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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-836

Filed 4 November 2026

Iredell County, No. 13CVD002250-480

JACOB ALEXANDER WAGNER, Plaintiff,

v.

VICTORIA ANN BRINKLEY, Defendant.

Appeal by plaintiff from order entered 28 February 2025 by Judge Edward L. Hendrick, IV, in Iredell County District Court. Heard in the Court of Appeals 11 February 2026.

Winthrop & Gaines Messick, PLLC, by Leah Gaines Messick, for plaintiff-appellant.

Lassiter & Lassiter, PA, by T. Michael Lassiter, Jr., for defendant-appellee.

FREEMAN, Judge.

Plaintiff appeals from a child custody modification order (Modification Order) entered by the trial court reducing plaintiff's custody. On appeal, plaintiff argues that the trial court erred by entering the Modification Order because substantial evidence does not support the trial court's findings of fact and the findings of fact do

not support the trial court's conclusions of law. After careful review, we vacate the trial court's Modification Order.

I. Procedural and Factual Background

The parties share one child (the Child), born in 2013, who is the subject of this appeal. Sometime in 2016, plaintiff was struck and injured by a semi-truck. Plaintiff lived in California "for a little over a year" where he received medical treatment and recovered from his severe back injury.

On 4 January 2018, the parties entered into a consent order. That order stated that the parties shared joint legal custody of the Child. Plaintiff exercised physical custody of the Child the first, second, and third weekend of each school year month, Friday through Monday. And, in the summer, the parties alternated custody every other week. However, plaintiff described that the parties did not fully follow this schedule, and at times, the parties exercised custody "on a more equal 50-50 basis." At the time of and more than six months prior to that consent order, both parties resided in Iredell County. Further, the Child was enrolled in a North Carolina school.

In February 2024, defendant moved to Greenville, South Carolina, and left the Child in plaintiff's sole custody. Then, in April 2024, defendant took custody of the Child and ceased allowing plaintiff to exercise visitation or custody until sometime in May. On 1 April 2024, defendant had completed transfer paperwork for the Child to attend school in Greenville, South Carolina. On 6 May 2024, plaintiff filed a motion

for contempt and modification of custody alleging that defendant violated the parties' previous 2018 consent order.

On 17 October 2024, the trial court heard plaintiff's motion for contempt. In the trial court's subsequent order, defendant was found in indirect criminal contempt. On 14 and 15 January 2025, the trial court heard plaintiff's motion to modify custody. The trial court entered a child custody modification order (Modification Order) on 28 February 2025, finding a substantial change in circumstances to warrant modification and concluding that primary custody to defendant was in the best interest of the Child. The modified order reduced plaintiff's custody schedule. Plaintiff filed timely written notice of appeal.

II. Jurisdiction

This Court has jurisdiction to review a final order of a district court modifying child custody. N.C.G.S. §§ 7A-27(b)(2), 7B-1001(a)(4) (2025). Accordingly, we have jurisdiction to review plaintiff's appeal.

III. Standard of Review

We review a trial court's child custody modification 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 of fact. *Green v. Kelischek*, 234 N.C. App. 1, 5 (2014); *Munoz v. Munoz*, 278 N.C. App. 647, 649–50 (2021). "Conclusions of law are reviewed de novo and are subject to full review." *State v. Biber*, 365 N.C. 162, 168 (2011). "If the trial court's uncontested findings of fact

support its conclusion of law, [this Court] must affirm the trial court's order." *Respess v. Respess*, 232 N.C. App. 611, 614 (2014).

IV. Discussion

Plaintiff contends the trial court erred by entering the Modification Order for two reasons. First, plaintiff argues the trial court's factual findings 8, 11, 30, 37, 40, 45, 49, 52, and 53 are not supported by substantial evidence. Second, plaintiff argues the conclusions of law are not supported by the factual findings. We address each argument in turn.

A. Findings of Fact

Plaintiff argues factual findings 8, 11, 30, 37, 40, 45, 49, 52, and 53 are unsupported by substantial evidence.

"When reviewing a trial court's decision to grant or deny a motion for modification of an existing child custody order, the appellate courts must examine the trial court's finding of fact to determine whether they are supported by substantial evidence." *Kelischek*, 234 N.C. App. at 5 (quoting *Shipman v. Shipman*, 357 N.C. 471, 474 (2003)). Substantial evidence is evidence that "a reasonable mind might accept as adequate to support a conclusion." *Id.* (quoting *Shipman*, 357 N.C. at 474). "The findings of fact are conclusive on appeal if there is evidence to support them, even if evidence might sustain findings to the contrary." *Everett v. Collins*, 176 N.C. App. 168, 170 (2006) (quoting *Williams v. Pilot Life Ins. Co.*, 288 N.C. 338, 342 (1975)).

1. Findings of Fact 8 and 11

Plaintiff challenges factual findings 8 and 11, arguing that substantial evidence does not support the finding that the Child was seven or eight years old at the time of plaintiff's 2016 injury and residence in California. Specifically, plaintiff contends that the evidence shows the Child was between three or four years old at the time of his injury. Factual findings 8 and 11 provide as follows:

> 8. When [the Child] was seven (7) or (8) years old, plaintiff was severely injured when he was struck by a truck. He went to California to seek assistance from his brother while he healed. He stayed in California for more than a year. During this year he spoke to defendant, but he did not speak with [the Child.] He did not visit [the Child]. He did not send [the Child] cards, letters, or gifts.
>
> 11. Plaintiff returned from California before October of 2022. Thereafter, plaintiff enjoyed significant overnights with the [Child]. At times, plaintiff's overnights exceeded defendant's overnights and at other times they were less.

Although plaintiff testified on cross-examination that he believed the Child was "seven or eight" at the time of his injury, the evidence shows that the Child was three or four years old. At the hearing, plaintiff testified that his injury occurred in 2016. The record demonstrates that the Child was born on 10 June 2013. This shows that the Child was only three or four years old at the time of plaintiff's 2016 injury and residence in California. Thus, the portions of factual findings 8 and 11 which state the Child's age, are not supported by substantial evidence.

2. Finding of Fact 37

Plaintiff challenges factual finding 37, arguing that evidence does not support the finding that the Child's "performance does not appear to change significantly with the change in her primary custodian." Specifically, plaintiff contends that during the period he had primary custody of the Child, the Child's grades increased. Factual finding 37 states:

> 37. The [C]hild attends Sevier Middle School. Her grades in core courses range from 60 to 83 and she is in danger of failing at least one class for failing to complete work despite accommodations. She's had three (3) absences. Her academic performance has been fairly consistent since kindergarten. She performs satisfactory in some areas, inconsistent in others and needs improvement in areas. She's had three (3) to twelve (12) absences per year in the four (4) years of report cards produced. Her performance does not appear to change significantly with the change in her primary custodian.

The evidence in the record tends to show that during the period plaintiff had primary custody of the Child, the Child's fifth grade math grade increased from a sixty to a seventy-three and the Child's fifth grade ELA grade increased from a sixty-nine to an eighty-nine. When the Child was back in defendant's primary custody, the Child's sixth grade math and science grades dropped again. Further, the Child's counselor testified that the Child's grades improved while she was in plaintiff's primary custody. This evidence supports a finding that the Child's grades appeared to change significantly with a change in primary custody. Therefore, substantial evidence does not support the portion of factual finding 37 stating that the Child's "performance does not appear to change significantly with the change in her primary custodian."

3. Findings of Fact 30, 40, 45, 49, 52, and 53

Plaintiff also argues that factual findings 30, 40, 45, 49, 52, and 53 are unsupported by substantial evidence. These findings state:

> 30. Plaintiff took the [C]hild to therapy on June 5, 2024 and June 20, 2024. It is concerning that the [C]hild discussed the court case and her parent's views during therapy.
>
> 39. The home in which plaintiff resides has three (3) bedrooms. Plaintiff's parents share a room. Plaintiff has a bedroom which is also used as a storage room. [The Child] has a room with only one (1) bed which shares with her half-sister when both visit at the same time.
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> 40. Plaintiff is employed with Target Distribution. He works nights generally during the week. Plaintiff has a 40-minute commute. He generally gets home at 6:00 a.m. and prepares breakfast for [the Child] and gets her ready for her day. He then sleeps in the middle of the day for several hours.
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> 45. Plaintiff and defendant do not communicate well. They generally limit their communication to texts and even with this method they do not respond to the questions of the other and frequently slip into arguments. Plaintiff and defendant's husband have often communicated more effectively than plaintiff and defendant.
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> 49. [The Child] also appears bonded to defendant. They play outside and have also taken special trips to Disney, the beach and local fairs and other events.
>
> 52. The parties remain fit and proper persons to share custody of the minor child. The court has considered all of the facts in this order and placed significant weight upon the facts in this and the next two paragraphs. The [Child] suffers from mental health disorders. Those disorders may not be as serious as once believed considering the changes in diagnoses offered by the professionals who see the [C]hild. Defendant has been the primary caretaker for the

> minor child since 2018, and her sole caretaker when defendant went to California for a year. Defendant arranged for the [C]hild's educational and mental health needs with the assistance of other professionals.
>
> 53. Defendant's work schedule allows her to be more involved in the day-to-day care for the [C]hild than plaintiff's work schedule.

These findings are supported by evidentiary exhibits, the Child's counselor's testimony, plaintiff's mothers' testimony, plaintiff's testimony, plaintiff's attorney's statements, and defendant's testimony. Because there is evidence to support the trial court's findings, the trial court's findings of fact are conclusive on appeal. *Everett*, 176 N.C. App. at 171 ("findings of fact are conclusive on appeal . . . even if evidence might sustain findings to the contrary.").

Accordingly, we affirm factual findings 30, 39, 40, 45, 49, 52, and 53. We vacate factual findings 8, 11, and 37, as they are unsupported by substantial evidence.

B. Conclusions of Law

Plaintiff next contends that the findings of fact do not support the trial court's conclusion of law that decreasing plaintiff's custody is in the best interests of the child. Plaintiff does not contest that a substantial change in circumstances occurred, which the trial court attributed to Defendant's relocation to a home in South Carolina, approximately three and a half hours from plaintiff's residence.

"In addition to evaluating whether a trial court's findings of fact are supported by substantial evidence, this Court must determine if the trial court's factual findings

support its conclusions of law." *Shipman*, 357 N.C. at 475. The trial court must make conclusions of law determining "whether there has been a substantial change in circumstances" affecting the child's welfare, and if so, "whether a modification of custody [is] in the child's best interests." *Id.* at 475, 481. Therefore, when finalizing the findings of fact, trial courts should focus on "explaining whether any change in circumstances can be deemed substantial, whether that change affected the welfare of the minor child, and, finally, why modification is in the child's best interests." *Id.* at 481.

Here, the trial court made the following conclusion of law regarding the best interest of the Child: "Plaintiff and defendant continue to be fit and proper persons to share the joint legal and physical custody of the minor child and this order is in the best interests of the minor child."

Considering only the findings of fact that are supported by substantial evidence, we conclude the findings of fact are insufficient to support the trial court's conclusion of law that the Modification Order is in the best interests of the Child. In awarding defendant primary custody of the Child and decreasing plaintiff's custody, the trial court emphasized the following facts: "the parties remain fit and proper persons to share custody" of the Child, the Child is "bonded" to both plaintiff and defendant, defendant "has been the primary caretaker" for the Child since 2018, defendant "arranged for the [C]hild's educational and mental health needs," and defendant's "work schedule allows her to be more involved in the day-to-day care for

the [C]hild than plaintiff's work schedule.

However, the trial court also found that the Child missed therapy appointments while in defendant's custody, the Child's move to South Carolina with defendant "disrupted the [C]hild's life," defendant "violated prior orders and has been found in contempt," defendant "has inappropriately involved the [C]hild in conversations about this litigation," and some of defendant's statements to the Child "are not in the best interests of" the Child and "could be contemptuous." These findings of fact contradict the trial court's conclusion of law that it is in the best interests of the Child to award defendant primary custody and decrease plaintiff's custody.

Further, the trial court made various positive findings of fact regarding plaintiff: "[p]laintiff is a good parent," the Child "became more communicative in sessions when the [C]hild was in the custody of plaintiff," the Child "appeared to have a closer relationship to [plaintiff] in the presence of the therapist," plaintiff's relationship with the Child "improved during a period when he exercised primary custody suggesting that defendant is interfering with plaintiff's relationship with the [C]hild," and plaintiff has "a good grasp of appropriate boundaries for discussions with the [C]hild." Therefore, considering the findings of fact supported by sufficient evidence, the trial court's conclusion of law—that it is in the best interests of the Child to decrease plaintiff's custody and award defendant primary custody—is not supported by the findings of fact.

Because the findings of fact do not support and in some ways contradict the trial court's conclusions of law regarding the best interests of the Child, the trial court erred in concluding that decreasing plaintiff's custody was in the Child's best interest.

C. *Ramirez-Barker* Factors

Plaintiff also argues that the trial court erred because it did not address the *Ramirez-Barker* factors, claiming they are necessary in relocation cases to determine whether modification of custody is in the Child's best interest.

"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 v Tuel*, 270 N.C. App. 629, 632 (2020) (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). Further, a custody order will be "vacated where the 'findings of fact' consist of mere conclusory statements" that the custody order is in the best interests of the child or where "the findings of fact are too meager to support the award." *Id.*

In *Ramirez-Barker*, we established a non-exhaustive list of factors, which the trial court must weigh in determining whether relocation is in the best interests of the child:

> [T]he 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 scheme can be arranged which will preserve and foster the parental relationship with the noncustodial parent.

Ramirez-Barker, 107 N.C. App. at 80. While the trial court does not have to address every *Ramirez-Barker* factor, "these factors will be highly relevant to the best interest of the child in nearly all [relocation] situations." *Tuel*, 270 N.C. App. at 633.

Here, the trial court did not consider any of the *Ramirez-Barker* factors when determining that the Modification Order is in the best interest of the Child. The trial court's Modification Order made no mention of the advantages of relocation, defendant's motives, plaintiff's integrity in resisting relocation, or the likelihood that a visitation scheme can be arranged to preserve the parents' relationship with one another. While the court stated, "[defendant] has violated prior orders and has been found in contempt," it did not explain or weigh how that fact related 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." *Ramirez-Barker*, 107 N.C. App. at 80. And although the trial court stated, "[defendant's] move to South Carolina has disrupted the child's life," it did not explain "the advantages of the relocation in terms of its capacity to improve the life of the child." *Id*. Other than

referencing defendant's work schedule and ability to bear the burden of driving to exchanges, the trial court did not engage in any comparison between how defendant's home in South Carolina would benefit the Child more than the plaintiff's home in North Carolina. Thus, the trial court failed to substantively address any of the *Ramirez-Barker* factors or any other facts about the relocation that would affect the Child's welfare.

Because the trial court failed to make detailed findings of fact from which this Court can determine that the Modification Order is in the best interest of the Child, the trial court erred in concluding that decreasing plaintiff's custody and relocation was in the Child's best interest. *See Dixon*, 67 N.C. App. at 76–77.

V. Conclusion

For the foregoing reasons, we conclude that the trial court's finding of fact 8, 11, and 37 are not supported by substantial evidence. Further, because the trial court failed to make detailed findings of fact to support its conclusion of law regarding the Child's best interests, we vacate the trial court's Modification Order.

VACATED.

Judge FLOOD concurs.

Chief Judge DILLON dissents by separate opinion.

Report per Rule 30(e).

No. COA25-836 – *Wagner v. Brinkley*

DILLON, Chief Judge, dissenting.

The trial court has entered an order modifying custody of the child for the period that the child is in school, reducing Father's physical custody to every other weekend. Holidays and summer vacations remain split 50/50. My vote is to affirm. There has been a substantial change of circumstances, as stated by the majority. Mother and Father no longer live in the same town, as Mother has moved three hours away with her husband and their two children. This change makes the prior custody arrangement, requiring more transfers for short periods, too burdensome.

And I conclude the trial court made sufficient findings to support its best interest determination. The trial court considered how both parents were each fit and have each bonded with the child. The trial court found Mother had met her burden, though, barely, based on certain misconduct by Mother. In so finding, the trial court considered many factors including the unworkability of the prior custody arrangement. The trial court also considered that the child attends school in South Carolina, that Mother's work schedule was more conducive to parental involvement in day-to-day care of the child, and that Mother's home provided a better living arrangement for the child.

I agree with the majority that some of the trial court's findings were not supported by the evidence, but I do not believe these errors are consequential in the

trial court's, otherwise, proper exercise of discretion.