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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-653

Filed 18 June 2024

Dare County, No. 17 CVD 454

MEREDITH A. SMITH, Plaintiff,

v.

JEREMY T. SMITH, Defendant.

Appeal by Defendant from an Order entered 28 December 2022 by Judge Robert P. Trivette in Dare County District Court. Heard in the Court of Appeals 7 February 2024.

Hiner Law, PLLC, by Frank P. Hiner, IV and Brett A. Lewis, for Plaintiff-Appellee.

The Twiford Law Firm, PLLC, by Courtney S. Hull, for Defendant-Appellant.

HAMPSON, Judge.

Factual and Procedural Background

Jeremy T. Smith (Defendant) appeals from a Custody Order and Contempt Order entered 28 December 2022 granting primary physical and legal custody of the parties' minor child to Meredith A. Smith (Plaintiff) and holding Defendant in civil contempt. The Record before us tends to reflect the following:

The parties married on 24 October 2015 and had one child during the marriage. The minor child lived with the parties at their home in Kitty Hawk, North Carolina until the parties separated on 28 April 2017. When the parties separated, the minor child resided with Plaintiff in Currituck County. On 7 March 2018, the parties entered into a temporary consent order, which provided Defendant with weekly visitation from Wednesday at 5:30 p.m. through Friday at 8:00 p.m., and every Sunday from 10:30 a.m. until 6:00 p.m.

On 9 January 2019, the parties entered into a Consent Custody Order that provided both parties with joint legal custody and physical custody on a 50-50 basis. The Consent Custody Order found both parties were “fit and proper persons to exercise joint custody of the juvenile[.]” The parties were able to maintain the custody schedule and communicate appropriately for several years.

On 19 May 2022, Plaintiff informed Defendant that she had a boyfriend and anticipated introducing her boyfriend to the minor child. Defendant responded by text: “Ok, I’ll be meeting him too if he’s going to be around [the minor child] at all. Yea, we will, and I’m fine with it, but he should know, and I mean this from the bottom of my heart . . . if he ever touches my son out of anger or harshly reprimands him in any way, I will kill him.” Defendant, who then resided in Knightdale, North Carolina, began stating he was going to return to Dare County and change the minor child’s school or homeschool him. Defendant began making intensified and increased threats and disparaging remarks against Plaintiff, Plaintiff’s boyfriend, and other

people close to Plaintiff. The trial court described Defendant's comments as "so despicable, specifically related to women (i.e., Plaintiff's boyfriend's mother and Plaintiff), that the [c]ourt does not want to repeat them." On or about 20 June 2022, during a phone conversation between Plaintiff and the minor child while the minor child was in Defendant's care, Defendant began singing and mocking Plaintiff and her boyfriend. This behavior caused the minor child to become confused and angry, as Defendant screamed over the minor child to make threatening and disparaging comments to Plaintiff about her and her boyfriend.

Based on the threats made by Defendant, Plaintiff filed for and obtained a Domestic Violence Protection Order in Johnston County. Plaintiff then filed a Motion in the Cause for Contempt and to Show Cause; Motion in the Cause to Modify; and Motion for Attorney Fees on 19 July 2022. These Motions alleged that since entry of the Consent Custody Order, "there has been a substantial change in circumstances affecting the welfare of the minor child such that a modification of the Order is in the best interest of the child." In support of this claim, Plaintiff alleged Defendant had exhibited threatening, harassing, and disparaging behavior toward Plaintiff and persons in her life, much of which occurred in the presence of the minor child and had impacted the minor child's behavior. These Motions were heard in the trial court on 30 November 2022.

On 28 December 2022, the trial court entered a Custody Order and Contempt Order. In its Order, the trial court found:

21. The minor child often returns to the Plaintiff after his week-long visits with the Defendant and is disrespectful to the Plaintiff, angry, aggressive, and non-conforming to the rules of the Plaintiff's house. It takes the Plaintiff three (3) to four (4) days to re-regulate the child and get him back into his routine at the Plaintiff's home. These behaviors have increased significantly since June 2022.

The trial court noted the 20 June 2022 phone call and found “[t]he child was present and overheard all of the negative and threatening statements made by the Defendant.” The trial court found Defendant had made threatening phone calls, text messages, and voicemails to Plaintiff and several people connected to Plaintiff, and, specifically through his text messages, Defendant had shown he cannot co-parent with Plaintiff. Further,

The child is old enough to understand that the comments made by the Defendant are harmful, threatening and disrespectful. The child is learning this behavior and acting it out at school and when he returns home to the Plaintiff. The parties have been notified by the child's school that he is having some behavioral issues related to following directions and keeping his hands to himself.

The trial court also found Defendant “has acted without just cause and excuse and is in contempt of the January 9, 2019 Consent Custody Order.”

Based on its Findings, the trial court concluded a substantial change in circumstances had occurred since entry of the Consent Custody Order, and this change affected the welfare of the minor child “such that a modification of the previous order is in the best interest of the minor child.” The trial court thus ordered Plaintiff have primary physical and legal custody of the minor child, and set out a

new custodial schedule reducing Defendant's visitation to the third weekend of each month from Friday after school until Monday morning at school drop-off, in addition to the holiday schedule. Further, the Order set out, in pertinent part:

4. The Defendant's visitation may increase at the discretion of the Plaintiff if the Defendant completes the following:

a. Obtains a complete psychological evaluation by an agreed upon evaluator.

. . . .

e. The Defendant shall follow any and all recommendations of the psychological evaluation.

f. If, after completing the requirements of Paragraphs 4(a) - 4(e), and if she believes it is in the best interest of the minor child, the Plaintiff, in her discretion, may increase the visitation between the Defendant and minor child.

On 27 January 2023, Defendant timely filed Notice of Appeal from the Order.

Issues

The various issues raised by Defendant on appeal are whether the trial court erred by (I) conditioning Defendant's visitation on a psychological evaluation; (II) ordering Defendant to complete a psychological evaluation; (III) holding Defendant in contempt; (IV) ordering payment of attorney fees; (V) modifying the prior Order; (VI) ordering a substantial decrease in Defendant's custodial time and awarding Plaintiff primary physical and legal custody of the minor child; and (VII) omitting a provision for telephone contact between Defendant and the minor child.

Analysis

I. Conditioning Visitation

Defendant contends the trial court erred in conditioning increased visitation upon his completion of a psychological evaluation and granting discretion to Plaintiff to increase Defendant's visitation. "The standard of review for a child custody proceeding is abuse of discretion." *Velasquez v. Ralls*, 192 N.C. App. 505, 506, 665 S.E.2d 825, 826 (2008). An abuse of discretion is found when "a court's actions are manifestly unsupported by reason, or so arbitrary that it could not have been the result of a reasoned decision." *In re Z.T.W.*, 238 N.C. App. 365, 374, 767 S.E.2d 660, 667 (2014) (citation and quotation marks omitted).

Under N.C. Gen. Stat. § 50-13.2(b), "[a]ny order for custody shall include such terms, including visitation, as will best promote the interest and welfare of the child." N.C. Gen. Stat. § 50-13.2(b) (2021). In interpreting this statute, this Court has held, "under our law, the trial judge is entrusted with the delicate and difficult task of choosing an environment which will, in his judgment, best encourage full development of the child's physical, mental, emotional, moral and spiritual faculties." *In re Peal*, 305 N.C. 640, 645, 290 S.E.2d 664, 667 (1982). Our statutes further note it is the role of the trial court to determine what is in a child's best interests: "In making the determination, *the court* shall consider all relevant factors . . ." N.C. Gen. Stat. § 50-13.2(a) (2021) (emphasis added).

This Court has held a determination of visitation is a judicial function that cannot be delegated by the trial court. *In re J.D.R.*, 239 N.C. App. 63, 75-76, 768

S.E.2d 172, 179-80 (2015). However, our Supreme Court has clarified that there is no impermissible delegation where the trial court merely delegates discretion to allow *some* visitation. *Routten v. Routten*, 374 N.C. 571, 579, 843 S.E.2d 154, 159 (2020). In *Routten*, our Supreme Court held: “in light of the trial court’s authority to deny *any* visitation to defendant pursuant to N.C.G.S. § 50-13.5(i), any delegation of discretion to plaintiff to allow *some* visitation ‘is mere surplusage, albeit admittedly confusing.’” *Id.* (quoting *Routten v. Routten*, 262 N.C. App. 436, 465, 822 S.E.2d 436, 455 (2018), *J. Inman, dissenting in part*) (emphasis in original).

Here, the trial court’s Order provides:

4. The Defendant’s visitation may increase at the discretion of the Plaintiff if the Defendant completes the following:

...

f. If, after completing the requirements of Paragraphs 4(a) - 4(e), and if she believes it is in the best interest of the minor child, the Plaintiff, in her discretion, may increase the visitation between the Defendant and the minor child.

In contrast to *Routten*, the trial court in the instant case provided Defendant with some visitation. The delegation of discretion to provide for increased visitation, then, is comparatively less impactful to Defendant’s visitation rights. Thus, in light of *Routten*, we must conclude there was no error in the visitation order. Consequently, we affirm this portion of the trial court’s Order. We note, however, that Defendant is not precluded from filing a motion to modify if he believes he is wrongly denied increased visitation once he has completed the recommended steps.

II. Ordering a Psychological Evaluation

Defendant contends the trial court erred in ordering him to complete a psychological evaluation, arguing the trial court did not make Findings of Fact to support this directive. The Order provides, in pertinent part:

4. The Defendant's visitation may increase . . . if the Defendant completes the following:

a. Obtains a complete psychological evaluation by an agreed upon evaluator.

b. The evaluator shall be provided a copy of all previous complaints, exhibits and court Orders between the parties . . .

. . . .

e. The Defendant shall follow any and all recommendations of the psychological evaluation.

"In cases involving child custody, the trial court is vested with broad discretion." *Browning v. Helff*, 136 N.C. App. 420, 423, 524 S.E.2d 95, 97 (2000) (citation omitted). "The decision of the trial court should not be upset on appeal absent a clear showing of abuse of discretion." *Id.* (citing *Falls v. Falls*, 52 N.C. App. 203, 209, 278 S.E.2d 546, 551 (1981)).

We note at the outset that the Order does not require Defendant to undergo a psychological evaluation. Rather, Defendant may opt to complete a psychological evaluation in order to increase his visitation with the minor child. Contrary to Defendant's argument, this Court has repeatedly affirmed trial courts' decisions to order mental health evaluations in child custody and visitation cases. *See e.g.*,

Maxwell v. Maxwell, 212 N.C. App. 614, 621, 713 S.E.2d 489, 494 (2011) (trial court’s “authority to require Plaintiff to submit to a mental health evaluation arose from the broad discretion granted to courts in child custody proceedings.”); *Pass v. Beck*, 156 N.C. App. 597, 601, 577 S.E.2d 180, 182 (2003) (trial court “did not abuse its discretion in delaying determination of the best interests of the child regarding visitation pending a recommendation from a psychologist”); *Rawls v. Rawls*, 94 N.C. App. 670, 676-77, 381 S.E.2d 179, 183 (1989) (holding trial court did not abuse its discretion by requiring defendant to consult psychiatrist or psychologist before awarding specific visitation rights). In *Maxwell*, the trial court found the plaintiff had made threats against the defendant, verbally abused the defendant, “repeatedly defamed and disparaged Defendant/Mother in communications to school personnel and to medical providers[,]” and “engaged in a pattern of harassing and inappropriate contact” with staff at the minor children’s elementary school, among others. 212 N.C. App. at 620-21, 713 S.E.2d at 494.

In the case *sub judice*, the trial court’s Findings support its Order recommending Defendant obtain a mental health evaluation. The trial court found:

14. On May 19, 2022, the Plaintiff informed the Defendant that she had a boyfriend and she anticipated introducing her boyfriend to the minor child in the near future. The Defendant’s immediate response via text was “*Ok, I’ll be meeting him too if he’s going to be around [the minor child] at all. Yea, we will, and I’m fine with it, but he should know, and I mean this from the bottom of my heart ... if he ever touches my son out of anger or harshly reprimands him in any way, I will kill him.*”

15. The Defendant degrades and disparages the Plaintiff calling her a “*shit Mom*,” “*fucking dumbass*,” “*ugly*,” and “*stupid*.” These statements are made in willful violation of the January 2019 Consent Order that orders both parties to not make any disparaging remarks about the other and to be courteous and respectful to each other at all times.

16. The Defendant is obsessed with Dare County Sheriff Doug Doughtie. . . Throughout the text messages, the Defendant makes degrading, hostile and threatening comments about Sheriff Doughtie. The Defendant’s rapid swing in anger and warped perception of people and reality leads the [c]ourt to believe the Defendant is suffering from extreme mental health instability.

17. The Defendant is also obsessed with Dr. Christian Lige . . . the [Defendant], while extremely intoxicated, called and left several voicemails for Dr. Lige that were threatening and mocking. The Defendant told Dr. Lige over and over that if he “*ever fucked with my son, I’m going to fuck you up*.” . . . The purpose of this call is unknown to the [c]ourt and furthers the [c]ourt’s concern regarding the Defendant’s paranoia, mania, anger and other mental health issues.

. . . .

22. On or about June 20, 2022, the Plaintiff was engaged in a phone call with the minor child. The Plaintiff recorded the entire conversation and said recording was introduced and played for the [c]ourt. During the phone call, the Defendant is singing and mocking the Plaintiff and her boyfriend while in the presence of the minor child. The child is confused, angry and baffled by the Defendant’s behavior. The Defendant constantly interrupts the child and screams over the child during this conversation to say ugly, threatening and disparaging comments to the Plaintiff about her and her boyfriend. The Defendant makes threats not to return the child to the Plaintiff if she does not disclose her boyfriend’s full name and physical address. In one sentence, the Defendant tells the child not to trust the Plaintiff’s boyfriend, but then a few sentences later, the Defendant tells the child that if he has any questions about life, he should ask the Plaintiff’s boyfriend instead of the Plaintiff or the Defendant. The child is

thoroughly confused and distraught by the Defendant's statements. . . .

These Findings recount a pattern of threatening, disparaging, and harassing behavior, similar to that found in *Maxwell* (and perhaps more serious because much in this case has occurred in front of the minor child), that support the trial court's decision to require Defendant to obtain a mental health evaluation in order to increase his visitation with the minor child. Additionally, the trial court noted a Domestic Violence Protection Order was entered in Johnston County due to threats Defendant made against Plaintiff in the presence of the minor child. Although this Court has cautioned that "[t]he trial court has the discretion to require a party to submit to a mental health evaluation . . . only if there is a legal basis for this requirement[,]" *Davis v. Davis*, 229 N.C. App. 494, 502, 748 S.E.2d 594, 601 (2013), the Findings in this case provide such a basis. Thus, the trial court did not abuse its discretion in ordering Defendant to submit to a psychological evaluation to increase his visitation with the minor child.

III. Contempt

In its Order, the trial court concluded: "The Defendant has acted without just cause and excuse and is in willful contempt of the January 9, 2019 Consent Custody Order and is sanctioned as set forth below." Defendant contends the trial court erred in holding him in contempt because it failed to make supporting Findings of Fact. We agree.

Our statutes provide:

(a) Failure to comply with an order of a court is a continuing civil contempt as long as:

(1) The order remains in force;

(2) The purpose of the order may still be served by compliance with the order;

(2a) The noncompliance by the person to whom the order is directed is willful; and

(3) The person to whom the order is directed is able to comply with order or is able to take reasonable measures that would enable the person to comply with the order.

N.C. Gen. Stat. § 5A-21(a) (2021). “It is the role of the trial court to make findings addressing each element in its contempt order.” *Barham v. Barham*, 286 N.C. App. 764, 769, 881 S.E.2d 911, 916 (2022) (citing N.C. Gen. Stat. § 5A-23(e) (2021)).

Here, in support of its Conclusion, the trial court made the following Finding: “The Defendant has acted without just cause and excuse and is in contempt of the January 9, 2019 Consent Custody Order.” This Finding does not satisfy the requirements articulated above in order for the trial court to hold Defendant in contempt. Therefore, we conclude the trial court erred in holding Defendant in contempt and reverse this portion of the trial court’s Order.

IV. Attorney Fees

Defendant contends the trial court erred in awarding attorney fees to Plaintiff. We agree. The attorney fees portion of the Order provides: “The Defendant is ordered to reimburse the Plaintiff for her attorney fees in the amount of \$4,800.00. The

Defendant shall make payments in the amount of \$400.00/month beginning on January 1, 2023 and for eleven (11) consecutive months thereafter.” It is not clear from the language of the Order whether the award of attorney fees is related to the issue of contempt or to Plaintiff’s Motion for Attorney’s Fees regarding her Motion to Modify. Our determination is the same in either case, and we therefore vacate the award.

To the extent the attorney fees are related to Defendant’s contempt, they must be vacated because we conclude the trial court erred in holding Defendant in contempt and reverse that portion of the Order. To the extent the attorney fees are unrelated to the trial court’s holding Defendant in contempt, the Order is insufficient because the trial court made no Findings to support the award under the relevant statutory provision.

Our statutes provide: “In an action or proceeding for the custody or support, or both, of a minor child, . . . the court may in its discretion order payment of reasonable attorney’s fees to an interested party acting in good faith who has insufficient means to defray the expense of the suit.” N.C. Gen. Stat. § 50-13.6 (2021). However, in order to make an award of attorney fees, “[t]he trial court must make findings of fact to support and show ‘the basis of the award, including: the nature and scope of the legal services, the skill and time required, and the relationship between the fees customary in such a case and those requested.’” *Davignon v. Davignon*, 245 N.C. App. 358, 365, 782 S.E.2d 391, 396-97 (2016) (quoting *Robinson v. Robinson*, 210 N.C. App. 319, 337,

707 S.E.2d 785, 798 (2011) (citation omitted)).

In the present case, the trial court's Order fails to make the required Findings to support an award of attorney fees. Indeed, the only portion of the Order that discusses legal services or attorney fees at all is the award of attorney fees itself. Thus, the trial court did not make the required Findings to support an award of attorney fees under our child support statute. Therefore, we vacate this portion of the Order.

V. Modification of Prior Order

A trial court may modify an existing child custody order if the movant shows "a substantial change of circumstances affecting the welfare of the child warrants a change in custody." *Shipman v. Shipman*, 357 N.C. 471, 473, 586 S.E.2d 250, 253 (2003) (citation and quotation marks omitted); *see also* N.C. Gen. Stat. § 50-13.7(a) (2021) ("[A]n order of a court of this State for custody 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.").

"When reviewing a trial court's decision to grant or deny a motion for the modification of an existing child custody order, the appellate courts must examine the trial court's findings of fact to determine whether they are supported by substantial evidence." *Shipman*, 357 N.C. at 474, 586 S.E.2d at 253 (citing *Pulliam v. Smith*, 348 N.C. 616, 625, 501 S.E.2d 898, 903 (1998)). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a

conclusion.” *State v. Smith*, 300 N.C. 71, 78-79, 265 S.E.2d 164, 169 (1980) (citing *Thompson v. Wake Cnty. Bd. of Educ.*, 292 N.C. 406, 414, 233 S.E.2d 538, 544 (1977) and *State ex rel. Comm’r of Ins. v. N.C. Fire Ins. Rating Bureau*, 292 N.C. 70, 80, 231 S.E.2d 882, 888 (1977)).

“In addition to evaluating whether a trial court’s findings of fact are supported by substantial evidence, this Court must determine if the trial court’s factual findings support its conclusions of law.” *Shipman*, 357 N.C. at 475, 586 S.E.2d at 254 (citation omitted). “If 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.” *Id.*

Here, Defendant has not challenged any of the trial court’s Findings of Facts. They are, therefore, binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) (“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.”). “A substantial change in circumstances that affects the welfare of the children can occur when a parent demonstrates anger and hostility in front of the children and attempts to frustrate the relationship between the children and the other parent.” *Stephens v. Stephens*, 213 N.C. App. 495, 499, 715 S.E.2d 168, 172 (2011) (citation omitted). The trial court’s Findings, detailed above, illustrate

recurring instances of Defendant exhibiting harassing and disparaging behavior that inhibited the parties' ability to co-parent. The trial court found Defendant threatened Plaintiff, Plaintiff's boyfriend, and other persons connected to Plaintiff, and made derogatory remarks about Plaintiff, including in front of the minor child. The trial court also found Defendant's behavior impacted the minor child:

21. The minor child often returns to the Plaintiff after his week-long visits with the Defendant and is disrespectful to the Plaintiff, angry, aggressive, and non-conforming to the rules of the Plaintiff's house. It takes the Plaintiff three (3) to four (4) days to re-regulate the child and get him back into his routine at the Plaintiff's home. These behaviors have increased significantly since June 2022.

The trial court's Findings thus point to the 20 June 2022 phone call, as well as other specific instances of inappropriate behavior, that show a significant change from the appropriate, amicable communications between the parties and the impact of that behavior on the minor child.

In *Stephens*, the trial court made findings showing defendant initiated several arguments in front of the minor children, demonstrated "hostility" toward the plaintiff, and repeatedly sought to "belittle the [father] in the mind of his child[.]" 213 N.C. App. at 499-500, 715 S.E.2d at 172. There, as in the present case, the trial court detailed specific incidents of the defendant's inappropriate behavior and concluded there had been a substantial change in circumstances. *Id.* at 503, 715 S.E.2d at 174. Thus, *Stephens* illustrates that a parent's overt animus toward their co-parent can lead to a substantial change in circumstances warranting modification of a custody

order. Such is the case here, where the trial court found both that Defendant exhibited inappropriate behavior in front of the minor child and that Defendant's behavior has, in fact, affected the minor child's relationship with Plaintiff.

Moreover, this Court has previously stated: "It is beyond obvious that a parent's unwillingness or inability to communicate in a reasonable manner with the other parent regarding their child's needs may adversely affect a child[.]" *Laprade v. Barry*, 253 N.C. App. 296, 303, 800 S.E.2d 112, 117 (2017). Although Defendant and Plaintiff previously communicated appropriately about the minor child, the trial court's unchallenged Findings, based on evidence presented since the January 2019 Order, provide: "Defendant has shown, specifically through his text messages, that he cannot co-parent with the Plaintiff." We, therefore, conclude the evidence supports the trial court's Findings, and those Findings, in turn, support its Conclusion there had been a substantial change in circumstances affecting the minor child's wellbeing.

VI. Decrease in Defendant's Custodial Time and Joint Legal Custody

"Upon determining that a substantial change in circumstances affecting the welfare of the minor child occurred, a trial court must then determine whether modification [of the custody order] would serve to promote the child's best interests." *Shipman*, 357 N.C. at 481, 586 S.E.2d at 257 (citation omitted). "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). "Abuse of discretion results

where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Campbell*, 359 N.C. 644, 673, 617 S.E.2d 1, 19 (2005) (citation and quotation marks omitted).

Defendant contends the trial court erred by decreasing his visitation with the minor child and granting full legal custody to Plaintiff. Defendant asserts, without support, that reducing Defendant's visitation as ordered "is not only not in the best interests of the child but is detrimental to his best interests and wellbeing."

With respect to custodial time, contrary to Defendant's assertion, the trial court here expressly found "[t]he minor child often returns to the Plaintiff after his week-long visits with the Defendant and is disrespectful to the Plaintiff, angry, aggressive, and non-conforming to the rules of the Plaintiff's house." Further, the minor child "is old enough to understand that the comments made by the Defendant are harmful, threatening and disrespectful. The child is learning this behavior and acting it out at school and when he returns home to the Plaintiff." Additionally, the trial court found "[i]t takes the Plaintiff three (3) to four (4) days to re-regulate the child and get him back into his routine at the Plaintiff's home" after custodial time with Defendant. These Findings support the trial court's decision to reduce Defendant's custodial time.

With respect to legal custody, "[i]n a dispute between natural parents, child custody is awarded based on the best interests of the child." *Peters v. Pennington*, 210 N.C. App. 1, 17, 707 S.E.2d 724, 736 (2011) (citation omitted). "Our trial courts

have wide latitude in distributing decision-making authority between the parties based on the specifics of a case.” *Id.* (citation omitted). “Evidence of a parent’s ability or inability to cooperate with the other parent to promote their child’s welfare is relevant in a custody determination and material to determining the best interests of the child.” *Cunningham v. Cunningham*, 171 N.C. App. 550, 559, 615 S.E.2d 675, 682 (2005).

This Court has upheld a trial court’s award of primary legal custody of a minor child to one parent where the parties had “difficulty communicating effectively with each other[,]” and the other parent had communicated in a “derogatory manner” with the other on several occasions by email and at exchanges, and made comments to the child blaming the other parent for the child not getting to do what he wanted. *Urvan v. Arnold*, 291 N.C. App. 300, 306-07, 894 S.E.2d 803, 807-08 (2023). There, this Court noted the trial court had “found facts detailing past disagreements by the parties which illustrate their inability to communicate and the effect their contentious communications will have on the child[.]” *Id.* at 307, 894 S.E.2d at 808.

Similarly, in this case the trial court found Defendant “cannot co-parent with the Plaintiff.” The trial court detailed multiple instances of inappropriate, threatening, and harassing communications by Defendant toward Plaintiff, which occurred in the minor child’s presence. Further, the trial court found Defendant’s behavior has negatively affected the minor child, increasing the child’s anger and disrespect toward Plaintiff and resulting in behavioral problems at school. Based on

our precedent and the Findings of Fact, the trial court did not abuse its discretion by granting legal custody of the minor child to Plaintiff.

VII. Telephone Contact Provision

Defendant contends the trial court abused its discretion by not including a provision for telephone or other electronic communications between Defendant and the minor child. Although Defendant concedes the trial court is not required to order such contact under N.C. Gen. Stat. § 50-13.2(e), he nevertheless argues there was significant evidence both parties engaged in telephone/electronic contact with the minor child above what was previously ordered, and that contact was in the best interests of the child.

As set out above, “[a]s 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*, 138 N.C. App. at 541, 530 S.E.2d at 81 (citation omitted). An abuse of discretion occurs when “a court’s actions are manifestly unsupported by reason, or so arbitrary that it could not have been the result of a reasoned decision.” *In re Z.T.W.*, 238 N.C. App. at 374, 767 S.E.2d at 667 (citation and quotation marks omitted). Again, as Defendant has not challenged any specific Findings of Fact, the trial court’s Findings are presumed to be supported by competent evidence and are binding on appeal. *Koufman*, 330 N.C. at 97, 408 S.E.2d at 731.

Here, the trial court made several detailed Findings concerning Defendant’s

behavior in phone calls and text messages. The trial court found Defendant had, on multiple occasions, made threatening, disparaging, and harassing comments while the minor child was on the phone with Plaintiff, in front of the minor child, and through text message. Further, the trial court found this behavior adversely affected the minor child. It was thus reasonable for the trial court to conclude mandatory telephone or electronic communication would not be in the best interest of the minor child and so omit such a provision.

Conclusion

Accordingly, for the foregoing reasons, we conclude the trial court erred in holding Defendant in contempt and ordering Defendant to pay attorney fees. We therefore reverse and vacate those portions of the December 2022 Order. We also conclude the trial court did not otherwise abuse its discretion and affirm the remaining portions of the Order.

AFFIRMED IN PART; REVERSED IN PART; VACATED IN PART.

Judges MURPHY and ARROWOOD concur.

Report per Rule 30(e).