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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-548

Filed 2 July 2024

Brunswick County, No. 18 CVD 2294

CHRISTY HASZ, Plaintiff,

v.

KIME BRITTAIN, Defendant.

Appeal by plaintiff from order entered 17 October 2022 by Judge Will M. Callihan, Jr., in Brunswick County District Court. Heard in the Court of Appeals 16 April 2024.

Tharrington Smith, LLP, by Steve Mansbery, for plaintiff-appellant.

Sandlin Family Law Group, by Deborah Sandlin, for defendant-appellee.

DILLON, Chief Judge.

Plaintiff Christy M. Hasz (“Mother”) and Defendant Kime B. Brittain (“Father”) are the parents of two minor children. Mother appeals from an order modifying custody whereby Father was awarded primary custody of the children.

I. Background

In November 2019, the trial court entered an order with minimal findings, awarding Mother sole physical and legal custody of the children and granting visitation rights to Father (the “2019 Order”).

Evidence in the record tends to show: Father exercised four or five of his weekend visits granted to him through the 2019 Order before the COVID pandemic occurred, after which Mother prevented him from seeing the children for approximately a year. Mother also acted in a hostile and degrading manner toward Father, blocked his phone number, and claimed not to have received his emails.

In June 2021, Father remarried and moved to Virginia, but he continued to visit the children in North Carolina.

In August 2021, Mother made allegations to DSS that Father had inappropriately touched their daughter. However, the case was closed as being unsubstantiated. Testimony later revealed that, during this time, Mother also sent emails to the school accusing Father of abusing the children, changed their schools without telling Father, and caused the children to be afraid of him. According to the record, the children struggled emotionally during this time.

Father filed a motion seeking Mother to be held in contempt for violating the 2019 Order. After the contempt hearing in December 2021, Mother continued to act with hostility towards Father, at one point telling him that she would go to jail before she would ever give him the children. In any event, in January 2022, the trial court entered an order holding Mother in civil contempt of the 2019 Order.

On 2 March 2022, the trial court temporarily modified the custody plan by granting Father more visitation and ordering family counseling for the children. In so doing, the trial court noted that this was one of the worst cases of parental alienation it had seen.

On 22 July 2022, the trial court entered an order appointing a therapist “to conduct counseling sessions with the minor children” to replace the previously appointed therapist, determining that it was in the children’s best interest to do so.

As Father and the children became more comfortable with each other, Mother continued her hostility. On multiple occasions, she called law enforcement to conduct welfare checks on the children while they were in Father’s care. She also called him a pedophile and a molester in the presence of the children and hundreds of people at a baseball game, and on another occasion told the children that Father was gay and that his wife was transgender. After the incident at the baseball game, Father was granted a Domestic Violence Protective Order against Mother in a separate action.

On 17 October 2022, the trial court entered an order that modified custody by awarding Father primary custody, allowing the children to be relocated to Virginia where he lived, and granting Mother visitation every other weekend (the “2022 Order”). The trial court also held Mother in criminal contempt.

II. Analysis

Mother makes five arguments in this appeal, which we address in turn.

A. Appointment of the Counselor

First, Mother argues that the trial court erred during a conference in appointing a new therapist to conduct counseling sessions with the children, contending that she received no notice in advance of the conference. Mother claims she was prejudiced, as the new therapist was Father’s first witness at the custody hearing, which resulted in the change of custody. Mother also complains that there is no record or evidence from the conference to support the trial court’s order.

On 2 March 2022, the trial court temporarily modified the custody plan by ordering family counseling with a certain therapist for the children. In an order, the trial court made findings regarding Mother’s efforts to alienate the children from Father and determined that the minor children “would benefit from family counseling with [Mother] and [Father].” The parties were ordered to appear in court on 1 June 2022 to present the results. However, attempts to schedule counseling with the designated therapist failed.

On 1 June 2022, the trial court convened with counsel in chambers off-the-record and determined that a new therapist should be appointed. By an order entered on 22 July 2022, the trial court appointed the new therapist.

Based on the record before us, we conclude that the trial court did not abuse its discretion in appointing a new therapist to replace the previously appointed therapist.

B. Challenged Findings and Conclusions

Second, Mother argues that the trial court erred by making certain findings and conclusions in its 2022 Order.

Findings of fact in an order modifying custody shall be sustained if “supported by substantial evidence, even if there is sufficient evidence to support contrary findings.” *Turner v. Oakley*, 283 N.C. App. 99, 109, 872 S.E.2d 547, 554 (2022).

Mother challenges the finding that Father was a resident of Fairfax County, Virginia, “for at least six months prior to the filing of this Motion to Modify Child Custody Order.” Father admits that this finding is a clerical error. However, to vacate an order based on error in the findings, the person alleging error must prove that the error prejudiced them. *See Jonna v. Yaramada*, 273 N.C. App. 93, 105, 848 S.E.2d 33, 44 (2020). Moreover, it is not necessary for the Court to review technical errors if they are not vital to the trial court’s conclusion. *See Conroy v. Conroy*, 291 N.C. App. 145, 161, 895 S.E.2d 418, 429 (2023). We conclude Mother has failed to meet her burden of showing that she suffered prejudice because of this finding.

Mother challenges the finding that “[Father]’s inability to interact with the [children] for an extended period was detrimental to their relationship and will take time and counseling to repair the damage.” She contends that this finding was not supported by the evidence and is a conclusory statement rather than an ultimate finding. We conclude the order is supported by the record and contains sufficient findings to support this ultimate finding.

For instance, the record shows ample instances of Mother taking action to withhold visitation and to alienate the children from Father, and details how these actions caused harm to the children and to their relationship with Father. The record shows that the children would not call Father “Dad,” but instead called him by his first name because “Mom said so.” Moreover, both the therapist and the DSS representative testified that the children needed counseling.

Mother challenges the finding that “[s]ince the entry of the [2019 Order], [Mother] has continuously attempted to distort the children’s relationship with [Father] through false accusations and manipulation.” We conclude that the finding is supported by the record. For instance, the record does show that Mother made an unsubstantiated report to DSS that Father had inappropriately touched one of the children. It also shows that she caused the children to be afraid of him and that she called him a pedophile and a molester in the presence of the children and others.

Mother challenges the finding that “[Mother, Father,] and their minor children treated with [the new therapist], a child and family therapist, to address psychological concerns raised by [Mother] in the prior Temporary Child Custody hearing.” Mother argues the record is devoid of any indication of what role the therapist played other than “to conduct counseling sessions” and to have “eyes on this [case]”. She also argues that the record is devoid of any indication tending to show Mother and Father “treated with” the therapist. There is testimony in the record regarding the therapist’s treatment with the children. To the extent that there is no

evidence of her treating Father or Mother, Mother has failed to show how she was prejudiced by this finding.

Mother challenges the finding that “[s]ince the entry of the [2019 Order], [Mother] has exerted significant effort towards alienating the [children] from [Father].” Although Mother argues that this is merely a conclusory statement, we disagree. It is an ultimate finding. And we conclude that the finding is supported by the evidence in the record and the other findings by the trial court.

Mother challenges the finding “[t]he Court has taken into consideration the temporary disruption that may be caused by relocating the [children] to Fairfax County, Virginia, and finds that the long-term benefit of placing the children in a home where they will not be alienated from Mother substantially outweighs the possibility of a short-term disruption.” Mother again argues that this is merely a conclusory statement. We, though, conclude it is another ultimate finding, supported by substantial evidence including other findings of fact.

Mother challenges the finding that “[t]he Court finds beyond a reasonable doubt that Mother has willfully violated the terms and conditions of the [2019 Order], and, in addition has willfully violated the subsequent Temporary Child Custody Order entered in this case.” The standard of review in contempt proceedings is whether there was competent evidence to support holding a party in contempt. *See Blanchard v. Blanchard*, 279 N.C. App. 280, 284, 865 S.E.2d 693, 696 (2021). We have reviewed the record and conclude there are findings and evidence to support

this determination. And, as the finder of fact, it is for the trial court to assign weight to the evidence.

Mother challenges the trial court’s conclusion that “[t]here has been a material and substantial change in circumstances affecting the welfare of the [children] since the entry of the [2019 Custody Order].”

A custody order may be modified only if it is determined that (1) there has been a substantial change in circumstances affecting the welfare of the child and (2) a change in custody is in the best interest of the child. *See* N.C. Gen. Stat § 50-13.7 (2023).

Here, the 2019 Order does not contain any findings or conclusions of law regarding the children. The only meaningful determination was that there was no evidence of domestic violence between the parties. Thus, Mother argues that it is impossible for the trial court to properly consider how circumstances have changed since that Order. We disagree.

We infer, from the absence of such findings, that the circumstances of Mother’s aggression, hostility, manipulation, accusations, and interference with visitation were not present before or at the time of the 2019 Custody Order.

“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). “[A]lthough

interference alone is not enough to merit a change in the custody order, where interference with visitation becomes so pervasive as to harm the child's close relationship with the noncustodial parent, it may warrant a change in custody." *Id.* (cleaned up). *See also Shipman v. Shipman*, 357 N.C. 471, 479, 586 S.E.2d 250, 256 (2003). The evidence in the case at hand clearly demonstrates that Mother acted in a hostile manner toward Father in the children's presence and that her actions to alienate the children from Father damaged their relationship with Father.

Mother further argues that, even if the trial court did not err by making its conclusion, it failed "to make sufficient findings showing a nexus between the substantial change in circumstances and the children's welfare."

"[B]efore a child custody order may be modified, the evidence must demonstrate a connection between the substantial change in circumstances and the welfare of the child, and flowing from that prerequisite is the requirement that the trial court make findings of fact regarding that connection." *Shipman*, 357 N.C. at 478, 586 S.E.2d at 255. However, "[w]here the effects of the substantial changes in circumstances on the minor child are self-evident, there is no need for evidence directly linking the change to the effect on the child." *Deanes v. Deanes*, 269 N.C. App. 151, 156, 837 S.E.2d 404, 409 (2020) (cleaned up).

We conclude that the effect of the parties' communication issues on the welfare of the children is obvious. The record contains nothing that would indicate negative behavior on Mother's part when the initial 2019 Order was entered. Accordingly, we

infer that her negative behavior occurred between the entry of the 2019 Order and the entry of the 2022 Order. The 2022 Order included several findings regarding how Mother’s new issues “were *presently* having a negative effect on the children.” Accordingly, we are satisfied that the trial court’s 2022 Order sufficiently establishes the nexus between the change in circumstances and the welfare of the children.

Finally, Mother argues that the trial court abused its discretion by concluding that “[i]t is in the best interest of the [children] that this Court modify the [2019 Order],” contending that the findings are too meager and “insufficiently detailed” to support this conclusion.

Once the trial court makes the threshold determination that a substantial change in circumstances affecting the children’s welfare has occurred, its best interest determination cannot be upset absent a manifest abuse of discretion. *See Turner v. Oakley*, 283 N.C. App. 99, 109, 872 S.E.2d 547, 554 (2022).

The trial court specifically found that the children would benefit from Father having primary custody because they would be in a home where they would not be alienated by the custodial parent. Based on our review of the record and the 2022 Order, we cannot say that the trial court abused its discretion.

AFFIRMED.

Judges TYSON and GRIFFIN concur.

Report per Rule 30(e).