show that a substantial change of circumstances has affected the welfare of the minor child and that modification was in the child's best interests, we will defer to the trial court's judgment and not disturb its decision to modify an existing custody agreement.

Id.

¶ 11 "[B]efore a child custody order may be modified, the evidence must demonstrate a connection between the substantial change in circumstances and the welfare of the child, and flowing from that prerequisite is the requirement that the trial court make findings of fact regarding that connection." *Id.* at 478, 586 S.E.2d at 255 (citing *Carlton v. Carlton*, 145 N.C. App. 252, 262, 549 S.E.2d 916, 923 (Tyson, J., dissenting), *rev'd per curiam per dissent*, 354 N.C. 561, 557 S.E.2d 529 (2001), *cert. denied*, 536 U.S. 944, 153 L. Ed. 2d 811 (2002). "In situations where the substantial change involves a discrete set of circumstances such as a move on the part of a parent . . . the effects of the change on the welfare of the child are not self-evident and therefore necessitate a showing of evidence *directly* linking the change to the welfare of the child." *Id.* at 478, 586 S.E.2d at 256 (emphasis in original).

¶ 12 "Upon determining that a substantial change in circumstances affecting the welfare of the minor child occurred, a trial court must then determine whether modification would serve to promote the child's best interests." *Id.* at 481, 586 S.E.2d at 257.

¶ 13 "As a general matter, the trial court has 'discretion to distribute certain decision-making authority that would normally fall within the ambit of joint legal custody to one party rather than another based upon the specifics of the case.'" *Hall v. Hall*, 188 N.C. App. 527, 534, 655 S.E.2d 901, 906 (2008) (quoting *Diehl v. Diehl*, 177 N.C. App. 642, 647, 630 S.E.2d 25, 28 (2006)). However, "upon an order entering

joint legal custody, the trial court may only deviate from 'pure' legal custody after making specific findings of fact" that the deviation is in the child's best interest. *Hall*, 188 N.C. App. at 535, 655 S.E.2d at 906.

A. Substantial Change in Circumstances

¶ 14 Mr. Johnson argues that the trial court erred in finding a substantial change in circumstances because Ms. Gyurisko's motion did not allege a specific substantial change in circumstance nor did the trial court's order specify what it found to be a substantial change in circumstances.

¶ 15 Mr. Johnson only challenges finding of fact number 6 as unsupported by the evidence. Finding of fact number 6 states, "Since the entry of the prior Order on February 20, 2018, there has been a substantial and material change in circumstances that materially affect the welfare of the minor child." In reality, this finding of fact is best categorized as a conclusion of law. *See In re Everette*, 133 N.C. App. 84, 85, 514 S.E.2d 523, 525 (1999) ("[A]ny determination requiring the exercise of judgment, or the application of legal principles is more properly classified as a conclusion of law."). All the other findings of fact are binding upon this Court. *See In re S.C.R.*, 198 N.C. App. 525, 532, 679 S.E.2d 905, 909 (2009) ("[T]he trial court's findings of fact to which an appellant does not assign error are conclusive on appeal and binding on this Court.").

¶ 16 The unchallenged findings of fact show that Mr. Johnson moved from North Carolina to Virginia; Ms. Gyurisko must obtain a waiver each year for the minor child to attend her current public school because Ms. Gyurisko moved within the school district; Moore County public schools are operating on a hybrid schedule due to the COVID-19 pandemic; the minor child has the opportunity to attend Grace Christian School, a private school in Sanford, North Carolina, on a partial scholarship and Ms. Gyurisko would be responsible for the remaining tuition; after communicating with Ms. Gyurisko about the opening at Grace Christian School, Mr. Johnson sent a letter to the school stating he has joint legal custody of the minor child and expressing his desire that the minor child not attend Grace Christian School; and that Mr. Johnson's primary objection to Grace Christian School was that "he felt the minor child was doing well [in public school] and that a change would be potentially disruptive."

¶ 17 Mr. Johnson does not challenge any of these findings of fact but instead argues the record does not support a conclusion that there was a substantial change of circumstance. Mr. Johnson's argument asks this Court to reweigh the evidence, but we do not have that authority. We are limited to determining whether a trial court's findings of fact are supported by substantial evidence and whether those findings of fact support the conclusions of law. *Shipman*, 357 N.C. at 475, 586 S.E.2d at 254. Further, trial courts are vested with broad discretion in child custody matters, due to the trial court's opportunity to see the parties; to hear the witnesses; and to "detect

tenors, tones, and flavors that are lost in the bare printed record read months later by appellate judges." *Pulliam*, 348 N.C. at 625, 501 S.E.2d at 902-03 (quoting *Newsome v. Newsome*, 42 N.C. App. 416, 426, 256 S.E.2d 849, 855 (1979)); *Surles v. Surles*, 113 N.C. App. 32, 37, 437 S.E.2d 661, 663 (1993).

¶ 18 Based on a thorough review of the record we conclude that the trial court's findings of fact are supported by competent evidence, the findings of fact support the conclusions of law, and the trial court did not abuse its discretion in concluding there was a substantial change in circumstances.

B. Effect on the Welfare of the Child

¶ 19 It is not sufficient for the trial court to only conclude there has been a substantial change in circumstances, in most cases the trial court must also conclude the substantial change in circumstances affected the child's welfare. *Shipman*, 357 N.C. at 474, 586 S.E.2d at 253; *Walsh v. Jones*, 263 N.C. App. 582, 587, 824 S.E.2d 129, 133 (2019). The change in circumstance may have either an adverse or beneficial effect on the child. *Shipman*, 357 N.C. at 473, 586 S.E.2d at 253. The trial court must make findings on the connection between the substantial change in circumstances and the welfare of the minor child before the trial court may modify child custody unless the effect of the substantial change on the minor child is self-evident. *Id.* at 478, 586 S.E.2d at 255 (citing *Carlton*, 145 N.C. App. at 262, 549 S.E.2d at 923 (Tyson, J., dissenting)). Discrete sets of circumstances where the effect on the minor child is

not self-evident include a move on the part of a parent, a parent's cohabitation, or a change in a parent's sexual orientation. *Id.* (citing *Carlton*, 145 N.C. App. at 262, 549 S.E.2d at 923; *Browning v. Helff*, 136 N.C. App. 420, 524 S.E.2d 95 (2000); *Pulliam*, 348 N.C. 616, 501 S.E.2d 898).

¶ 20 The dissent in this case wholly ignores this State's requirement that where the effect on the minor child is not self-evident the trial court must make explicit findings of fact connecting the substantial change of circumstances to an effect on the *welfare* of the child. In fact, the dissent provides its own rationale for the trial court's determination, appearing to assert that the potential of any effect on the minor child is sufficient, instead of pointing to the effect that occurred regarding the child's welfare or pointing to any finding from the trial court *directly* linking the substantial change in circumstances to an effect on the minor child's welfare. The dissent cites to several cases claiming these cases stand for the assertion that any change in education necessarily affects the welfare of a minor child. However, only one of these cases involve the modification of a previous child custody order. *See Wolgin v. Wolgin*, 217 N.C. App. 278, 719 S.E.2d 196 (2011). *Wolgin* does not stand for the assertion that the affect a substantial change in circumstances involving education has on a minor child is self-evident, as the dissent purports. In fact, the trial court in *Wolgin* made findings directly linking the substantial change in the minor child's education to the child's welfare, the exact type of finding which are fatally missing in the case

sub judice. *Wolgin*, 217 N.C. App. at 286, 719 S.E.2d at 201-02 ("The trial court in making these findings of fact, not only considered Defendant's failure to discuss her selection of the children's new school with Plaintiff, but in Findings of Fact 15 (I), (J), and (K), the trial court found that the change in school *had a detrimental effect on Hannah's social adjustment*, as her teachers at [her previous school] had begun to successfully address improvements in Hannah's social interaction with her peers.").

¶ 21 In the case *sub judice*, the substantial change in circumstances centers around the parties' disagreement over whether the minor child can attend Grace Christian School. We conclude this is not a set of circumstances where the effect on the minor child is self-evident and, thus, the trial court must make findings on the connection between the substantial change in circumstances and the welfare of the minor child before the trial court may modify child custody. Our review of the trial court's findings of fact and conclusions of law show no findings as to the connection between the substantial change in circumstances and the minor child's welfare. As a result, we conclude the trial court erred in modifying child custody.

C. Legal Custody

¶ 22 Because of the likelihood to come up again on subsequent appeal we also discuss the trial court's grant of primary decision-making authority to Ms. Gyurisko. Mr. Johnson argues the trial court erred in granting Ms. Gyurisko primary decision-making authority after awarding joint legal custody. We agree.

¶ 23 The trial court's order granted joint legal custody to both parties. Ms. Gyurisko, however, was to have "the final decision-making authority as primary custodian of the child" if the parties come to an impasse on "discussions in reference to the minor child's schooling, medical decisions, extracurriculars, and all other major decisions effecting the welfare of the minor child."

¶ 24 "Although not defined in the North Carolina General Statutes, our case law employs the term 'legal custody' to refer generally to the right and responsibility to make decisions with important and long-term implications for a child's best interest and welfare." *Diehl*, 177 N.C. App. at 646, 630 S.E.2d at 27 (2006) (citing *Patterson v. Taylor*, 140 N.C. App. 91, 96, 535 S.E.2d 374, 378 (2000); 3 Suzanne Reynolds, *Lee's North Carolina Family Law* § 13.2b, at 13-16 (5th ed. 2002) (Legal custody includes "the rights and obligations associated with making decisions affecting the child's life.")) Generally, the trial court has discretion to relegate authority that typically falls within the scope of legal custody to one parent based on the specific facts of the case, so long as the trial court makes "sufficient findings of fact to show that such a decision was warranted." *Id.* at 647, 630 S.E.2d at 28.

¶ 25 Thus, "upon an order granting joint legal custody, the trial court may only deviate from 'pure' legal custody after making specific findings of fact." *Hall*, 188 N.C. App. at 535, 655 S.E.2d at 906. The extent of the deviation from "pure" legal custody is immaterial. *Id.* "Accordingly, this Court must determine whether, based on the

findings of fact below, the trial court made specific findings of fact to warrant a division of joint legal [custody]." *Id.*

¶ 26 In *Diehl*, similar to the case *sub judice*, the trial court abrogated final decision-making authority. The trial court in *Diehl* made factual findings that "[t]he parties are currently unable to effectively communicate regarding the needs of the minor children." *Diehl*, 177 N.C. App. at 647, 630 S.E.2d at 28. The *Diehl* trial court also made findings that "Ms. Diehl has occasionally found it difficult to enroll the children in activities or obtain services for the children when Mr. Diehl's consent was required, as his consent is sometimes difficult to obtain . . . ." *Id.* In that case, this Court reversed and remanded the trial court's decision, holding that the findings related to failure to communicate and obtain consent when required are insufficient to abrogate a parent's decision-making authority when granting joint legal custody. *Id.* at 648, 630 S.E.2d at 29. Similarly, in *Hall* the trial court did not make findings as to the parties' inability to communicate, as in *Diehl*, thus, this Court reversed the trial court's abrogation of decision-making authority. *Hall*, 188 N.C. App. at 535, 655 S.E.2d at 907. The dissent attempts to distinguish this case from *Diehl* by asserting that the extent of the abrogation of final decision making authority in the two cases are different, thus, asserting that the cases and the sufficiency of the findings of fact should be analyzed differently. However, the dissent fails to address this Court's statement in *Hall* that the extent of the deviation from pure legal custody is

immaterial. *Hall*, 188 N.C. App. at 535, 655 S.E.2d at 906. The extent of the deviation from pure legal custody is irrelevant in determining whether the analysis in *Diehl* is applicable. The relevant determination is whether the trial abrogated pure legal custody from a previous order, by granting Ms. Gyurisko final decision making authority the trial court did so here, and thus, the analysis in *Diehl* applies.

¶ 27 In the case *sub judice*, the trial court made the following findings of fact:

> 20. The parties have exercised joint legal custody of the minor child since the entry of the prior February 2018 Order and have been able to work well together with a few minor exceptions. The parties have been able to work together on decisions involving medical issues, behavioral issues, and extracurricular activities despite [Mr. Johnson] not being adverse to conflict.
>
> 21. Both parties remain fit and proper to have joint legal custody with [Ms. Gyurisko] having primary physical custody of the minor child and with [Mr. Johnson] having secondary physical custody of the minor child . . . .
>
> 22. However, a conflict has arisen concerning the minor child's education that the parties are unable to resolve. There needs to a final decision maker regarding issues of the minor child when the parties reach an impasse. As primary custodian, [Ms. Gyurisko] is in the best position to be the final decision maker especially since [Mr. Johnson] now resides out of state. [Ms. Gyurisko] is mainly responsible for the minor child's daily activities and care including getting the minor child to and from school, attending school activities, being the primary contact for the school, and arranging alternative childcare if the minor child is unable to attend school in-person.

> 23. Allowing [Ms. Gyurisko] final decision making authority in situations where the parties cannot agree after good faith discussions is in the minor child's best interests and prevents situations where the minor child's opportunities are limited simply because the parties cannot agree.

¶ 28 Finding of fact 22 and 23 are similar to those in *Diehl* which demonstrate the parties have issues making certain joint decisions. However, in *Diehl* this Court found those findings were insufficient to deviate from "pure" legal custody and abrogate decision-making authority. *Diehl*, at 647, 630 S.E.2d at 28. Additionally, findings of fact 20 and 21 cut further away from justifying a deviation from "pure" legal custody in that these findings tend to show that both parents remain fit and proper to have joint legal custody. Thus, we conclude that the trial court's findings regarding one singular disagreement between the parties are insufficient to justify granting Ms. Gyurisko final decision-making authority in all matters.

III. Conclusion

¶ 29 For the foregoing reasons we conclude the trial court's findings of fact are insufficient in that they did not show the effect the substantial change in circumstances had on the minor child nor do they justify granting Ms. Gyurisko final decision-making authority. Thus, the trial court erred in entering its Child Modification Order.

REVERSED.

Judge DILLON concurs.

Judge WOOD concurs in part and dissents in part.

Report per Rule 30(e).

WOOD, Judge, concurring in part and dissenting in part.

¶ 30 We all agree the trial court did not abuse its discretion by determining a substantial change in the minor child's circumstances had occurred. However, I respectfully dissent from the remainder of the majority's opinion which leads to a reversal of the trial court's order modifying child custody. I would affirm the trial court's order modifying child custody.

I. Custody Order

A. Standard of Review

¶ 31 In a child custody proceeding, "a trial court's principal objective is to measure whether a change in custody will serve to promote the child's best interests." *Shipman v. Shipman*, 357 N.C. 471, 474, 586 S.E.2d 250, 253 (2003) (citing *In re Custody of Peal*, 305 N.C. 640, 645-46, 290 S.E.2d 664, 667-68 (1982)). The majority opinion correctly points out if

> the trial court does indeed determine that a substantial change in circumstances affects the welfare of the child, it may only modify the existing custody order if it further concludes that a change in custody is in the child's best interests. *Pulliam* [*v. Smith*], 348 N.C. [616,] . . . 629-30, 501 S.E.2d [898] . . . 905-06 [1998] (Orr, J., concurring).

Id. The trial court is required to make findings to show the nexus between the substantial change in circumstances and the child's welfare. *Shipman*, 357 N.C. at 478, 586 S.E.2d at 255; *see also Stephens v. Stephens*, 213 N.C. App. 495, 499, 715 S.E.2d 168, 172 (2011) ("Unless the effect of the change on the children is self-evident,

the trial court must find sufficient evidence of a nexus between the change in circumstances and the welfare of the children." (internal quotation marks omitted)).

¶ 32 After determining a substantial change has occurred and such change affected the child's welfare, "the court must then examine whether a change in custody is in the child's best interests. If the trial court concludes that modification is in the child's best interests, only then may the court order a modification of the original custody order." *Shipman*, 357 N.C. at 474, 586 S.E.2d at 253; *see Mastny v. Mastny*, 259 N.C. App. 572, 577, 816 S.E.2d 241, 246 (2018); *McConnell v. McConnell*, 151 N.C. App. 622, 627, 566 S.E.2d 801, 805 (2002). A change in circumstances need not be negative to effectuate a change in custody; indeed, "a showing of a change in circumstances that is, or is likely to be, beneficial to the child may also warrant a change in custody." *Pulliam v. Smith*, 348 N.C. 616, 620, 501 S.E.2d 898, 900 (1998). The trial court's determination of a child's "best interest" is "more inquisitorial in nature than adversarial." *Ramirez-Barker v. Barker*, 107 N.C. App. 71, 78, 418 S.E.2d 675, 679 (1992), *rev'd on other grounds by Pulliam v. Smith*, 348 N.C. 616, 501 S.E.2d 898 (1998). When deciding the child's best-interest, "the trial court is vested with broad discretion, and its decision cannot be overturned absent a showing of an abuse of discretion." *Pulliam*, 348 N.C. at 631, 501 S.E.2d at 906 (citation omitted).

¶ 33 This court reviews a trial court's decision to modify a child custody order to first determine whether substantial evidence supports the trial court's findings of

fact, *Padilla v. Whitley de Padilla*, 271 N.C. App. 246, 247, 843 S.E.2d 650, 651 (2020), and whether these findings support the ultimate conclusions of law. *Shipman*, 357 N.C. at 475, 582 S.E.2d at 254 (citing *Pulliam*, 348 N.C. at 628, 501 S.E.2d at 904); *see Hatcher v. Matthews*, 248 N.C. App. 491, 492, 789 S.E.2d 499, 501 (2016).

B. Discussion

1. Effects on the Welfare of the Child

¶ 34 Mr. Johnson asserts this Court should overturn the trial court's order modifying child custody because the record is devoid as to how the change in circumstances effected his child's welfare. The trial court's conclusion number 2 states "[s]ince the entry of the prior Order on February 20, 2018, there has been a substantial and material change in circumstances that materially affect the welfare of the minor child."

¶ 35 Our appellate courts, along with the Fourth Circuit, have repeatedly indicated a substantial change in circumstances which affects a child's ability to obtain an education necessarily effects the child's welfare. *See James v. Pretlow*, 242 N.C. 102, 106, 86 S.E.2d 759, 762 (1955) ("The custody of these two children for that school year is now almost a *fait accompli*, and it is perfectly clear that their best interests and welfare demand that their custody for this school year be not disturbed."); *Wolgin v. Wolgin*, 217 N.C. App. 278, 288, 719 S.E.2d 196, 203 (2011) (finding that transferring a child to a new school, amongst other factors, was a substantial change that affected

the child's well-being); *Biggs v. Greer*, 136 N.C. App. 294, 299, 524 S.E.2d 577, 582 (2000) (holding "the trial court did not err in failing to find as fact that private school expenses were 'necessary' for the children's welfare[]"); *cf. In re McMillan*, 30 N.C. App. 235, 238, 226 S.E.2d 693, 695 (1976) ("It is fundamental that a child who receives proper care and supervision in modern times is provided a basic education. A child does not receive 'proper care' and lives in an 'environment injurious to his welfare' when he is deliberately refused this education, and he is 'neglected' within the meaning of G.S. 7A-278(4)."); *Duro v. District Attorney, Second Judicial Dist.*, 712 F.2d 96, 99 n.3 (4th Cir. 1983) ("When we examine their well-being, along with their state constitutional right to an education, we conclude that the children's right to an education that will prepare them for their future is paramount.").

¶ 36 The majority's opinion concluded the "trial court's findings of fact and conclusions of law show no findings as to the connection between the substantial change in circumstances and the minor child's welfare." By so concluding, the majority opinion disregards our appellate court's precedent that a substantial change in circumstances which inhibits a child's ability to obtain an education necessarily effects the child's welfare.

¶ 37 Indeed, the trial court made ample findings of fact which tended to show how the substantial changes affected the minor child's ability to obtain an education:

7. In June 2018, the Defendant moved her residence in

Carthage, North Carolina.

8. In December 2019, the Plaintiff moved to the Commonwealth of Virginia.

9. The minor child has been enrolled in Carthage Elementary since 2017. The minor child is currently enrolled in Carthage Elementary, however, the Defendant had to obtain a waiver from the Moore County Board of Education to allow the child to attend Carthage Elementary as it is outside of her assigned district as a result of her move.

10. The Defendant will have to apply for the waiver every year and there is no guarantee that the Defendant will be able to obtain such a waiver in future school years.

11. Due to the COVID-19 global pandemic, Moore County public schools, including Carthage Elementary, offers students either two days of in-person instructions with three days of virtual learning or the option of all virtual learning.

12. The Defendant is responsible for getting the child to and from school, prepares the child for school in the mornings, prepares her lunches and assists the child with her homework.

13. In July of 2020, the Defendant found out about [an] opening at Grace Christian School located in Sanford, North Carolina. Grace Christian is a private, nondenominational Christian school. It allows students to attend in-person classes five days a week.

. . .

19. The minor child's school has already changed due to COVID-19 because she can no longer receive five days of in-person instruction at Carthage Elementary and there is no guarantee she will be able to continue to attend

> Carthage Elementary after this academic year.
>
> . . .
>
> 22. The Defendant is mainly responsible for the minor child's daily activities and care including getting the minor child to and from school, attending school activities, being the primary contact for the school, and arranging alternative care if the minor child is unable to attend school in-person.

Based upon these findings, the trial court concluded that a substantial change in circumstances affected the welfare of the child. Indeed, the trial court found that the minor child was no longer able to receive five days of in-person schooling at her current school, whereas she would be able to receive five days of in-person schooling at Grace Christian School.

¶ 38 A child has the inherent right to obtain an education in North Carolina. A substantial change in circumstances which affects this right, in turn, effects the child's welfare. Thus, the trial court did not err by concluding the minor child's welfare was affected because the trial court's findings support this conclusion; accordingly, I would affirm the trial court's order modifying child custody.

2. Custody and Decision-Making Authority

¶ 39 The majority's opinion also holds the trial court's findings of facts are insufficient to grant Ms. Gyurisko final decision-making authority. I disagree.

¶ 40 In reaching its conclusion, the majority opinion incorrectly relies on *Diehl v. Diehl*, 177 N.C. App. 642, 630 S.E.2d 25 (2006). Therein, this Court examined a child

custody order which stated in part, "[t]he parties share permanent joint legal custody of the minor children with [Ms. Diehl] having primary decision-making authority." *Id.* at 645, 630 S.E.2d at 27. We found the findings of fact to support this order included:

> [T]he parties are currently unable to effectively communicate regarding the needs of the minor children. . . . Moreover, the trial court also found that since the parties' separation: the children have resided only with Ms. Diehl, and Mr. Diehl has exercised only sporadic visitation; Mr. Diehl has had very little participation in the children's educational and extra-curricular activities; Ms. Diehl has occasionally found it difficult to enroll the children in activities or obtain services for the children when Mr. Diehl's consent was required, as his consent is sometimes difficult to obtain; and when John's school recommended he be evaluated to determine whether he suffered from any learning disabilities, Mr. Diehl refused to consent to the evaluation unless it would be completely covered by insurance.

Id. at 647, 630 S.E.2d at 28 (cleaned up). This Court concluded that these findings were insufficient to "support an order abrogating all decision-making authority that Mr. Diehl would have otherwise enjoyed under the trial court's award of joint legal custody." *Id.* at 648, 630 S.E.2d at 29.

¶ 41 The facts, circumstances, and analysis in *Diehl* are markedly different from those in the case *sub judice*. The order in *Diehl* unequivocally granted Ms. Diehl "primary decision-making authority on all issues" and only granted Mr. Diehl a right to petition the court on certain issues, *id.* at 646, 630 S.E.2d at 28 (internal quotation

marks omitted); while in this case, the trial court specified that "[t]he parties shall continue to engage in good faith discussions in reference to the minor children's schooling, medical decisions, extracurriculars, and all other major decisions effecting the welfare of the minor child[,]" and "[o]nly if the parties come to an impasse, the Defendant shall have the final decision-making authority as primary custodian of the child." Notably, the trial court did not "strip . . . [Mr. Johnson] of all decision-making authority[,]" rather, it only granted Ms. Gyurisko final decision-making authority if the parties came to an impasse despite good faith discussions. *Id.* Pursuant to their prior order, the parties were required to engage in good faith efforts to reach mutual decisions about the welfare of the minor child; however, there was no statement as to the resolution should the parties not agree.

¶ 42 We have held that an allocation of decision-making authority between the parties in a joint custody arrangement is not prohibited, only the trial court "must set out specific findings as why a deviation f[rom] pure joint legal custody is necessary. Those findings must detail why a deviation from pure joint legal custody is in the best interest of the children." *Hall v. Hall*, 188 N.C. App. 527, 536, 655 S.E.2d 901, 907 (2008).

¶ 43 In this case, the unchallenged findings of fact show neither Ms. Gyurisko nor Mr. Johnson lived within Carthage Elementary's school district; as such, the minor child would be forced to obtain a waiver each year in order to remain enrolled in the

school. Thus, there is no guarantee the minor child will be able to attend Carthage Elementary in the foreseeable future. Due to COVID-19, the minor child's schooling has already been interrupted such that she cannot receive five days of in-person instruction at Carthage Elementary. Grace Christian School, in contrast, allows its students to attend five days a week in-person and has more resources available to its students. Moreover, Ms. Gyurisko is the minor child's primary caretaker during the school week as Mr. Johnson lives in Virginia. On days when the child cannot be in school getting an education due to the failure of Carthage Elementary to offer in-person instruction, Ms. Gyurisko must arrange childcare for her. Specifically, the trial court found split decision-making authority is necessary in finding number 22 and 23:

> 22. However, a conflict has arisen concerning the minor child's education that the parties are unable to resolve. There needs to be a final decision maker regarding issues of the minor child when the parties reach an impasse. As primary custodian, the Defendant is in the best position to be the final decision maker especially since the Plaintiff now resides out of state. The Defendant is mainly responsible for the minor child's daily activities and care including getting the minor child to and from school, attending school activities, being the primary contact for the school, and arranging alternative childcare if the minor child is unable to attend school in-person.
>
> 23. Allowing the Defendant final decision-making authority in situations where the parties cannot agree after good faith discussions is in the minor child's best interest and prevents situations where the minor child's

> opportunities are limited simply because the parties cannot agree.

Accordingly, the trial court made the required, specific findings as to why a split in decision-making authority is necessary and in the minor child's best interest. *Hall*, 188 N.C. App. at 535-36, 655 S.E.2d at 907.

¶ 44 To the extent the majority opinion argues the findings are insufficient to grant final decision-making power to Ms. Gyurisko, this Court has indicated that a trial court does not abuse its discretion by modifying a custody order based upon a child's educational needs. *See Wolgin v. Wolgin*, 217 N.C. App. 278, 719 S.E.2d 196 (2011) (upholding an order modifying custody when transferring the child to a new school had a detrimental effect on her social adjustment and as such affected her wellbeing). The court further found that allowing Ms. Gyurisko final decision-making authority following good faith discussions that resulted in an impasse was "in the child's best interest and prevents situations where the minor child's opportunities are limited simply because the parties cannot agree." Following such impasses, the parties' only recourse is to return to court continuously, which presumably, is not in the best interest of the child. Accordingly, the trial court did not abuse its discretion by granting final decision-making authority to Ms. Gyurisko when the parties cannot agree following good faith discussions. The trial court's order modifying child custody should be affirmed.

II. Conclusion

¶ 45 I concur with the majority opinion's conclusion that there was a substantial change in the minor child's circumstances; however, I disagree with the majority's conclusion that there were no findings to illustrate the nexus between the substantial change in circumstances and the welfare of the minor child. A child's right to obtain an education necessarily effects his welfare. The record on appeal shows the trial court made ample findings of fact as to how the change in circumstances affected the minor child's ability to obtain an education, and thus effected the minor child's welfare.

¶ 46 The trial court correctly concluded Ms. Gyurisko was to have the final decision-making power should the parties continue to disagree following good faith discussions to reach an agreement. Moreover, the trial court made the required findings as to why a split in decision-making authority is necessary and in the minor child's best interest.

¶ 47 The trial court order's findings were supported by competent evidence and its conclusions of law were supported by the findings of fact and should be affirmed. I respectfully concur in part and dissent in part.