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NO. COA01-1604

NORTH CAROLINA COURT OF APPEALS

Filed: 17 December 2002

TONITA E. MELTON,  
(FORMERLY CLINE)  
Plaintiff

v.

Catawba County  
No. 93 CVD 3051

JAMES ARNOLD CLINE,  
Defendant

Appeal by plaintiff from order entered 22 August 2001 and amended order entered 9 October 2001 by Judge J. David Abernethy in Catawba County District Court. Heard in the Court of Appeals 9 December 2002.

*David Shawn Clark, P.A., by D. Shawn Clark, for plaintiff-appellant.*

*No brief for defendant-appellee.*

CAMPBELL, Judge.

Plaintiff appeals from an order and amended order which modify a child custody consent order entered 18 October 2000 and grant primary custody of the parties' minor children to defendant based on a change of circumstances. Plaintiff and defendant were married on 14 April 1990, and two children were born of the marriage in 1990 and 1992. The parties subsequently separated and divorced. The trial court granted primary custody of the two children to

plaintiff in an order entered 19 September 1994. On 30 June 2000, defendant filed a motion seeking a change in child custody. In a consent order entered on 18 October 2000, the trial court granted primary custody of the children to defendant.

On 19 April 2001, plaintiff filed a motion seeking a change in child custody as the result of a substantial change in circumstances. Plaintiff amended her motion on 13 June 2001 to add additional allegations. Defendant filed an answer and counterclaim on 20 June 2001. The trial court heard the matter on the 13<sup>th</sup> and 14<sup>th</sup> of August 2001. Plaintiff was represented by counsel, and defendant appeared *pro se*.

In an order entered on 22 August 2001 and subsequently amended on 9 October 2001 as a result of a motion filed by plaintiff pursuant to N.C.R. Civ. P. 59, the trial court made the following findings of fact:

4. That a Consent Order was entered giving joint custody to both the Plaintiff and the Defendant with primary custody to the Defendant, including after-school visitation which was entered on October 18, 2000. [*The Plaintiff was awarded extensive visitation according to a schedule set out in the Consent Order and was ordered to pay child support.* (Portion in italics amended by 9 October 2001 order.)

. . . .

7. That the Plaintiff remarried on September 16, 2001, to Chris Melton and had moved into his residence by no later than August 1, 2001.

. . . .

9. That the minor child, Cody Cline has had difficulty concentrating on his schoolwork since entering school and has some symptoms of

ADHD.

. . . .

11. That the minor child, Cody Cline, has been discovered three times naked with another minor child in closets or closed rooms; once with [his four-year-old stepbrother] in June 2000. The minor child, Cody Cline, has not committed sex offenses to date, but is at risk for doing so and he has been in counseling for that reason. . . .

. . . .

13. That the minor child, Keysha Cline's, school grades dropped during the 2000-2001 school year. The elementary school, Webb Murray, attended by the children is forty-five minutes away from the Plaintiff's residence. Each child has some tardies at school.

. . . .

16. That the Plaintiff describes herself as having been saved, and she and her husband attend church regularly. She does not drink or curse as much since her marriage. [] *The Plaintiff has attempted to improve her relationship with her mother, who desires no such relationship.* (Portion in italics amended by 9 October 2001 order.)

17. That the Plaintiff stopped working outside the home in May 2001.

18. That prior to the Consent Order, the Plaintiff had changed jobs and residences frequently. The Plaintiff has taken paramedic classes but never completed the classes. The Plaintiff owes \$2500.00 in student loans.

19. That the Plaintiff is \$620.00 in arrears on Child Support. The Plaintiff owes \$4500.00 on a van and \$2000.00 to her mother, Mrs. Davis.

On the basis of these and other findings of fact, the trial court concluded the "improvement in Plaintiff's lifestyle constitutes a

material change of circumstances favorable to the minor children's welfare. . . . [but] the school day visitation is not in the minor children's best interest, and their best interest will be served by the following modification of custody." The trial court then eliminated the school day visitation periods set out in the 18 October 2000 consent order. From the trial court's order and amended order, plaintiff appeals.

Plaintiff in her first assignment of error asserts "[t]he trial court abused its discretion in the making of the Findings of Fact in that the Findings of Fact are not supported by competent evidence." However, "[a] single assignment generally challenging the sufficiency of the evidence to support numerous findings of fact, as here, is broadside and ineffective." *Wade v. Wade*, 72 N.C. App. 372, 375-76, 325 S.E.2d 260, 266, *disc. review denied*, 313 N.C. 612, 330 S.E.2d 616 (1985). When no assignment of error is made to particular findings, they are "presumed to be supported by competent evidence and are binding on appeal." *Anderson Chevrolet/Olds v. Higgins*, 57 N.C. App. 650, 653, 292 S.E.2d 159, 161 (1982). This broadside assignment of error is overruled.

Plaintiff's second assignment of error states "[t]he trial court abused its discretion in the making of the Conclusions of Law in that the Conclusions of Law and Decretal do not follow from the evidence presented and the Findings of Fact." This broadside assignment of error "is ineffectual except to present the question of whether the facts found support the judgment and whether error of law appears on the face of the record." *Monds v. Monds*, 46 N.C.

App. 301, 304, 264 S.E.2d 750, 752-53 (1980).

A court order for custody of a minor child may be modified or vacated if the moving party can prove that there has been a substantial change in the circumstances affecting the welfare of the child. *Evans v. Evans*, 138 N.C. App. 135, 139, 530 S.E.2d 576, 578 (2000). Here the trial court concluded the "improvement in Plaintiff's lifestyle constitutes a material change of circumstances favorable to the minor children's welfare[,] " but then made no findings of fact regarding what effect the changed circumstances would have on the children's welfare. While it appears from the trial court's findings of fact that the school day visitation provision in the 18 October 2000 consent order has had a detrimental effect on the minor children, those findings of fact would arguably support plaintiff's claim for primary custody. The trial court's conclusion of law that the improvement in plaintiff's lifestyle was a change of circumstances favorable to the minor children's welfare cannot be construed as supporting its decision to reduce plaintiff's visitation and to leave the minor children's primary custody with defendant.

"[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 subserved, 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, 158 S.E.2d 77, 80 (1967). Accordingly, the trial court's order and amended order are vacated and remanded so that the trial court can

make detailed findings of fact on the issue of change of circumstances. The trial court may take additional evidence based on events occurring since the last hearing and shall then make findings of fact relating to custody based on this evidence as well as that currently in the record.

Vacated and remanded.

Judges WYNN and McGEE concur.

Report per Rule 30(e).