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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-248

Filed 07 March 2023

Guilford County, No. 17-CVD-3859

INKWON DAVID KIM, Plaintiff,

v.

JENNIFER B. WASHBURN, Defendant.

Appeal by plaintiff from an order entered 29 November 2021 by Judge Michelle Fletcher in Guilford County District Court. Heard in the Court of Appeals 19 October 2022.

*Carolyn J. Woodruff, Jessica Snowbeger Bullock, and Y. Michael Yin for the Plaintiff-Appellant.*

*Amiel J. Rossabi, Gavin J. Reardon, and Catherine F. Stalker, for the Defendant-Appellee.*

DILLON, Judge.

Plaintiff appeals from a modification order limiting custody with his daughter. We affirm.

I. Background

Plaintiff (“Husband”) and Defendant (“Wife”) were married in 2010. In 2014,

a daughter was born to the marriage. Shortly after her birth, the child began to suffer from recurring respiratory infections which continue to require medical attention. Husband and Wife separated in 2017.

In August 2017, months after the parties separated, the trial court entered a temporary custody order granting the parties joint legal custody of their daughter.

In July 2019, the trial court entered a new order, granting primary physical custody to Wife. Husband was awarded six overnight visits with his daughter every 14 days.

In April 2021, Wife moved for an order to modify custody based on a change of circumstances. In November 2021, the trial court entered a modification order. The order restricted Husband's custodial period to one overnight and two brief afternoon visits every 14 days. Husband appeals from this order.

## II. Analysis

In its modification order, the trial court found that since its original order, Husband (1) neglected to administer prescribed medication to his daughter on multiple occasions, (2) was not "well versed" regarding his daughter's medical condition, (3) habitually failed to obtain refills of his daughter's prescribed medications despite having the financial ability to do so, and (4) disparaged and physically assaulted Wife in the presence of their daughter during several custody exchanges. The trial court's findings are extensive and detailed.

In its modification order, the trial court concluded that there had been a

substantial change in circumstances affecting the welfare of the child, that both parties were fit and proper to have the custodial roles as modified by the order, and that modification was in the best interest of the child. The trial court entered its modification order which reduced Husband's custody.

"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) (citation omitted). This is because "the trial court has the opportunity to see the parties in person and to hear the witnesses, and its decision [on a motion to modify] ought not be upset on appeal absent a clear showing of abuse of discretion." *Id.* at 625, 501 S.E.2d at 902. To show a change in circumstances warranting modification, "there only needs to be sufficient findings to establish a baseline of events at the time the initial custody award was entered." *Henderson v. Wittig*, 278 N.C. App. 178, 181, 862 S.E.2d 369, 372 (2021). We have reviewed the order and conclude that the trial court did not err in its modification order.

Husband first argues that the trial court erred because the modification order contained no express findings concerning the "baseline of circumstances" established in its prior 2019 order. However, we have held that a trial court need not include specific language relating back to its original order. *Lang v. Lang*, 197 N.C. App. 746, 749-50, 678 S.E.2d 395, 398 (2009). Instead, a trial court's modification order may rely solely on events occurring after entry of its original custody order. *Id.*

Husband next argues that there was no substantial changes in circumstances

to warrant the modification order because communication issues between Husband and Wife on the topic of their daughter's medical needs were present at the onset of this case. We disagree.

“An order of a court of this State for support of a minor child may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party or anyone interested subject to the limitations of G.S. 50-13.10.” N.C. Gen. Stat. § 50-13.7(a) (2021). To justify modification of custody, the trial court must find that (i) “there has been a substantial change in circumstances,” (ii) the “change affected the minor child,” and, if so, (iii) “modification of custody was in the child’s best interests.” *Shipman v. Shipman*, 357 N.C. 471, 474, 586 S.E.2d 250, 253 (2003). However, each finding of fact is not required to establish each conclusion of law independently. In a recent case, our Court found that because “the effects of the substantial change in circumstances were self-evident... [the] evidence directly linking the changes and the welfare of [the child] was not required.” *Fecteau v. Spierer*, 277 N.C. App. 1, 9, 858 S.E.2d 123, 129 (2021).

While it is true Husband and Wife had a history of poor communication regarding the medical needs of their daughter, the modification order was based solely on factors which occurred *after* the prior order. These factors included Husband’s failure to give his daughter her Flovent prescription, his use of physical violence and verbal abuse towards Wife during custody exchanges, and additional conflicts related to COVID-19 health protocols. The trial court found these events

constituted a substantial change in circumstances warranting modification. We conclude that each of these findings is supported by the evidence. *Henderson*, 278 N.C. App. at 180, 862 S.E.2d at 372 (“If we find there is substantial evidence in the record to support the trial court’s findings of fact, such findings are conclusive on appeal, even if the record also includes evidence that supports findings to the contrary.”)

Husband next argues that the trial court erred by failing to explain how its factual findings affected the welfare of his daughter. However, we have held that a failure to expressly find how certain events affected the best interests of the child is not fatal where the effect is self-evident. *See Lang*, 197 N.C. App. at 750-51, 678 S.E.2d at 398-99. For example, Husband takes issue with the trial court’s failure to find the connection between Husband’s failure to give his daughter medication and her resulting medical issues. However, we conclude it was not necessary to provide such opinion. The trial court reasonably concluded that a logical connection existed between the daughter’s worsening respiratory issues and Husband’s failure to provide her asthma inhaler and medication as prescribed. Accordingly, the trial court made its findings of fact based on substantial evidence.

Husband next argues that the trial court erred by admitting irrelevant, speculative testimony about an alleged sexual relationship he had with his daughter’s teacher. We disagree.

“Credibility of the witnesses is for the trial judge to determine, and findings

based on competent evidence are conclusive on appeal, even if there is evidence to the contrary.” *Woncik v. Woncik*, 82 N.C. App. 244, 248, 346 S.E.2d 277, 279 (1986). In *Woncik*, this Court affirmed the trial court’s grant of the father’s petition for custody modification based on a substantial change of circumstances because there was no error. The court further found that even if error had occurred, there was no prejudice because the order did not refer to the testimony. *Id.* at 249, 346 S.E.2d at 280.

Here, the alleged irrelevant, speculative testimony was admitted. However, as in *Woncik*, there was no prejudice to Husband because counsel used this question to impeach him as a witness and the order did not refer to this testimony. Accordingly, the trial court did not err by introducing this testimony.

Lastly, Husband argues that the trial court abused its discretion when it found that a parenting coordinator or sole legal custody were appropriate solutions, yet it ordered neither. We disagree.

Our General Assembly has determined that the specifics of modification orders are subject to the best interest of the juvenile:

Upon motion in the cause or petition, and after notice, the court may conduct a modification hearing to determine whether the order of the court is in the best interests of the juvenile. The court may modify the order in light of changes in circumstances or the needs of the juvenile and address the issues raised in the motion that do not require a review or permanency planning hearing pursuant to G.S. 7B-906.1.

N.C. Gen. Stat. § 7B-1000(a) (2021). Indeed, “in choosing an appropriate permanent

plan under N.C. Gen. Stat. § 7B-906.1 (2013), the juvenile's best interests are *paramount*." *In re A.C.*, 247 N.C. App. 528, 532, 786 S.E.2d 728, 733 (2016) (emphasis added).

In this case, the trial court properly considered the daughter's best interests. Because her medical well-being was largely contingent upon which parent had custody, the trial court did not abuse its discretion when it modified custody to best meet her medical needs.

### III. Conclusion

For the reasons set forth above, we conclude that the trial court did not err by modifying the custody order.

AFFIRMED.

Judges COLLINS and WOOD concur.

Report per Rule 30(e).