IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-751

No. COA22-209

Filed 15 November 2022

Pitt County, No. 18 CVD 337

ELLIOT MOORE HINES, Plaintiff,

v.

CHELLE C. NICHOLS, Defendant.

Appeal by Defendant from order entered 13 August 2021 by Judge Lee F. Teague in Pitt County District Court. Heard in the Court of Appeals 6 September 2022.

Teresa DeLoatch Bryant for Defendant-Appellant.

No brief for Plaintiff-Appellee.

JACKSON, Judge.

¶ 1 Chelle C. Nichols ("Defendant") appeals from an order modifying a Consent Order for Permanent Child Custody and granting Elliot Moore Hines ("Plaintiff") sole legal decision-making authority regarding the schooling and education of the parties'

minor child, "Elizabeth."[1] After careful review, we affirm in part, vacate in part, and remand for further proceedings regarding the child support determination.

I. Background

¶ 2 Plaintiff and Defendant are the parents of one child, Elizabeth, born in 2017. On 2 March 2020, the Honorable Lee F. Teague entered a Consent Order for Permanent Child Custody ("Permanent Order") vesting the parties with joint legal and physical custody of Elizabeth. The Permanent Order defined joint legal custody as the following:

> Joint legal custody as awarded herein shall and does mean that although each Party shall have the authority to make routine decisions while the minor child is in the physical placement of that respective Party, any and all major decisions regarding the minor child's education, health, extracurricular activities and any other major issues affecting her general welfare, development, or upbringing shall be mutually discussed in advance between the Parties and shall be mutually decided between the two of them. If the Parties cannot reach a mutual agreement on a major decision they will follow the advice of a qualified professional or will return to mediation. Notwithstanding, either Party shall be entitled to file a motion in Court, if either deems it necessary, to request judicial intervention as related to such matters, subject to any principles of law governing such motion(s)[.]

¶ 3 At the time the Permanent Order was entered, Elizabeth was enrolled in

[1] We use a pseudonym in this opinion to protect the privacy of the juvenile. *See* N.C. R. App. P. 42(b).

daycare at A Child's Place – Children's World Learning Center at Vidant Hospital where Defendant worked. The Permanent Order directed that Elizabeth remain enrolled at A Child's Place "so long as she is in daycare or unless otherwise mutually agreed upon by the parties." Elizabeth went to A Child's Place on an as-needed basis.

¶ 4 In February 2021, Plaintiff emailed Defendant asking her to consider enrolling Elizabeth in Trinity Christian School ("Trinity") in Fall 2021 for pre-kindergarten. The parties emailed back and forth until April 2021 but were unable to agree on enrolling Elizabeth at Trinity. On 4 May 2021, Plaintiff filed Motions in the Cause, asking the trial court to vest him with sole decision-making authority regarding Elizabeth's schooling and education or alternatively to determine the appropriate school for Elizabeth to attend. Neither party requested mediation and the Family Court Staff did not set this matter for custody mediation pursuant to Rule 5.1 of the 3A Judicial District Family Court Domestic Rules.

¶ 5 This matter came on for hearing on 2 August 2021. Both parties testified. Following the hearing, the trial court waived the requirement for the parties to participate in mediation, granted Plaintiff's Motions in the Cause, and entered an order modifying the Permanent Order on 13 August 2021. The trial court specifically ordered the following:

> 1. Plaintiff is granted sole legal custody decision making authority regarding the minor child's school/education decisions and enrollment at Trinity Christian School.

> 2. If Plaintiff elects or the parties otherwise mutually agree the minor child will no longer be enrolled at Trinity Christian School the parties will exercise joint legal custody decision making involving the minor child's education.
>
> 3. That the remainder of the [Permanent Order] remains in full force and effect.

The trial court also entered a child support worksheet including the monthly tuition for Trinity as a work-related childcare cost.

¶ 6 Defendant filed timely notice of appeal on 9 September 2021.

II. Analysis

¶ 7 On appeal, Defendant argues that the trial court erred in granting Plaintiff's motion to modify the Permanent Order. Specifically, Defendant contends that several findings of fact were not supported by substantial evidence and the remaining findings of fact do not evidence a substantial change in circumstances affecting the welfare of Elizabeth and necessitating the modification of the order. Therefore, Defendant argues, the trial court erred in granting Plaintiff the sole legal custody decision-making authority regarding Elizabeth's schooling and allowing Elizabeth to be enrolled at Trinity. We disagree.

¶ 8 "Our trial courts are vested with broad discretion in child custody matters." *Shipman v. Shipman*, 357 N.C. 471, 474, 586 S.E.2d 250, 253 (2003). When ruling upon a motion to modify a custody order, the trial court must first determine whether there was a substantial change in circumstances and whether that change affects the

welfare of the minor child. *Id.* at 475, 586 S.E.2d at 254. *See also* N.C. Gen. Stat. § 50-13.7 (2021). On appeal, we examine the trial court's findings of fact regarding a change in circumstances affecting the welfare of the child to determine whether they are supported by substantial evidence, and then we determine whether the findings of fact support the trial court's conclusions of law. *Deanes v. Deanes*, 269 N.C. App. 151, 155, 837 S.E.2d 404, 408 (2020) (citing *Shipman*, 357 N.C. at 474-75, 586 S.E.2d at 253-54).

¶ 9 If the trial court concludes there is a substantial change affecting the child's welfare, it must then determine "whether a modification of custody was in the child's best interests." *Shipman*, 357 N.C. at 475, 586 S.E.2d at 254. "As long as there is competent evidence to support the trial court's findings, its determination as to the child's best interests cannot be upset absent a manifest abuse of discretion." *Metz v. Metz*, 138 N.C. App. 538, 541, 530 S.E.2d 79, 81 (2000). "Under an abuse of discretion standard, we must determine whether a decision is manifestly unsupported by reason, or so arbitrary that it could not have been the result of a reasoned decision." *Stephens v. Stephens*, 213 N.C. App. 495, 503, 715 S.E.2d 168, 174 (2011).

A. Substantial Change in Circumstances Affecting the Minor Child

¶ 10 In Finding of Fact 27, the trial court found that "there has been a substantial change in circumstances affecting the welfare of the minor necessitating the modification of the [Permanent Order] only as it relates specifically to the legal

custody decision making involving the minor child's education." The trial court also made the following specific findings related to the substantial change in circumstances:

> a. The minor child turned four (4) years old in July and is of age to begin attending pre-school/kindergarten in the Fall of 2021. As such, decisions regarding the minor child's education and appropriate school need to be addressed and determined as the parties are unable to agree on selecting a school.
>
> b. Plaintiff has communicated with Defendant since February 2021 regarding current pre-school/kindergarten options for the minor child and has suggested that the minor child attend Trinity Christian School.
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> c. Trinity will provide consistency for the minor child's Christian-based upbringing and will offer continuity as the school encompasses pre-school/kindergarten through the twelfth grade as compared to the current daycare facility which is used to assist with work related childcare.
>
> d. Trinity offers early drop-off and after school/summer care programs, which eliminates the need for the minor child to be enrolled in a separate daycare program and accommodates the respective work schedules of the parties.
>
> e. The minor child has previously enrolled in daycare at A Child's Place – Children's World Learning Center. From reviewing the records the parties have not used this facility consistently as will be required by the pre-school/kindergarten program at Trinity during educational hours. There is nothing wrong in the manner in which the parties have used their prior daycare on an as needed basis since entry of

the prior Order.

f. Defendant first rebuffed Plaintiff's suggestion that the minor child attend Trinity Christian School due to the cost of tuition, which is $170.00 per week. Plaintiff communicated to Defendant that he is now prepared to be solely responsible for paying the minor child's tuition at Trinity Christian School. Pursuant to the prior temporary child support order entered on 15 October 2018 Defendant paid for work related childcare and received an adjustment on the Worksheet B Child Support Obligation of $860.00 per month. This childcare expense paid by Defendant will no longer be necessary.

g. As the parties continued to communicate regarding pre-school/kindergarten options for the minor child from February until Plaintiff filed his motion on 4 May 2021, Defendant stated that private school is not appropriate for the minor child at this time and suggested that the parties consider open-enrollment public schools. However, at no time has Defendant provided any specific schools she would like to consider despite Plaintiff's request nor has Defendant communicated what is inappropriate about private school options provided by Plaintiff.

h. Defendant has previously alleged that the minor child may have special needs, and if this is accurate, a private school would well serve any additional accommodations.

i. The minor child's education and appropriate school has become a point of contention between the parties that did not exist at the time of the [Permanent Order].

¶ 11 Defendant argues that all or portions of the trial court's Findings of Fact 27(a), (c), (e), (g), and (h) were not supported by substantial evidence.

¶ 12 Regarding Finding of Fact 27(a), it appears that the trial court's use of the descriptor "pre-school/kindergarten" is a reference to pre-kindergarten as well as kindergarten. There is substantial evidence that Elizabeth was old enough to attend pre-kindergarten in Fall 2021, having turned four in July 2021. Furthermore, a child reaching the age of matriculation into pre-kindergarten—and one year after that into kindergarten—is one of many factors which cumulatively may evince a substantial change in circumstances affecting the welfare of a minor child. *See Deanes*, 269 N.C. App. at 157, 837 S.E.2d at 409 (concluding that children reaching school age can appropriately be considered one factor supporting a substantial change in circumstances determination).

¶ 13 Regarding Finding of Fact 27(c), there is substantial evidence that Trinity is a pre-K-12 school, meaning it could offer Elizabeth educational continuity beginning in pre-kindergarten that A Child's Place, as a standard daycare facility, could not. This finding of consistency and continuity is not a finding of superiority in terms of academic offerings, but rather of the ability to remain in the same environment from the beginning of Elizabeth's structured schooling.

¶ 14 Regarding Finding of Fact 27(g), there is substantial evidence that Defendant never specified a school that she would like Plaintiff to consider, nor did she explain what was inappropriate about the private schools—Trinity and Greenville Christian Academy—Plaintiff suggested. While Defendant sent Plaintiff a list of open

enrollment schools, she did not specify any school in particular nor did she provide information about a specific alternative to Trinity. Likewise, Defendant appears to have objected generally to the cost of private school education and to have asserted that private school is inappropriate for Elizabeth as a four-year-old. Defendant did not, however, explain her specific objections to Trinity as an option.

¶ 15 While a portion of Finding of Fact 27(e) and (h) may not be supported by substantial evidence, Findings of Fact 27(a), (c), and (g) are supported by substantial evidence, and Defendant concedes that Findings of Fact (b), (d), (f), and (i) are supported by evidence. Together, Findings of Fact 27(a), (b), (c), (d), (f), (g), and (i) support the trial court's determination that there had been a substantial change in circumstances affecting the welfare of Elizabeth.

B. Best Interests of the Minor Child

¶ 16 We next review the trial court's findings to determine whether they support its conclusion that modification was in Elizabeth's best interests.

¶ 17 The trial court found that Elizabeth's education and appropriate school had become a point of contention between Plaintiff and Defendant and that the parties had communicated about schooling from February to May 2021 without resolution. Although this communication took place via email and the emails were cordial, Defendant appears to have never seriously considered Trinity as an option for Elizabeth. In February, she told Plaintiff in response to his proposal of Trinity for

pre-kindergarten that she was not going to move Elizabeth, that they should be looking into preschools that go into kindergarten, and that she would look at all their schooling options. She then cited concerns about the expense of private school and conflicts with her work schedule. In March, Defendant stated that private school was not going to work for her at the moment. In April, Defendant reiterated that private school would not accommodate her work schedule and added that private school was inappropriate for Elizabeth's age. At the hearing, Defendant testified that she thought the parties needed more time to decide about Elizabeth's schooling.

¶ 18 While Defendant may have had reasons for not considering Trinity as an option, she did not specify those for the trial court's consideration. Furthermore, by the time of the hearing on 2 August 2021, the date for beginning pre-kindergarten at Trinity was drawing nearer. Plaintiff had in fact applied for a spot at Trinity in July 2021 to ensure that Elizabeth would at least have the option of attending. Thus, the trial court's findings that the parties were unable to agree on a school were supported by competent evidence.

¶ 19 Ultimately,

> [i]f 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.

Shipman, 357 N.C. at 475, 586 S.E.2d at 254. Although reasonable minds could differ regarding the decision to vest Plaintiff with sole decision-making authority regarding Elizabeth's schooling and education decisions and enrollment at Trinity, we cannot say that the trial court's determination that this modification was in Elizabeth's best interests was manifestly unsupported by reason or so arbitrary that it did not result from a reasoned decision. Therefore, we hold that the trial court did not err in concluding that modification was in Elizabeth's best interests.

C. Child Support Worksheet

¶ 20 Defendant also contends that the trial court erred in how it included the tuition for Trinity in the child support calculation. Specifically, Defendant argues that despite Plaintiff testifying he was willing to pay the entirety of Elizabeth's tuition for Trinity and the trial court ordering that "Plaintiff shall be responsible for the tuition fees and expenses" of Elizabeth owed to Trinity, the tuition for Trinity was included in the child support worksheet as a work-related child care cost and therefore the expense is essentially being paid proportionally by both parties rather than solely by Plaintiff. Defendant asserts that the cost of Trinity tuition should be included in the extraordinary expenses adjustments category rather than the work-related child care costs adjustments column.

¶ 21 Here, we are unable to determine whether the trial court intended for Plaintiff to be credited with the cost of Trinity tuition when calculating his child support

obligation. Although the trial court decreed that "Plaintiff shall be responsible for the tuition fees and expenses of the minor child owed to Trinity Christian School" and found that "Plaintiff communicated to Defendant that he is now prepared to be solely responsible for paying" Elizabeth's tuition at Trinity, the trial court also found that the child support worksheet, which included the cost of Trinity tuition as a work-related child care cost, was appropriate. By including the cost of Trinity tuition in the child support calculation, Plaintiff is credited with the cost of Trinity tuition, which lowers his overall monthly child support obligation paid to Defendant.[2] This means that Defendant is proportionally sharing in the cost of Trinity tuition via the child support calculation. If the cost of Trinity tuition was not included in the child support calculation, then Plaintiff's monthly child support obligation would be higher.

¶ 22 While the trial court may have intended for Plaintiff to be solely responsible for the payment of Trinity tuition but to receive credit towards his child support obligation, based on this uncertainty, we cannot review this issue in full. Accordingly, we vacate the modification order in part and remand for the limited purpose of amending the order to clarify the basis of the trial court's determination of Plaintiff's child support obligation—specifically Decree 10 and, if necessary, Decree 5 of the 13 August 2021 modification order.

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[2] We also note that the cost of Trinity tuition at $736.66 per month is lower than the cost of daycare at $860 per month.

¶ 23 Lastly, we note that the North Carolina Child Support Guidelines treat "special or private elementary or secondary schools to meet a child's particular educational needs" as an extraordinary child-related expense. *North Carolina Child Support Guidelines*, N.C. Dept. Health & Hum. Servs., https://ncchildsupport.ncdhhs.gov/ecoa/cseGuideLineDetails.htm (last visited Sept. 12, 2022). Furthermore, these extraordinary expenses "may be added to the basic child support obligation and ordered paid by the parents in proportion to their respective incomes if the court determines the expenses are reasonable, necessary, and in the child's best interest." *Id.* On the other hand, "[r]easonable child care costs that are, or will be, paid by a parent due to employment or job search are added to the basic child support obligation and prorated between the parents based on their respective incomes." *Id.* Ultimately, "the trial court has the discretion to determine what expenses constitute extraordinary expenses, the amount of the expenses, and . . . how the expenses are to be apportioned between the parties." *Mackins v. Mackins*, 114 N.C. App. 538, 549, 442 S.E.2d 352, 359 (1994).

III. Conclusion

¶ 24 For the aforementioned reasons, we affirm the trial court's order modifying the Permanent Order and granting Plaintiff sole decision-making authority regarding Elizabeth's school decisions and enrollment at Trinity. We vacate the child support portion of the modification order and remand for clarification of the child support

determination. We leave it to the trial court's discretion whether to have a new hearing on this issue or to amend the order based on the existing record.

AFFIRMED IN PART; VACATED IN PART; AND REMANDED.

Judges ZACHARY and GORE concur.

Report per Rule 30(e).