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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-184

Filed 3 December 2024

Polk County, No. 19 CVD 245

MICHAEL HAMMETT, Plaintiff,

v.

CARLA HAMMETT, Defendant.

Appeal by defendant from order entered 18 July 2023 by Judge Kimberly Gasperson-Justice in Polk County District Court. Heard in the Court of Appeals 8 October 2024.

No brief filed by plaintiff-appellee.

Donald H. Barton, P.C., by Donald H. Barton, for defendant-appellant.

THOMPSON, Judge.

Carla Hammett (defendant) appeals from the trial court's order modifying an existing custody order. On appeal, defendant argues that the trial court committed reversible error in applying the incorrect standard in considering the motion to modify child custody. After careful review, we vacate and remand.

I. Factual Background and Procedural History

Defendant and Michael Hammett (plaintiff) married in 2005 and separated in October 2019. Plaintiff and defendant had one child in their marriage, born in September 2012. On 16 October 2019, plaintiff filed a complaint in Polk County District Court seeking custody and equitable distribution, which resulted in a custody order entered 22 November 2019 (initial custody order). On 22 July 2022, plaintiff filed a motion in Polk County District Court seeking change of child custody and a modification of the initial custody order. The matter came on for hearing on 30 January 2023 in Polk County District Court, and by order entered 18 July 2023, the trial court granted plaintiff's motion for modification of the initial custody order. From this order, defendant filed timely written notice of appeal.

II. Discussion

On appeal, defendant argues, *inter alia*, that the trial court “commit[ted] reversible error in applying the best interests standard in its consideration of a motion to modify custody instead of substantial change in circumstances affecting the welfare of the minor children.” We agree.

A. Standard of review

“When reviewing a trial court’s order modifying custody, the appellate court must determine whether the trial court’s findings are supported by substantial evidence and, in turn, whether the court’s findings support its conclusions of law.” *Crenshaw v. Williams*, 211 N.C. App. 136, 142, 710 S.E.2d 227, 231 (2011). “If supported by substantial evidence, the trial court’s findings are binding on appeal,

despite the existence of evidence that might support contrary findings.” *Id.* “Unchallenged findings of fact are presumed to be supported by competent evidence and are binding on appeal.” *Id.* at 142, 710 S.E.2d at 232 (internal quotation marks, brackets, and citation omitted). “The trial court’s conclusions of law, however, are reviewed de novo.” *Id.*

B. Custody Modification

“In determining whether modification [of an existing custody order] is warranted, the trial court engages in a *two-step analysis*: the court first determines whether there has been a substantial change in circumstances affecting the welfare of the child involved” and if there has been a substantial change in circumstances, “the court then determines whether modification of custody is in the child’s best interest.” *Id.* at 142, 710 S.E.2d at 231.

This Court has reasoned that, “[a] decree of custody is entitled to such stability as would end the vicious litigation so often accompanying such contests, unless it be found that some *change of circumstances* has occurred affecting the welfare of the child so as to require modification of the order.” *Warner v. Brickhouse*, 189 N.C. App. 445, 451–52, 658 S.E.2d 313, 317–18. “To hold otherwise would invite constant litigation by a dissatisfied party so as to keep the involved child constantly torn between parents and in a resulting state of turmoil and insecurity.” *Id.* “This in itself would destroy the paramount aim of the court, that is, that the welfare of the child be promoted and subserved.” *Id.*

Because “there is a statutory procedure for modifying a custody determination, a party seeking modification of a custody decree must comply with its provisions. There are *no exceptions* in North Carolina law to the requirement that a change in circumstance be shown *before* a custody decree may be modified.” *Bivens v. Cottle*, 120 N.C. App. 467, 469, 462 S.E.2d 829, 831 (1995) (emphases added). Consequently, “the trial court commits reversible error by modifying child custody absent any finding of substantial change of circumstances affecting the welfare of the child.” *Hibshman v. Hibshman*, 212 N.C. App. 113, 121, 710 S.E.2d 438, 443 (2011) (internal quotation marks, brackets, ellipsis, and citation omitted).

Upon our careful review of the order modifying child custody, we conclude that the trial court committed reversible error in modifying the initial custody order without *first* making an explicit finding of a substantial change of circumstances affecting the welfare of the child—*before* considering whether modification of the existing custody order was in the best interest of the child. Indeed, the order’s findings of fact state that, “the Court finds that there has been a material change of circumstances that affects the best interest of the minor child,” and found that “the standard is Substantial Change in Circumstances that has affected the best interest of the child.”

This is an incorrect statement of the law, and lays bare the reality that the trial court did not consider the two-step analysis to be applied to custody modification motions correctly—that is, *independently*—but rather considered a one-step

amalgamation of the two steps. Consequently, we hold that the trial court committed reversible error by applying the incorrect standard in modifying the initial custody order. However, because the trial court heard ample evidence from which it could have modified the initial custody order, we vacate for entry of an order applying the appropriate standard. *See Hatcher v. Matthews*, 248 N.C. App. 491, 495, 789 S.E.2d 499, 503 (2016) (vacating the trial court’s order modifying custody “because the trial court applied an incorrect legal standard in its” order modifying custody and instructing the trial court “to enter a new order containing express findings as to whether a substantial change in circumstances ha[d] occurred” and if so, “then a best interests analysis w[ould] be necessary”).

III. Conclusion

We conclude that the trial court committed reversible error in failing to apply the statutorily mandated two-step analysis for modifying child custody orders. For this reason, the order of the trial court is vacated and remanded for entry of an order applying the appropriate standard for modification of a child custody order.

VACATED AND REMANDED.

Judges MURPHY and GRIFFIN concur.

Report per Rule 30(e).