An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA 12-464
NORTH CAROLINA COURT OF APPEALS

Filed: 16 October 2012

TIMOTHY SCOTT BOBBITT,
Plaintiff,

v.

KELLIE LYNN EIZENGA,
Defendant.

Davie County
No. 10 CVD 13

Appeal by plaintiff from order entered 1 February 2012 by Judge Mary F. Covington in Davie County District Court. Heard in the Court of Appeals 27 September 2012.

The Dummit Law Firm, by Barbara E. Cini, for plaintiff-appellant.[1]

HUNTER JR., Robert N., Judge.

This appeal arises from a custody dispute between Timothy Scott Bobbitt ("Father") and Kellie Lynn Eizenga ("Mother"), the biological parents of minor child Laura.[2] At the hearing on Father's Complaint for Child Custody, the trial court denied visitation rights to Father because it concluded, as a matter of

[1] Defendant filed no brief in this matter.
[2] A pseudonym is used to protect the minor child's identity and for ease of reading.

law, that the penal facility where he is currently serving a sentence for attempted statutory rape is unsuitable for child visitation. Father appealed. For the following reasons, we conclude that the trial court's findings of fact do not support its conclusions of law; thus, we vacate and remand for further findings of fact.

I. Factual and Procedural History

Parties are the biological parents of the minor child Laura, now age 3. Both are residents of Davie County. Soon after the birth of Laura, Father pled guilty to the attempted statutory rape of Mother and was sentenced to 94-122 months in prison.[3] Mother has been the sole caretaker of Laura since her birth.

Father instituted an action seeking joint legal custody of Laura and reasonable visitation rights on 12 January 2010. On 3 March 2010, Mother filed a motion to dismiss Father's suit. Father's parents ("Intervenors") filed a motion to intervene in the custody dispute on 7 June 2010. On 26 August 2010, Judge Carlton Terry granted Mother's motion to dismiss. On 6 September 2011, our Court reversed the decision of the district

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[3] In her answer to Father's Complaint, Mother denies ever having an "intimate relationship" with Father, noting that "in fact, [Father] raped [Mother] and is currently serving an active prison sentence for the statutory rape of [Mother]."

court and remanded for a hearing on the merits. *See Bobbitt ex rel. Bobbitt v. Eizenga*, __ N.C. App. __, 715 S.E.2d 613 (2011).

At a subsequent hearing, the trial court found, based on undisputed evidence, that Father is functioning well in prison. Father has attained his General Education Diploma and a commercial cleaning license, which he hopes to translate into an entrepreneurial cleaning business after being released from incarceration. Also, Father has obtained a job within the facility of incarceration and often is commended for his good behavior. Father is making an effort to establish a bond with Laura. Father has sent Laura cards, letters, notes, drawings, and other materials in order to establish that relationship. In addition, the court found Intervenors wish to be a part of Laura's life, but Mother will not permit grandparent visitation.

On 12 December 2011, the trial court granted visitation to Intervenors, but found that it was not in the best interest of Laura for her to have visitation with Father. On 29 February 2012, Father filed and served a timely notice of appeal.

II. Jurisdiction

We have jurisdiction over Father's appeal of right. *See* N.C. Gen. Stat. § 7A-27(c) (2011) (stating appeal lies of right to this Court from final judgments of the district court

in civil cases).

III. Analysis

Father argues on appeal that the trial court's findings of fact do not support its conclusion of law that it is not in the best interest of Laura to have visitation with Father because "[f]acilities of incarceration . . . are not suitable environments for minor children[.]" Father argues that there are no findings of fact regarding the appropriateness of the incarceration facility for visitation and that there are no findings of fact showing that visitation at the incarceration facility would have an adverse impact on Laura.

"In a trial without a jury, it is the duty of the trial judge to resolve all issues raised by the pleadings and the evidence by making findings of fact and drawing therefrom conclusions of law upon which to base a final order or judgment." *Small v. Small*, 107 N.C. App. 474, 477, 420 S.E.2d 678, 681 (1992). "A 'conclusion of law' is the court's statement of the law which is determinative of the matter at issue [and] . . . must be based on the facts found by the court." *Appalachian Poster Adver. Co., v. Harrington*, 89 N.C. App. 476, 480, 366 S.E.2d 705, 707 (1988) (quotation omitted). Thus, "[a] bare conclusion unaccompanied by the supporting

grounds for that conclusion does not comply with G.S. 1A-1, Rule 52(a)(1)." *Id.* This Court has also noted that:

> [e]ffective appellate review of an order entered by a trial court sitting without a jury is largely dependent upon the specificity by which the order's rationale is articulated. *Evidence must support findings; findings must support conclusions; conclusions must support the judgment.* Each . . . link in the chain of reasoning must appear in the order itself. Where there is a gap, it cannot be determined on appeal whether the trial court correctly exercised its function to find the facts and apply the law thereto.

Cape Hatteras Elec. Membership Corp. v. Lay, ___ N.C. App. ___, ___, 708 S.E.2d 399, 407 (2011) (emphasis added).

Here, there is no finding of fact upon which the trial court could have drawn its conclusion of law that facilities of incarceration are not suitable environments for minor children to visit. The trial court made the following conclusions of law:

> 4. Facilities of incarceration, even though a visitation room is provided, are not suitable environments for minor children because of the atmosphere of such a facility and the risk of exposure [sic] minor children to the inmates incarcerated therein.
>
> 5. It is not in the best interest of the minor child, [Laura], that visitation be exercised in the facility in which Plaintiff is incarcerated, even though Plaintiff is a fit and proper person to exercise

> visitation, because of the atmosphere of the incarceration facility and the possible exposure of the minor child to other inmates incarcerated therein.

The trial courts' only findings of fact concerning the fitness of facilities of incarceration for visitation state that:

> 9. The Plaintiff presented uncontroverted evidence, and the court finds as fact, that there is a room in the facility in which he is incarcerated dedicated for the exclusive purpose of allowing inmates to exercise visitation with their minor children in an environment suitable for minor children.
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> 10. The Plaintiff is often visited by his family who bring his two nieces whom are of similar age to Plaintiff's minor child to visit the Plaintiff.

In order to comply with Rule 52(a)(1), the trial court must have drawn the conclusions of law on this matter from these findings of fact, as they are the only ones that address the issue in question. *See Appalachian Poster Adver. Co.,* 89 N.C. App. at 480, 366 S.E.2d at 707. However, absent any other additional findings of fact, the trial court's findings seem to suggest an opposite conclusion from the one that the trial court ultimately reached. The findings the court *did* make suggest only that the facility of incarceration has acknowledged the risk of allowing children to visit such institutions and has made specific accommodations to remedy the problem. Accordingly, there was no

finding of fact on which the trial court could have based its conclusion of law that "it is not in the best interest of [Laura] that visitation be exercised in the facility in which Plaintiff is incarcerated" because "[f]acilities of incarceration, even though a visitation room is provided, are not suitable environments for minor children[.]" (R. p. 34)

As with most proceedings involving minor children, our polar star must always be "the best interest of the child." *See* N.C. Gen. Stat. § 50-13.5(i) (2011). We do not reach the question of whether it is ever in the best interests of the child to allow prison visitations. A judge must weigh a number of factors before allowing visitation. In this case, the fact that the parent who is seeking visitation is the attempted statutory rapist of the child's mother is one factor the court should consider along with other contextual factors. As written, the trial court's findings of fact in this case do not support its conclusion that visitation would be inappropriate. In the absence of specific findings supporting the trial court's conclusions, the order is incomplete. We cannot not hold as a matter of law any visitation with a parent who is incarcerated is *per se* inappropriate, but rather that the extent to which such visitation is appropriate must be conditioned on factors

not addressed by the trial court, including, but not limited to, the age of the child, the relationship of the child's parents, developmental issues, and the nature of the visitation facilities. Accordingly, we vacate and remand to the trial court for further findings of fact. *See Powell v. Powell*, 25 N.C. App. 695, 698, 214 S.E.2d 808, 810 (1975). Because we are vacating the order, we need not reach Father's other argument that the trial court abused its discretion in reaching its conclusions.

VACATED AND REMANDED.

Judges ERVIN and MCCULLOUGH concur.

Report per Rule 30(e).