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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-209

Filed 20 February 2024

Wake County, No. 19 CVD 14937

MARIA TERESA TORRES, Plaintiff,

v.

CAREY LEONARD KIDD, Defendant.

Appeal by plaintiff from order entered 13 May 2022 by Judge Julie L. Bell in Wake County District Court. Heard in the Court of Appeals 10 January 2024.

New Direction Family Law, by Christopher R. Hicks for the plaintiff-appellant.

Marshall & Taylor, PLLC, by Travis R. Taylor for the defendant-appellee.

DILLON, Chief Judge.

This appeal concerns a custody order. Plaintiff Maria Teresa Torres (“Mother”) and Defendant Carey Leonard Kidd (“Father”) never married but lived together for a period of time. They have one child, Rylee¹, who was born in 2016. Mother appeals from an order awarding primary physical custody of Rylee to Father. We affirm in part, vacate in part, and remand for further proceedings to reconsider whether to

¹ A pseudonym.

grant Father primary decision-making authority.

I. Background

In 2019, Mother and Father separated and began sharing custody of Rylee. Soon after, Father began dating his current wife Leila, and Mother began dating Leila's former spouse (hereinafter "Mother's boyfriend").

The coparenting relationship between the parties grew tenuous. In November 2019, Father commenced this action for child custody.

Two months later, in January 2020, the parties entered a consent order for temporary child custody granting them joint legal and physical custody of Rylee.

The following month, Rylee made an unprompted disclosure to Father that Mother's boyfriend had inappropriately touched her. Father reported the incident to Wake County Child Protective Services ("CPS").

On 9 April 2020, the parties entered an amended consent order that contained the same custodial schedule as the original order, but included a provision stating that the minor child was not to be left unsupervised with Mother's boyfriend. However, CPS continued to receive reports that Mother's boyfriend was inappropriately touching Rylee.

In August 2020, Father was granted exclusive custody of Rylee until a hearing could be held on the matter.

CPS reviewed Rylee's file and conducted various interviews, the results of

which substantiated the sexual abuse claims against Mother’s boyfriend.

On 13 May 2022, after a hearing on the matter, the trial court entered a Permanent Custody Order granting Father primary physical custody of Rylee and secondary physical custody to Mother. Mother appeals.

II. Analysis

“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). Thus, we review the trial court’s ultimate 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).

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.” *Williams v. Pilot Life Ins. Co.*, 288 N.C. 338, 342, 218 S.E.2d 368, 371 (1975). We must determine whether “the trial court’s factual findings support its conclusions of law.” *Shipman v. Shipman*, 357 N.C. 471, 475, 586 S.E.2d 250, 254 (2003). “Conclusions of law are reviewed de novo and are subject to full review.” *State v. Biber*, 365 N.C. 162, 168, 172 S.E.2d 874, 878 (2011).

A. Custody Order

Mother argues that the trial court abused its discretion when it granted Father primary physical custody and limited Mother's custodial time. We conclude that it did not.

In making this argument, Mother first argues the trial court's finding that "the minor child made disclosures of sexual abuse to seven separate professionals during the interviews that were consistent with sexual abuse by [Mother's boyfriend] against [Rylee]" was not sufficiently supported by the evidence presented. Mother argues that this finding was unsupported because the trial court failed to note "the inconsistencies in [Rylee's] disclosures." It is true that Rylee initially disclosed that Mother's boyfriend touched her on her back and buttocks, but that later during a forensic interview she stated he touched her buttocks and "private area" and she touched his penis.

However, the trial court was not required to make a finding concerning this inconsistency. Instead, it was only required to make findings sufficient to resolve any issue raised by the evidence. *See Carpenter v. Carpenter*, 225 N.C. App. 269, 273, 737 S.E.2d 783, 787 (2013). And the trial court explicitly resolved any issue when it found that Mother's boyfriend sexually abused Rylee.

Any contention Mother may have regarding the weight or credibility given to the aforementioned testimony is an issue of fact reserved for the trial court. *In re B.C.B.*, 374 N.C. 32, 39, 839 S.E.2d 748, 754 (2020). We cannot "substitute [our] judgment for the trial court's judgment." *Id.* Because the trial court did not leave

the issue of sexual abuse unresolved and because it exercised its discretion in determining the weight afforded to the testimony, we overrule Mother's contention regarding this finding.

Next, Mother challenges the trial court's finding that Mother's boyfriend had been left alone with Rylee on multiple occasions. This finding specifically includes six dates (8 January 2020, 22 January 2020, 23 January 2020, 18 March 2020, 19 March 2020 and 5 June 2020) when Mother's boyfriend was alone with the minor child. These dates are supported by the evidence in the Record.

Specifically, in a timeline created by Mother's boyfriend that was admitted into evidence, he detailed that he was present in Mother's home at the same time as Rylee on three of the dates included in the trial court's findings (8 January, 22 January, and 23 January). He also stated that he was left alone with Rylee on the first date when Mother left to pick up dinner. This was consistent with Mother's testimony of the events of the evening.

Similarly, a private investigator hired by Father testified that he witnessed Mother's boyfriend visit the home on several occasions including the other two dates (19 March 2020 and 5 June 2020). He testified that he witnessed Mother's boyfriend alone with Rylee in March 2020 in the backyard of her grandmother's home. He also testified that he saw Mother's boyfriend touch Rylee's lower back as they walked inside the house.

Other evidence supporting the trial court's findings include Mother's testimony

on cross-examination that Mother's boyfriend spent the night on 22 January 2020, though she later contradicted this testimony, stating that she may have left Rylee with Rylee's grandmother that night. In any event, the private investigator testified that he observed Mother leave late that evening with two friends and that Mother's boyfriend remained in the home.

For the remaining dates of 23 January, 19 March, and 5 June, there was less evidence regarding whether Mother's boyfriend was alone with Rylee. However, there was sufficient evidence and testimony from Mother and from the private investigator tending to show that Mother's boyfriend had the opportunity to be alone with Rylee on those occasions.

Next, Mother argues that there was insufficient evidence to support the trial court's finding that Rylee was sexually abused by Mother's boyfriend. We disagree and conclude that there was sufficient evidence to support this finding.

For example, we note Rylee's unprompted disclosure to Father that Mother's boyfriend had inappropriately touched her. There was evidence that Mother's boyfriend was alone with Rylee on several occasions. And CPS personnel conducted multiple interviews of Rylee, during which she stated that he abused her.

We thus conclude that there was sufficient evidence to support the trial court's finding that Mother's boyfriend sexually abused Rylee.

Given the above findings that are supported by the evidence, we conclude that the trial court did not abuse its discretion in entering its Order awarding primary

physical custody to Father. Mother does not dispute the trial court's finding that she continued her relationship with Mother's boyfriend and continued to allow him around Rylee, after the sexual abuse allegations were substantiated. It is also undisputed that at the time of the hearing, Mother had not determined what her relationship would look like with Mother's boyfriend going forward. She was also one week from her due date with his child.

Because a trial court is granted great discretion in matters of child custody and because its findings support its conclusion that awarding custody to Father was in Rylee's best interest, we conclude that the trial court did not abuse its discretion when it awarded primary physical custody to Father.

For this same reason, we also conclude that, despite Mother's arguments to the contrary, the trial court did not unnecessarily limit her contact with Rylee. The trial court awarded Mother joint legal custody with unsupervised visitation, and its findings are sufficient to show that Rylee's best interests would be served by awarding Father primary physical custody. Accordingly, we conclude that the trial court did not abuse its discretion when it entered its Order. *White*, 312 N.C. at 777, 324 S.E.2d at 833 (internal citation omitted) (stating that "[a] trial court may be reversed for abuse of discretion only upon a showing that its actions are manifestly unsupported by reason[.]").

B. CPS Investigation

Next, Mother argues that the trial court erred by failing to include certain facts

regarding the CPS investigation in its Order. Specifically, Mother contends that the trial court should have referenced specific sections or excerpts from the CPS records that “are material to the resolution of the dispute” as required by our Court in *Witherow v. Witherow*, 99 N.C. App. 61, 63, 392 S.E.2d 627, 629 (1990).

First, this argument is redundant, as discussed above. Further, Mother cites *Witherow* out of context. Our Court in *Witherow* explicitly stated that a trial court is *not* required to “make a finding as to every fact which arises from the evidence.” *Id.* On the contrary (and as discussed previously), a trial court “*need only find those facts which are material to the resolution of the dispute.*” *Id.* (emphasis added). Because the trial court here resolved every dispute raised by the evidence (including the issue of sexual abuse, which was the dispute relevant to the CPS investigation), we are unconvinced by Mother’s argument.

C. Juvenile File

Next, Mother argues that the trial court erred when it denied Mother’s motion to review the juvenile file of the biological child of Mother’s boyfriend. Specifically, on 12 July 2021, Mother filed a “Motion for In-Camera Review,” asking the trial court to conduct a review of a juvenile file regarding Mother’s boyfriend’s own biological child, for whom a petition had been filed pursuant to N.C. Gen. Stat. § 7B. The court denied that motion.

In making this argument, Mother contends that the juvenile file is relevant and thus admissible. N.C. Gen. Stat. § 8C-1, R. 402 (2021). However, the rules of

evidence are immaterial here absent a preliminary determination regarding whether *res judicata* applies. Indeed, our Supreme Court has recognized that “[e]xcept where the principle of *res judicata* is involved, the previous finding of a court cannot be used as evidence of the fact found[.]” *Masters v. Dunstan*, 256 N.C. 520, 526, 124 S.E.2d 574, 578 (1962). And here, Mother concedes that *res judicata* does not apply. *State ex rel. Tucker v. Frinzi*, 344 N.C. 411, 413-14, 474 S.E.2d 127, 128 (1996) (recognizing that for *res judicata* to apply, among other things, a party must show the existence of the same parties and cause of action).

D. Father’s Decision-Making Authority

Finally, Mother argues that the trial court’s findings were not sufficient to justify its conclusion to grant Father final decision-making authority.

Our Court has recognized that where a trial court deviates from “pure” legal custody, including the abrogation of decision-making authority, the “extent of the deviation is immaterial.” *Hall v. Hall*, 188 N.C. App. 527, 535, 655 S.E.2d 901, 906 (2008). Instead, the relevant inquiry is whether “the trial court made specific findings of fact to warrant a division of joint legal authority.” *Id.*

In *Diehl v. Diehl*, our Court concluded that the trial court’s decision to abrogate the father’s decision-making authority was not supported by sufficient findings. *Diehl v. Diehl*, 177 N.C. App. 642, 647-48, 630 S.E.2d 25, 29 (2006). In *Diehl*, the trial court only found that both parties had trouble communicating and that the mother experienced occasional trouble obtaining the father’s consent for matters; these

findings were insufficient to support its conclusion. *Id.* Our Court accordingly reversed the portion awarding primary decision-making authority to the mother. *Id.*

Similarly, in *Hall v. Hall*, our Court reversed the trial court’s ruling dividing decision-making authority, because the trial court only “made numerous findings regarding the parties’ tumultuous relationship, which, as in *Diehl*, merely support the trial court’s conclusion to award primary physical custody to plaintiff.” *Hall*, 188 N.C. App. at 535, 655 S.E.2d at 906-07. The Court held that findings regarding “past disagreements between the parties regarding matters affecting the children, such as where they would attend school or church, would be sufficient, but mere findings that the parties have a tumultuous relationship would not.” *Id.* See also *Ward v. Halprin*, 274 N.C. App. 494, 497, 853 S.E.2d 7, 9 (2020) (affirming the trial court’s award of primary decision-making authority to the mother where the court made findings detailing past disagreements by the parties that illustrated their inability to communicate and the effect their contentious communications on the children).

Here, the only finding made to support Mother’s abrogation of authority was that “[t]he parties have a strained co-parenting relationship.” As our Court instructs, this finding alone is insufficient to support an order abrogating Mother’s decision-making authority. *Hall*, 188 N.C. App. at 535-36, 655 S.E.2d at 906-07.

We, therefore, vacate and remand the portion of the trial court’s order awarding primary decision-making authority to Father. On remand, the court may reconsider this issue. See *Diehl*, 177 N.C. App. at 647, 630 S.E.2d at 28 (recognizing

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a trial court’s exercise of discretion in child custody matters must be “accompanied by sufficient findings of fact to show that such a decision was warranted.”).

III. Conclusion

In summary, we affirm the portion of the trial court’s order awarding primary physical custody to Father. We, however, vacate and remand the portion of the trial court’s order awarding primary decision-making authority to Father.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.

Judges MURPHY and CARPENTER concur.

Report per Rule 30(e).