NO. COA09-313

NORTH CAROLINA COURT OF APPEALS

Filed: 6 July 2010

DANIEL IRVING CORDELL, JR.,

Plaintiff,

v. Buncombe County
No. 03 CVD 460

GAIL ANN DOYLE (formerly CORDELL),

Defendant.

Appeal by defendant from orders entered 24 January 2008 and 30 July 2008 by Judge Marvin P. Pope, Jr., in Buncombe County District Court. Heard in the Court of Appeals 29 September 2009.

Diane K. McDonald for plaintiff.

Mary Elizabeth Arrowood for defendant.

ELMORE, Judge.

Gail Ann Doyle (defendant) appeals from three orders concerning custody of the two minor children from her marriage to former husband Daniel Irving Cordell, Jr. (plaintiff). These orders, entered in 2008, occurred after a previous opinion by this Court in *Cordell v. Doyle*, 2007 N.C. App. LEXIS 1775 (2007) (unpublished). The full factual background of the case can be found there.

The appeal at hand concerns three orders, all appealed by defendant: one denying defendant's motion to recuse, filed on 24 January 2008; one denying defendant's motion for 50-A relief, filed on 24 January 2008; and one concerning a change in custody, filed on 30 July 2008 but titled "Order of June 9-10, 2008 Hearing" (9-10 June Order). We consider each in turn.

Motion to Recuse

Per the Code of Judicial Conduct, "[o]n motion of any party, a judge should disqualify himself/herself in a proceeding in which the judge's impartiality may reasonably be questioned, including but not limited to instances where: (a) The Judge has a personal bias or prejudice concerning a party[.]" Code of Judicial Conduct Canon 3(C)(1) (2010). The only facts to which defendant points to support her argument that Judge Pope was biased in this matter are his ruling against her on several matters and his entering a visitation order without hearing.

We first note that "the fact that a trial judge has repeatedly ruled against a party is not grounds for disqualification of that judge absent substantial evidence to support allegations of interest or prejudice." *Love v. Pressley*, 34 N.C. App. 503, 506, 239 S.E.2d 574, 577 (1977) (citation omitted). As such, defendant's argument on this basis is overruled.

Defendant's bare assertions that the trial court did not review sufficient evidence to enter the visitation order does not meet the burden she must carry to support her motion to recuse. When a defendant makes a motion that a judge be recused,

> the burden is upon the party moving for disqualification to demonstrate objectively that grounds for disqualification actually exist. Such a showing must consist of substantial evidence that there exists such a personal bias, prejudice or interest on the part of the judge that he would be unable to rule impartially.

State v. Fie, 320 N.C. 626, 627, 359 S.E.2d 774, 775 (1987) (citations omitted). Defendant asserts that she has proven such a claim without going through the motions of proving it. As such, we overrule this assignment of error.

50A Motion

Pursuant to N.C. Gen. Stat. § 50A-207, "[a] court of this State which has jurisdiction under this Article to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances, and that a court of another state is a more appropriate forum." N.C. Gen. Stat. § 50A-207(A) (2009). "Deferring jurisdiction on inconvenient forum grounds rests in the sound discretion of the trial judge. Without a showing that the best interest of the child would be served if another state assumed jurisdiction, North Carolina courts should not defer jurisdiction pursuant to G.S. 50A-7." *Kelly v. Kelly*, 77 N.C. App. 632, 635, 335 S.E.2d 780, 783 (1985). "A trial court may be reversed for abuse of discretion only upon a showing that its actions are manifestly unsupported by reason." *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985).

Defendant points to several facts that she argues the trial court should have taken into account in its decision, namely: the

child's[1] residence in New Jersey; the distance between this state and New Jersey; the "relative financial circumstances of the parties"; and the location of some relevant evidence, including witnesses, in New Jersey. Defendant argues that the trial court did not consider those facts because, she argues, it did not consider the factors of N.C. Gen. Stat. § 50A-207(b); that statute states that:

> Before determining whether it is an inconvenient forum, a court of this State shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:
>
> (1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
>
> (2) The length of time the child has resided outside this State;
>
> (3) The distance between the court in this State and the court in the state that would assume jurisdiction;
>
> (4) The relative financial circumstances of the parties;
>
> (5) Any agreement of the parties as to which state should assume jurisdiction;
>
> (6) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

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[1]Plaintiff and defendant have two children, but only one is still a minor. The custody dispute and visitation issues this opinion concerns pertain only to the minor child, a girl; all references herein to "the child" refer to the daughter only. Their older child, Brandon, is mentioned in some of the trial court's findings of fact by name; he turned 18 years of age in March 2007.

> (7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and
>
> (8) The familiarity of the court of each state with the facts and issues in the pending litigation.

N.C. Gen. Stat. § 50A-207(b) (2009). As evidence of the trial court's failure to consider these factors, she points both to its ruling against her and to its order denying her motion, which contains no stated findings of fact or conclusions of law. However, this Court has specifically held that "[t]he factors listed in N.C.G.S. § 50A-207(b) are necessary when the current forum is inconvenient, not when the forum is convenient." *Velasquez v. Ralls*, 192 N.C. App. 505, 509, 665 S.E.2d 825, 827 (2008).

We hold that defendant has not carried her burden of showing that the trial court abused its discretion in this ruling. As such, this assignment of error is overruled.

9-10 June Order

Defendant's arguments three through twenty-five argue individually as to the certain findings of fact from the 9-10 June Order, alleging that each is unsupported by the evidence. However, only eleven of those twenty-three arguments have citations to supporting exhibits that were provided to the Court; the other twelve contain either no citations to any supporting evidence or contain citations to exhibits not submitted to this Court. We thus deem those eleven arguments abandoned. *See* N.C. R. App. Proc. 28(b)(6) (2009).

Before reviewing defendant's many arguments, we first note our standard of review:

> When reviewing a trial court's decision to grant or deny a motion for the modification of an existing child custody order, the appellate courts must examine the trial court's findings of fact to determine whether they are supported by substantial evidence. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.
>
> Our trial courts are vested with broad discretion in child custody matters. This discretion is based upon the trial courts' opportunity to see the parties; to hear the witnesses; and to detect tenors, tones, and flavors that are lost in the bare printed record read months later by appellate judges. Accordingly, *should we conclude that there is substantial evidence in the record to support the trial court's findings of fact, such findings are conclusive on appeal, even if record evidence might sustain findings to the contrary*.

Shipman v. Shipman, 357 N.C. 471, 474-75, 586 S.E.2d 250, 253-54 (2003) (citations and quotations omitted; emphasis added).

> 12. The Plaintiff-Father was entitled to visitation with the minor child for the month of September, 2006. The Plaintiff failed to give the required 30 day notification of his intent to exercise visitation on a certain date[;] however[,] the date was outside of the thirty day mandated notice provision *by two days* and the September visit was forfeited by the Plaintiff-Father. On September 19, 2006[,] the Plaintiff requested October visitation stating his preference of the weekend of October 13, 14, and 15th, 2006. The Defendant-Mother did not respond until October 9, 2006[,] requesting that she be allowed to visit with Brandon for the same weekend. The Plaintiff-Father did not have visitation for the month of October, 2006.

In support of her contention that this finding is erroneous, defendant points this Court to (1) her own testimony that plaintiff never purchased an airplane ticket for his daughter's travel, including for the month of September 2006, and (2) a fax received by defendant's attorney from plaintiff's attorney on 13 October 2006 stating that plaintiff was ill and "unable to pick up his daughter." Also among the exhibits, however, are emails (1) from plaintiff to defendant, on 19 September 2006, in which he acknowledges he has missed the 30-day deadline and asks for visitation the weekend of 13-15 October 2006, and (2) from defendant's attorney to plaintiff, on 9 October 2006, confirming the visitation and suggesting a time to meet for the exchange. Thus, the record contains substantial evidence to support this finding of fact.

> 15. For the 2006 Christmas visit with the minor child Brandon, the Plaintiff initiated inquiry on November 27, 2006[,] to the attorney for the Defendant as to airline arrangements. The Plaintiff advised the Defendant's attorney that Brandon was out of school for the holiday on December 20, 2006. The Plaintiff received no response and followed up on December 12, 2006[,] with another request for arrangements for Brandon's travel (Plaintiff's Exhibit 40). On December 19, 2006[,] Brandon forwarded an e-mail to the Plaintiff containing his airline schedule for the next day. This e-mail was not read by the Plaintiff until December 20, 200[6,] at his office computer. This example not only illustrates that the Plaintiff and the Defendant could not communicate directly but that the minor child Brandon was involved in the messages concerning his travel which should not have occurred. This was an adult matter between two parents of utmost importance as to when a child had to be placed on an airplane which could have been shared in

> a more appropriate manner. In this e-mail the ticketing information reveals that this ticket was purchased on October 16, 2006.

In support of her contention that this finding is erroneous, defendant points to testimony that plaintiff confirmed asking about arrangements for the Thanksgiving visitation; however, we note that this finding of fact has nothing to do with Thanksgiving, and that the testimony to which defendant points is her own, not plaintiff's. Defendant also points to a fax between the parties dated 11 October 2006 that shows the plane ticket at issue was on hold, but not booked, at that time; she also points to an email from herself to Brandon on 16 October 2006 apparently containing the flight information for this trip. Finally, defendant points to her own testimony that plaintiff was aware of the flight, as well as a fax dated 20 December 2006 from her attorney to plaintiff's attorney referencing plaintiff's "game playing and sabotage efforts" regarding vacation scheduling.

Also in the record, however, are (1) plaintiff's testimony that he communicated to defendant's attorney on 28 November 2006 that he had received no information regarding the Christmas visit; (2) plaintiff's email to defendant's attorney dated 12 December 2006 stating that plaintiff had received no information about Brandon's travel arrangements (plaintiff's exhibit 40 referenced in the finding of fact); (3) an email from Brandon to plaintiff, with an attachment apparently providing his flight information, sent by Brandon on 19 December 2006 forwarding a message from defendant also dated 19 December 2006; and (4) notice to plaintiff that his

deposition was scheduled for 12 October 2006. Defendant testified that plaintiff was made aware of the travel arrangements at that deposition, rather than learning of them for the first time via the email 19 December 2006; as noted above, however, the record contains evidence that the ticket for Brandon's travel was not in fact purchased until 16 October 2006, four days after the deposition.

Thus, the record contains substantial evidence to support this finding of fact.

> 18. For the year 2007, the miscommunication between the Plaintiff, Defendant and Defendant's attorney began again on January 9, 2007[,] when the Plaintiff requested [the daughter]'s visitation for February, 2007. Plaintiff's Exhibits 45 through 60 concern this one visitation and are an ongoing argument of whether the travel will be by air or ground; if by air the plane fare amount; whether or not the Defendant intends to attend the graduation of the minor child Brandon; ground travel is preferable but they cannot agree on the half-way point; request for school records for [the daughter], etc. The issue(s) was/were not effectively resolved and finally the Plaintiff drove the whole way to New Jersey, a twenty hour trip, to visit the minor [daughter] for February, 2007 in New Jersey simply because the Defendant erroneously demanded the minor child fly for this visitation which was not her choice to make per the December 20, 2005[,] Order of this Court.

In support of her contention that this finding is erroneous, defendant states that plaintiff misinterpreted the order in place regarding visitation and which party was to pay for the transportation for visits; defendant also points this Court to her own testimony that she decided to attend a memorial service in

February 2007 and thus "made the child available to him" that month, and to an exhibit showing that she purchased a plane ticket for the daughter to come to North Carolina for the weekend of 16-18 March 2007.

However, the record also contains plaintiff's testimony that he made the twenty-hour round trip drive to New Jersey to see the daughter in February and exhibits 45 through 60 referenced by the court which are accurately described in this finding of fact. As such, this finding of fact is supported by competent evidence.

> 19. The lack of communication continued with the March and April, 2007 visitations for the Plaintiff. The parties and/or Plaintiff-Father and Defendant's attorney could not exchange simple information as to the flight numbers and flight times that the child would be on so that the Plaintiff could be at the airport to meet the child's plane until two days before the actual flight (See Plaintiff's Exhibit 66). The Plaintiff did not get a response from the Defendant's attorney and asked for the flight numbers directly from the Defendant. (Plaintiff's Exhibit 67).

Plaintiff's exhibit 66 referenced by the court is an email from plaintiff to defendant's attorney. It is dated 14 March 2007 and contains a request for the child's flight numbers for the visit two days later. Plaintiff's exhibit 67, also referenced by the court, is an email from plaintiff to defendant directly, dated 15 March 2007, requesting the same information.

Defendant states that she did in fact provide the flight information requested. In support of this, she points this Court only to plaintiff's exhibit 67 – which, as mentioned, contains a request for the information but not the information itself – and to

an email from herself identified by date but not by exhibit number, or even making clear whether the email is part of the evidence in this case. As such, this finding of fact is supported by competent evidence.

> 20. For the May, 2007 visitation with the Plaintiff and the minor child, the Plaintiff requested on March 28, 2007[,] a specific date and advised that he wanted the child for a family reunion. The Plaintiff followed up with a second request for confirmation of the May visit [(]in Plaintiff's Exhibits #72 and #73). After these additional e-mails in April, 2007 the attorney for the Defendant responded on May 8, 2007[,] concerning a meeting place halfway between North Carolina and New Jersey[;] however this called for a rearranging for the Plaintiff's schedule which he could not do at that point. The May visitation occurred[;] however, it could have been handled much more efficiently and courteously without the delays in response from the Defendant.

In support of her contention that this finding is erroneous, defendant points this Court to defendant's exhibit 41, which is a letter dated 23 January 2007 from her attorney to plaintiff's attorney regarding the April 2007 visit. Attached to the letter is a proposed plane schedule for the child's travel to North Carolina for the dates of 7 April to 14 April.

The plaintiff's exhibits to which the court refers in its findings are two emails from plaintiff to defendant's attorney dated 17 April 2007 (exhibit 72) and 30 April 2007 (exhibit 73) asking for confirmation of the dates for the child's visit and stating that the family reunion was to take place on the requested dates of 25 May through 28 May. Also in the record is plaintiff's testimony that he sent an email to his attorney on 28 March 2007

"requesting that we lock down" the child's visit for May. Although defendant argues that the 8 May 2007 email referred to by the court does not exist, it is in fact contained in plaintiff's exhibit 75; it is from defendant's attorney to plaintiff, proposing that plaintiff and defendant meet at a halfway point to exchange the child "on Saturday at noon" (8 May 2007 was a Tuesday). Plaintiff's exhibit 75 also contains plaintiff's response, dated 9 May 2007, which contains his statement that his scheduled plans for Saturday would not permit him to meet defendant on that day. As such, this finding is supported by competent evidence.

> 21. The parties argued extensively over the number of days for the summer visitation for the years 2006 and 2007. In 2006, the Defendant-Mother claimed that she missed 12 days of her summer vacation period. In 2007, the vacation period extended from June 20, 2007[,] to September 5, 2007. Due to the work schedule of the Defendant, she did not deliver the child until June 23, 2007[,] and the Plaintiff returned the child on a weekend past the midway point of the summer. The Defendant complained that the child was tardy in reporting for a physical examination so that she could participate in cheerleading activities due to this delay. The Plaintiff called and told the school athletic department why the child's return was delayed. The child was able to participate in the cheerleading activities despite the fact the summer was not divided absolutely equally (2007 – 38 days to 48 days plus or minus depending on the contentions of the Plaintiff or Defendant).

The majority of defendant's argument regarding this finding of fact relates to the scheduling of the summer 2006 visit and her grievances against plaintiff for his actions during that planning; more time is then spent on grievances against plaintiff for his actions during the planning for the summer 2007 visit, culminating

in defendant's agreement that the child was exchanged on 23 June 2007 as stated in the above finding of fact. The one portion of her argument that relates to the statements in the finding of fact above simply states that the blame for the delay in the child's return to defendant was plaintiff's.

In the record is an email from plaintiff to defendant's attorney dated 24 July 2007 that provides the dates cited in the finding of fact above and states that plaintiff spoke with the sports director for the child's cheerleading class and had been told that it would not be a problem for the child to miss the first portion of the practice sessions. As such, this finding of fact is supported by competent evidence.

> 22. For the October, 2007 visitation, the Plaintiff-Father initiated his e-mail request on September 18, 2007[,] for the weekend of October 19-21, 2007[,] and informed the Defendant (through the Defendant's attorney) that there was a scheduled family function that he wanted the child to participate in out of town. This was also during the time of the minor [daughter]'s birthday (October 22) and the Plaintiff had not celebrated with the child on or around her birthday for several years. After several e-mails from Plaintiff to Defendant's attorney and to his own attorney, on October 8, the response from the Defendant's attorney was that the minor child had activities for that particular weekend requested by the Plaintiff and furnished flight information for the following weekend of [October] 26, 2007. The Plaintiff responded that he could not visit that weekend due to scheduled melanoma biopsies and possible surgery. The Defendant retained the child for the weekend of October 19-21, 2007[,] and the Plaintiff did not see the minor child for the month of October, 2007. The Defendant justified her actions by saying that she offered the following weekend to the Plaintiff but he did not take advantage of

> that opportunity for alleged medical reasons and that he did not have the surgery for the melanoma and he could have visited with the child. The Plaintiff was justified in asking for the weekend of October 19-21, 2007[,] on September 18, 2007. The Defendant was unjustified in withholding her response until October 8 (eleven days prior to the event) and insisting that the Plaintiff-Father take the following weekend when the Plaintiff had [a] melanoma examination that week at the Department of Dermatology at Wake Forest University and he did not know if surgery would be performed or not.

Defendant argues that plaintiff's counsel was made aware that the child had activities scheduled in New Jersey on the weekend of 19 October 2007 via faxes on 1 October 2007 and 8 October 2007, the latter being sent after receiving no response to the first. She further argues that plaintiff knew on 22 October 2007 that he would not be requiring surgery on 26 October 2007, and thus a visit that weekend should not have been a problem. In support of her argument that this finding is erroneous, defendant points this Court to four exhibits: (1) a fax from defendant's attorney to plaintiff's attorney, dated 1 October 2007, asking for confirmation that plaintiff is willing to move his custody weekend of the child forward one week; (2) a fax from defendant's attorney to plaintiff's attorney, dated 8 October 2007, stating that defendant's attorney had not received a reply to a previous fax regarding a change in visitation for October, with a proposed flight schedule for the weekend of 26 October 2007 attached; (3) plaintiff's medical records, dated 22 October 2007, indicating that at his appointment plaintiff "decided unequivocally" that he preferred to have check-ups every six months rather than undergo

any more surgical procedures; and (4) a fax from a paralegal from plaintiff's attorney's firm to defendant's attorney, dated 26 October 2007, stating that plaintiff was scheduled for surgery for the upcoming weekend.

Also in the record, however, are (1) a fax from plaintiff's attorney to defendant's attorney, dated 8 October 2007, stating that no reply had been received to plaintiff's request for visitation over the 19-21 October 2007 weekend, (2) an email from plaintiff to his attorney, dated 15 October 2007, stating that he had not seen his daughter on her birthday since she turned three, that he had surgery scheduled for the weekend of 26 October 2007, and that he had received no confirmation regarding the child's travel for the upcoming weekend. As such, this finding of fact was supported by competent evidence.

> 23. During the correspondence for the October, 2007 visitation above, the Plaintiff-Father requested an original medical insurance card from the Defendant-Mother as well as evidence that the child could be seen by North Carolina medical providers. The parties could not agree on whether or not a copy of an insurance card would do or whether it had to be an original card. The Defendant-Mother never gave an insurance card (in any form) to the Plaintiff-Father.

In support of her argument that this finding of fact is erroneous, defendant points this Court to (1) testimony by plaintiff that he requested the insurance card at issue, (2) her own testimony that she sent a copy of the insurance card for the child to plaintiff's attorney in February and again directly to plaintiff in October, and (3) a fax from defendant's attorney to

plaintiff's attorney, dated 1 October 2007, with a copy of the child's insurance card attached.

The record also contains evidence that plaintiff made multiple requests for the insurance card - namely, testimony from plaintiff and a fax from plaintiff's attorney to defendant's attorney dated 25 September 2007. It does not appear, however, that plaintiff's attorney denies receiving the fax of 1 October 2007; as such, the final sentence of this finding appears not to be supported by competent evidence. The remainder of the finding, however, is.

> 25. The Plaintiff-Father testified and the Court finds that he has experienced difficulty in communicating with the minor child via telephone (See Plaintiff's Exhibit #21). During the years 2006 and 2007, the Plaintiff has noticed that it has been difficult for the child to have an open conversation with the Plaintiff. The conversations are very short and concise. Subsequent to the Order of December 20, 2005[,] and for a short time during 2006, the child was more open and conversant with the Plaintiff[,] speaking freely with him. The Order of December 20, 2005[,] ordered the phone calls to be free from eaves-dropping [*sic*] by the Defendant-Mother on the child's calls with the Plaintiff (Page 3, Paragraph 10 of the Order). While there is insufficient evidence to make a finding [th]at eavesdropping has occurred, it is quite obvious . . . that the minor [daughter] has been adversely affected by the strained and hostile relationship between her parents.

Defendant's argument focuses on the final sentence of this finding of fact: that the child has been adversely affected by the relationship between her parents. In support of her argument that this finding is erroneous, defendant points to (1) her own testimony that the child has no school problems and is quite

social, (2) testimony by plaintiff that she loves both her parents, and (3) testimony by a co-worker of plaintiff's that the child is well-mannered and well-behaved.

Also in the record, however, are (1) plaintiff's exhibit 21, mentioned in the finding, which is an email from plaintiff to his attorney stating that he had just spoken to the child on the telephone and she "sounded realy [*sic*] down and [he] could tell that she could not talk freely as usual" and (2) testimony by plaintiff, in response to a question regarding any change in the child's demeanor toward him, that:

> I've seen quite a bit of change this past year. She's become somewhat reclusive, noncommunicative. When I call her on the phone . . . I get very short conversations with her. They don't consist of very much.

As such, this finding is supported by competent evidence.

> 28. In the Defendant's Motion to Show Cause filed on April 18, 2008, she alleged that she had difficulty communicating with Brandon during the latter part of 2006 and early 2007 while living with the Plaintiff. Telephone records of the Plaintiff indicated that there were calls made between the child Brandon and the Defendant during this period of time and further that the land line telephone was located in Brandon's room.

In support of her argument that this finding is erroneous, defendant points this Court to plaintiff's deposition on 13 February 2008, wherein he stated that he had canceled long-distance service at his home as of December 2006, as well as her own testimony that she had trouble for one or two weeks in the summer of 2006 talking to Brandon on the phone.

Also in the record, however, is plaintiff's testimony that his house phone (the land line referenced in the finding above) could still *receive* long-distance calls, that their son was allowed to use plaintiff's cell phone after 9:00pm, and that the only phone hooked up to the land line was located in their son's room. As such, this finding is supported by competent evidence.

> 29. Defendant alleged that the Plaintiff failed to pay his share of the flight costs of the child Brandon in violation of the Order of December 20, 2005. The Court finds from the evidence that . . . the Plaintiff reimbursed the Defendant for the March 2006 flight. The other flight was for Christmas, 2006. The December 2005 Order provides that for Brandon, each party shall pay one-half of transportation costs/summer visits for non-holiday/summer visits. Christmas is a holiday. The Plaintiff-Father did not violate this provision of the December, 2005 Order.

The December 2005 order, in relevant part, states: "For Brandon, each party shall pay one-half of the transportation costs for non-holiday/summer visits which shall be done by airplane. Defendant-mother shall advance the costs and provide documentation to the Plaintiff-father's [*sic*] for his reimbursement of the one-half to her within 30 days." For holiday visits, the order states that "[a]ll holiday visitation is by airplane which shall be paid for by the party receiving the minor child for the holiday."

As to the March 2006 flight, defendant argues only that plaintiff did not reimburse her within thirty days as required by the order, and that he made the check payable to Brandon rather than to her. As to the Christmas 2006 flight, defendant argues

that there was no testimony as to the purchase of that ticket being an issue.

Although defendant cites to numerous pieces of testimony and discusses this finding at length, we note that she does not in fact allege that any portion of it is incorrect. As such, we decline to consider her argument on this point.

Finally, while defendant argues that several conclusions of law were made in error, only one of these conclusions (1) is based on findings of fact that defendant properly challenged above and (2) cites to any existing law. As such, we consider only her assignment of error as to conclusion of law 3, which states:

> 3. Since the entry of the Order of December 20, 2005, there has been a material, substantial change of circumstances so as to affect the welfare of the minor child. It is in the best interests of the minor child that a modification of custody should occur from the home of the Defendant-Mother to the home of the Plaintiff-Father.

Defendant argues that no evidence was presented at the hearing to support the trial court's conclusion that there had been a substantial change in circumstances affecting the welfare of the child. We disagree.

Our standard of review for evaluating such conclusions of law was spelled out by this Court in *Shipman*:

> [T]his Court must determine if the trial court's factual findings support its conclusions of law. With regard to the trial court's conclusions of law, our case law indicates that the trial court must determine whether there has been a substantial change in circumstances and whether that change affected the minor child. Upon concluding that such a change affects the child's welfare, the trial

> court must then decide whether a modification of custody was in the child's best interests. If we determine that the trial court has properly concluded that the facts show that a substantial change of circumstances has affected the welfare of the minor child and that modification was in the child's best interests, we will defer to the trial court's judgment and not disturb its decision to modify an existing custody agreement.

357 N.C. at 475, 586 S.E.2d at 254.

Aside from the properly challenged findings of fact above, the trial court's order contained a myriad of other findings regarding defendant's interference in the relationship between the child and plaintiff. Among these were findings that defendant unnecessarily complicated or delayed the planning and execution of the child's visits to plaintiff in the months of January, February, March, April, September, and October 2006; findings regarding the hostility evident from the face-to-face interactions between defendant and plaintiff and between defendant's attorney and plaintiff; and findings detailing the refusal of defendant to provide plaintiff with various materials related to the child's life and schoolwork.

This Court has specifically held that

> [w]here interference by one parent with the visitation privileges of the other parent becomes so pervasive as to harm the child's close relationship with the noncustodial parent, there can be a conclusion drawn that the actions of the custodial parent show a disregard for the best interests of the child, warranting a change of custody.

Hicks v. Alford, 156 N.C. App. 384, 390, 576 S.E.2d 410, 414 (2003) (quotations and citation omitted). The trial court in this case

made a plethora of findings of fact to support its conclusion that such harm was occurring here. As such, we hold that the trial court did not err in making this conclusion of law.

Affirmed.

Judges WYNN and CALABRIA concur.

Report per Rule 30(e).