IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-105

Filed: 20 September 2016

Cabarrus County, No. 14-CVD-2902

DIMPLE BAILEY, Plaintiff,

v.

DAVID H. MCCORKLE, Defendant.

Appeal by plaintiff from order entered 11 September 2015 by Judge Donna H. Johnson in Cabarrus County District Court. Heard in the Court of Appeals 9 August 2016.

Ferguson, Hayes, Hawkins & DeMay, PLLC, by James R. DeMay, for plaintiff-appellant mother.

Alexander J. King for defendant father.

BRYANT, Judge.

Where the trial court made sufficient findings of fact to support its determination that the exercise of primary physical custody by father was in the best interest of the minor child, we affirm.

On 3 October 2014, plaintiff Dimple Bailey (mother) filed a complaint for custody in Cabarrus County District Court. Mother was a resident of Cabarrus County; defendant David McCorkle (father) was a resident of New York. Though

living separately, the parties were still married. The complaint was filed to resolve a custody dispute over their then four-year-old son, David Ethan McCorkle (the minor child). The couple had separated in May 2012 and agreed to exchange physical custody of the minor child every three months. In August 2013, mother moved to North Carolina for a job opportunity and indicated her intent that the minor child reside and attend school in North Carolina. In response to the complaint, father first challenged the jurisdiction of the trial court on the basis that North Carolina was not the home state of the minor child. However, following a hearing before the Honorable Judge Donna H. Johnson, the court entered a 20 May 2015 order concluding that North Carolina was the home state of the minor child, within the meaning of the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA), and that jurisdiction over the custody matter was properly exercised by the Cabarrus County District Court.

During the 17 August 2015 session of Cabarrus County District Court, the custody matter came on for hearing. On 11 September 2015, Judge Johnson entered a custody order granting mother and father joint custody of the minor child, with father exercising primary physical custody and mother exercising secondary physical custody. Specifically, the court ordered that the minor child was to reside with father in New York during the school year and with mother during the summer months. Mother appeals.

On appeal, the dispositive issue is whether the trial court made sufficient findings of fact to support an order that primary physical custody to father was in the best interest of the child.[1]

Mother first argues that the trial court erred by failing to make sufficient findings of fact as to material, disputed issues in support of its conclusion that the exercise of primary physical custody of the minor child by father was in the child's best interest. Specifically, mother challenges the trial court's failure to make findings of fact regarding the parties' respective residential accommodations, as well as the educational and extracurricular activities in which the minor child participates when residing with mother or father.

Pursuant to North Carolina General Statutes, section 50-13.2,

> [a]n order for custody of a minor child entered pursuant to this section shall award the custody of such child to such person . . . as will best promote the interest and welfare of the child. In making the determination, the court shall consider all relevant factors . . . . 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.

N.C. Gen. Stat. § 50-13.2(a) (2015). "Our trial courts are vested with broad discretion in child custody matters." *Shipman v. Shipman*, 357 N.C. 471, 474, 586 S.E.2d 250,

[1] No brief was filed for defendant David McCorkle.

253 (2003) (citation omitted). "The trial court's custody decisions must be based upon the best interests of the children." *O'Connor v. Zelinske*, 193 N.C. App. 683, 687, 668 S.E.2d 615, 617 (2008). "Trial courts are permitted to consider an array of factors in order to determine what is in the best interest of the child. The factors may include the consideration of constitutionally protected choices or activities of parents." *Phelps v. Phelps*, 337 N.C. 344, 352, 446 S.E.2d 17, 22 (1994). But, "[b]efore awarding primary physical custody of a child to a particular party, the trial court must conclude as a matter of law that the award of custody to that particular party will be in the best interest of the child. N.C. Gen. Stat. § 50-13.2(a)." *Hall v. Hall*, 188 N.C. App. 527, 532, 655 S.E.2d 901, 905 (2008).

"When the court finds that both parties are fit and proper persons to have custody . . . and then adjudges that it is in the best interest of the child for [one parent] to have custody, such holding will be upheld. But it must be supported by competent evidence." *Green v. Green*, 54 N.C. App. 571, 574, 284 S.E.2d 171, 174 (1981) (citing *Griffith v. Griffith*, 240 N.C. 271, 81 S.E.2d 918 (1954); *Grafford v. Phelps*, 235 N.C. 218, 69 S.E.2d 313 (1952); *McEachern v. McEachern*, 210 N.C. 98, 185 S.E. 684 (1936)). "The trial judge is not required to find *all* the facts shown by the evidence. It is sufficient if enough *material* facts are found to support the judgment." *In re Custody of Stancil*, 10 N.C. App. 545, 549, 179 S.E.2d 844, 847 (1971) (citations omitted). "In child custody cases, where the trial judge has the opportunity to see

and hear the parties and witnesses, the trial court has broad discretion and its findings of fact are accorded considerable deference on appeal." *Pass v. Beck*, 156 N.C. App. 597, 601, 577 S.E.2d 180, 182 (2003) (citations and quotation marks omitted).

In its 11 September 2015 custody order, the trial court made five findings of fact. In finding of fact number five, the trial court made ten unchallenged statements. Both mother and father had extended family in the Bronx, New York. Father, who resided with his mother and stepfather, facilitated visitation for the minor child with the child's maternal grandmother. Before mother moved to North Carolina in August 2013, she delayed telling father of her plans to move and take the minor child with her until two weeks before she moved. "Subsequently, she refused to provide [father] with her address [in North Carolina]." When mother filed an action for child support in a New York state court, mother used her mother's New York address, rather than her own North Carolina address. In November 2014, when the minor child visited New York, a New York State Court issued an order enjoining either party from removing the minor child from New York State; the order was lifted in June 2015. While the minor child resided in New York, mother traveled to New York to visit him. The court also made the following findings of fact[2]:

> d. [Mother] has been with her boyfriend, Rashad, for three years. . . . Since November 2014, [mother] has

[2] Mother challenges finding of fact number 5.e., which states that father's home is appropriate for the minor child.

> resided with Rashad in Matthews, Mecklenburg County, North Carolina in a home that is appropriate for [the minor child].
>
> e. After the parties separated, [father] moved in with his parents in the Bronx, New York. He continues to reside with them. The home is appropriate for [the minor child].

From these findings, the court concluded that "[t]he parties are fit and proper persons to have the joint care and control of child, with primary physical custody with [father] subject to [mother's] secondary physical custody. Joint custody to the parties is in the child's best interests."

Despite mother's contentions that the trial court's 11 September 2015 custody order is fatally defective for failure to address evidence presented during the 17 August 2015 hearing, a trial court need not find all facts raised by the evidence. *See Green*, 54 N.C. App. 575, 284 S.E.2d 174 ("[T]he trial judge is not required to find all the facts shown by the evidence, but only enough material facts to support the judgment." (citation omitted)). A trial judge has "the delicate and difficult task of choosing an environment which will, in his judgment, best encourage full development of the child's physical, mental, emotional, moral and spiritual faculties." *In re Peal*, 305 N.C. 640, 645, 290 S.E.2d 664, 667 (1982) (citing *Blackley v. Blackley*, 285 N.C. 358, 204 S.E.2d 678 (1974)). The 11 September 2015 custody order states the findings of fact the trial court found to be dispositive, and therefore reflects those findings material to the judgment. *See Pass*, 156 N.C. App. at 601, 577 S.E.2d at 182

("In child custody cases, . . . the trial court has broad discretion and its findings of fact are accorded considerable deference on appeal." (citation and quotation marks omitted)); *Custody of Stancil*, 10 N.C. App. at 549, 179 S.E.2d at 847 ("It is sufficient if enough *material* facts are found to support the judgment." (citation omitted)). Accordingly, we overrule mother's argument.

Mother also challenges the trial court's finding of fact that father's home is an appropriate home for the minor child. Mother focuses on evidence that father resides with his mother and stepfather and that he slept in a dayroom that had been converted to a bedroom. When the minor child resided with father, the minor child slept in a bed with father or on an air mattress. However, a review of the record revealed no evidence of conditions obviously detrimental to the minor child's safety, health, or development.

As we have stated, "[i]n child custody cases, . . . the trial court has broad discretion and its findings of fact are accorded considerable deference on appeal." *Pass*, 156 N.C. App. at 601, 577 S.E.2d at 182 (citation and quotation marks omitted). In finding the father's residence was an appropriate home for the minor child, we hold the trial court did not abuse its discretion. Accordingly, we overrule this argument.

AFFIRMED.

Judges TYSON and INMAN concur.

Report per Rule 30(e).