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NO. COA11-147
NORTH CAROLINA COURT OF APPEALS

Filed: 5 July 2011

LUCINDA GALLOWAY GRIFFIN,
Plaintiff,

v.

Forsyth County
No. 07 CVD 4010

MICHAEL SCOTT GRIFFIN,
Defendant.

Appeal by plaintiff from Order entered 13 August 2010 by Judge Lisa Menefee in Forsyth County District Court. Heard in the Court of Appeals 26 May 2011.

Robert N. Weckworth, Jr., for the plaintiff-appellant.

Theodore M. Molitoris, for the defendant-appellee.

STEELMAN, Judge.

The trial court's findings of fact do not establish the essential nexus between the substantially changed circumstances and the effects on the child's welfare.

I. Factual and Procedural History

Lucinda Galloway Griffin (plaintiff) married Michael Scott Griffin (defendant) on 7 July 2001. Their only child was born

30 September 2004. On 23 February 2006, the parties separated. They entered into a Contract of Separation and Property Settlement on 8 June 2007, granting plaintiff primary legal and physical custody of the minor child, subject to defendant's secondary custody. The decree of absolute divorce, entered 2 July 2007, incorporated the Contract of Separation.

On 17 June 2010, defendant filed a Motion for Child Custody Modification. Defendant alleged that, since the divorce, "there has been a substantial and material change of circumstances affecting the welfare of the minor child," and therefore it "is presently in the best interest and general welfare of the minor child that her full and complete permanent custody be transferred from Plaintiff to Defendant." On 16 July 2010, plaintiff filed a response denying the material allegations of defendant's motion. Plaintiff appealed *pro se* throughout the proceedings before the trial court.

On 12 August 2010, a hearing was held before Judge Lisa Menefee on defendant's motion. The hearing was not recorded or transcribed. On 13 August 2010, the trial court entered an Order, modifying the custodial arrangement of the parties to a shared physical custodial arrangement. Pursuant to this Order, the parties were granted equal joint legal custody and shared

physical custody. The Order also modified child support payments. On 9 September 2010, plaintiff's motion for reconsideration was denied.

Plaintiff appeals.

II. Findings and Conclusions Do Not Support Modification

In her only argument on appeal, plaintiff contends that the trial court erred in changing the custody arrangements without finding substantial and material changes in circumstances affecting the welfare of the child. We agree.

A. Standard of Review

On appeal, plaintiff does not challenge the trial court's findings of fact. "Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal." *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). Therefore, the only issue on appeal is whether these findings of fact support the trial court's conclusions of law. *Shipman v. Shipman*, 357 N.C. 471, 475, 586 S.E.2d 250, 254 (2003).

Conclusions of law in child custody cases are reviewed *de novo*. *West v. Marko*, 141 N.C. App. 688, 691, 541 S.E.2d 226, 229 (2001). "Whether there has been a substantial change in circumstances is a legal conclusion." *Kowalick v. Kowalick*, 129

N.C. App. 781, 785, 501 S.E.2d 671, 674 (1998). "The trial court's examination of whether to modify an existing child custody order is twofold. The trial court must determine whether there was a change in circumstances and then must examine whether such a change affected the minor child." *Shipman*, 357 N.C. at 474, 586 S.E.2d at 253.

B. Analysis

Trial courts are vested with broad discretion in child custody matters. *Shipman*, 357 N.C. at 474, 586 S.E.2d at 254. Whether there has been a substantial change in the circumstances depends on the specific facts of each case. Some examples of substantial changes are as follows: (1) a move on the part of a parent; (2) a parent's cohabitation; or (3) a change in a parent's financial status. See *Shipman*, 357 N.C. at 478, 586 S.E.2d at 256.

In the instant case, the trial court's findings of fact in the Child Custody and Child Support Modification Order of 13 August 2010, reveal a substantial change in circumstances:

(4) . . . Since the entry of the foregoing Absolute Divorce and Custody Order, there has been a substantial and material change of circumstances affecting this child's welfare warranting a modification by this Court of the prior Custody Order.

(5) Plaintiff has the present intention to

relocate to the coast and possibly the city of New Bern, North Carolina. Plaintiff told Defendant that she is relocating to New Bern and told the Court that she was relocating to the coast. She saw nothing wrong with this move to a location more than four hours travel from Forsyth County, North Carolina and did not feel that this relocation would endanger this child's relationship with her father, the Defendant herein.

(6) Plaintiff is presently unemployed and has the present intention to relocate with Eric W. Hancock on the coast and the said Eric W. Hancock has residences both in North Myrtle Beach, South Carolina and New Bern, North Carolina. Plaintiff's relationship with Eric W. Hancock is not an exclusive relationship. The minor child has seen Eric Hancock on many occasions, has spent a great deal of time with him, and in fact, according to the Plaintiff loves him.

. . . .

(9) Since the parties' separation, Plaintiff has resided at three separate locations . .

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. . . .

(12) This Plaintiff has allowed this child to make age inappropriate decisions about whether she wants to spend time with her father and whether to start school at an earlier or later age.

(13) This child has a strong bond with her father and her stepmother.

. . . .

(15) . . . Plaintiff would not encourage this child to spend time with her father

unless this child first indicated her desire to spend time with her father. Plaintiff's belief in this child's reluctance to spend time with the father is not substantial.

(16) Plaintiff has expressed an interest in moving to the coast and this interest would affect the relationship with this child and her father and jeopardize their relationship thereafter. Plaintiff does not value the relationship this child has with her father.

(17) It is in the best interest and general welfare of this child that the Court modify the prior Child Custody Order and provide for a joint legal custody relationship and a shared physical custody relationship with the minor child.

(18) Plaintiff is able-bodied but not gainfully employed Defendant is able-bodied and gainfully employed

The trial court concluded as a matter of law that "[t]here has been a substantial and material change of circumstances affecting the welfare of the minor child such that the Court should modify the prior Child Custody Order."

It is well established that findings of fact must support the conclusions of law and the conclusions of law must support the judgment. *Coble v. Coble*, 300 N.C. 708, 714, 268 S.E.2d 185, 190 (1980). "Where there is a gap, it cannot be determined on appeal whether the trial court correctly exercised its function." *Id.* In order to modify a child custody order, the trial court must make specific findings of fact regarding the

connection or nexus between the substantial change in circumstances and the welfare of the child. See *Shipman*, 357 N.C. at 478, 586 S.E.2d at 255; *Johnson v. Adolf*, 149 N.C. App. 876, 878, 561 S.E.2d 588, 589 (2002) (reversing and remanding a child custody modification order for failure to assess whether the changed circumstances affected the child's best interest); see also *Lee's North Carolina Family Law*, §13.103(a) (noting that the law requires proof of a nexus between the changed circumstances and the child's welfare). However, there is an exception when the "effects of the substantial changes in circumstances on the minor child . . . are self-evident[.]" *Lang v. Lang*, 197 N.C. App. 746, 750, 678 S.E.2d 395, 398 (2009) (citing *Shipman*, 357 N.C. at 479, 586 S.E.2d at 256).

Although we agree that the trial court adequately identified substantial changes of circumstance, the findings of fact do not establish how the changes affected the child. The trial court's conclusion of law was not supported by adequate findings of fact indicating the essential nexus between the changed circumstances and their effects on the child's best interest. The trial court therefore erred in concluding that the custody modification was in the best interest and welfare of the child without supporting findings of fact. The effects of

the substantial changes in circumstance are not self-evident in this case.

The order of the trial court is vacated and this matter is remanded for further findings of fact on the effect of the substantial and material changes of circumstances upon the best interests of the child. Upon remand, the trial court in its discretion may take additional evidence.

VACATED AND REMANDED.

Judges CALABRIA and ELMORE concur.

Report per Rule 30(e).