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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-635

No. COA22-168

Filed 20 September 2022

Stanly County, No. 20 CVD 778

NATALIE DRAGONETTE, Plaintiff,

v.

CURTIS W. TAYLOR, III, Defendant.

Appeal by Plaintiff from order entered 3 August 2021 by Judge John R. Nance in Stanly County District Court. Heard in the Court of Appeals 23 August 2022.

Collins Family Law Group, by Rebecca K. Watts, for the Plaintiff.

Curtis W. Taylor, III, Pro Se.

DILLON, Judge.

¶ 1 Plaintiff ("Mother") appeals from an Order granting Defendant ("Father") primary physical custody of J.A.T. and C.A.T[1].

I. Background

¶ 2 Mother and Father resided together when each of their children were born.

[1] Pseudonyms. *See* N.C. R. App. P. 42(b)(1).

They separated in November 2018. From the date of their separation through August 2020, the children resided with Mother and visited Father.

¶ 3 Father did not return the children to Mother at the end of one of his visitation periods in August 2020. Rather, he sought and was granted an *ex parte* domestic violence protective order ("DVPO") against Mother. Two months later, in October 2020, Mother filed a *pro se* custody action.

¶ 4 The parties participated in mediation but were unsuccessful in reaching an agreement. In March 2021, the trial court entered a temporary custody order awarding primary physical custody to Father and visitation rights to Mother.

¶ 5 Five months later, in August 2021, after a hearing on the matter, the trial court entered a permanent custody order, awarding primary physical custody to Father and visitation to Mother. Mother timely appealed.

II. Analysis

¶ 6 Mother first argues that the trial court failed to make sufficient findings to support its permanent award of custody. We agree.

¶ 7 "It is a long-standing rule that the trial court is vested with broad discretion in cases involving child custody." *Pulliam v. Smith*, 348 N.C. 616, 624, 501 S.E.2d 898, 902 (1998). Accordingly, we review a trial court's custody determination for abuse of discretion. *Id*. at 625, 501 S.E.2d at 902. "A trial court may be reversed for abuse of discretion only upon a showing that its actions are manifestly unsupported

by reason. . . . [or] upon a showing that [its ruling] was so arbitrary that it could not have been the result of a reasoned decision." *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985) (internal citation omitted).

¶ 8 In the order on appeal, the trial court found as follows:

> 1. Plaintiff and Defendant were present and advised by the Court that the Court would not and could not provide any assistance or advice as to how they were to present their respective cases, question witnesses or introduce evidence. Each understood and stated they wished to proceed without counsel.
>
> 2. This matter was last heard March 9, 2021, whereby a Temporary Order was signed by the Honorable Phillip L. Cornett and entered March 11, 2021. The matter is before the Court for review.
>
> 3. Plaintiff and Defendant were never married to one another but are the parents of two (2) minor children, to wit: [J.A.T.], born June 4, 2013 and [C.A.T.], born August 17, 2016.
>
> 4. No additional competent testimony or evidence was provided to the Court other than the Plaintiff now resides with her mother and is no longer residing with her (former?) boyfriend, James Chambers.
>
> 5. The *Ex-Parte* Order that was pending at the last hearing was resolved March 24, 2021 wherein the Plaintiff, Curtis William Taylor (the Defendant herein) was granted a Domestic Violence Order of Protection against Natalie Dragonette (the Plaintiff herein). Ms. Dragonette was ordered not to assault, threaten, abuse, follow, harass, or otherwise interfere with Mr. Taylor. She is to remain at least 500 feet away from Mr. Taylor except for compliance with the parties' child custody order (the Temporary Order under review). The Order of Protection is to expire August

18, 2021.

Based on these findings, the trial court determined that there was no evidence that there had been a substantial change since the March 2020 temporary custody was entered. In addition, the trial court found that it would be in the best interest of the children to award permanent custody to Father and grant Mother visitation rights, which would effectively maintain the status quo.

¶ 9 When changing a temporary order to a permanent order, there is no requirement that a change of circumstances be shown, only that the trial court determine what is in the best interest of the children. N.C. Gen. Stat § 50-13.2(a) (2018). Though the trial court determined there was no evidence showing any change of circumstances between the entry of the temporary order and the hearing on permanent custody, it did make the required determination concerning the best interest of the children in making its permanent award.

¶ 10 However, we must agree with Mother that the trial court did not make enough findings to support its order. All the trial court found was that there had been a DVPO taken out against Mother and that she was living with her mother. Our Supreme Court has instructed that when the trial court "fails to find facts so that this Court can determine that the order is adequately supported by competent evidence and the welfare of the child subserved, then the order entered thereon must be vacated and the case remanded for detailed findings of fact." *Crosby v. Crosby*, 272

N.C. 235, 238-239, 158 S.E.2d 77, 80 (1967) (citation omitted).

¶ 11 The parties both appeared *pro se*, and the evidence was not well developed. However, there is evidence in the record that Father had primary custody of the children and that he was caring, had a good support system, and was better at setting boundaries for the children. In addition, other evidence concerning issues with Mother, coupled with her past DVPO, might be enough to support the trial court's order that it would be in the best interest of the children to continue living with Father. *See, e.g., Evans v. Evans*, 169 N.C. App. 358, 610 S.E.2d 264 (2005) (finding that children had been living with the father, that the father had a good support system, and that the mother had been physically violent in the past supported an order granting primary physical custody with the father). However, the court must make sufficient evidentiary findings to allow us to review the matter.

¶ 12 Therefore, we vacate the permanent custody order and remand the matter to the trial court. On remand, the trial court may, in its discretion, consider more evidence and enter a new order or simply make additional findings based on the evidence that was presented at the previous hearing.

VACATED AND REMANDED.

Judges CARPENTER and GORE concur.

Report per Rule 30(e).