

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-481

Filed 16 September 2026

Mecklenburg County, No. 22CVD014575-590

RODRIGO PARENTE, Plaintiff,

v.

MARIANA TEXEIRA, Defendant.

Appeal by plaintiff from order entered 4 April 2025 by Judge Christy T. Mann in Mecklenburg County District Court. Heard in the Court of Appeals 12 August 2026.

Bagwell Holt Smith P.A., by Michael S. Harrell, and Averett Family Law, by Kirsten A. Grieser, for plaintiff-appellant.

Dogwood Family Law, by Samantha C. Jackson, for defendant-appellee.

ARROWOOD, Judge.

Rodrigo Parente (“Father”) appeals from an Order on Modification of Custody issued following a hearing in Mecklenburg County District Court. For the following reasons, we remand the case to develop further findings in accordance with this opinion.

I. Background

Father and Mariana Texeira (“defendant” or “Mother”) are the parents of one child, M.P., born 15 May 2016. For most of M.P.’s life, Mother has had primary

custody of the child. On 1 April 2021, the parties entered a consent order in Brazil providing Mother primary custody while granting Father reasonable open-ended visitation. The parties subsequently moved to North Carolina, and on 6 August 2024 the Honorable Christy Mann entered an Order granting Mother primary custody and visitation for Father as follows: “reasonable visitation upon request[], but at least each Wednesday overnight and every other weekend from Friday until Sunday[.]”

A. Modification of the Custody Order

On 28 October 2024, Mother filed a Motion to Modify Child Custody and requested Emergency Custody, claiming “there has been a substantial change in circumstances affecting the welfare of the minor child that now warrants a modification of the previous custodial schedule.” Mother alleged that M.P. spontaneously reported that Father had taken pictures of her on the toilet, and that she was “embarrassed and ashamed.” She also alleged that Father and M.P. shared a bed during overnight visitation, which had been previously addressed in a DSS report, and that although M.P. had her own bed at Father’s residence, he stopped allowing her to sleep in it since the entry of the previous Order. Mother alleged that, since the previous Order, Father emotionally and verbally abused M.P., forcing her to run “to punish the minor child for her weight[.]” She alleged that Father refused to sign a safety assessment proposed by DSS which would require Father not to share his bed with M.P. or leave her in the car while he works.

Mother also alleged a pattern of behavior in which Father generated conflict

about visitations and custodial exchanges, which had become “extremely controlling and detrimental to the health and wellbeing of the minor child.” She alleged that he communicates with her “frequently and unnecessarily” and “in a hostile and aggressive manner.” Because “[t]he current Order does not provide for where drop off and pick up locations and times are to be held[,]” she alleged that Father tried “to impose his preferred schedule,” and had withheld M.P. outside of his ordered visitation times. This pattern allegedly included attempts to remove her from school and cancelling appointments with her pediatrician.

Mother also informed the court that she wished to relocate with M.P. to Wisconsin, where her current husband (“Mr. Pollard”) lived and worked. Mr. Pollard had been offered an ownership interest in the restaurants he manages, and was renting a larger home, which included space for extended family to visit. Mother argues that it was in M.P.’s best interest to modify the custodial Order to grant her full physical and legal custody and/or to enter an *Ex Parte* Temporary Custody Order granting the same.

On 5 November 2024, Mother moved for criminal contempt against Father, alleging that, on 3 November, Father refused to drop off M.P., unilaterally edited their shared digital calendar, claimed he was not required to release M.P. to her maternal relatives without Mother present, and dropped her off at school the following day without her school supplies. On 5 December 2024, Mother filed an amended Motion for Contempt, alleging two further incidents wherein Father refused

to release M.P. to Mother as ordered, including throughout the Thanksgiving holiday.

Father appeared *pro se* on 14 March 2025 when the case was heard in Mecklenburg County Family Court. No transcript of this hearing appears in the record, but the parties presented evidence and the court made a series of factual findings in its Order filed 4 April 2025. The court found that the custody dynamic had become “chaotic” and “disruptive for the minor child” because of the Father’s “my way or the highway mentality[.]” The court found that he “created an environment where it was World War III at every exchange” and “engaged in aggressive behaviors” including: speeding his car “towards Mother before swerving away or quickly [braking],” insisting that Mother be present at every exchange, accusing her of not living at her address, and sending countless unnecessary texts, including overnight. The court found that Father violated the Order repeatedly, before and after Mother filed her Motion. For example, “[i]f Mother is not behaving the way he believes Mother should behave at an exchange, he will turn around and leave the exchange without dropping off the minor child.” Further, he had “repeatedly taken the child out of school early” and “[w]hen Father does not exchange the minor child with Mother, he will take the minor child to school in the same clothes she wore the day before and without her school supplies or a lunch.” As to the living arrangements in Father’s apartment, the court found that he “lives in university style apartments that he shares with an older man” and that M.P. did not have “her own room or privacy[.]” Moreover, the court found that Father’s immigration status was unclear and that he

had represented multiple times, including at the 14 March hearing, that he wished to take M.P. back to Brazil with him. In sum, the court found that “Father has caused the turmoil which has impacted the minor child’s life.”

As to relocation, the court found that Mr. Pollard had been present at most court hearings despite living in Wisconsin, that he was offered the ownership interest, that Wisconsin schools would provide M.P. with “a better educational opportunity[,]” and that the Wisconsin home was more spacious and would allow more visitation with M.P.’s extended family. As a result, the Court granted the Motion to Modify Custody, permitting Mother to relocate to Wisconsin with M.P. and setting out a highly specific visitation schedule for Father: between 26 December and 6:00 p.m. on 2 January, for four consecutive summer weeks, and weekend visits in Wisconsin with 48 hours notice. The court specified precise exchange times and a default location, required M.P. to maintain unlimited access to contact both parents, and ordered the parties to “communicate civilly and cordially” about schedule changes and to forbear from confrontations, criticisms, or derogatory remarks within earshot of M.P.

B. Subsequent Filings

Father filed Notice of Appeal 19 March 2025, before the court filed the above Order, and served the notice on Mother the following day. He simultaneously filed a *pro se* Motion seeking criminal contempt, entry of a Show Cause Order, and appealing the Judge’s decision to modify custody, making unspecific allegations that Mother denied him his ordered visitation. Two days later, he amended the Motion to allege

“Parental Alienation and assault[,]” that Mother was “acting in bad faith and setting up traps for Father to difficult [sic] his regular rights before the Minor Child[,]” and that he suspected someone connected with her had stolen his car. He filed a further amended Motion the following month, alleging that Mother left North Carolina with M.P. following the hearing and that she “and her connections” are suspects in the theft of his car and “violat[ion]” of his mailbox.

Soon after the court’s order, Father made another series of filings. On 7 April 2025, Father filed a Petition for Writ of Certiorari with this Court, alleging that the trial court heard insufficient evidence to support its conclusion that modification was in M.P.’s best interest. We construed the filing as both a Petition for Writ of Supersedeas and a Motion for Temporary Stay, granting the latter pending our ruling on the Petition. At this Court, he also filed Motions to enforce the stay on 21 April, 24 April, and 2 May, and an Emergency Motion for Criminal Contempt and Emergency Order to Show Cause on 12 May, all of which we dismissed without prejudice to Father’s right to seek relief in the trial court. On 19 April, 29 April, 7 May, and 11 May, Father filed further amended Motions for contempt, stay enforcement, and temporary emergency custody with the trial court, alleging that Mother left bullets in his stolen car to frame him. Father also filed a petition to enforce the Brazilian custody order. On 27 May 2025, we denied his Petition and dissolved the temporary stay.

On 16 May 2025, Father filed a document titled “Record on Appeal.” Along

with many of the relevant filings, it contains an unsupported claim that he had unsuccessfully requested court transcripts. It also contained a lengthy point-by-point rebuttal of the findings and conclusions from the Custody Modification Order, a series of screenshots from the digital calendar, and a series of photos of M.P. with Father. Lastly, it contains a “Statement of Settlement” asserting that he had served the document upon Mother, that “[s]ince Petitioner and Respondent are in dispute, pursuant the historic [sic] of the present case, both parties have no agreement about this matter regarding the Rule 11(c) of the North Carolina Rules of Appellate Procedure[.]” and that “the Record on Appeal is deemed to be settled by the operation of law” and “settled, complete, and ready for filing with the appellate court.” Two days later, Father filed a two-page Appellant’s Brief. He then submitted a supplement to the record containing improved scans of pages that were illegible in the earlier filing.

Plaintiff accepted representation by *pro bono* appellate attorneys and on 23 December 2025 this Court permitted him to file a substitute appellant’s brief. Father’s appellate counsel filed his Replacement Brief on 9 April 2026, to which Mother’s counsel responded with her Appellee’s Brief on 11 May 2026.

On 7 January 2026, Mother moved *pro se* to dismiss the appeal for substantial noncompliance with Rule 11 of the North Carolina Rules of Appellate Procedure or to strike the record, arguing that the documents titled “Record on Appeal” and “Supplement to Record” were not properly settled and did not constitute a valid record

of the case, and that Father was required to include a transcript because of the issues presented on appeal. This Court ordered that her motion be referred to this case's assigned appellate panel.

II. Discussion

A. Mother's Motion to Dismiss

"It is well established that this Court can judicially know only what appears in the record." *County of Durham v. Roberts*, 145 N.C. App. 665, 671 (2001) (citations omitted). Without evidence in the record of error by a trial judge, the appellate court is not required to and should not assume error on the part of the trial judge. *Hicks v. Alford*, 156 N.C. App. 384, 390 (2003). "It is the appellant's duty and responsibility to see that the record is in proper form and complete." *State v. Alston*, 307 N.C. 321, 341 (1983) (citations omitted).

The North Carolina Rules of Appellate procedure provide that appellants may order transcripts of trial proceedings "when those proceedings are the basis for one or more issues presented on appeal" and "so much of the testimonial evidence must be designated as is necessary for an understanding of all issues presented on appeal." N.C. R. App. P. 9(c)(2). Such transcript "shall be settled, together with the other components of the record on appeal, according to the procedures established by Rule 11[.]" N.C. R. App. P. 9(c)(3)(a).

Father unilaterally produced and filed the record on appeal and simultaneously served it on the Appellee along with a "Statement of Settlement."

Mother did not object to this proposed record until she filed her *pro se* motion to dismiss his appeal. Mother now argues that we must dismiss this appeal because Father failed to include the transcript necessary to resolve the issues Father raises, and because this record was never settled as required under the Rules of Appellate Procedure. We ask whether this noncompliance rises to the level of a “substantial failure or gross violation” and “consider, among other factors, whether and to what extent review on the merits would frustrate the adversarial process.” *Sapia v. Sapia*, 294 N.C. App. 419, 424 (2024) (quotes omitted); *see also Hill v. Hill*, 229 N.C. App. 511, 514 (2013).

Mother is correct that transcripts are generally obligatory to provide “so much of the testimonial evidence . . . as is necessary for an understanding of all issues presented on appeal.” N.C. R. App. P. 9(c)(2). Indeed, where a party appeals the modification of a child custody order, transcripts will nearly always be essential for proper appellate review, and exceptions on this point are exceedingly rare. Moreover, the Rules setting out the procedure for settling a record of appeal are vital to ensuring a fair adversarial process.

This record on appeal omits a court transcript. However, it includes the Order appealed from, and because evidence of assigned error appears on the face of this Order, no transcript is necessary to resolve the issues in this case. Under the circumstances of this case, Father’s non-compliance does not impede our ability to perform appellate review of the merits. Therefore, we deny the Motion to dismiss and

proceed to discuss the merits of the appeal. Father’s Petition for Writ of Certiorari is dismissed as moot.

B. The Custody Order Modification

1. Standard of Review

“‘Absent an abuse of discretion, the trial court’s decision in matters of child custody should not be upset on appeal.’” *Tuel v. Tuel*, 270 N.C. App. 629, 631 (2020) (quoting *Everette v. Collins*, 176 N.C. App. 168, 171 (2006)). To award custody of a child to a particular party, “the trial court must conclude as a matter of law that the award of custody to that particular party will best promote the interest and welfare of the child.” *Id.* (cleaned up). That conclusion of law is reviewed *de novo*. *Id.* (citing *Hall v. Hall*, 188 N.C. App. 527, 530 (2008)). We accord the trial court ample discretion in these cases because each “must be determined upon its own peculiar facts and circumstances.” *Id.* at 633, *see also Shipman v. Shipman*, 357 N.C. 471, 474 (2003). This discretion recognizes the trial judge’s “opportunity to see the parties, hear the witnesses, and detect nuances innate in live testimony that are absent from the printed record.” *Durbin v. Durbin*, 388 N.C. 55, 60 (2025) (citing *Shipman*, 357 N.C. at 474.)

“[T]he findings of fact are conclusive on appeal if there is evidence to support them, even if evidence might sustain findings to the contrary.” *Everette v. Collins*, 176 N.C. App. 168, 170 (2006). The trial court’s legal conclusions will not be reversed if supported by the findings of fact. *Witherow v. Witherow*, 99 N.C. App. 61, 63 (1990).

2. Substantial Change in Circumstances and Best Interests Analysis in Relocation Cases

The trial court's primary concern is "the furtherance of the welfare and the best interests of the child" by bringing about the custody arrangement "most conducive to the full development of the child's physical, mental, and moral faculties." *Frey v. Best*, 189 N.C. App. 622, 633–34 (2008). To modify an existing child custody order between two natural parents, the trial court must conclude that its Order is justified by a "substantial change in circumstances affecting the welfare of the child." *Id.* The reason for this justification is "to prevent relitigation of conduct and circumstances that antedate the prior custody order." *Newsome v. Newsome*, 42 N.C. App. 416, 429 (1979). Where we determine that the trial court properly concluded that "a substantial change of circumstances has affected the welfare of the minor child" and modified the custody order based upon the child's best interest, "we will defer to the trial court's judgment and not disturb its decision to modify an existing custody agreement." *Durbin*, 388 N.C. at 60 (citing *Shipman*, 357 N.C. at 474.)

The party seeking a custody modification at the trial court has the burden of showing the requisite change in circumstances. *Blackley v. Blackley*, 285 N.C. 358, 362 (1974). A substantial change in circumstances can be supported by either allegations that the current custody situation has an adverse effect on the child or by "showing a change in circumstance . . . is, or is likely to be, beneficial to the child." *Pulliam v. Smith*, 348 N.C. 616, 620 (1998). Then, the trial court must determine

whether the showing establishes a substantial change in circumstances, and it must set out findings demonstrating the nexus “between the substantial change in circumstances and the welfare of the child.” *Shipman*, 357 N.C. at 478.

Once the trial court concludes that a substantial change in circumstances exists and affects the welfare of the child, the court must ask whether, as a matter of law, the modification is in the child’s best interests. *Id.* Permission for one parent to relocate with the child to another state is a possible modification, and “[i]f the child’s welfare and best interests will be better promoted by granting one parent permission to remove the child from the State, the court should not hesitate to do so.” *Frey*, 189 N.C. App. at 633–34. “Although most relocations will present both advantages and disadvantages for the child, when the disadvantages are outweighed by the advantages, as determined and weighed by the trial court, the trial court is well within its discretion to permit the relocation.” *Tuel*, 270 N.C. App. at 632 (quoting *Ramirez-Barker v. Barker*, 107 N.C. App. 71, 79–80 (1992)).

However, a custody order is fatally defective where it fails to make detailed findings of fact from which an appellate court can determine that the order is in the best interest of the child. *Dixon v. Dixon*, 67 N.C. App. 73, 76–77 (1984). A custody order will be vacated “where the findings of fact are too meager to support the award.” *Tuel*, 270 N.C. App. at 633 (citing *Montgomery v. Montgomery*, 32 N.C. App. 154 (1977)). Given the significance of an out-of-state relocation, this Court has provided a non-exhaustive list of the factors “appropriately considered by the trial court” before

concluding that such a modification is in a child's best interests. *Evans v. Evans*, 138 N.C. App. 135, 142 (2000) (quoting *Ramirez-Barker*, 107 N.C. App. at 79–80). These include:

the advantages of the relocation in terms of its capacity to improve the life of the child; the motives of the custodial parent in seeking the move; the likelihood that the custodial parent will comply with visitation orders when he or she is no longer subject to the jurisdiction of the courts of North Carolina; the integrity of the noncustodial parent in resisting the relocation; and the likelihood that a realistic visitation schedule can be arranged which will preserve and foster the parental relationship with the noncustodial parent.

Ramirez-Barker, 107 N.C. App. at 79–80. A custody order permitting relocation is not fatally deficient if the trial court fails to make explicit findings regarding every *Ramirez-Barker* factor, but these factors “will be highly relevant to the best interests of the child in nearly all of these situations.” *Tuel*, 270 N.C. App. at 633.

3. The Order Granting Modification Included Insufficient Facts to Support its Legal Conclusion that Relocation was in M.P.'s Best Interest

Appellant first argues that “sufficient time had not passed for Mother to demonstrate a substantial change of circumstances as a matter of law.” “An 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.” N.C.G.S. § 50-13.7 (emphasis added). Accordingly, there is no set minimum passage of time following a custody order after which a party may move for modification due to changed circumstances. Instead, the question is

whether there is a showing of changed circumstances which exist at the time of the hearing, and courts only consider events that occurred after the entry of the previous order, unless the earlier events had been previously undisclosed to the court. *Shipman*, 357 N.C. at 480.

Next, Father argues that the circumstances found by the trial court did not support the conclusion that there existed a substantial change in circumstance. Alternately, he argues that, if a substantial change in circumstances warranting modification existed, it did not properly support the conclusion that relocation was in M.P.'s best interests.

It is possible that the evidence regarding Father's pattern of conduct would have permitted some kind of modification to the custody arrangement. "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." *Correll v. Allen*, 94 N.C. App. 464, 471 (1989).

However, the findings of fact as to Mother, the re-marriage, and the relocation opportunity are legally insufficient to establish a substantial change in circumstances that would justify her out-of-state relocation. The Order tells us Mother married Mr. Pollard and had a child with him, that Mr. Pollard has attended court with Mother, that he works in Wisconsin while Mother resides in North Carolina, that he has been offered an "ownership interest in the restaurants that he manages" and that the

couple's home in Wisconsin has "more space" and can accommodate visits from M.P.'s extended family. Although the effects on M.P. of these events could be substantial, the Order only describes the nexus between the events and M.P.'s welfare as follows: "Wisconsin schools would provide the minor child with a better educational opportunity for the minor child."

The findings offer no sense of M.P.'s relationship with her stepfather, nothing further as to the business opportunity, and no information as to the superiority of Wisconsin schools. Accordingly, we know nothing from this Order about "the advantages of the relocation in terms of its capacity to improve the life of the child [or] the motives of the custodial parent in seeking the move[.]" *Ramirez-Barker*, 107 N.C. App. at 79–80. Moreover, given the other findings about Father, the relocation would also raise questions as to "the likelihood that the custodial parent will comply with visitation orders when he or she is no longer subject to the jurisdiction of the courts of North Carolina [and] the integrity of the noncustodial parent in resisting the relocation." *Id.* But the court did not address the matter. Of the required factors, the court only discusses "the likelihood of a realistic visitation schedule . . . which will preserve and foster the parental relationship with the noncustodial parent" by setting out its plan for Father's visitation, with exact times and a default drop-off location roughly halfway between Wisconsin and Mecklenburg County.

"[W]hen the court fails to find facts so that this Court can determine that the order is adequately supported by competent evidence and the welfare of the child

subservied, then the order entered thereon must be vacated and the case remanded for detailed findings of fact.” *Crosby v. Crosby*, 272 N.C. 235, 238–39 (2000). Failing to address the nexus between these changed circumstances and their effect on M.P., the court erred in concluding as a matter of law that the findings as to Mother and the possible relocation were legally sufficient to contribute to a substantial change in circumstances that would justify a modification permitting relocation. Furthermore, the court failed to substantively address either the issues contemplated by the *Ramirez-Barker* factors, which would have been highly relevant in this case, or anything else about the relocation that might conceivably affect M.P.’s welfare.

Accordingly, the court erred in concluding that relocation was in M.P.’s best interests, because the findings of fact were legally insufficient to support this conclusion. Therefore, we remand to the trial court to make additional findings in the matter. In doing so the court may rely upon the previous evidence presented or in its discretion conduct a new hearing in order to make the appropriate findings of fact and conclusions of law.

III. Conclusion

For the above reasons, we remand to the trial court to make additional findings.

REMANDED.

Judges CARPENTER and FREEMAN concur.