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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-513

No. COA21-541

Filed 19 July 2022

Carteret County, No. 19 CVD 1386

ANGELIQUE T. STURDIFEN (now JOHNSON), Plaintiff,

v.

VAMANA BROWN, Defendant.

Appeal by defendant from order entered 18 December 2020 by Judge L. Walter Mills in Carteret County District Court. Heard in the Court of Appeals 23 March 2022.

No brief filed for plaintiff-appellee.

New Direction Family Law, by Elizabeth A. Stephenson, for defendant-appellant.

ARROWOOD, Judge.

¶ 1 Vamana Brown ("defendant") appeals from the trial court's order modifying custody. Defendant contends the trial court failed to make sufficient findings of fact to support its conclusion of law that there had been a substantial change in circumstance. For the following reasons, we vacate and remand for further proceedings.

I. Background

¶ 2 Defendant and Angelique T. Sturdifen ("plaintiff") were married on 25 May 2014. The parties had one child together, born 30 November 2015. The parties divorced in Florida on 17 March 2016.

¶ 3 A Mediated Settlement Agreement and Parenting Plan ("Parenting Plan") was incorporated into the divorce judgment, setting forth shared parental responsibilities between the parties. The Parenting Plan provided the minor child would primarily reside with plaintiff and set forth a time-sharing plan for visitation with defendant for a minimum of every other weekend. Additionally, a relocation clause required any party intending to relocate more than fifty miles from their principal residence to provide "detailed notice (with the specific information listed in [Florida Statute § 61.13001]) to the other parent and allows time for the other parent to raise to the Court his or her objection to relocation."

¶ 4 Plaintiff is an officer in the United States Marine Corps, and later remarried a man that is also an officer in the Marine Corps and stationed in Japan.

¶ 5 Plaintiff filed a Petition for Registration of Foreign Child Custody Order in Onslow County on 9 August 2017, and a Notice of Registration on 4 October 2017. On 11 October 2017, defendant filed a Motion to Contest Validity of a Registered Foreign Child Custody Order and Notice of Hearing. On 8 November 2017, the Onslow County District Court entered an order confirming registration of the foreign

child custody order.

¶ 6 On 21 August 2019, plaintiff filed a Motion to Set Custody Exchange Location and Allow Passport Application. Defendant filed several combined motions on 3 September 2019, seeking an order to change venue to Carteret County, modify child custody, and hold plaintiff in contempt for violating previous orders. In these motions, defendant alleged plaintiff had refused to allow visitation pursuant to the terms of the Parenting Plan and had failed to update defendant on significant life events, including the minor child's hospitalization; defendant also raised concerns as to the actual purpose of plaintiff's seeking a passport for the minor child.

¶ 7 On 26 September 2019, plaintiff filed a response agreeing that venue should be changed to Carteret County. Venue was transferred to Carteret County District Court pursuant to an order entered 12 December 2019.

¶ 8 On 29 April 2020, defendant filed a Motion to Show Cause, alleging that plaintiff was not allowing defendant to exercise visitation. On 8 May 2020, defendant filed combined motions to compel discovery, to continue "until the issues of custody, contempt, and discovery have been resolved[,]" for a restraining order to prevent the minor child's removal from North Carolina, and for attorney fees.

¶ 9 On 2 July 2020, plaintiff filed a Motion to Modify Child Custody. Plaintiff's motion asserted that a substantial change of circumstance had arisen affecting the minor child, namely that "[p]laintiff is on Active Duty with the United States Marine

Corps and has Permanent Change of Station Orders to Okinawa, Japan." The motion requested modification of the Parenting Plan to allow plaintiff to move to Japan with the minor child.

¶ 10 On 13-14 August 2020, the trial court conducted a trial on the parties' motions, Judge Mills presiding. At the outset of the trial, defendant's trial counsel provided the trial court with copies of the Florida statute controlling the Parenting Plan, and "case law from [*Ramirez-Barker v. Barker*] from 2020, which essentially runs the factors to consider on a relocating parent." During trial, both parties testified and presented various exhibits detailing communication between the parties and plaintiff's Permanent Change of Station Orders.

¶ 11 At closing arguments, plaintiff requested that the trial court grant her custody of the minor child and allow them to relocate to Japan, providing defendant visitation in the form of either two three-week periods, or three two-week periods. Defendant requested that the trial court hold plaintiff in contempt and award him custody of the minor child. Defendant's trial counsel stated that defendant feared "that if [plaintiff] goes to Japan with the child, he may not ever see [his child] again[,]" further stating that plaintiff "sold her house here, and she's not coming back here[.]"

¶ 12 At the conclusion of the parties' arguments, the trial court asked plaintiff about her scheduled departure for Japan. Plaintiff's trial counsel stated that plaintiff had tickets to leave for Japan on 19 August 2020, five days after the hearing. Judge Mills

noted in response that in fourteen years of sitting as a judge, he had never made a permanent custody decision on the same day as trial, and that the pandemic had "created a lot of backlog[.]" Judge Mills went on to state that in most relocation cases, there were "two good parents who are in a situation because of the mobility in our society that's imposed by outside forces, but there's going to be a separation and it's going to drastically affect custody from the child's eyes." Judge Mills stated that this type of case was "really, really difficult[,] [b]ecause one of the reasons is . . . there's just no middle ground. There's no good solution." At the conclusion of his comments, the trial court stated that he would have a written decision "no later than" 31 August 2020.

¶ 13 The trial court entered an order on 31 August 2020, which was signed and filed on 18 December 2020. In the order, the trial court made the following relevant findings of fact:

> 23. There has been a substantial change in circumstances affecting the welfare of the minor child and warranting a modification of custody.
>
> 24. Plaintiff's obligation with the United States Marine Corps to relocate to Okinawa, Japan makes the current visitation schedule not feasible and will alter the consistent contact that the minor child has had with both parents.
>
> 25. Defendant has a flexible work schedule with the Richmond Police Department and has accrued significant vacation time which is conducive to the

creation of a long distant [sic] visitation schedule.

26. The minor child has resided primarily with Plaintiff since her birth and has a close and lov[ing] relationship with her half-sister. The minor child has a long standing and loving relationship with her stepfather.

27. The minor child has thrived under the existing order which places her in Plaintiff's primary care subject to Defendant's visitation.

28. Pursuant to the existing Order, Defendant has visited with the minor child [on an] every other weekend basis totaling approximately 48 days per calendar year.

29. Relocation to Okinawa, Japan will provide the minor child with numerous cultural opportunities that are likely to enrich her life.

¶ 14 Based on these findings, the trial court made the following conclusions of law:

3. A substantial change of circumstances affecting the minor child has occurred, and it is proper that this Court modify the existing custody order.

4. Relocation will alter the consistent contact the minor child has with the Defendant and therefore affect that relationship.

5. The Court considered and weighed the factors set forth in Ramirez v. Barker [sic] and concludes that the advantages to the minor child of relocation outweighed the disadvantages.

6. It is in the minor child's best interest for the Plaintiff to retain primary physical custody subject to Defendant's visitation.

7. Sufficient evidence was presented to find that Plaintiff

willfully violated the prior order.

Accordingly, the trial court granted plaintiff's motion to modify custody, allowing her to relocate to Okinawa, Japan with the minor child. The order set forth visitation for defendant with different conditions before and after the minor child began kindergarten. The trial court allowed plaintiff to "maintain authority and control over the minor child's passport and shall have the right to renew the same without written consent of Defendant." Additionally, the trial court granted defendant's motion to show cause for plaintiff's failure to notify defendant of the minor child's hospitalization, ordering plaintiff to pay defendant $350.00 as attorney fees.

¶ 15 On 15 January 2021, defendant served notice of appeal, and filed notice of appeal on 19 January 2021.

II. Discussion

¶ 16 Defendant argues the trial court erred in failing to make sufficient findings of fact to support the conclusion that there had been a substantial change in circumstance affecting the welfare of the child, and to support relocation as required by *Ramirez-Barker v. Barker*, 107 N.C. App. 71, 418 S.E.2d 675 (1992). We agree with Defendant the findings made by the trial court were inadequate.

A. Standard of Review

¶ 17 "Absent an abuse of discretion, the trial court's decision in matters of child custody should not be upset on appeal." *Everette v. Collins*, 176 N.C. App. 168, 171,

625 S.E.2d 796, 798 (2006) (citation omitted). "Abuse of discretion results when the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988) (citation omitted).

¶ 18 When awarding custody of a child to a particular party, the trial court must make a conclusion of law "that the award of custody to that particular party 'will best promote the interest and welfare of the child.' " *Tuel v. Tuel*, 270 N.C. App. 629, 631, 840 S.E.2d 917, 920 (2020) (quoting *Steele v. Steele*, 36 N.C. App. 601, 604, 244 S.E.2d 466, 468 (1978)). "We review this conclusion of law *de novo* to determine whether it is adequately supported by the trial court's findings of fact." *Id.* (citation omitted).

¶ 19 "The findings of fact are conclusive on appeal if there is evidence to support them, even if evidence might sustain findings to the contrary." *Id.* at 632, 840 S.E.2d at 920 (citation and quotation marks omitted). "The evidence upon which the trial court relies must be substantial evidence and be such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Everette*, 176 N.C. App. at 170, 625 S.E.2d at 798 (citation omitted).

¶ 20 "The quality, not the quantity, of findings is determinative." *Carpenter v. Carpenter*, 225 N.C. App. 269, 273, 737 S.E.2d 783, 787 (2013).

B. Modifying Custody

¶ 21 When determining custody upon relocation of a parent to a foreign jurisdiction,

"[t]he trial court must make a comparison between the two applicants considering all factors that indicate which of the two is best-fitted to give the child the home-life, care, and supervision that will be most conducive to its well-being." *Evans v. Evans*, 138 N.C. App. 135, 142, 530 S.E.2d 576, 580 (2000) (citation and quotation marks omitted). In evaluating the best interests of a child in a proposed relocation, trial courts may consider, and make findings addressing, a number of factors set out in *Ramirez-Barker v. Barker*, 107 N.C. App. 71, 418 S.E.2d 675 (1992). These factors include but are not limited to:

> the advantages of the relocation in terms of its capacity to improve the life of the child; the motives of the custodial parent in seeking the move; the likelihood that the custodial parent will comply with visitation orders when he or she is no longer subject to the jurisdiction of the courts of North Carolina; the integrity of the noncustodial parent in resisting the relocation; and the likelihood that a realistic visitation schedule can be arranged which will preserve and foster the parental relationship with the noncustodial parent.

Id. at 80, 418 S.E.2d at 680 (citation omitted). "[T]hese factors will be highly relevant to the best interest of the child in nearly all [child custody] situations." *Tuel*, 270 N.C. App. at 633, 840 S.E.2d at 921. In considering the advantages of relocation, it is appropriate to engage in a comparison between the two locations where each parent resides. *Id.*

¶ 22 Here, the findings of fact include some of the *Ramirez-Barker* factors, but do

not adequately support the trial court's conclusion of law. Regarding the first factor, the trial court found that relocation "will provide the minor child with numerous cultural opportunities that are likely to enrich her life[,]" without providing any detail about how the minor child's life would be improved. Significantly, the trial court did not engage in any comparison between plaintiff's residence in Japan and defendant's residence in Virginia. The trial court did not address the motives of plaintiff in seeking the move, the integrity of defendant in resisting the relocation, or the likelihood that plaintiff would comply with visitation orders. The only findings addressing visitation provided that plaintiff's relocation made "the current visitation schedule not feasible" and that defendant had "a flexible work schedule" and "significant vacation time which is conducive to the creation of a long distant [sic] visitation schedule." The trial court's conclusions of law provided that the trial court "considered and weighed the factors set forth in Ramirez v. Barker [sic] and concludes that the advantages of relocation outweighed the disadvantages."

¶ 23 In sum, the trial court made findings of fact that barely addressed the *Ramirez-Barker* factors, yet concluded that the advantages of relocation outweighed the disadvantages.

¶ 24 We observe that the trial court's reference to *Ramirez-Barker* misidentifies the title of the case. Although this may represent a typographical error, we find it noteworthy that the trial court, after being presented a physical copy of case law

describing the *Ramirez-Barker* factors, failed to make adequate findings considering these factors and also failed to correctly reproduce the title of a controlling case in its conclusions of law. As Judge Mills recognized at trial, these cases are difficult and require detailed findings that set forth the trial court's reasoning in allowing relocation. Unfortunately, the trial court's order here lacks sufficiently detailed findings and fails to consider several important factors relevant to the minor child's best interest.

¶ 25 Although there may have been evidence to support a conclusion that it was in the minor child's best interest to relocate to Japan, the trial court did not make the necessary findings of fact to support such a conclusion. Because the trial court's conclusion of law was not supported by sufficient findings of fact, the trial court's order allowing relocation amounts to an abuse of discretion.

III. Conclusion

¶ 26 For the foregoing reasons, we vacate the trial court's order modifying custody and remand for the entry of a new order that adequately addresses relevant factors, including those set forth in *Ramirez-Barker*, and engages in a comparison between the custodial locations of each party. The trial court may take additional evidence if deemed necessary to make the requisite findings.

VACATED AND REMANDED.

Judges TYSON and CARPENTER concur.

Report per Rule 30(e).