NO. COA12-547
NORTH CAROLINA COURT OF APPEALS

Filed: 4 December 2012

LOUISE W. REED,
Plaintiff-Appellee,

v.

Orange County
No. 03 CVD 863

MATTHEW D. OLSON,
Defendant-Appellant.

Appeal by Defendant from order entered 16 November 2011 by Judge Joseph M. Buckner in District Court, Orange County. Heard in the Court of Appeals 23 October 2012.

Sandlin & Davidian, P.A., by Lisa Kamarchik, for Plaintiff-Appellee.

Sharpe, Mackritis & Dukelow, P.L.L.C., by Lisa M. Dukelow, for Defendant-Appellant.

McGEE, Judge.

Louise W. Reed (Plaintiff) and Matthew D. Olson (Defendant) were married on 2 January 1993. Plaintiff and Defendant had one child (the minor child), born 13 January 2000. Plaintiff and Defendant separated on 1 October 2002 and have since divorced. Defendant filed a motion for modification of child custody in October 2010. The trial court, in an order entered 16 November

2011, granted Plaintiff primary custody of the minor child and granted Defendant secondary custody. Defendant appeals.

The findings of fact in the trial court's order modifying custody tend to show the following. Plaintiff was a citizen and resident of Richmond, Virginia, where she had resided since January 2007. Defendant was a citizen and resident of North Carolina for the six months prior to the institution of the action, but Defendant intended to relocate to Wisconsin on 1 July 2011.[1] At the time the modification order was entered, Defendant had remarried.

By a consent order entered 12 December 2008, Plaintiff was awarded primary physical custody of the minor child during the school year, while Defendant was awarded primary physical custody during the summer, long weekends, and school breaks. Since the entry of the 2008 consent order, the minor child had been attending a private girls' school in Richmond, Virginia.

Defendant filed his motion for modification of custody, and requested that a guardian ad litem (GAL) for the minor child be

[1] The trial court's order modifying custody was entered 16 November 2011, which was after the 1 July 2011 date mentioned for Defendant's relocation to Wisconsin. However, it appears the hearing on Defendant's motion to modify the custody order was conducted on 28 June 2011, prior to Defendant's 1 July 2011 relocation. The parties do not explain the trial court's five-month delay in entering the order modifying custody, nor do they discuss the trial court's findings regarding future events that had already occurred by the time the modification order was entered.

appointed for a custody evaluation. The GAL was appointed and the GAL entered a report on 23 April 2011, recommending that the minor child be placed in Defendant's custody during the school year and in Plaintiff's custody during the summer. However, the trial court found that "as a young teenager, it is important for [the minor child's] relationship with [Plaintiff] to continue to be consistent[.]"

The trial court concluded there had been a substantial change in circumstances after the entry of the consent order that warranted "modification of the custodial schedule." The trial court also concluded that North Carolina would no longer have continuing exclusive jurisdiction "since neither party, nor minor child, reside in the State of North Carolina and North Carolina will no longer have substantial evidence available concerning the child's care, protection, training, and personal relationships pursuant to N.C.G.S. § 50A-202-(a)(1) and (2)." The trial court further concluded that it was in the best interests of the minor child to award Plaintiff and Defendant joint custody of the minor child, with Plaintiff having primary physical custody during the school year and Defendant having secondary physical custody during the summers. Defendant was authorized to travel to Richmond, Virginia for any "weekend or

long weekend to spend with the minor child with [] thirty (30) days['] advanced notice to . . . [P]laintiff."

Issues on Appeal

Defendant raises the issues on appeal of whether: (1) there was "competent and sufficient evidence in the record to support the trial court's findings of fact regarding the Plaintiff's family living in Richmond, the Plaintiff being an excellent parent and the relationship between the mother and the minor child[;]" (2) the trial court erred "in concluding[] that Plaintiff is a fit and proper person to exercise primary custody of the minor child and that awarding Plaintiff primary physical custody was in the best interest of the minor child[;]" and (3) the trial court "committed reversible error when it held North Carolina would no longer have continuing exclusive jurisdiction and therefore order[ed] that child support be transferred to Virginia[.]"

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." *Shipman v. Shipman*, 357 N.C. 471, 474, 586 S.E.2d 250, 253 (2003). "In addition to evaluating whether a trial

court's findings of fact are supported by substantial evidence, this Court must determine if the trial court's factual findings support its conclusions of law." *Id.* at 475, 586 S.E.2d at 254. "'Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Peters v. Pennington*, ___ N.C. App. ___, ___, 707 S.E.2d 724, 733 (2011) (citation omitted). "Unchallenged findings of fact are binding on appeal." *Id.* "Absent an abuse of discretion, the trial court's decision in matters of child custody should not be upset on appeal." *Everette v. Collins*, 176 N.C. App. 168, 171, 625 S.E.2d 796, 798 (2006).

Findings of Fact

Defendant challenges the following findings of fact in the trial court's custody modification order:

> 24. The minor child is eleven (11) years of age and, as a young teenager, it is important for her relationship with the mother to continue to be consistent in an effort to allow . . . [P]laintiff to provide guidance, love and involvement to her teenage daughter.
>
> 25. . . . [P]laintiff's extended family lives and resides in the area of Richmond.
>
> 26. . . . [P]laintiff and [D]efendant are both excellent parents and have a close and loving relationship with the minor child. Both parties provide a nurturing environment for their daughter.

Defendant states that, regarding finding of fact 24, the trial court "was not within its discretion to conclude that the relationship with the mother was any more important than the relationship the minor child has with the father and her step-mother and half-sister." We note that the trial court's finding of fact was not that the relationship with Plaintiff was more important than the minor child's other relationships, rather it was simply that it was important. Further, we note that Defendant's arguments concerning the challenged findings of fact generally focus on the presence of evidence which could have led the trial court to a different finding of fact. However, our role is not to re-weigh the evidence to dictate which facts should have been found, but is to review the trial court's findings to determine if they were supported by substantial evidence. *Peters*, ___ N.C. App. at ___, 707 S.E.2d at 733.

The record contains the testimony of Sue Baldwin (Ms. Baldwin), the interim head of the school at which the minor child was enrolled. When asked about the importance of a mother-daughter relationship to girls of the minor child's age, Ms. Baldwin testified that, "in [her] mind, a girl needs her mother when she's becoming a woman, . . . that is a crucial time to have a mother with whom you can talk and share concerns and so forth." Further, Ms. Baldwin testified that, based on her

observations of Plaintiff and the minor child, the two already shared a close, loving relationship. We find this testimony is such "'as a reasonable mind might accept as adequate to support [the] conclusion'" that the minor child was eleven years old and that a loving relationship with a mother is important to a girl of that age. *Peters*, ___ N.C. App. at ___, 707 S.E.2d at 733 (citation omitted).

Defendant next argues that "[n]o evidence was presented that . . . [P]laintiff's extended family still lived in the Richmond area." Plaintiff argues that the "uncontroverted evidence was that [Plaintiff] had family living in Richmond[.]" The testimony of the GAL appointed in this matter includes the following:

> I asked [the minor child] about family because, you know, [Plaintiff] has family in Richmond, and I, on a previous guardian ad litem assignment, had met the family. It's a nice family.
>
> I think -- what [the minor child] told me is that -- I said, "Well, how often do you see your family?" She said, "Not very often." I said, "Well, tell me what you mean." And she said that, you know, she has a great-grandmother, but she sees her about every two months and that she has a great-aunt and uncle; she sees them about once a month, and that other family members, Rosie and Hutch, that she sees them more often, but generally they may be coming through the yard or something like that. I mean that's what she told me."

We hold that this testimony was sufficient evidence for the trial court to find that Plaintiff had extended family living in the Richmond area.

Defendant next challenges the trial court's finding of fact that Plaintiff was an excellent parent who had a close and loving relationship with the minor child. Plaintiff argues that there was sufficient evidence in the record to make this determination. Defendant's argument contrasts the GAL's testimony with that of Ms. Baldwin and Defendant again asks us to reconsider the evidence before the trial court and assign more weight to the testimony of the GAL than to that of Ms. Baldwin. As stated above, that is not our role. Ms. Baldwin was asked if Plaintiff and the minor child "already share a close, loving relationship[,]" and Ms. Baldwin replied affirmatively. Further, the GAL testified that, "I don't doubt one percent [Plaintiff] loves her and that [the minor child] loves [Plaintiff.]" The GAL also testified that, "she loves both her mother and her father." We find this evidence sufficient to allow the trial court to find that Plaintiff had a close, loving relationship with the minor child.

Conclusions of Law

Defendant next challenges the trial court's conclusions of law that Plaintiff was a fit and proper person to exercise

primary custody and that such an award was in the best interests of the minor child. However, Defendant's arguments are based on his assertion that "[t]he trial court modified the prior custody order using findings of fact that were not supported by the evidence at the trial." Defendant contends that "[n]o findings of fact discuss . . . Plaintiff's life with the minor child and support an award of primary custody, except those noted in this brief that are unsupported by the evidence presented at trial." However, we have determined that the findings of fact Defendant challenged were supported by substantial evidence. Further, the findings of fact not challenged by Defendant are also binding on appeal. *Peters*, ___ N.C. App. at ___, 707 S.E.2d at 733. Because Defendant's argument relies on our overruling certain findings of fact, and we have not done so, his argument is without merit.

Jurisdiction

Defendant argues that the trial court erred by determining that North Carolina would no longer have continuing exclusive jurisdiction and by ordering that "child support be transferred to Virginia." Defendant contends that the trial court's determination of jurisdiction could only have been proper if there had been a child support action involved in the underlying case. Plaintiff agrees with Defendant, stating that she "agrees

that the trial court did not have authority to transfer child support, and the reference to 'support' in [the order] should be stricken and vacated."

The trial court's order contains the following conclusion of law:

> 6. As of July 1,2011, North Carolina will no longer have continuing exclusive jurisdiction since neither party, nor minor child, reside in the State of North Carolina and North Carolina will no longer have substantial evidence available concerning the child's care, protection, training, and personal relationships pursuant to N.C.G.S. 50A-202[] (a)(1) and (2).

The trial court's order further contains the following decree: "5. Orange County District Court no longer has exclusive jurisdiction and hereby transfers jurisdiction of all matters relating to the custody, visitation and support of the minor child to the Juvenile and Domestic Relations District Court of the City of Richmond, Virginia."

The trial court's conclusions of law do not address the relevant statutes for child support. N.C. Gen. Stat. § 50A-202 (2011) governs jurisdiction for child custody matters, while child support matters are governed by chapter 52C of the General Statutes. *See* N.C. Gen. Stat. § 52C-1-100 *et seq.* Based on the record before us, and the agreement of the parties, it does not appear that there was any issue of child support before the

trial court in this matter. Rather, it appears that the trial court simply made an error in including language about child support in the decretal portion of its order. We therefore vacate the portion of decretal paragraph 5 so that it no longer decrees that jurisdiction is transferred in "matters relating to the . . . support of the minor child to the Juvenile and Domestic Relations District Court of the City of Richmond, Virginia."

Affirmed in part, vacated in part.

Judges BRYANT and THIGPEN concur.

Report per Rule 30(e).