

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1145

Filed 1 October 2024

Stanly County, No. 20CVD571

LAUREN PATTERSON, Plaintiff,

v.

CHAD PATTERSON, Defendant.

Appeal by defendant from order entered 25 April 2023 by Judge John R. Nance in Stanly County District Court. Heard in the Court of Appeals 28 August 2024.

Hartsell & Williams, PA, by E. Garrison White, for plaintiff-appellee mother.

Arnold & Smith, PLLC, by Ashley A. Crowder, for defendant-appellant father.

FLOOD, Judge.

Defendant Chad Patterson appeals from the trial court's order reducing his custodial time with his minor child. On appeal, Defendant contends the trial court failed to make sufficient findings of fact to show the substantial change in circumstances affected the welfare of the minor child. Upon our careful review of the Record, we agree, and vacate and remand for further findings of fact.

I. Factual and Procedural Background

PATTERSON V. PATTERSON

Opinion of the Court

Defendant and Plaintiff Lauren Patterson were married on 24 March 2012 and separated on 28 May 2020. One child was born of the marriage, Ben¹ (hereinafter, “minor child” or “Ben”), on 18 July 2018. Ben was diagnosed with Level 1 Autism when he was two years old and goes to speech and occupational therapy. Prior to their separation, the parties were residing in New London, North Carolina. After separating, Plaintiff remained in the marital home, and Defendant moved to Kannapolis, North Carolina.

On 4 August 2021, the parties entered into a child custody consent order (“Custody Order”). The Custody Order provided that Plaintiff would have primary legal and physical custody of Ben, and Defendant would have visitation with Ben on alternate weekends and on alternate Wednesday overnights. The parties split major holidays, and each party received two weeks with Ben during the summer months.

At the time the Custody Order was entered, Defendant was working the third shift, 6:00 p.m. until 6:00 a.m., five nights a week, at ATI Specialty Materials. The Custody Order provided that, were Defendant to secure the first shift employment of 6:00 a.m. until 6:00 p.m., the Custody Order may be reviewable, as that switch may constitute a substantial change of circumstances for Defendant.

On 22 March 2022, the parties entered into a child support consent order (“Support Order”). Defendant was ordered to pay Plaintiff \$1,150 per month, which

¹ A pseudonym has been used to protect the juvenile’s identity.

PATTERSON V. PATTERSON

Opinion of the Court

included Ben's daycare costs.

Early in 2022, Defendant secured the first shift of employment and moved to Charlotte, North Carolina, with his family. Due to this new schedule, on Defendant's custodial weekends, Defendant relied on family members to drive Ben to school on Monday mornings.

On 18 November 2022, Defendant filed a motion to modify child custody and support. Defendant argued his new work shift was a substantial change in circumstances that affected Ben's welfare, and argued Plaintiff did not include him in any decisions regarding Ben, such as educational and medical decisions. Defendant requested, *inter alia*, the trial court grant him joint legal and physical custody of Ben.

On 21 December 2022, Plaintiff also filed a motion to modify child custody, arguing there had been a substantial change in circumstances and requesting Defendant's visitation schedule be reduced. In support of her argument, Plaintiff noted: Defendant had moved farther away from New London, Ben was spending a great deal of time in the car traveling from New London to Charlotte, and Defendant's family members were the ones driving Ben to school on Mondays.

On 23 March 2023, the parties' motions came on for hearing before the trial court. The trial court found, in relevant part, that: Ben "thrives from a routine"; Ben "has been able to develop and do well in school" while in each parents' care; Defendant "provides appropriate care" and routine, including taking Ben to his speech therapy

every other Wednesday during Defendant’s custodial time; Ben “appears to be a good car rider”; and Ben “has a good relationship with each parent and their extended families.” The trial court also found that Ben, on Wednesday nights, “participates in a special needs Awana Group” through his church—which he “misses twice a month” when he is with Defendant—and that “it is in [Ben’s] best interest that he attends regularly.”

Based on these findings, the trial court concluded that there was a substantial change in circumstances that warranted modification of the Custody Order. The trial court entered an order on 25 April 2023 and directed the parties to share legal custody, Plaintiff to keep primary custody of Ben, and Defendant to keep his alternate weekends with Ben, but to terminate the alternate Wednesday overnights.

Defendant timely appealed on 23 May 2023.

II. Jurisdiction

Defendant’s appeal is properly before this Court pursuant to N.C. Gen. Stat. § 7A-27(b)(2) (2023).

III. Analysis

On appeal, Defendant argues the trial court abused its discretion by modifying the Custody Order and reducing Defendant’s custodial time with Ben. Specifically, Defendant contends the trial court failed to make findings of fact that address whether the substantial change in circumstances affected the welfare of the child. We agree.

PATTERSON V. PATTERSON

Opinion of the Court

This Court reviews a trial court’s decision in a child custody case for abuse of discretion. *Turner v. Oakley*, 283 N.C. App. 99, 109, 872 S.E.2d 547, 554 (2022). “An abuse of discretion occurs only where the [trial] court’s decision is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *Id.* at 109, 872 S.E.2d at 554 (citation and internal quotation marks omitted). A “trial court’s examination of whether to modify an existing child custody order is twofold[]”:

The trial court must [(1)] determine whether there was a change in circumstances and then [(2)] must examine whether such a change affected the minor child. 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. If the trial court concludes that modification is in the child’s best interests, only then may the court order a modification of the original custody order.

Shipman v. Shipman, 357 N.C. 471, 474, 586 S.E.2d 250, 253 (2003). “It is not necessary to show a change had an adverse effect on a child to warrant a modification. A showing of a change in circumstances that is, or is likely to be, beneficial to the child may also warrant a change in custody.” *Henderson v. Wittig*, 278 N.C. App. 178, 179-80, 862 S.E.2d 369, 371 (2021) (citation and internal quotation marks omitted).

“Unless the effect of the substantial change in circumstances on the child[] is self-evident, the trial court must find sufficient evidence of a nexus between the change in circumstances and the welfare of the child[].” *Turner*, 283 N.C. App. at

PATTERSON V. PATTERSON

Opinion of the Court

111, 872 S.E.2d at 555 (citation omitted) (cleaned up); *see also Henderson*, 278 N.C. App. at 182, 862 S.E.2d at 373 (“[I]f the effect of the substantial change . . . is not self-evident, a showing of evidence directly linking the change to the welfare of the child is necessary.” (citation omitted)). Such evidence of linkage may include “assessments of the minor child’s mental well-being by a qualified mental health professional, school records, or testimony from the child or the parent.” *Henderson*, 278 N.C. App. at 182, 862 S.E.2d at 373 (citation omitted).

In *Carlton v. Carlton*, the defendant-father filed a motion to modify child custody after the minor child accumulated an “inordinate number” of absences from school that “placed her in jeopardy of having to repeat the third grade.” 145 N.C. App. 252, 253, 549 S.E.2d 916, 918 (2001), *rev’d per curiam per dissent*, 354 N.C. 561, 557 S.E.2d 529 (2001), *cert. denied*, 536 U.S. 944, 122 S. Ct. 2630, 153 L. Ed. 2d 811 (2002). The defendant-father and the plaintiff-mother shared joint legal and physical custody; however, it was during the plaintiff-mother’s custodial time that the minor child accumulated her school absences. *Id.* at 253, 549 S.E.2d at 918. The trial court made findings of fact pertaining to the minor child missing school and the impact this had on her and ordered the defendant-father to have primary custody over the minor child. *Id.* at 255, 549 S.E.2d at 919.

On appeal, our Supreme Court, adopting the dissent from our Court’s opinion, held there were sufficient findings to support the trial court’s conclusion of law that the minor child’s welfare was affected by the substantial change in

circumstances because the trial court incorporated in its findings the impact those missed days had on the child's schoolwork; in short, "[t]he trial court's findings le[ft] no need to draw inferences." *Id.* at 263, 549 S.E.2d at 924, (Tyson, J., dissenting).

Presently, this is not a case where the findings of fact show that the changes in additional driving time and Defendant's new shift schedule had an obvious effect on the minor child's Wednesday nights to support a reduction in Defendant's custodial time with Ben. The trial court found that Ben is a good car rider, Defendant consistently takes Ben to his Wednesday speech therapy sessions, and Ben has a routine at each parties' home. While the trial court found that it would be beneficial for Ben to regularly attend his Awana group every Wednesday night, the trial court failed to show how either of the changes, additional driving time and Defendant's new schedule, had any new effect on Ben's Wednesday nights per the original Custody Order, and thus, the trial court failed to "find sufficient evidence of a nexus between the change in circumstances and the welfare of the child." *Turner*, 283 N.C. App. at 111, 872 S.E.2d at 555.

Because the trial court failed to find that there was a substantial change in circumstances that *affected* the welfare of the child, we vacate and remand the Custody Order for the trial court to make further findings consistent with this opinion. *See Shipman*, 357 N.C. at 474, 586 S.E.2d at 253.

IV. Conclusion

PATTERSON V. PATTERSON

Opinion of the Court

Upon review, because the findings of fact do not establish a nexus between the change in circumstances and its effect on the minor child, we conclude the trial court's findings of fact do not support the conclusion of law that modification of the custody order is in the minor child's best interests. As such, we remand to the trial court for further findings of fact pertaining to this nexus.

VACATED AND REMANDED.

Chief Judge DILLON and Judge THOMPSON concur.

Report per Rule 30(e).