IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-445

Filed: 21 November 2017

Rowan County, No. 15 CVD 1316

ROGER BRANDON PRESSLEY, Plaintiff,

v.

SHARETTA JONES, Defendant.

Appeal by plaintiff from order entered 2 September 2016 by Judge Charlie Brown in Rowan County District Court. Heard in the Court of Appeals 1 November 2017.

Seth B. Weinshenker, P.A., by Seth B. Weinshenker, for plaintiff-appellant.

Hoffman Law Firm, PLLC, by James P. Hoffman, Jr., for defendant-appellee.

INMAN, Judge.

Plaintiff Roger Brandon Pressley ("Father") appeals from an order granting Defendant Sharetta Jones ("Mother") primary legal and physical custody of their child Brayden L. Jones ("Brayden") and providing Father with secondary custody through visitation. On appeal, Father argues that both the visitation schedule set

forth in the order and the award of primary physical and legal custody to Mother were abuses of discretion. After careful review, we affirm the trial court's order.

I. Factual and Procedural History

Brayden was born to Mother and Father, who are unmarried and have never lived together, in November of 2014. Brayden has at all times lived with Mother in Rowan County. Father did not discover that Brayden was his child until January of 2015. Following this discovery, Father expressed a desire to be a part of Brayden's life but could not reach an agreement with Mother concerning his involvement. He thereafter filed a child custody action in Mecklenburg County to resolve the dispute, and Mother filed an answer.

On 11 May 2015, the district court entered a temporary parenting arrangement order ("TPA"), which provided Father with visitation every other weekend, five hours of visitation on Thanksgiving, one full week of visitation during the summer months, and visitation on Father's Day weekend.[1] Following entry of the TPA, the parties agreed to allow Father to extend his visitation from Friday through Monday to Thursday through Monday.

In June of 2015, the action was transferred from Mecklenburg County to Rowan County District Court, and Mother filed an amended answer and

[1] Neither party contends that the TPA was in actuality a permanent order, nor do they argue that the trial court, in entering the order appealed from, improperly determined that the TPA was temporary.

counterclaims. The cause came on for hearing on 3 August 2016, and the trial court received documentary and testimonial evidence from the parties and witnesses concerning, *inter alia*, their work schedules, Brayden's schooling and daycare options, the parties' living arrangements, and Brayden's care and development under both Mother and Father. Father requested joint custody, which was denied by the trial court at the conclusion of the hearing. Instead, the trial court held that it was in Brayden's best interests that Mother have primary physical and legal custody, that Father receive secondary custody by way of visitation, and that his visitation be limited to every other weekend from Friday afternoon until Sunday evening. The trial court also provided Father with additional visitation not ordered in the TPA: Christmas, Easter, spring break, Father's birthday, Brayden's birthday, and an added second week in the summer. The trial court entered a written order consistent with the above on 2 September 2016, and Father timely appealed.

II. Analysis

On appeal, Father argues that the trial court abused its discretion in two ways: (1) by ordering a visitation schedule without sufficient findings of fact to support it; and (2) by failing to make facts concerning Mother's conduct and Father's ability to parent Brayden. For reasons explained below, both arguments are without merit.

In review of child custody cases, "unchallenged findings of fact are binding on appeal." *Peters v. Pennington*, 210 N.C. App. 1, 12-13, 707 S.E.2d 724, 733 (2011).

Whether those findings support the conclusions of law reached by the trial court are subject to *de novo* review. *Hall v. Hall*, 188 N.C. App. 527, 530, 655 S.E.2d 901, 904 (2008). "If the trial court's uncontested findings of fact support its conclusions of law, we must affirm the trial court's order." *Respess v. Respess*, 232 N.C. App. 611, 614-15, 754 S.E.2d 691, 695 (2014) (internal quotation marks and citation omitted). "[T]he word 'custody' shall be deemed to include custody or visitation or both." N.C. Gen. Stat. § 50-13.1(a) (2015).

Father does not challenge any of the trial court's findings of fact as unsupported by the evidence; "[t]herefore, the issue before this Court is whether the trial court's findings of fact support its conclusions of law and the provisions of its order with regard to the trial court's award of [custody and] visitation." *Burger v. Smith*, ___ N.C. App. ___, ___, 776 S.E.2d 886, 889 (2015). This question is controlled by N.C. Gen. Stat. § 50-13.2(a), which provides:

> In making [a custody or visitation] determination, the court shall consider all relevant factors including acts of domestic violence between the parties, the safety of the child, and the safety of either party from domestic violence by the other party. An order for custody must include written findings of fact that reflect the consideration of each of these factors and that support the determination of what is in the best interest of the child.

"These findings may concern physical, mental, or financial fitness or any other factors brought out by the evidence and relevant to the issue of the welfare of the child." *Steele v. Steele*, 36 N.C. App. 601, 604, 244 S.E.2d 466, 468 (1978). Because visitation

and custody are treated the same in this context, N.C. Gen. Stat. § 50-13.1(a), and both must be determined in the best interests of the child, we treat Father's arguments that the trial court did not make sufficient findings of fact as to both custody and visitation together.

The trial court made the following findings relevant to its visitation and custody determinations:

> 8. Since birth [Brayden] has resided in Rowan County, North Carolina, with [Mother].
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> 9. [Father] resides in Charlotte, North Carolina.
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> 10. [Father] is employed as a machine operator for an engineering company in Charlotte, North Carolina. [Father] works sixty to seventy-two hours a week, which at times includes weekends from 7 AM until 7 PM.
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> . . .
>
> 13. . . . [Father's] wife is from New York where her family resides.
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> 14. [Father's] extended family resides in South Carolina.
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> . . .
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> 17. [Father's] wife runs a transportation business out of her home. She and [her] sister give people rides wherever they need or want to go. . . . [Father's] wife takes [Brayden] to a babysitter's home about twenty-five minutes, one way from her home while she works transporting people.
>
> 18. [Father] did not know the name of the school [Brayden] or his daughter would attend in the school district where he resides.

. . .

22. In July 2015 at an exchange with [Father's] grandparents present, [Father] drew back his fist as though he was going to strike [Mother].

23. [Mother] works as a Certified Nursing Assistant from 7 AM to 3 PM.

24. [Mother] enrolled the child in a five star childcare development center, namely, Cornerstone Development Center, in January 2016.

25. The child is attentive and has made progress while attending Cornerstone Developmental Center using the creative curriculum . . . . The child has made good progress socially and academically.

26. [Mother] receives a DSS voucher from the minor child to attend Cornerstone Developmental Center. The minor child is only allowed to miss five days a month without losing the assistance of this voucher. Cornerstone Developmental Center does not accept children for half-time care.

. . .

28. [Mother] works in close proximity to Cornerstone Developmental Center. It takes [Mother] about two minutes to drive from her employment to Cornerstone Development Center.

. . .

30. [Mother] has extended family who assist her with the minor child that live less than ten minutes from [Mother's] residence.

31. [Mother] washes the minor child clothes [sic], feeds the

> minor child, and appropriately provides all the necessities of life.
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> 32. [Mother] establishes a regular routine for the minor child.
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> 33. [Mother] obtains appropriate medical care for the minor child.
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> . . .
>
> 37. The parties reside a significant distance a part from each other.
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> 38. [Father] works a lot more hours each week than [Mother].
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> 39. It is in the best interests of the minor child for [Mother] to have primary legal and physical custody and [Father][2] to have secondary custody by way of visitation as set out hereinbelow.
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> . . .
>
> 41. It is not in the child's best interest for the parties to have joint legal custody.

We hold that these findings of fact are sufficient to support the trial court's determination that Mother would receive primary physical and legal custody and that Father would receive secondary custody by way of visitation. *See, e.g., Hall*, 188 N.C.

[2] The trial court's order actually references Mother rather than Father with regard to secondary custody in this finding of fact; however, the parties agree that the order granted Mother with primary custody and provided secondary custody by way of visitation to Father, and the order's conclusions of law and decree plainly contemplate this result. We therefore read this as a typographical error, and have substituted Father in our recitation of this finding of fact in the trial court's order.

App. at 532-33, 655 S.E.2d at 905 (holding a trial court's award of primary physical custody to the mother was supported by sufficient findings of fact where the trial court found that mother took good care of the children medically and academically and enjoyed a more flexible work schedule while the father was less involved in schooling, worked an unpredictable schedule, and engaged in domestic violence against the mother). It was reasonable to award Mother with primary physical and legal custody and Father with visitation, because Mother, per the unchallenged findings: (1) shows a greater interest in Brayden's education; (2) is able to provide quality daycare at a nearby development facility versus a babysitter; (3) works far fewer hours than Father at a job that is much closer to her home and Brayden's daycare than Father is to Brayden's babysitter; (4) has relatives very close by to assist in caring for Brayden; (5) has adequately provided for Brayden's material, physical, medical, and educational needs to date; and (6) was physically threatened by Father on one occasion.

Despite these findings, Father nevertheless contends that the trial court was required to make additional specific findings as to why the "every other weekend" visitation schedule was reasonable, in the best interests of the child, and consistent with N.C. Gen. Stat. § 50-13.01 (2015), which sets forth the General Assembly's purpose in establishing the State's child custody scheme. As explained *infra*, the trial court did make findings supporting its conclusions as to Brayden's best interests.

However, Father cites no legal authority requiring additional findings in the challenged order. Had the legislature intended to alter the findings required for custody determinations under N.C. Gen. Stat. § 50-13.2(a) in enacting Section 50-13.01, it would have stated so. *See, e.g., Estate of Bullock v. C.C. Mangum Co.*, 188 N.C. App. 518, 524, 655 S.E.2d 869, 873 (2008) ("If the General Assembly intended to subrogate the employer's right to that of the beneficiaries of the award, they would have done so expressly as they did in subsection (g) [of N.C. Gen. Stat. § 97-10.2]."). Additionally, the trial court was not required to make findings as to why its order differed from the visitation schedule set forth in the TPA, as there was "no prior permanent custody order . . . in effect. [The trial judge] was therefore obligated to consider all the evidence and determine which party would best promote the interest and welfare of the child, but he was not required to find changed circumstances of any kind." *Regan v. Smith*, 131 N.C. App. 851, 854, 509 S.E.2d 452, 455 (1998).

Father further argues that the trial court was required to make additional findings as to Mother's alleged bad conduct and as to his positive ability to parent. The trial court's failure to make findings sufficiently unfavorable to the opposing party to satisfy the appellant does not constitute an abuse of discretion in a child custody award. *Hall*, 188 N.C. App. at 533, 655 S.E.2d at 905 (upholding the trial court's conclusion as to the best interests of the child despite father's argument on appeal that the trial court did not make sufficient findings as to mother's bad acts,

noting that "[a]lthough [father] argues that the trial court should have made less complimentary findings as to [mother], we are not in a position to re-weigh the evidence"). Finally, Father's contention that the trial court failed to make findings of fact as to his ability to parent Brayden is directly contradicted in the order, which includes findings that Father "has been there for his child since the time he learned he was his child[,]" that he "has a sincere interest in having a real and meaningful relationship with the minor child[,]" and that he has a "fit and proper home[ ] for the child." Father's arguments are overruled.

III. Conclusion

For the foregoing reasons, we hold that the trial court did not err in awarding Mother primary legal and physical custody of Brayden, awarding Father secondary custody through visitation, and establishing a visitation schedule for Father where the order contained sufficient findings of fact, unchallenged on appeal, to support such determinations.

AFFIRMED.

Judges ELMORE and DIETZ concur.

Report per Rule 30(e).