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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-802

Filed 21 May 2024

Mecklenburg County, No. 14 CVD 17981

SEAN GRAY COGGIN, Plaintiff,

v.

DENISE MARIE BRENNAN (now Denise Marie Pauls), Defendant.

Appeal by Denise Marie Brennan from order entered 17 April 2023 by Judge Paige B. McThenia in District Court, Mecklenburg County. Heard in the Court of Appeals 17 April 2024.

*Touchstone Family Law, by Brionne B. Pattison, for plaintiff-appellee.*

*Soni Brendle, PLLC, by Ketan P. Soni, for defendant-appellant.*

ARROWOOD, Judge.

Denise Marie Brennan (“mother”) appeals from the order modifying legal custody entered 17 April 2023. For the following reasons, we affirm the trial court’s order.

I. Background

Sean Gray Coggin (“father”) and mother are parents of one child, Caitlyn.<sup>1</sup> In November 2018, the trial court entered a consent order (“2018 Order”), which granted mother and father joint legal custody of Caitlyn. The 2018 Order further stated that if mother and father “are unable to reach a mutual decision” concerning major issues related to Caitlyn’s “education, religious training, and non-routine medical or dental care,” they must consult with their previously appointed parenting coordinator, Tia Hartley (“Ms. Hartley”), to assist them with making such decisions.

Ms. Hartley was originally appointed as parenting coordinator in 2015. Ms. Hartley testified that she met frequently with mother and father in 2015 and 2016, and then on an “as-needed basis” through 2021. In late 2021, after mother and father could not reach an agreement as to whether Caitlyn should receive the COVID-19 vaccine, father contacted Ms. Hartley so that mother and father could meet with her to help them decide. During a meeting on 3 December 2021, Ms. Hartley directed mother and father to discuss the issue with their pediatrician, after which, they could reconvene. Three days after the meeting with Ms. Hartley, mother filed a request for a temporary restraining order (“TRO”) and a motion to modify child custody. The TRO requested that father be barred from vaccinating Caitlyn with the COVID-19 vaccine.

Mother and father met with Caitlyn’s pediatrician, where mother’s concerns

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<sup>1</sup> A pseudonym is used to protect the identity of the child.

about the vaccine were discussed. After mother and father reconvened with Ms. Hartley to discuss the meeting with the pediatrician, Ms. Hartley determined that father would have the authority to decide whether Caitlyn would receive the vaccine.<sup>2</sup> Ms. Hartley notified mother and father about her decision via a letter on 10 January 2022. The following day, mother filed motions to vacate Ms. Hartley's decision, terminate her as the parenting coordinator, and to bar father from administering the vaccine via another TRO.<sup>3</sup> On 21 January 2022, father filed motions to dismiss mother's 11 January 2022 requests and modify custody.

Ms. Hartley testified that she "didn't have any communication whatsoever with [mother] from about December of 2021 until" near the end of 2022 despite Ms. Hartley reaching out to her, emailing her, and attempting to schedule meetings on several occasions.<sup>4</sup> Mother's attorney communicated to Ms. Hartley that mother was concerned that the parenting coordinator meetings were not recorded and that attorneys were not present.

Around November 2021, mother attended a meeting regarding Caitlyn's First Communion while father was in the hospital. Mother received paperwork indicating

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<sup>2</sup> According to Ms. Hartley, one of mother's concerns about the vaccine centered on father's health issues and "not knowing if that would pose [Caitlyn] at any particular risk or any kind of issue." However, Ms. Hartley testified that mother's concern was "discussed fully with the doctor[.]" and "[t]here didn't seem to be a problem at all that the doctor felt would – would be posed by that."

<sup>3</sup> On 18 January 2022, mother also filed an Emergency Request to Stay Parenting Coordinator Ruling and Request for Exp[er]t Review Hearing. Mother also filed two motions for Contempt in March and August 2022. The trial court denied those motions in January 2023.

<sup>4</sup> Ms. Hartley further testified that "[e]verything went through [mother's] attorney. She did not contact me directly. She didn't respond to me directly."

there were two dates available to have Caitlyn's ceremony but did not inform nor discuss the date options with father, and mother scheduled Caitlyn's ceremony for the date that occurred on her custodial time. Father later learned about the ceremony date options and attempted to discuss them with mother but mother "shut [him] down." After mother's attorney requested Ms. Hartley meet with mother and father to "resolve the issue[.]" Ms. Hartley emailed them both to schedule a meeting. However, mother never responded to Ms. Hartley's email and refused to meet. After talking it over with Ms. Hartley, father "acquiesced . . . because [mother] would not engage or work with [him] or even discuss it."

On 3 June 2022, father sent an email to Ms. Hartley and mother requesting that Ms. Hartley schedule a meeting "to discuss next steps" because mother and father's relationship "ha[d] deteriorated to an extreme low point[.]" and he did "not feel [they could] work together on any issue." Father further articulated that he "believed [they] must talk with [Ms. Hartley] to get back on track and discuss verbally." Ms. Hartley tried scheduling the meeting but received a response from mother's attorney stating that "he was not comfortable with any legal or quasi legal proceeding/meeting involving his client . . . without him present" or "with any meeting that is not recorded . . . ." Ms. Hartley responded stating that, pursuant to her appointment as the parenting coordinator, she was "required and authorized to carry out [her] duties by communicating with each parent as [she] deem[ed] appropriate" and that it was "normal course of business that attorneys are not

included in [parenting coordinator] meetings and that those meetings are not recorded.”

On 27 July 2022, mother’s attorney emailed father’s attorney and Ms. Hartley concerning father’s desire for Caitlyn to receive the COVID-19 booster shot and that the trial court’s previous order did not cover the booster. Ms. Hartley responded stating that the issue was “appropriate for a [parenting coordinator] meeting” and that she was “happy to schedule one for the parties.” Ms. Hartley further agreed to request that the booster not be administered temporarily if mother was willing to meet with her and father to discuss the issue. Mother’s attorney agreed to set up a hearing, so long as father’s “complete medical records” be provided to them. No meeting regarding the booster shot occurred.

Mother voluntarily dismissed her 11 January 2022 motions, *inter alia*, on 10 October 2022, and voluntarily dismissed her motion to modify custody, *inter alia*, on 18 October 2022. A hearing on father’s motion to modify custody took place on 4 November 2022 and 12 January 2023. When asked about mother’s motion to terminate her appointment as the parenting coordinator during the 4 November 2022 hearing, Ms. Hartley testified that she felt “a little bit of whiplash . . . [b]ecause the manner in which it had been dealt with in the beginning, going back to – towards the end of 2021, was a complete departure from the way we had always handled things in the past.” Ms. Hartley also testified she had concerns “about the process going forward . . . [b]ecause what happened over the last year was a complete departure

from the manner in which [they] had always operated and the civility that had always been displayed up to that point[.]”

The trial court entered an order modifying custody on 17 April 2023. The order included the following relevant findings of fact:

32. The parties have not been able to make successful decisions in [Caitlyn’s] best interest without the help of Ms. Hartley or the intervention of the Court.

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41. When Ms. Hartley was not actively involved in the case, she thought things were going very well with the parties. Then suddenly in 2021 she had whiplash because things between the parties had devolved. She testified the civility and cooperation were gone.

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44. In December 2021 the parties engaged the assistance of Ms. Hartley on the issue of whether [Caitlyn] should receive the COVID-19 vaccine. Mother agreed to meet with [Caitlyn’s] pediatrician and do research. The matter was also addressed with the Court, which ordered the parties to cooperate with Ms. Hartley. The Court finds the COVID-19 vaccine to be a time-sensitive issue, particularly considering Father’s medical condition, which required Mother’s cooperation. Instead, Mother dragged her feet until Ms. Hartley ultimately gave Father the authority to decide whether [Caitlyn] would receive the vaccine.

45. Beginning in January 2022, Mother refused to engage in communications and meetings with Ms. Hartley.

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48. Mother failed to share with Father information

regarding [Caitlyn's] First Communion ceremony. She knew two dates were offered for the ceremony but failed to inform Father that there were two dates and failed to discuss these options with Father. Father was not receiving all the information from the school. Mother unilaterally chose the date on which [Caitlyn] would have her First Communion.

49. When Father became aware that there were two dates on which [Caitlyn] could take her First Communion, he attempted to engage Mother and Ms. Hartley in a discussion on the issue.

50. Mother refused to engage in any discussion with Father or Ms. Hartley on the First Communion issue. Two days before the ceremony, Father capitulated and allowed [Caitlyn] to take her First Communion on Mother's unilaterally chosen day.

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53. Father tried to engage Mother in discussions regarding a cell phone for [Caitlyn]. Father purchased a cell phone, but Mother did not want it at her home and she refused to engage in a conversation regarding the cell phone.

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56. Mother took a trip with [Caitlyn]. Mother refused to answer Father's questions regarding the small airplane or [her current husband's] qualifications to pilot the small plane on which [Caitlyn] was flying. Mother told Father he had to talk directly to [her current husband], but there is no history of any relationship between Father and [her current husband] that would allow that type of communication to happen easily . . . .

57. Father asked Mother six times about [her current husband's] qualifications and the security of the plane. Mother did not respond for twelve days, which is consistent with her cooperation with Father

for the past year.

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59. Throughout the spring, summer, and fall of 2022 Mother did not want to follow the [Parenting Coordinator] Order and take part in the process.

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61. The Court also finds it suspicious that Mother dismissed all of her pending motions, which were adversarial in nature, just prior to the modification hearing.
62. Mother only began communicating again with Ms. Hartley after her Motion for Contempt against Father was denied and just a few weeks before Father's Motion for Contempt and Motion to Modify were scheduled to be heard.
63. Mother's agreement and desire to communicate with Ms. Hartley again after ten months of no communication gave Ms. Hartley whiplash.
64. On November 10, 2022, the day prior to the hearing on Father's Motion for Contempt and the first day of hearings on Father's Motion to Modify, Mother and Father had a brief, three-minute conversation. This was the first time in over a year that Mother agreed to have a verbal conversation with Father.
65. Since the end of 2021, Mother's cooperation with Father and Ms. Hartley has consisted of dragging her feet, not responding, being adversarial, and not responding in a timely manner, which is not acting in [Caitlyn's] best interests.
66. Father has continually tried to engage with Mother, and sought the assistance of Ms. Hartley in doing so, to make timely decisions that are in [Caitlyn's] best interests.



67. Although Mother alleged that [Caitlyn] has exhibited behavioral issues . . . which may be related to Father's diagnosis, this Court finds that it does not have to wait for an adverse effect on the child to modify custody.
68. Since the entry of the 2018 Consent Order, there has been a substantial change of circumstances affecting the welfare of the minor child.
69. It is in [Caitlyn's] best interest that decisions regarding her welfare are made in a timely fashion.

The trial court's order concluded that there had been a substantial change of circumstances affecting the welfare of Caitlyn, which justified a modification of legal custody. The order further concluded that mother and father were "fit and proper persons to exercise legal custody of [Caitlyn]" but that father would have "final decision-making authority regarding legal custody matters."<sup>5</sup>

Mother filed a timely notice of appeal on 12 May 2023.

## II. Discussion

Mother contends that the 17 April 2023 order contains findings not supported by competent evidence and that the conclusions of law are unsupported by the findings. Mother also contends that the trial court erred because its findings failed

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<sup>5</sup> The order specified that mother and father "shall use their best efforts to come to a mutual decision as to any major issue regarding [Caitlyn], including but not limited to, [Caitlyn's] education, religious training, medical and dental care, therapeutic care, and general well-being." But "[i]n the event the parties cannot come to a timely resolution on an issue after a full, thorough conversation and/or a session with the Parenting Coordinator, Father shall have final decision-making authority on all major issues."

to show a substantial change in circumstances or an impact on Caitlyn's welfare. Lastly, mother contends that the trial court erred in ordering that father had final decision-making authority on all major issues involving Caitlyn. We take each argument in turn.

A. Substantial Change in Circumstances

Mother contends that the trial court erred because the trial court's findings failed to show a substantial change in circumstances or that the change had an impact on Caitlyn's welfare.<sup>6</sup> We disagree.

"The trial court's examination of whether to modify an existing child custody order is twofold. The trial court must determine whether there was a change in circumstances and then must examine whether such a change affected the minor child." *Laprade v. Barry*, 253 N.C. App. 296, 299 (2017). If "the trial court determines that there has been a substantial change in circumstances and that the change affected the welfare of the child, the court must then examine whether a change in custody is in the child's best interests." *Id.* at 299–300.

"When reviewing a trial court's decision to grant or deny a motion for the modification of an existing child custody order, this Court must examine the trial court's findings of fact to determine whether they are supported by substantial

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<sup>6</sup> Mother challenges several findings of fact from the 17 April 2023 order, including 32, 39, 41, 44–45, 48–51, 58, 60–61, and 65. However, we only need to address the contested findings necessary to support the trial court's conclusions. See *In re C.J.*, 373 N.C. 260, 262 (2020) (citing *In re T.N.H.*, 372 N.C. 403, 407 (2019)).

evidence.” *Shipman v. Shipman*, 357 N.C. 471, 474 (2003) (cleaned up). “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Smith v. Smith*, 300 N.C. 71, 78–79 (1980) (citations omitted). Uncontested findings are presumed to be supported by competent evidence and are binding on appeal. *Malone-Pass v. Schultz*, 280 N.C. App. 449, 464 (2021) (citation omitted).

Further, “trial courts are vested with broad discretion in child custody matters.” *Shipman*, 357 N.C. at 474 (citation omitted). Such discretion is based on a trial court’s “opportunity to see the parties; to hear the witnesses; and to detect tenors, tones, and flavors that are lost in the bare printed record read months later by appellate judges.” *Id.* (cleaned up). A trial court’s findings are thus binding on appeal “if there is evidence to support them, even though the evidence might sustain findings to the contrary.” *Pulliam v. Smith*, 348 N.C. 616, 625 (1998) (cleaned up).

Additionally, this Court must determine whether the trial court’s findings of fact support its conclusions of law. *Shipman*, 357 N.C. at 475 (citation omitted). “If the trial court’s uncontested findings of fact support its conclusions of law, we must affirm the trial court’s order.” *Mussa v. Palmer-Mussa*, 366 N.C. 185, 191 (2012) (citation omitted). Contested findings not necessary to support the trial court’s conclusions “need not be reviewed on appeal.” *In re C.J.*, 373 N.C. 260, 262 (2020) (citing *In re T.N.H.*, 372 N.C. 403, 407 (2019)).

In *Laprade*, this Court concluded “that a parent’s unwillingness or inability to communicate in a reasonable manner with the other parent regarding their child’s needs” can constitute a substantial change of circumstances. *Laprade*, 253 N.C. App. at 303–04. In doing so, the *Laprade* Court also found “no reason to question the trial court’s finding that these communication problems [were] *presently* having a negative impact on [the child’s] welfare that constitute[d] a change of circumstances.” *Id.* at 304 (emphasis in the original) (citing *Shipman*, 357 N.C. at 473–75).

But the trial court “need not wait for any adverse effects on the child to manifest themselves before the court can alter custody because it is neither necessary nor desirable to wait until the child is actually harmed to make a change in custody.” *Stephens v. Stephens*, 213 N.C. App. 495, 502–03 (2011) (cleaned up). In *Stephens*, the trial court concluded that a parent’s move to another city constituted a substantial change in circumstances because the children “now faced a fifty mile (one hour) drive each way to school every day.” *Id.* at 502. Although the trial court never found that the change created “emotional or behavior problems with the children[.]” this Court held there was no error because the trial court did not need to wait for the children’s new commute to cause such harm. *Id.* at 503. *See also Laprade*, 253 N.C. App. at 304 (“[I]t is foreseeable the communication problems are likely to affect [the child] more and more as she becomes older and is engaged in more activities which require parental cooperation and as she is more aware of the conflict between her parents.”).

Here, the trial court concluded that a substantial change in circumstances—specifically, mother’s refusal to communicate effectively with father or Ms. Hartley—affected the welfare of Caitlyn and justified the custody modification. Multiple uncontested findings support this conclusion. Specifically, findings 59, 62, 63, and 64 represent mother’s unwillingness to (1) follow the parenting coordinator order and take part in the process during the spring, summer, and fall of 2022, (2) communicate with Ms. Hartley for approximately ten months, and (3) have a verbal conversation with father for over a year. Uncontested findings 53 and 57 also support the conclusion by addressing mother’s lack of communication with father concerning issues that directly involved Caitlyn’s health and safety.<sup>7</sup>

The substantial change in circumstances is further supported by findings 45 and 65. Finding 45 states that, beginning in January 2022, mother “refused to engage in communications and meetings with Ms. Hartley.” And finding 65 states that since the end of 2021, mother’s cooperation “consisted of dragging her feet, not responding, being adversarial, and not responding in a timely manner, which is not acting in [Caitlyn’s] best interests.” Although mother challenges these findings, they are supported by substantial evidence, including mother’s unwillingness to meet with Ms. Hartley and father about father’s 3 June 2022 email that described their

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<sup>7</sup> Further, although mother considers finding 56 as not “relevant to the communication between [m]other and [f]ather[,]” we disagree because it helps provide context for finding 57 and mother’s lack of communication regarding Caitlyn’s safety on the plane.

deteriorating relationship, as well as the First Communion dates and the COVID-19 booster shot.<sup>8</sup>

Further, even assuming that the change was not *presently* affecting Caitlyn's welfare, under *Stephens*, such determination was not required "because it is neither necessary nor desirable to wait until [Caitlyn] is actually harmed to make a change in custody." *Stephens*, 213 N.C. App. at 502–03 (cleaned up). Moreover, like in *Laprade*, "it is foreseeable the communication problems are likely to affect [Caitlyn] more and more as she becomes older and is engaged in more activities which require parental cooperation and as she is more aware of the conflict between her parents." *Laprade*, 253 N.C. App. at 304.

Accordingly, the trial court did not err because its conclusive findings supported the conclusion that there was a substantial change of circumstances that affected Caitlyn's welfare and justified modification of custody.

B. Final Decision-Making Authority

Mother contends that the trial court erred in ordering that father had final decision-making authority on all major issues involving Caitlyn. We disagree.

"Legal custody generally refers 'to the right and responsibility to make decisions with important and long-term implications for a child's best interest and

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<sup>8</sup> Finding 65 is also supported by mother's demand that any meetings be recorded with attorneys present and by mother filing multiple motions shortly after Ms. Hartley's decision regarding the COVID-19 vaccine.

welfare.’ ” *Urvan v. Arnold*, 894 S.E.2d 803, 807 (2023) (quoting *Diehl v. Diehl*, 177 N.C. App. 642, 646 (2006)). “Our trial courts have wide latitude in distributing decision-making authority between the parties based on the specifics of a case.” *Peters v. Pennington*, 210 N.C. App. 1, 17 (2011) (citation omitted). “This grant of latitude refers to a trial court’s discretion to distribute certain decision-making authority that would normally fall within the ambit of joint legal custody to one party rather than another based upon the specifics of the case.” *Diehl*, 177 N.C. App. at 647 (citation omitted). “While we review a trial court’s deviation from pure joint legal custody for abuse of discretion, a trial court’s findings of fact must support the court’s exercise of this discretion.” *Eddington v. Lamb*, 260 N.C. App. 526, 535 (2018) (citations and internal quotation marks omitted).

Here, given the trial court’s “wide latitude in distributing decision-making authority[.]” we conclude that its findings sufficiently supported its exercise of discretion. *See Peters*, 210 N.C. App. at 17. This includes particularly findings 69 and 65—that it was in Caitlyn’s “best interest that decisions regarding her welfare are made in a timely fashion” and that mother “dragging her feet, not responding, being adversarial, and not responding in a timely manner” was not in Caitlyn’s best interests. Accordingly, the trial court did not err by awarding father with “final decision-making authority on all major issues” in the event mother and father “cannot come to a timely resolution on an issue after a full, thorough conversation and/or a session with the Parenting Coordinator[.]”

III. Conclusion

For these reasons, we affirm the trial court's order.

AFFIRMED.

Judges MURPHY and THOMPSON concur.

Report per Rule 30(e).