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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-422

Filed 3 December 2024

Chatham County, No. 22 CVD 944

EDWARD CULBERSON and JOAN CULBERSON, Plaintiffs,

v.

JONATHAN GARRETT HART, Defendant

v.

CHRISTINA CAUSEY and JOSHUA CAUSEY, Intervenors.

Appeal by intervenors from order entered 3 November 2023 by Judge Hathaway S. Pendergrass in District Court, Chatham County. Heard in the Court of Appeals 22 October 2024.

*Wilson, Reives & Doran, PLLC, by Nathalie M. Doran, for intervenor-appellants.*

*Ellis Family Law, by Autumn D. Osbourne, for plaintiffs-appellees.*

*No brief filed for Jonathan Garrett Hart, pro se defendant-appellee.*

ARROWOOD, Judge.

Christina and Joshua Causey (“intervenors”) appeal from the trial court’s order granting Edward and Joan Culberson (“plaintiffs”) permanent sole legal and physical

custody of the juvenile S.H.<sup>1</sup> and declining to permit intervenors to have custody or visitation. For the following reasons, we affirm the district court’s order.

I. Factual Background

On 17 December 2022, S.H.’s mother, Laci Hart (“Laci”), died. On 28 December 2022, plaintiffs filed a complaint against Jonathan Hart (“defendant”), alleging that defendant’s “acts and omissions” were “inconsistent with the constitutionally protected status of a natural parent,”<sup>2</sup> and sought custody of S.H. on the basis that they had a parent child relationship with S.H. Plaintiffs stated that they had cared and nurtured S.H. in a loving home environment for much of her life, “including most of the last 20 months and exclusively with Plaintiffs since [Laci’s] illness and later death.” On 29 December 2022, plaintiffs were granted sole temporary custody of S.H., with the trial set for 9 January 2023.

On 6 January 2023, the intervenors filed a motion to intervene in the custody action and asserted a child custody claim of their own; in the motion, they represented that a “significant relationship” existed between them and S.H., and that plaintiffs had not permitted them to see S.H. after Laci’s death. Intervenor Christina Causey (“Christina”) was a high school friend of Laci, and intervenor Joshua Causey (“Joshua”) was a high school friend of defendant. In their petition, intervenors stated

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<sup>1</sup> Initials are used to protect the identity of the juvenile.

<sup>2</sup> Plaintiffs alleged that defendant did have a permanent home, had depression, used alcohol and drugs habitually, and broke off visitation with S.H. since his separation from Laci.

that they had provided S.H. “shelter and guidance,” that S.H. had her own room with intervenors, and that she spent the night with them three to four times a week.

On 27 February 2023, plaintiffs met with Annie Whittenberg (“Ms. Whittenberg”) to discuss therapy for S.H. At that session, Ms. Whittenberg determined two treatment goals: reduction of separation anxiety and processing the grief and loss of losing her mother. Intervenors had dinner with S.H. on 1 March. S.H. then began her therapy with Ms. Whittenberg on 6 March.

At a hearing on 17 March, the court allowed the motion to intervene, and granted intervenors secondary custody of S.H., which included intermittent overnight visits. However, Ms. Whittenberg recorded a change in S.H. beginning on 15 May, after S.H.’s first weekend with intervenors. S.H. had “dysregulated” behavior, which included telling puppets that they were “bad” and were going to get “whooped.” S.H. shared negative experiences she was having with intervenors at subsequent therapy sessions. On 7 July, the court entered a modified temporary custody order, which included suspension of S.H.’s overnight visits with intervenors.

Finally, after hearings conducted on 27 July and 24 August, the court, on 3 November 2023, granted plaintiffs permanent sole legal and physical custody of S.H., intermittent daytime visitation for defendant, and declined to grant intervenors any custody or visitation. The custody order included the following findings of fact in relevant part:

17. Plaintiffs are the current caregivers for the minor child

and have been actively involved in her upbringing since birth.

18. The minor child has a loving, well established, secure bond with Plaintiffs and has been doing, overall, very well while in their care and custody.

19. Since her mother's passing, Plaintiffs have ensured the minor child had structure with support in place, including taking her to and from a preschool where she is thriving and engaging therapeutic intervention for the minor child with Annie Whittenburg of Just Be Counseling (hereinafter referred to as Ms. Whittenberg).

20. Ms. Whittenberg was tendered as an expert in child trauma, and she has been actively seeing the minor child, regularly and routinely since February 27th, 2023.

21. Ms. Whittenberg initially started seeing the minor child with the goal of helping her process the loss of her mother and the changes within her life due to the same. Counseling was focused on grief and attachment related issues.

22. Upon the Court's allowing visitation between the minor child and Intervenors the therapeutic intervention shifted as the minor child started showing increased signs of anxiety and emotional deregulation. Ms. Whittenberg testified to concerns raised by the minor child during her time with Intervenors.

23. Prior to visitation being ordered by this Court between the minor child and Intervenors, the minor child had not mentioned Intervenors to Ms. Whittenberg even though she had mentioned other third parties, including but not limited to Defendant, other family members, and friends.

24. Ms. Whittenberg testified to serious concerns she had regarding the negative impact Intervenor's visitation time was having on the minor child, her mental health and her therapeutic needs and treatment.

...

26. Defendant testified at prior hearings that he has used fentanyl. Defendant further stated that he consented to and agreed for Plaintiffs to have sole legal and sole physical custody of the minor child and supported their request for the same.

...

30. Plaintiffs have a substantial relationship with the minor child.

31. Plaintiffs are fit and proper persons to have the exclusive care, custody, and control of the minor child, and it is in the best interest of the minor child that her sole legal and sole physical custody be placed with Plaintiffs subject to visitation with Defendant as described herein below.

32. It is not within the minor child's best interests for the Intervenor to have custody and/or visitation of the minor child.

Intervenor gave notice of appeal on 7 November 2023; subsequently, plaintiffs filed a motion to dismiss with the Chatham County District Court, as well as a motion with this Court to stay the appellate process pending the decision of the lower court, or, in the alternative, to dismiss the appeal. The basis for the motion before this Court was lack of timeliness in violation of Rule 25(a) of the North Carolina Rules of Appellate Procedure.

## II. Discussion

Intervenor raises three issues on appeal: one, that the findings of fact are not

supported by substantial evidence, and there was insubstantial evidence to deny a custody award to intervenors; two, that the trial court's findings of fact fail to support its conclusions of law; and three, that the trial court failed to make adequate findings of fact and conclusions of law to support its judgement and failed to address the rights of intervenors. We address each argument in turn and begin with plaintiffs' motions.

A. Motions to Stay and Dismiss

We first address plaintiffs' motion to stay proceedings. Once an appeal is docketed with this Court, it is deemed perfected; at that point, the lower court loses all jurisdiction to issue orders. *State v. Harvey*, 291 N.C. App. 473, 477 (2023). Given that the case *sub judice* has been docketed with our court, the Chatham County District Court no longer has jurisdiction to dismiss the appeal. Thus, plaintiffs' motion to stay proceedings with the Court of Appeals is moot.

Second, we address the violations committed by intervenors. In their motion to stay, plaintiffs cite to violations of timeliness regarding the transcript, which is a nonjurisdictional defect. *See N.C. State Bar v. Sossomon*, 197 N.C. App. 261, 270 (2009). Under the North Carolina Rules of Appellate Procedure,

A court of the appellate division may, on its own initiative or motion of a party, impose a sanction against a party or attorney or both when the court determines that such party or attorney or both substantially failed to comply with these rules, including failure to pay any filing or printing fees or costs when due. The court may impose sanctions of the type and in the manner prescribed by Rule 34 for frivolous appeals.

N.C.R. App. P. 25(b).

In determining what is meant by “substantial failure” in the context of nonjurisdictional defects, our Supreme Court has held that “only in the most egregious instances of nonjurisdictional default will dismissal of the appeal be appropriate.” *Dogwood Dev. and Mgmt. Co., LLC v. White Oak Transp. Co., Inc.*, 362 N.C. 191, 200 (2008) (citations omitted). Factors to be considered include whether the court’s “task of review” is impaired, and “to what extent review on the merits would frustrate the adversarial process.” *Id.* The Court stressed “that a party’s failure to comply with nonjurisdictional rule requirements normally should not lead to dismissal of the appeal.” *Id.* at 198 (citation omitted).

In the case *sub judice*, plaintiffs do not provide any reasons as to why they have been unduly affected by intervenors’ violations, nor can those violations be characterized as egregious. Plaintiffs’ motion is denied.

B. Trial Court’s Findings of Fact

At a bench trial, “the fact-finding responsibility rests with the trial court. Absent a total lack of substantial evidence to support the trial court’s findings, such findings will not be disturbed on appeal.” *Pulliam v. Smith*, 348 N.C. 616, 625 (1998). These findings are conclusive “even if there is sufficient evidence to support contrary findings.” *Peters v. Pennington*, 210 N.C. App. 1, 12–13 (2011) (citation omitted). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Pulliam*, 210 N.C. at 625 (cleaned up). “[T]he

trial court need not make a finding as to every fact which arises from the evidence; rather, the court need only find those facts which are material to the resolution of the dispute.” *Witherow v. Witherow*, 99 N.C. App. 61, 63 (1990) (citation omitted).

Intervenors contend that Findings of Fact 22 and 24, which are based on expert witness testimony at trial, are unsupported by competent evidence; intervenors argue that they are “merely restatements of testimony of a witness,” something we found did not qualify as a finding of fact in *In re O.W.*, 164 N.C. App. 699, 703 (2004). There, we determined that several findings of fact “simply recite[d] what some unknown source said . . .,” and specifically noted that several findings were “a verbatim recitation of the facts stated in DSS’s petition[,]” and another finding reciting the testimony of a DSS social worker, who in turn “was simply reciting what the daycare had told DSS.” *Id.* at 702–703. The Court concluded that the findings were “not ‘specific ultimate facts’ . . . sufficient for this Court to determine that the adjudication of abuse and neglect is adequately supported by competent evidence.” *Id.* at 704.

Here, the findings of fact go beyond mere recitation of testimony. The trial court found Ms. Whittenberg was a qualified expert witness in child trauma and began seeing S.H. “with the goal of helping her process the loss of her mother and the changes within her life due to the same.” With respect to Ms. Whittenberg’s testimony, the trial court found she testified “to concerns raised by [S.H.] during her time with Intervenors[,]” and spoke to “serious concerns she had regarding the negative impact Intervenor’s visitation time was having on [S.H.], her mental health



and her therapeutic needs and treatment.” Furthermore, Finding of Fact 22 states, without being couched in terms of what Ms. Whittenberg testified, that “the minor started showing increased signs of anxiety and emotional deregulation” after visitation with Intervenors. Everything Ms. Whittenberg is found to have testified to relates to this increased anxiety and deregulation.

Regarding Findings of Fact 17, 18, 19, and 30, intervenors point to evidence in the record that, in their view, militates against a finding for the plaintiffs. For example, they question the bond between plaintiffs and S.H., note S.H.’s mental state while in the care of the plaintiffs, and note S.H.’s behavior at daycare while in plaintiff’s care. While we recognize that there was evidence before the trial court that favored intervenors, there was also evidence that favored plaintiffs, and it is the role of the trial court to resolve evidentiary issues. It is not the place of the Court of Appeals to relitigate the evidence, only to ensure that the findings of fact are supported by substantial evidence. We find that to be the case.

Finding of Fact 23 correctly notes that S.H. did not mention intervenors to Ms. Whittenberg before visitation with intervenors, but this is because S.H. did not begin therapy until after that visitation began. We recognize that this carries no persuasive weight. However, there were ample findings of fact made upon which the trial court could, and did, base its conclusions of law, so the lack of persuasiveness is immaterial.

Intervenors take issue with the timeline established concerning when therapy began. We note that there may have been some confusion at the trial court level as

to the precise date that S.H. began therapy with Ms. Whittenberg; the record indicates that February 27 was the day that plaintiffs met with Ms. Whittenberg to discuss therapy, while March 6 was the day that S.H. actually started therapy herself. Intervenors contend that the fact that the therapy sessions began after S.H. commenced visitation with intervenors results in reversible error, “since the child had been attending visits with the Causey’s since prior to [the] entirety of her therapeutic sessions . . . .” Intervenors do not explain why this is significant, and it is not the role of this Court to make the parties’ arguments for them.

Intervenors argue that Findings of Fact 21, 22, and 24 are unsupported by the evidence as they do not establish a causal link between S.H.’s initial anxiety and increased dysregulation, and visitation with the Causeys. First, we note that the findings of fact do not include any claims about S.H.’s initial anxiety. Second, there was ample evidence from Ms. Whittenberg for the court to infer that visitation with the Causeys was causing increased dysregulation. S.H. showed a marked change in behavior after her 15 May 2023 appointment, which occurred after her first full weekend with intervenors. While intervenors argue that her behavioral shift could have been caused by her emotions from Mother’s Day, it was for the trial court to make findings of fact and resolve conflicting evidence, which in this case they resolved in favor of plaintiffs.

Intervenors challenge Finding of Fact 26 on the grounds that the record does not support the contention that defendant supported plaintiffs’ request for custody of

S.H. We first note that at trial, Edward Culberson, when asked if defendant “agrees that at this time [S.H.] should be in yours and Joan’s sole care,” Mr. Culberson testified that defendant did agree. Second, assuming *arguendo* that defendant never expressed his desire for plaintiffs to have custody, there were other findings of fact supported by competent evidence for the court to make its ultimate ruling.

Finally, intervenors challenge Findings of Fact 31 and 32 based on evidence that intervenors had a parent-like role in S.H.’s life and provided more direct care for her than plaintiffs and based on the fact that the trial court did not address the rights of intervenors. Intervenors’ argument fails in both respects. First, we acknowledge that there was evidence favoring intervenors at trial, but it is not our role to relitigate this case. As long as there was competent evidence to support the court’s finding that plaintiffs were “fit and proper persons to have the exclusive care, custody, and control of the minor child . . .” then our inquiry is at an end. Intervenors second argument is similar to their second and third issue on appeal and is addressed below.

C. Trial Court’s Failure to Address Intervenors’ Rights

Intervenors argue, in their final section of Issue I, as well as in Issues II and III, that the trial court failed to address the intervenor’s “rights in regard to custody of the minor child in its findings of fact and conclusions of law [in] any meaningful way.”

Intervenors’ argument is not that the court’s conclusion of law that plaintiffs were fit and proper to have custody of S.H. is unsupported by the evidence, but rather

that the trial court abused its discretion by failing to address the rights of intervenors in the findings of fact and conclusions of law. In making their arguments, intervenors provide no case law or statutory authority that requires a trial court to address an intervenor's rights regarding child custody. While it is true that "the trial court allowed the Causeys to intervene as parties in the action specifically having standing to seek child custody of the minor child," intervenors at no point explain why this requires the court to specifically address their rights in the order. Intervenors were permitted to intervene and were heard at trial; their standing was fully respected. We therefore find no abuse of discretion.

### III. Conclusion

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

AFFIRMED.

Judges ZACHARY and GRIFFIN concur.

Report per Rule 30(e).