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IN THE COURT OF APPEALS OF NORTH CAROLINA

2023-NCCOA-9

No. COA21-691

Filed 17 January 2023

Lincoln County, No. 19 CVD 821

CHRISTOPHER GILLELAND, Plaintiff,

v.

DAKOTA ADAMS, Defendant Mother,

v.

JOHN DOE, Defendant Unknown Father,

v.

TYLER V. WURMLINGER, Defendant Putative Father.

Appeal by Plaintiff from order entered 31 March 2021 by Judge Justin K. Brackett in Lincoln County District Court. Heard in the Court of Appeals 7 September 2022.

*Rebecca K. Watts, for Plaintiff-Appellant.*

*James, McElroy & Diehl, P.A., by Preston O. Odom, III, for Defendant-Appellee Dakota Adams.*

GRIFFIN, Judge.

Plaintiff Christopher Gilleland appeals from the trial court's order granting Defendant Dakota Adams's motion to dismiss Plaintiff's claim for custody of

Defendant's minor child, R.G.,<sup>1</sup> for lack of standing. Plaintiff contends that the trial court erred by conducting a lengthy hearing and making multiple findings of fact and conclusions of law in its order, when the question before it turned only on the sufficiency of the pleadings.

¶ 2 However, where the trial court is asked to determine whether a party has standing, it may elect to look beyond the pleadings to determine whether a party has standing as a matter of law. Standing is an issue of subject matter jurisdiction, and a court must have jurisdiction before it may rule on the sufficiency of a party's complaint. As such, we hold that the trial court properly considered evidence and dismissed Plaintiff's claim for custody for a lack of standing under Rule 12(b)(1). We affirm.

### **I. Factual and Procedural Background**

¶ 3 In January 2017, Defendant gave birth to R.G. On 25 June 2019, Plaintiff filed a complaint for custody of R.G., alleging that he was R.G.'s biological father. On 19 September 2019, Defendant filed an answer, counterclaims, and motions to dismiss Plaintiff's complaint, citing Rules 12(b)(1) and 12(b)(6) of the North Carolina Rules of Civil Procedure. Each of Defendant's motions to dismiss argued that Plaintiff could not bring a custody case, or failed to state a compensable claim, because he was not

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<sup>1</sup> We use a pseudonym to protect the identity of the juvenile and for ease of reading. N.C. R. App. P. 42(b).

R.G.’s biological father.

¶ 4

Plaintiff and Defendant consented to court-ordered paternity testing, which revealed that Plaintiff was not R.G.’s biological father. As a result, on 13 December 2019, Plaintiff amended his complaint to include additional Defendants John Doe, as unknown father, and Tyler Wurmlinger, as putative father. Plaintiff’s amended complaint alleged that he had a relationship with R.G., that Defendant had acted inconsistent with her constitutional right to parent, and that it was in R.G.’s best interest that Plaintiff be granted custody of the minor child. On 6 February 2020, Defendant filed an answer, counterclaims, and a motion to dismiss Plaintiff’s amended complaint. Defendant’s motion to dismiss the amended complaint did not cite a particular Rule, but once again argued that Plaintiff lacked standing to bring his claim because he was not a biological parent of R.G.

¶ 5

On 10 July 2020, Defendant also filed a motion for summary judgment against Plaintiff’s custody claim on grounds that Plaintiff lacked standing.

¶ 6

The trial court conducted an evidentiary hearing on Defendant’s motion to dismiss across five separate days from 22 July 2020 to 17 November 2020. During the hearing, the trial court heard from a total of eleven witnesses and allowed the parties to introduce nearly sixty documentary exhibits. Each party presented witness testimony establishing a history of events leading up to and following Defendant’s pregnancy with R.G. The trial court acknowledged that the parties presented

“drastically different versions of the underlying events that were the subject of this action which were diametrically opposed to each other.”

¶ 7

The evidence tended to show that Defendant engaged in sexual intercourse with three men around the time she became pregnant with R.G.: Plaintiff, Tyler Wurmlinger, and Sean Hohlowksi. Defendant later began a relationship with Dr. Timothy Heider, and Defendant was engaged to marry Heider at the time of the hearing. Plaintiff and Hohlowksi attended prenatal appointments with Defendant. At varying times, Defendant told Plaintiff and Wurmlinger that each was R.G.’s father. Defendant has sought financial child support from Plaintiff and Wurmlinger. Defendant and R.G. have resided with Hohlowksi and Heider at different times for varying amounts of time, and Defendant allowed both Hohlowksi and Heider to care for R.G. in a parent-like role.

¶ 8

Plaintiff particularly asserted that he paid for R.G.’s prenatal medical care, was routinely involved with Defendant during her pregnancy, was present for R.G.’s birth, and was listed as R.G.’s father on the child’s birth certificate. Plaintiff further informed the court that Defendant requested he pay child support for R.G., which he provided along with payments for R.G.’s medical care and housing. In return, Defendant gave Plaintiff gifts, allowed Plaintiff to think of R.G. as his child, and allowed R.G. to spend holidays around Plaintiff and Plaintiff’s family. Defendant’s evidence showed that she protested Plaintiff’s presence at R.G.’s birth and

subsequent involvement with R.G., but she gave in due to Plaintiff's insistence and threats to evict her and R.G. from housing Plaintiff owned. Defendant informed the court that, though he did provide some financial support, Plaintiff was not involved in the day-to-day caretaking and decision-making regarding R.G.'s upbringing.

¶ 9 On 31 March 2021, the trial court entered a written order making plenary findings of fact and conclusions of law regarding Plaintiff's standing to bring a child custody complaint, Defendant's constitutional right to parent, the best interests of R.G., and whether Plaintiff presented a claim upon which relief could be granted. The order ultimately granted Defendant's motion to dismiss "pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure." On 20 April 2021, Plaintiff timely appealed from the trial court's dismissal order.<sup>2</sup>

## II. Analysis

¶ 10 Plaintiff argues the trial court erred by dismissing his child custody complaint

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<sup>2</sup> On 11 March 2020, Defendant filed a motion to set aside an affidavit of parentage attesting that Plaintiff was R.G.'s biological father, as well as a motion for issuance of a new birth certificate stating that Wurmlinger was R.G.'s biological father. Plaintiff later moved to amend the dismissal order under Rules 52 and 59 of the North Carolina Rules of Civil Procedure on 9 April 2021, and also moved for a new trial under Rule 60 on 27 August 2021.

The record does not show whether any of these motions have been resolved. To the extent that the pendency of any motion renders this case interlocutory, it is nonetheless ripe for our review pursuant to N.C. Gen. Stat. § 50-19.1. N.C. Gen. Stat. § 50-19.1 (2021) ("Notwithstanding any other pending claims filed in the same action, a party may appeal from an order . . . adjudicating a claim for . . . child custody . . . if the order . . . would otherwise be a final order . . . within the meaning of G.S. 1A-1, Rule 54(b), but for the other pending claims in the same action.").

prior to trial. Plaintiff's brief on appeal addresses the trial court's decision primarily as a dismissal under Rule 12(b)(6), but also presents arguments against dismissal under Rules 12(b)(1) and 56. N.C. R. Civ. P. 12(b)(1) (allowing dismissal where the court lacks subject matter jurisdiction); N.C. R. Civ. P. 12(b)(6) (allowing dismissal where a plaintiff has failed to state a claim upon which relief could be granted); N.C. R. Civ. P. 56 (allowing resolution of claims as a matter of law where there are no material issues of fact remaining). Before we consider whether the trial court erred, we first set out the procedural stage at which the trial court dismissed Plaintiff's action.

#### **A. Procedural Stage**

¶ 11 Plaintiff and Defendant have provided this Court with an assortment of procedural postures from which this Court could review their case. Nonetheless, the parties uniformly assert, and we agree, that this case concerns Plaintiff's standing to bring a claim for child custody.

¶ 12 Section 50-13.1(a) of the North Carolina General Statutes creates a particular class of "other persons" who are not biological parents of a minor child, but who still possess standing to bring a child custody claim over which our courts have subject matter jurisdiction. N.C. Gen. Stat. § 50-13.1(a) (2021); *Krauss v. Wayne Cnty. Dep't of Soc. Servs.*, 347 N.C. 371, 379, 493 S.E.2d 428, 433 (1997) ("[T]he broad grant of standing in N.C.G.S. § 50-13.1(a) does not convey an absolute right upon every person

who allegedly has an interest in the child to assert custody.”). “Standing is jurisdictional in nature and consequently, standing is a threshold issue that must be addressed, and found to exist, before the merits of the case are judicially resolved.” *In re S.E.P.*, 184 N.C. App. 481, 487, 646 S.E.2d 617, 621 (2007) (citation omitted and internal marks omitted). “Subject matter jurisdiction is the indispensable foundation upon which valid judicial decisions rest, and in its absence a court has no power to act[.]” *In re T.R.P.*, 360 N.C. 588, 590, 636 S.E.2d 787, 790 (2006).

¶ 13 Here, Defendant moved to dismiss Plaintiff’s amended complaint on grounds that, *inter alia*, “Plaintiff does not have standing to bring this action in that he does not have a relationship with [R.G.] tantamount to a parent/child relationship.” The trial court conducted an evidentiary hearing that spanned five days, during which the court allowed each party to introduce nearly sixty exhibits, present the testimony of eleven total witnesses, and otherwise educate the court on matters beyond the information contained within the parties’ pleadings. The trial court then expressed in open court that it had the difficult task of resolving material issues of fact in the incredibly divergent stories presented by the parties. It is clear from the trial court’s position that it did not believe its burden was solely to determine whether Plaintiff had sufficiently pled facts establishing his standing under Rule 12(b)(6).

¶ 14 The trial court entered a written order containing twenty-two findings of fact, determining that, even though Defendant may have been dishonest toward the men

in her life about her child’s parentage, Plaintiff did not have a sufficient parent/child relationship with R.G. Then, prior to any mention of Rule 12(b)(6), the court concluded “as a matter of law that [] Plaintiff does not have standing to bring this cause of action.”

¶ 15 The parties’ confusion surrounding the procedural posture of this case arises from the trial court’s decision to deviate from the typical manner in which our courts resolve standing in child custody cases. Our review of North Carolina precedent reveals that it is the common practice of our courts to resolve a plaintiff’s standing to bring a child custody claim based solely on whether they have alleged facts sufficient to show a parent/child relationship in the complaint, as if it were purely a Rule 12(b)(6) matter, without further investigation by the trial court—even after a full hearing has concluded. *See Bohannon v. McManaway*, 208 N.C. App. 572, 587, 705 S.E.2d 1, 11 (2010); *Mason v. Dwinnell*, 190 N.C. App. 209, 220, 660 S.E.2d 58, 65 (2008); *Ellison v. Ramos*, 130 N.C. App. 389, 396, 502 S.E.2d 891, 895 (1998); *Krauss*, 347 N.C. at 373, 493 S.E.2d at 430.

¶ 16 Seemingly in light of this precedent, Plaintiff contends the trial court erred by hearing evidence, entertaining motions about witness credibility, and conducting an extensive hearing when the proper procedural posture was only to determine whether standing was sufficiently pleaded under Rule 12(b)(6). *See Wells Fargo Bank, N.A. v. Corneal*, 238 N.C. App. 192, 195, 767 S.E.2d 374, 377 (2014) (stating court’s



assessment under Rule 12(b)(6) is “whether the complaint states a claim for which relief can be granted under some legal theory when the complaint is liberally construed and all the allegations included therein are taken as true”). Plaintiff asserts the trial court resolved the merits of the case when “[t]he parties were not there for a merits hearing on [Plaintiff’s] complaint.” The issue here, then, is whether the trial court erred by moving past the pleadings, conducting a full evidentiary hearing, and then deciding the threshold issue of standing based upon its findings of fact on disparate evidence. We hold that the trial court’s ruling was made pursuant to Rule 12(b)(1), not Rule 12(b)(6), and it was not error for the trial court to resolve standing in this manner in this child custody case.

¶ 17 It was proper for the trial court to assess standing as an issue of subject matter jurisdiction under Rule 12(b)(1), instead of resolving the issue under Rule 12(b)(6). “Subject matter jurisdiction is the basis for motions under Rule 12(b)(1): ‘Standing concerns the trial court’s subject matter jurisdiction and is therefore properly challenged by a Rule 12(b)(1) motion to dismiss.’” *Moriggia v. Castelo*, 256 N.C. App. 34, 45, 805 S.E.2d 378, 384 (2017) (quoting *Fuller v. Easley*, 145 N.C. App. 391, 395, 553 S.E.2d 43, 46 (2001)). To insist that the trial court’s ruling must have relied solely on Rule 12(b)(6) “elevates form over substance:”

As plaintiff recognizes, standing is necessary to survive motions to dismiss for lack of subject matter jurisdiction or failure to state a claim. See *[] Street v. Smart Corp.*, 157

N.C. App. 303, 305, 578 S.E.2d 695, 698 (2003) (“A lack of standing may be challenged by [a] motion to dismiss for failure to state a claim upon which relief may be granted.” (citation and quotation marks omitted)). However, regardless of the procedural posture in which the issue arises, if a party does not have standing to bring a claim, a court has no subject matter jurisdiction to hear the claim. Without jurisdiction the trial court must dismiss all claims brought by the plaintiff.

*Chavez v. Wadlington*, 261 N.C. App. 541, 550–51, 821 S.E.2d 289, 296 (2018) (some internal citations, editing marks, and quotation marks omitted).

¶ 18 It is not abnormal for the trial court to look beyond the pleadings to determine whether a party has standing under Rule 12(b)(1). See *Harris v. Matthews*, 361 N.C. 265, 271, 643 S.E.2d 566, 570 (2007) (stating as black letter law that our courts may consider matters outside the pleadings when determining subject matter jurisdiction under Rule 12(b)(1)). The trial court may elect to look outside the pleadings, and is only bound to treat the allegations of the complaint as true if it elects to confine its review to the pleadings:

“[U]nlike a Rule 12(b)(6) dismissal, the court need not confine its evaluation [of a Rule 12(b)(1) motion] to the face of the pleadings, but may review or accept any evidence, such as affidavits, or it may hold an evidentiary hearing.” 2 James W. Moore et al., *Moore's Federal Practice*, § 12.30[3] (3rd ed.1997) [hereinafter 2 *Moore's Federal Practice*]; see *Cline v. Teich*, 92 N.C. App. 257, 264, 374 S.E.2d 462, 466 (1988). If the evaluation is confined to the pleadings, the court must “accept the plaintiff's allegations as true, construing them most favorably to the plaintiff.” 2 *Moore's Federal Practice*, § 12.30[4]. Unlike a Rule 12(b)(6)

motion, consideration of matters outside the pleadings “does not convert the Rule 12(b)(1) motion to one for summary judgment. . . .” *Id.*

*Smith v. Privette*, 128 N.C. App. 490, 493, 495 S.E.2d 395, 397 (1998). The trial court elected to seek clarity beyond the pleadings before ruling on standing in this case.

¶ 19 Finally, this Court has chosen to review a child custody plaintiff’s standing based upon findings of fact resulting from a full hearing, instead of looking only to allegations in the plaintiff’s complaint. In *Moriggia v. Castelo*, the nonparent plaintiff filed a complaint requesting joint temporary and permanent custody of the defendant’s biological minor child. *Moriggia*, 256 N.C. App. at 36, 805 S.E.2d at 379. The defendant moved to dismiss the plaintiff’s claim on grounds that the plaintiff was neither a biological nor a legal parent of the minor child. *Id.* The trial court conducted a hearing on temporary custody and the defendant’s motion to dismiss, then entered a written order containing nearly eighty findings of fact and concluding that the plaintiff lacked standing to bring her child custody claims. *Id.*

¶ 20 On appeal, the plaintiff argued “the trial court erred by concluding that she did not have standing to bring a custody claim and dismissing her complaint under Rule 12(b)(1).” *Moriggia*, 256 N.C. App. at 44, 805 S.E.2d at 383. This Court surveyed its case law, then stated the rule that, “to maintain a claim for custody [as a third-party nonparent], the party seeking custody must *allege* facts demonstrating a sufficient relationship with the child and then must demonstrate that the parent has

acted in a manner inconsistent with his or her protected status as a parent.” *Id.* at 47, 805 S.E.2d at 385 (emphasis added). The Court then assessed the plaintiff’s standing *de novo* by reviewing the trial court’s plenary findings of fact regarding the parties’ relationship with the minor child. Based upon those findings, the Court concluded that the plaintiff did have standing and that it was error for the trial court to dismiss her complaint under Rule 12(b)(1). *Id.* at 53, 805 S.E.2d at 389. *Moriggia* presents a slightly different procedural posture than the present case because the trial court held a hearing on the plaintiff’s claims for temporary custody as well as the defendant’s motion to dismiss. Nonetheless, the trial court made findings of fact and concluded only that the plaintiff lacked standing. This Court then reviewed that conclusion based upon the court’s findings, rather than the allegations in the plaintiff’s complaint.<sup>3</sup>

¶ 21 It was certainly proper for the trial court to resolve the threshold issue of standing in this manner at the outset of the case, and doing so did not amount to a review of the merits. We hold that the trial court’s conclusions regarding Plaintiff’s

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<sup>3</sup> We must also note that both the trial court in *Moriggia* and the court in the present case made conclusions of law that they had jurisdiction over the parties and the subject matter of the cause of action, but also later concluded that the plaintiff did not have standing to bring the cause of action. As this Court stressed in *Moriggia*, we once again emphasize that standing *is* akin to subject matter jurisdiction. *Moriggia*, 256 N.C. App. at 45, 805 S.E.2d at 384. This contradiction in the trial court’s conclusions of law is not fatal, however, because we review conclusions of law *de novo* based upon the court’s findings of fact. See Section II.B, below.

standing are proper rulings on the trial court's subject matter jurisdiction under Rule 12(b)(1).

¶ 22

We recognize that confusion in this case also stems from additional conclusions of law made in the trial court's written order regarding Defendant's constitutionally protected status as a parent, the best interests of R.G., and that a basis existed "in law and fact to grant [Defendant's] Motion to Dismiss . . . under Rule 12(b)(6) . . . for failure by [] Plaintiff to state a claim upon which relief can be granted." These additional conclusions purport to resolve questions of law but are, in effect, dicta, especially those beyond the question of standing. The trial court chose to resolve Defendant's motion to dismiss exhaustively even though its determination that Plaintiff lacked standing was dispositive. It was not error to make additional conclusions of law here, but the trial court was under no obligation to make further conclusions once it determined Plaintiff lacked standing to bring his claim for custody of R.G. *Burgess v. Gibbs*, 262 N.C. 462, 465, 137 S.E.2d 806, 808 (1964) ("A universal principle as old as the law is that the proceedings of a court without jurisdiction of the subject matter are a nullity.").

## **B. Standing**

¶ 23

We now determine whether the trial court erred by dismissing Plaintiff's complaint for lack of standing under Rule 12(b)(1). "Our review of an order granting a Rule 12(b)(1) motion to dismiss is *de novo*." *Moriggia*, 256 N.C. App. at 45, 805

S.E.2d at 384 (citation and quotation marks omitted). “Under this review, we consider[ ] the matter anew and freely substitute[ ] [our] own judgment for that of the lower tribunal.” *Weideman v. Shelton*, 247 N.C. App. 875, 880, 787 S.E.2d 412, 417 (2016) (quotation marks and citation omitted). “In a custody proceeding, the trial court’s findings of fact are conclusive on appeal if there is evidence to support them, even though the evidence might sustain findings to the contrary.” *Owenby v. Young*, 357 N.C. 142, 147, 579 S.E.2d 264, 268 (2003). “Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal.” *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

¶ 24 To have standing to seek custody of a minor child as an “other person” through N.C. Gen. Stat. § 50-13.1(a), a nonparent plaintiff must show that they have a parent/child relationship with the minor child. *Ellison v. Ramos*, 130 N.C. App. 389, 394, 502 S.E.2d 891, 894 (1998) (“[A] relationship in the nature of a parent and child relationship, even in the absence of a biological relationship, will suffice to support a finding of standing.”). The plaintiff must then show that the biological parent has acted in a manner inconsistent with their constitutionally protected right to parent the child. *Moriggia*, 256 N.C. App. at 47, 805 S.E.2d at 385; *Petersen v. Rogers*, 337 N.C. 397, 406, 445 S.E.2d 901, 906 (1994). Our Courts have not established bright line rules for when these standards have been met, and instead leave each

determination to a case-by-case analysis:

No appellate court in North Carolina has attempted to draw any bright lines for how long the period of time needs to be or how many parental obligations the person must have assumed in order to trigger standing against a parent, but the existence of a significant relationship for a significant time should suffice.

*Myers v. Baldwin*, 205 N.C. App. 696, 699, 698 S.E.2d 108, 110 (2010) (citation omitted); *Boseman v. Jarrell*, 364 N.C. 537, 549, 704 S.E.2d 494, 503 (2010) (stating “no bright line” exists beyond which a parent’s conduct is inconsistent with their parental status). We have held that it is proper for the courts to consider facts pertaining before and after the minor child’s birth when determining whether a nonparent plaintiff has standing, particularly under circumstances of nontraditional parentage. *Moriggia*, 256 N.C. App. at 48, 805 S.E.2d at 385–86.

¶ 25 In the present case, Plaintiff argues only that the trial court erred in its conclusions of law that Plaintiff did not have a relationship with R.G. in the nature of a parent and child, and that Defendant had not acted inconsistent with her constitutionally protected status as a parent. Plaintiff primarily argues that the trial court erred by making its findings of fact, and does not challenge any particular finding as erroneous or not based on competent evidence. The trial court’s findings are therefore binding on appeal. *Koufman*, 330 N.C. at 97, 408 S.E.2d at 731.

¶ 26 The trial court’s written order contains the following findings of fact:

16. On the date of the birth of the minor child, [Defendant] drove herself to the hospital in Charlotte. . . . Plaintiff showed up at the hospital and insisted that he would be in the delivery room. When [Defendant] protested and refused his entry, . . . Plaintiff then made various comments about not knowing where [Defendant and R.G.] were going to live after she gave birth, which [were taken] as threats to evict [Defendant] from the home that she was residing in which Plaintiff owned. . . .

17. . . . Plaintiff was in the room when [the birth certificate and affidavit of parentage] were presented to [Defendant]. [Defendant] testifie[d] that she did not want Plaintiff there, but that she again felt she had no choice as she was total financially dependent on [] Plaintiff. . . . Additionally, [Defendant] testified that she did not want to use the last name Gilleland as she knew that [] Plaintiff was not the father of the minor child, but that again she was coerced into putting that on the birth certificate by [] Plaintiff.

. . .

21. [I]t is obvious to this [c]ourt that during this time [Defendant] was living a double life. . . . On multiple occasions, [] Plaintiff was present at parties and gatherings for holidays and the minor child's birthdays[.] . . . Additionally, evidence from [] Plaintiff's banking records show that [] Plaintiff paid for a number of the medical procedures and routine medical care that the minor child received prior to the filing of the action. As evidenced by the text messaging records of the parties, [] Plaintiff would come by [Defendant's] home on numerous occasions to see the minor child and spend time with him. . . . [Defendant] would often ask [] Plaintiff to bring supplies for the minor child or the bring a check or the benefit of the minor child. In some of these messages [Defendant] referred to the minor child as "your son" or "your child" and would ask for "child support" for the minor child. [Defendant] was



obviously taking advantage of [] Plaintiff's mistaken belief (whether that belief was of his own making or was induced by [Defendant]) for the financial gain of herself and the minor child.

22. Despite the dishonest and self-gratifying actions of [Defendant], [] Plaintiff did not have a significant parent-child relationship with the minor child. While he dedicated the two books he authored to "his son" and provided for some of the financial needs for the upkeep of the minor child and visited the minor child, he did not actively participate in the rearing of the minor child as a parent would. He was not involved in decision making as it pertains to the health and well-being of the minor child nor did he attend any doctor's appointments for the minor child, he did not change the minor child's diapers when he was a baby, he did not keep the minor child alone for any significant periods of time . . . , he has never had the minor child in his home overnight, he has not attended any swim lessons for the minor child or any other organized activities in which the minor child has participated, and he has not cooked for the minor child, given the minor child a bath, or taken care of the daily needs of the minor child. [Hohlowski and Heider] were both much more involved with the minor child in a parent-like role throughout various times of the minor child's life than [] Plaintiff has ever been at any point in the minor child's life.

The order then makes the following conclusion of law:

3. With regard to the first prong of the standing analysis, based on the foregoing Findings of Fact, this [c]ourt cannot find that there is a sufficient parent/child relationship between [] Plaintiff and the minor child. . . . As delineated in the foregoing Findings of Fact, while [Defendant] obviously used the desire of [] Plaintiff to be the father of the minor child for her own financial gain, when compared to the lack of parent-like action taken by [] Plaintiff, the balance favors a determination that there was not a

sufficient parent/child relationship in this matter.

¶ 28 Based on our independent review of the trial court's findings of fact, we agree with the court's conclusion of law 3. Prior to R.G.'s birth, the evidence showed that Plaintiff provided financial assistance, but was not involved in any planning of how R.G. would be birthed and raised. Rather, the trial court found it credible that Plaintiff was only present at the hospital when R.G. was born because Defendant felt financially coerced into allowing his presence. The majority of the evidence supporting Plaintiff's involvement in R.G.'s life focused on Defendant's dependence on Plaintiff for financial assistance, and her acquiescence of Plaintiff's involvement to continue those resources. R.G. was over two years old when Plaintiff filed his child custody complaint. Despite two years of opportunity, there was no evidence that Plaintiff contributed to R.G.'s upbringing in any way other than financial assistance. The uncontested language of finding 22 sets out the lengths to which Plaintiff could have, but did not act, as a parent to R.G. Plaintiff failed to show evidence in satisfaction of the first prong of the standing analysis, that he had a sufficient parent/child relationship with R.G. The trial court did not err by dismissing Plaintiff's complaint for a lack of standing.

### III. Conclusion

¶ 29 The trial court appropriately heard and decided whether Plaintiff had standing to bring his claim for child custody and bestow subject matter jurisdiction on the trial

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2023-NCCOA-9

*Opinion of the Court*

court. The trial court did not err in determining that, as a matter of law, Plaintiff lacked a sufficient parent/child relationship with R.G. to have standing to bring his child custody claim.

AFFIRMED.

Judges HAMPSON and WOOD concur.

Report per Rule 30(e).