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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-260

Filed 21 October 2026

New Hanover County, No. 16CVD004354-640

MOHAMED EL HENAWY, Plaintiff,

v.

AMEERA HAMMAD, Defendant.

Appeal by defendant from child custody modification order entered 9 October 2024 and amended child custody modification order entered 7 January 2025 by Judge Jeffrey E. Noecker in New Hanover County District Court. Heard in the Court of Appeals 20 November 2025.

Manning, Fulton & Skinner P.A., by Michael S. Harrell, for defendant-appellant.

James W. Lea, III, for plaintiff-appellee.

FREEMAN, Judge.

On appeal, defendant argues that the trial court erred by entering the 9 October 2024 child custody modification order (Modification Order) because the trial court did not have the authority to permit the minor child's international travel to a country not covered by the Hague Convention. Defendant also argues that the trial

court erred by entering the 7 January 2025 amended child custody modification order (Amended Order) because the amendments were not permissible clerical errors under Rule 60(a) of the North Carolina Rules of Civil Procedure, and in the alternative, that the amendments are "too cumbersome and time consuming" for defendant. After careful review, we affirm the Modification Order and deny defendant's petition for writ of certiorari to hear defendant's claims regarding the Amended Order.

I. Procedural and Factual Background

The parties are the parents of one minor child. **{R 31}** On 2 February 2018, a permanent custody hearing was held. **{R 2}** On 28 February 2018, the trial court entered a permanent custody order between the parties. **{R 2-9}** In that written order, the trial court granted defendant primary physical custody and the parties shared joint legal custody of the child. **{R 7-10}** The order also prohibited plaintiff from applying for a passport for the child or travelling outside of the state with the child without defendant's consent. **{R 9}**

On 5 December 2023, plaintiff filed a motion to modify the custody order, seeking the trial court's permission to bring the child to Egypt. **{R 11–13}** Plaintiff alleged that because the child's paternal grandfather had leukemia, plaintiff sought to travel with the child to visit family in Egypt, but defendant "steadfastly" and "unreasonably" refused to allow the trip. **{R 13}** The trial court heard plaintiff's motion on 15 July 2024 and entered the Modification Order on 9 October 2024. **{R 31–49}** In the Modification Order, the trial court found it "appropriate for the minor

child to travel to Egypt in order to visit with her family" and that "it would be in the best interests of the minor child to travel to Egypt." **{R 38}** The Modification Order also stated that the trial court "has no concerns that [plaintiff] will fail to return the minor child to the jurisdiction and comply with [the Modification Order], however in order to assure same, the [trial court] will put in provisions in the decretal part of [the Modification Order] to compel compliance." **{R 38}** However, the Modification Order did not contain any such provisions to compel compliance. **{R 40–48}** On 5 November 2024, defendant filed a notice of appeal. **{R 50}**

On 8 January 2025, approximately two months after defendant noticed her appeal, the trial court entered the Amended Order pursuant to plaintiff's Rule 60(a) motion. **{R 67–86}** The Amended Order stated that the trial court "made a clerical error" in the Modification Order "by inadvertently omitting a provision" providing that plaintiff "was required to post a security insuring his return from any trip with the minor child to Egypt." **{R 67}** The Amended Order included two additional findings of fact and one additional decretal amendment providing for a travel security requirement, which was left out of the Modification Order. **{R 75, 82}** Specifically, the amendments required that plaintiff execute a promissory note and deed of trust prior to each international trip, defendant obtain a real estate attorney as trustee of the deed of trust, and defendant return the promissory note and file a satisfaction to the deed of trust within thirty days of the child's return. **{R 82}**

Defendant never filed a subsequent notice of appeal regarding the Amended

Order. On 31 March 2025, defendant filed a petition for writ of certiorari.

II. Jurisdiction

Appeal to this Court lies of right any final judgment of a district court in a civil action, including any order, other than a nonsecure custody order, that changes legal custody of a juvenile. N.C.G.S. §§ 7A-27(b)(2), 7B-1001(a)(4).

For an appeal to be properly before this Court, Rule 3(d) of the North Carolina Rules of Appellate Procedure requires an appellant's notice of appeal to "designate the judgment or order from which appeal is taken . . . ." N.C. R. App. P. 3(d) (2025). "Without proper notice of appeal, the appellate court acquires no jurisdiction and neither the court nor the parties may waive the jurisdictional requirements even for good cause shown under Rule 2." *Mason v. Dwinnell*, 190 N.C. App. 209, 216 (2008) (quoting *Bromhal v. Stott*, 116 N.C. App. 250, 253 (1994)).

Here, the trial court entered its Modification Order on 9 October 2024. **{R 31–49}** Defendant timely filed her written notice of appeal on 5 November 2024, designating the trial court's Modification Order as the order from which appeal is taken. **{R 50}** Thus, this Court has jurisdiction to review the Modification Order.

However, on 8 January 2025, the trial court *sua sponte* entered the Amended Order to correct a "clerical mistake" pursuant to Rule 60(a) of the North Carolina Rules of Civil Procedure. **{R 68–86}** Defendant's notice of appeal was filed prior to the Amended Order and, naturally, does not reference the Amended Order. **{R 50}** For this Court to have jurisdiction to review the Amended Order, defendant must

have filed another notice of appeal designating the Amended Order as the order from which appeal is taken. *See id.* at 215 (concluding that the appellant was "required to file another notice of appeal" regarding a trial court's amended order to confer jurisdiction upon this Court). Defendant never filed an additional notice of appeal regarding the Amended Order but instead petitions this Court for writ of certiorari.

"The writ of certiorari may be issued in appropriate circumstances . . . to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action." N.C. R. App. P. 21(a)(1). Our Supreme Court requires this Court apply a two-part test when determining whether to issue a writ of certiorari. *Cryan v. Nat'l Council of YMCAs*, 384 N.C. 569, 572 (2023). Certiorari should only issue if the petition shows: (1) "merit or that error was probably committed below," and (2) "extraordinary circumstances to justify it." *Id.* at 572–73 (cleaned up). Extraordinary circumstances require "a showing of substantial harm, considerable waste of judicial resources, or 'wide-reaching issues of justice and liberty at stake.' " *Id.* (quoting *Doe v. City of Charlotte*, 273 N.C. App. 10, 23 (2020)).

Importantly, "a writ of certiorari 'is not intended as a substitute for a notice of appeal.' " *Id.* at 573. "If courts issued writs of certiorari solely on the showing of some error below, it would 'render meaningless the rules governing the time and manner of noticing appeals.' " *Id.* (quoting *State v. Ricks*, 378 N.C. 737, 741 (2021)).

Here, although defendant has demonstrated in her petition that error was

probably committed below, defendant's petition defendant failed to cite *Cryan* and did not make an argument showing extraordinary circumstances exist to warrant issuing a writ. The Amended Order in question added travel security provisions to compel plaintiff's compliance with travel plans and to ensure the child is safely returned to this state. **{R 75–76, 82}** We cannot say these amendments cause defendant or the child substantial harm, as they tend to favor defendant by providing additional safeguards. Further, defendant does not demonstrate how issuing the writ would prevent considerable waste of judicial resources or promote wide-reaching issues of justice and liberty. Therefore, defendant's petition fails to show extraordinary circumstances.

After careful review, we conclude that defendant's petition does not satisfy the two-part test for granting certiorari and therefore we lack jurisdiction to review the Amended Order. Accordingly, we only consider defendant's argument regarding the Modification Order.

III. Standard of Review

We review a trial court's modification of a child custody order to determine whether the trial court's findings of fact are supported by substantial evidence and whether the trial court's conclusions of law are supported by such findings. *Burger v. Smith*, 243 N.C. App. 233, 236 (2015). "[T]he trial court's findings of fact are conclusive on appeal if supported by substantial evidence, even if there is sufficient evidence to support contrary findings. . . . Unchallenged findings of fact are binding

on appeal." *Id.* (quoting *Peters v. Pennington*, 210 N.C. App. 1, 12–13 (2011)). Whether the trial court's findings of fact support its conclusions of law is reviewed de novo. *Id.* (quoting *Hall v. Hall*, 188 N.C. App. 527, 53 (2008)).

IV. Discussion

On appeal defendant argues that the trial court erred by entering the Modification Order because the trial court did not have the authority to permit the minor child's international travel "to a country not covered by the Hague Convention." **{Def. Br. 10}** Defendant does not challenge any of the trial court's findings of fact, and thus, the trial court's findings of fact are binding on appeal. *See id*.

Section 50-13.2(c) of the North Carolina General Statutes provides as follows:

> An order for custody of a minor child may provide for such child to be taken outside of the State, but if the order contemplates the return of the child to this State, the judge may require the person, agency, organization or institution having custody out of this State to give bond or other security conditioned upon the return of the child to this State in accordance with the order of the court.

N.C.G.S. § 50-13.2(c)(2025). Our Supreme Court has held that § 50-13.2(c) "clearly authorizes the court to enter an order providing for the child to be taken outside of the state." *Hamlin v. Hamlin*, 302 N.C. 478, 485 (1981). Further, this Court has held that a trial court does "not abuse its discretion by not restricting the minor children from visiting countries not a party to the Hague Convention . . . ." *Morrow v. Morrow*, 300 N.C. App. 60, 73 (2025). Therefore, in the present case, the trial court had the

authority to permit the child to travel to Egypt, even though Egypt is not a party to the Hague Convention.

Defendant argues in the alternative that even if the trial court had such authority, the Modification Order "fails to exercise that authority" because the trial court did not provide travel protections to ensure the child's return. **{Def. Br 10}** However, the trial court subsequently entered the Amended Order, which provided safeguards to ensure the child's safe return to the state. **{R 82}** Specifically, the Amended Order required: (1) plaintiff execute a promissory note and deed of trust prior to each international trip, (2) defendant obtain a real estate attorney as trustee of the deed of trust, and (3) defendant return the promissory note and file a satisfaction to the deed of trust within thirty days of the child's return. **{R 82}** Because the Amended Order included travel protections to ensure plaintiff's compliance with the Modification Order and the child's safe return to the state, defendant's argument—that the Modification Order failed to include travel protections—is moot.

V. Conclusion

Because the trial court had the authority to permit the child to travel to Egypt we affirm the Modification Order.

AFFIRMED

Judges GRIFFIN and MURRY concur.

Report per Rule 30(e).