IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 16-1160

Filed: 17 October 2017

Mecklenburg County, No. 14-CVD-23093 (ADB)

LEWIS D. MOORE, Plaintiff,

v.

BROOKE O. MOORE, Defendant.

Appeal by Plaintiff from order entered 21 April 2016 by Judge Alicia D. Brooks in Mecklenburg County District Court. Heard in the Court of Appeals 3 May 2017.

Collins Family Law Group, by Rebecca K. Watts, for Plaintiff-Appellant.

No brief filed on behalf of Defendant-Appellee.

INMAN, Judge.

Plaintiff Lewis D. Moore ("Father") appeals from an order for permanent child custody, child support, and attorneys' fees awarding Brooke O. Moore (now Brooke Brown, hereinafter "Mother") child support, attorneys' fees, and primary physical custody of their minor children R.M. ("Richard") and O.M. ("Ophelia"),[1] while also awarding Father and Mother joint legal custody but reserving in Mother final

[1] We refer to the minor children by pseudonym to protect their privacy.

decision-making powers regarding the children's welfare. Father argues that the trial court erred in: (1) awarding primary physical custody to Mother; (2) reserving final decision-making powers in Mother despite awarding the parties joint legal custody; (3) calculating the amount of child support due to Mother; and (4) awarding Mother attorneys' fees. Following careful review, we affirm in part, vacate in part, and remand for further findings consistent with this opinion.

I. Factual and Procedural History

Mother and Father were married in 2005 and together had two children, Richard and Ophelia. The couple separated in 2014, and a protective order was entered against Father shortly thereafter as a result of his punching fifteen holes in a wall, throwing furniture, and hitting Mother in the presence of Richard and Ophelia. Father filed his complaint for child custody, child support, and attorneys' fees on 18 December 2014, and Mother filed her answer, counterclaims, and motion for a temporary parenting arrangement on 22 December 2014.

In April of 2015, the trial court entered an order on Mother's motion for a temporary parenting arrangement, vesting Mother with primary physical custody and care over the children for four nights a week and Father with secondary physical custody and care over the children for three nights a week. Five days after the entry of the temporary parenting arrangement order, Father called Mother, threatened to

kill her, broke into her car, and destroyed her phone. He ultimately pled guilty to injury to personal property and violation of the protective order.

While the temporary parenting arrangement order was in effect and Father had Richard and Ophelia in his care, Father employed corporal punishment at least once against Richard. Mother began to notice that Richard would wet himself in advance of spending time with Father, and she enrolled him in therapy as a result. A therapist saw both children in January 2016, diagnosed Richard with adjustment disorder with disturbance of conduct and mood, and diagnosed Ophelia with adjustment disorder with disturbance of mood.

The parties' respective claims came on for hearing on 22 February 2016. At trial, the therapist who saw the children testified that Richard's "behavioral difficulties" were "based on the stressors that [the children were] experiencing," and identified "being hit by dad" as "a major stressor[.]" She further stated that Richard did not want to stay with Father "because of [his] being hit by dad." Father confirmed that he spanked Richard on one occasion, as did Richard's paternal grandfather.

Relevant to Mother's claim for attorneys' fees, the trial court received into evidence an affidavit from Mother showing her monthly income, expenses, and debts, and an affidavit from her attorney disclosing the total cost of representation in the action. Mother testified that she had set up an online fundraiser and raised $1,075

to defray her legal expenses, and the fundraiser webpage disclosed that she was paying her attorney $100 per month to satisfy the outstanding fees.

The trial court entered an order on 21 April 2016 resolving the custody, child support, and attorneys' fees issues. The court made findings of fact concerning the treatment of Richard and Ophelia by their parents, and although it found that both children had anxiety related to their Father, it also found that "Father is a caring and loving parent with good interaction with the minor children." The court also made findings concerning Father's prior domestic violence against Mother and his interference with Mother's employment and social life that resulted in Mother moving multiple times and changing her phone numbers. The court found that "it is in the minor children's best interests to be in the primary physical custody of Mother and the secondary physical custody of Father[,]" and that it was in their best interests that "the parties have joint legal custody . . . ."

Based on these factual findings, the trial court concluded that "Mother and Father are fit and proper to have joint legal custody as described herein[,]" and went on to decree that "[t]he parties shall have joint legal custody" but that "Mother shall have final decision making authority of all major issues related to the minor children."

The trial court made factual findings as to the parties' incomes and expenses. The court ordered the parties to share equal responsibility for the children's

uninsured healthcare expenses but did not exempt from its decree the first $250 in uninsured healthcare expenses or other reasonable extraordinary expenses related thereto. Finally, after making both findings of fact and conclusions of law that Mother's actions were in good faith and she had insufficient means to defray her legal expenses, the court awarded her attorneys' fees. Father timely appealed.

II. Analysis

Father advances four arguments, asserting the trial court erred in its: (1) physical custody award; (2) joint legal custody award; (3) child support award; and (4) attorneys' fees award. We review each in turn.

A. The trial court did not err in awarding Mother primary physical custody.

In reviewing a child custody order, "the trial court's findings of fact are conclusive on appeal if supported by substantial evidence, even if there is sufficient evidence to support contrary findings." *Peters v. Pennington*, 210 N.C. App. 1, 12-13, 707 S.E.2d 724, 733 (2011). "Whether [the trial court's] findings of fact support [its] conclusion of law is reviewable *de novo*." *Scoggin v. Scoggin*, ___ N.C. App. ___, ___, 791 S.E.2d 524, 526 (2016) (alterations in original) (internal quotation marks and citations omitted).

Father first challenges the trial court's finding of fact that "it is in the minor children's best interests to be in the primary physical custody of Mother and the secondary physical custody of Father" as unsupported by the evidence. He premises

his challenge on the argument that the trial court's recitations of the children's therapist's testimony were not proper findings of fact, and the remaining findings in the order do not, on the whole, resolve the question as to the children's best interests. We disagree with Father's premise and hold that the trial court's finding was supported by competent evidence.

Plaintiff identifies the following statements in the trial court's findings of fact as mere recitations of testimony:

> [Richard] indicated he was hit by Father . . . . The therapist indicated that the child suffers from generalized anxiety disorder that may stem from the allegations that Father hit the minor child. . . . Mother began noticing this behavior [of Richard wetting himself] in December 2015 and was generally when the child was anticipating time with his Father. . . . The therapist indicates that [Ophelia] is doing well but had anxiety about visiting Father without [Richard].

We have noted that "recitations of the testimony of [a] witness do not constitute findings of fact by the trial judge, because they do not reflect a conscious choice between the conflicting versions of the incident in question . . . ." *In re Green*, 67 N.C. App. 501, 505 n.1, 313 S.E.2d 193, 195 n.1 (1984) (emphasis omitted). We have also held that "[w]here there is *directly conflicting evidence on key issues*, it is especially crucial that the trial court make its own determination as to what pertinent facts are actually established by the evidence, rather than merely reciting what the evidence may tend to show." *In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 366 (2000)

(citations omitted) (emphasis added). Mere recitations of testimony by the trial court do not suffice as factual findings where the evidence is "conflicting," because reciting conflicting evidence does not resolve a factual dispute. Here, however, a full review of the record discloses no conflicting evidence that (1) Father hit Richard and (2) the minor children suffer from anxiety disorders related to their Father. As to Richard's bedwetting, the trial court made findings concerning that conduct beyond the language in the order which Father contends to be mere recitation of testimony. In any event, the findings above are sufficient to allow us, "the reviewing court[,] to determine whether [the] judgment, and the legal conclusions that underlie it, represent a correct application of the law." *Ludlam v. Miller*, 225 N.C. App. 350, 355, 739 S.E.2d 555, 558 (2013) (internal quotation marks and citation omitted).

Even if we were to hold that the findings excerpted above were insufficient, other findings in the order which are not challenged by Father support the trial court's determination as to physical custody. Although, as Father notes, the trial court found both parents to be caring and loving, an award of primary custody in one parent and secondary custody in the other may still be proper upon sufficient evidence and adequate findings. *See, e.g., Hall v. Hall*, 188 N.C. App. 527, 530, 655 S.E.2d 901, 904 (2008) (noting that "[w]hen the trial court finds that both parties are fit and proper to have custody, but determines that it is in the best interest of the child for one parent to have primary physical custody, as it did here, such

determination will be upheld if it is supported by competent evidence" (citation omitted)).

The trial court made unchallenged findings that Father engaged in corporal punishment with Richard, engaged in multiple acts of domestic violence against Mother—some in the presence of the minor children—and continued to harry Mother and her friend by contacting their employers. N.C. Gen. Stat. § 150-13.2(a) (2015) expressly includes "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" as relevant factors to the custody analysis, and the unchallenged findings above all bear upon these enumerated factors.[2] As a result, the trial court made sufficient findings of fact, supported by competent evidence, to award Mother primary physical custody of the children. *See, e.g., Hall*, 188 N.C. App. at 532-33, 655 S.E.2d at 905 (holding there was no abuse of discretion in awarding primary physical custody to a mother under N.C. Gen. Stat. § 50-13.2(a) where the father called the children names and engaged in domestic violence against the mother).

[2] Father argues that, because the trial court order prohibits him from contacting Mother and engaging in corporal punishment of the children while also directing him to obtain and comply with an anger management assessment, the trial court adequately addressed the domestic violence and corporal punishment issues. Such decrees have no bearing on the underlying findings of fact that support the court's physical custody award, however, and are therefore irrelevant to this analysis. Even if these additional requirements imposed on Father were relevant, we fail to see how the trial court's decision to take additional precautions and protections against Father's behavior above and beyond vesting Mother with primary physical custody supports his argument that the trial court erred.

B. The trial court failed to make sufficient findings of fact to support its joint legal custody decision.

Father, citing our decision in *Diehl v. Diehl*, 177 N.C. App. 642, 630 S.E.2d 25 (2006), next contends that the trial court erred in awarding both parents joint legal custody but reserving final decision-making authority in Mother. We agree.

In *Diehl*, the trial court found both parents to be fit and proper to exercise joint legal custody but nonetheless provided the mother with decision-making authority on all matters unless the decision had a "substantial financial effect" on the father. 177 N.C. App. at 646, 630 S.E.2d at 28. In such instances, the father did not have any individual decision-making authority, but instead was allowed to petition the court for resolution. *Id.* at 646, 630 S.E.2d at 28. We reversed the trial court's order for insufficient findings to support such an arrangement. *Id.* at 648, 630 S.E.2d at 29.

This Court analyzed and applied the law set forth in *Diehl* in our later decision in *Hall v. Hall*. 188 N.C. App. at 534-36, 655 S.E.2d at 906-07. There, the trial court's order found both parents fit to exercise joint legal custody but abrogated virtually all of father's decision-making ability. *Id.* at 534-36, 655 S.E.2d at 906-07. We interpreted *Diehl* to require this Court to "determine whether, based on the findings of fact below, the trial court made specific findings of fact to warrant a division of

joint legal authority." *Id.* at 535, 655 S.E.2d at 906. In reversing and remanding a portion of the trial court's order, we instructed the trial court to

> set out *specific findings* as to why deviation from "pure" joint legal custody is *necessary*. Those findings must detail why a deviation from "pure" joint legal custody is in the *best interest of the children*. As an example, past disagreements between the parties regarding matters affecting the children, such as where they would attend school or church, would be sufficient, but mere findings that the parties have a tumultuous relationship would not.

Id. at 535-36, 655 S.E.2d at 907 (emphasis in original) (footnote omitted).

As in *Diehl* and *Hall*, the trial court here found that "Mother and Father are fit and proper persons to have . . . legal custody of the minor children[,]" but then granted to Mother final decision-making authority "on all major issues related to the minor children." The trial court made no specific findings of fact, however to support the necessity of such a deviation from "pure" joint legal custody. The trial court's finding that "it is in the minor children's best interests that the parties have joint legal custody as described herein below" falls far short of the required specific findings "detail[ing] why a deviation from 'pure' joint legal custody is in the best interest of the children." *Hall*, 188 N.C. App. at 535, 655 S.E.2d at 907 (emphasis omitted). Because the order lacks necessary findings to support an award of joint legal custody while abrogating Father's decision-making authority, we vacate and remand for further findings. *Hall* at 535, 655 S.E.2d at 907; *Diehl*, 177 N.C. App. at 648, 630 S.E.2d at 29.

C. The trial court erred in calculating its award of child support.

Father challenges the child support award based on two arguments: (1) the court erred in failing to exclude the first $250 of uninsured medical expenses in apportioning all uninsured medical expenses between the parents; and (2) the trial court erred in its treatment of Richard's prescription costs as extraordinary expenses. We agree with the first argument and, though we disagree with Father's second argument, we nonetheless vacate and remand as to both the uninsured medical expenses and prescription costs.

N.C. Gen. Stat. § 50-13.4(c) (2015) requires the trial court to "determine the amount of child support payments by applying the presumptive guidelines established pursuant to subsection (c1) of this section." Awards consistent with the North Carolina Child Support Guidelines (the "Guidelines") are "conclusively presumed to be in such amount as to meet the reasonable needs of the child and commensurate with the relative abilities of each parent to pay support." *Buncombe County ex rel. Blair v. Jackson*, 138 N.C. App. 284, 287, 531 S.E.2d 240, 243 (2000) (citations omitted). Our review of child support orders is "limited to a determination of whether there was a clear abuse of discretion." *Mason v. Erwin*, 157 N.C. App. 284, 287, 579 S.E.2d 120, 122 (2003) (citation and quotation marks omitted). "Only a finding that the judgment was unsupported by reason and could not have been a result of competent inquiry, or a finding that the trial judge failed to comply with the

statute . . . will establish an abuse of discretion." *Wiencek-Adams v. Adams*, 331 N.C. 688, 691, 417 S.E.2d 449, 451 (1992) (internal citations omitted). "The trial court must, however, make sufficient findings of fact and conclusions of law to allow the reviewing court to determine whether a judgment, and the legal conclusions that underlie it, represent a correct application of the law." *Ludlam*, 225 N.C. App. at 355, 739 S.E.2d at 558 (2013) (internal quotation marks and citation omitted).

The Guidelines state that the values in the Schedule of Basic Support Obligations (the "Schedule") included therein are calculated from "economic data which represent adjusted estimates of average total household spending for children between birth and age 18, *excluding* child care, health insurance, and *health care costs in excess of $250 per year*." N.C. Child Support Guidelines, 2015 Ann. R. N.C. 2 (emphasis added). Thus, uninsured health care costs of up to $250 per year are included in the Guidelines' calculation of the basic child support obligation as set forth in the Schedule. In advising courts on the treatment of uninsured medical expenses in a child support award, the Guidelines state that a "court may order that uninsured medical or dental expenses *in excess of $250 per year* or other uninsured health care costs . . . be paid by either parent or both parents in such proportion as the court deems appropriate." N.C. Child Support Guidelines, 2015 Ann. R. N.C. 5 (emphasis added). Because of this permissive language, a trial court may allocate payment of such uninsured expenses in its discretion without the necessity of findings

as to the parents' estates, incomes, assets, and other factors relevant to an award that deviates from the Guidelines. *Holland v. Holland*, 169 N.C. App. 564, 571-72, 610 S.E.2d 231, 236-37 (2005).[3] However, the Guidelines also state that this discretionary allocation of uninsured costs applies to those "in excess of $250 per year[,]" in keeping with the Guideline's recognition that the first $250 of such expenses are included in the basic child support obligation calculation provided by the Schedule. N.C. Child Support Guidelines, 2015 Ann. R. N.C. 2, 5.

Here, the trial court found as a fact that "[i]t is in the best interests of the children for the parents to each pay 50% of all uninsured healthcare related expenses[,]" which is carried into effect in the decretal portion of the order. The court also found as a fact that "Worksheet A is appropriate pursuant to the North Carolina Child Support Guidelines." Father correctly points out that the trial court's failure to exclude the first $250 in uninsured medical expenses from the order that both parents share in such costs equally results in him paying that first $250 twice: first as part of his basic child support obligation under the Schedule and Worksheet A; and second as part of the 50% of "all uninsured medical . . . expenses" the order requires him to pay. The trial court abused its discretion in failing to exclude the first $250 in uninsured medical expenses from its order that Father pay 50% of all

[3] Father argues that the trial court is required to make additional findings of fact to support its division of the uninsured medical costs. But *Holland* plainly holds that specific findings of fact are not necessary to order such a division. 169 N.C. App. at 571-72, 610 S.E.2d at 236-37.

uninsured medical costs. Given, however, that the trial court ordered Father to pay the first $250 of uninsured medical expenses both as part of his child support obligation under Worksheet A and in his obligation to pay half of all uninsured medical expenses, we are unable to discern whether the trial court intended to render an award that either followed or deviated from the Guidelines. We therefore vacate and remand this portion of the trial court's order for further proceedings. If the trial court on remand clarifies its intention to deviate from the Guidelines as to uninsured medical expenses, it must make sufficient findings to support such a deviation. *Spicer v. Spicer*, 168 N.C. App. 283, 292-93, 607 S.E.2d 678, 685 (2005). Alternatively, if it intended that Father's child support obligation be consistent with the Guidelines, it must exclude the first $250 from any order that he pay uninsured medical expenses.

Father, in his second argument concerning the child support award, contends that the trial court erred in finding certain uninsured medical expenses relating to Richard's prescriptions as extraordinary expenses paid by Mother and then failing to exclude such costs from the uninsured medical expenses to be evenly split between the parties. We agree, but not for the reasons argued by Father.

Father is correct that the Guidelines permit a trial court to include extraordinary expenses in the basic child support obligation calculation and order they be "paid by the parents in proportion to their respective incomes . . . ." N.C. Child Support Guidelines, 2015 Ann. R. N.C. 5. In this case, the trial court found as

a fact that "Mother pays for [Richard's] prescriptions at a cost of an average of $120 per month, which is a reasonable extraordinary expense." However, there is nothing in the order expressly excluding these prescription costs from the order that the parents evenly split the children's uninsured medical costs. Father argues that he is again being double-taxed insofar as he is being required "to pay a pro rata share of the . . . medication as part of his monthly child support obligation [and] also paying 50% of that same medication as part of division of uninsured medical expenses." This argument misrepresents the trial court's order.

Extraordinary expenses found by the trial court are included on Worksheet A as a line item "adjustment" for calculation of the final prorated basic child support obligation. However, Worksheet A's instructions note that "if the non-custodial parent's income falls within the shaded area of the Schedule, determine the basic child support obligation based on the non-custodial parent's monthly adjusted gross income . . . *and do not proceed further on the worksheet*." (emphasis added). Because the adjustment for extraordinary expenses occurs after the calculation of the parents' monthly adjusted gross incomes, extraordinary expenses *are not used* to calculate the child support obligation of the non-custodial parent whose income under the Schedule is low enough to fall within the shaded area. In such circumstances, the non-custodial parent's monthly gross adjusted income is simply checked against the Schedule and

interpolated from the values therein without adjustment for and the inclusion of extraordinary expenses.

The trial court found Father's monthly income to be $1,256, which falls within the shaded area of the Schedule. Thus, in applying Worksheet A, the trial court simply calculated Father's monthly adjusted gross income and interpolated his child support obligation from the Schedule without including in its calculation any extraordinary expenses. Indeed, this Court's independent calculation applying the findings of fact in the trial court's order to Worksheet A according to its instructions results in the same monthly child support obligation ordered by the trial court: $111.20. Thus, Father's assertion that his child support obligation includes a *pro rata* payment of the extraordinary expenses is incorrect.[4]

Although we disagree with Father's representation of the order, we agree that it is unclear from the order and trial transcript whether the trial court actually intended to have Father pay a *pro rata* share of the prescription costs as extraordinary expenses, to include such costs in the even split of uninsured medical

[4] While extraordinary expenses are not included in an award under the above calculation, the first $250 of uninsured medical expenses are, as the "child support *schedule* . . . is based on economic data . . . excluding . . . health care costs in excess of $250 per year." (emphasis added). Thus, a child support payment interpolated from the shaded portion of the Schedule alone accounts for the first $250 in uninsured medical expenses but does not include any extraordinary expenses, which is a calculable line item included only in child support payments falling outside the shaded area of the Schedule.

costs, or to leave the costs solely to Mother. In its oral rendition of its ruling, the trial court stated that:

> Medical expenses, any unpaid – unreimbursed medical insurance – medical – unreimbursed medical expenses would be paid out at the – at the rate of fifty, fifty. In other words . . . given the fact that the mother is paying the extraordinary expenses [relating to prescriptions], I find that its necessary to – that the expenses should be split, that any unpaid – uninsured medicals, fifty, fifty.

While this statement could mean that Mother is to continue to pay in full the prescription costs and that other uninsured medical costs are to be split evenly between the parties, it could also mean that Mother had, up to the time of the hearing, been paying the prescription costs, and the trial court intended to divide those costs evenly between the parties going forward. The written order does nothing to clarify the matter, as it states that Mother has been paying the prescription costs as reasonable extraordinary expenses, orders Father to pay a child support obligation that does not include such extraordinary expenses in its calculation under Worksheet A, and also decrees that all uninsured medical costs are to be split evenly. We therefore vacate the trial court's order as to findings of fact 27 and 29 and decretal paragraphs 15 and 17 and remand for the trial court to clarify whether the prescription costs are to be paid solely by Mother as extraordinary expenses not included in Father's child support obligation, split evenly as part of the uninsured medical expenses, or paid as a deviation from the Guidelines and instructions of

Worksheet A such that they were to be included in Father's child support obligation. We note that should the trial court order the latter, it is required to make sufficient findings to support a deviation from the Guidelines. *Spicer v. Spicer*, 168 N.C. App. 283, 292-93, 607 S.E.2d 678, 685 (2005).[5]

D. The trial court failed to make sufficient findings to support an award of attorneys' fees.

This Court very recently considered the award of attorneys' fees in child support cases pursuant to N.C. Gen. Stat. § 50-13.6 (2015) in *Sarno v. Sarno*, ___ N.C. App. ___, ___ S.E.2d ___ (2017). There, we set forth the following standard of review:

> We typically review an award of attorney's fees under [the statute] for abuse of discretion. However, when reviewing whether the statutory requirements under section 50-13.6 are satisfied, we review *de novo*. Only when these requirements have been met does the standard of review change to abuse of discretion for an examination of the amount of attorney's fees awarded.

Sarno at ___, ___ S.E.2d at ___ (internal citations omitted).

Father contends that the trial court's finding that "Mother is an interested party, acting in good faith with insufficient means to defray her legal fees" is

[5] Father also appeals the portion of the trial court's order requiring him to pay half of all uninsured medical expenses on the grounds that (1) the court was required to make more specific findings concerning the incomes, assets, and estates of the parties, and (2) that the trial court's order constitutes a manifest abuse of discretion. Because we vacate and remand that portion of the trial court's order on the above grounds, we need not decide these issues. We note that this Court plainly held in *Holland* that such findings are not necessary, 169 N.C. App. at 571-72, 610 S.E.2d at 236-37, but we reiterate that a trial court must still make sufficient findings to permit an appellate court to determine whether the lower court abused its discretion. *Ludlam*, 225 N.C. App. at 355, 739 S.E.2d at 558.

unsupported by the evidence, and that its conclusion of law reciting the same is not based on competent findings of fact. The challenged finding is "in reality, a conclusion of law" that must be supported by other factual findings in the order. *Atwell v. Atwell*, 74 N.C. App. 231, 238, 328 S.E.2d 47, 51 (1985). Reviewing the factual findings contained in the order, we agree that the trial court failed to make necessary findings to support its award.

In *Sarno*, we upheld an award of attorneys' fees based upon the trial court's findings that the "[d]efendant has depleted all of his inheritance to cover fees and borrowed money from family[,]" he "has no estate, no retirement accounts, or other assets outside of his income[,]" and he "has borne all of the expenses associated with the child while in his primary care[,]" as well as findings as to his gross income. ___ N.C. App. at ___, ___ S.E.2d at ___. These findings were sufficient to support the conclusion of law that "[d]efendant has insufficient means to defray the costs of the suit." *Id.* at ___, ___ S.E.2d at ___. Similarly, in *Hennessey v. Duckworth*, 231 N.C. App. 17, 752 S.E.2d 194 (2013), we affirmed the trial court's award of attorneys' fees in a custody and child support action based upon findings of fact regarding the moving party's employment, bank account balances, total legal costs, monthly income, and total assets. 231 N.C. App. at 23, 752 S.E.2d at 199.[6]

[6] We note that in these cases there was no requirement that the trial court compare the estates of the parties in determining whether an award of attorneys' fees is appropriate. No such requirement exists, as "N.C. Gen. Stat. § 50-13.6 does not *require* the trial court to compare the relative estates of

The trial court in this case, though it found facts as to Mother's gross income and certain specific child-related expenses, did not make any findings concerning Mothers total assets, total expenses, the nature of her estate, or her past ability to pay her attorney. "Although information regarding [these facts is] present in the record . . . , there are no findings in the trial court's order which detail this information." *Dixon v. Gordon*, 223 N.C. App. 365, 373, 734 S.E.2d 299, 304 (2012). Short of such findings in the order itself, we must "remand so that the trial court can make additional required findings of fact regarding [Mother's] means to employ counsel." *Id.* at 373, 734 S.E.2d at 304.

III. Conclusion

For the foregoing reasons, we: (1) affirm the trial court's order in awarding Mother primary physical custody and Father secondary physical custody; (2) vacate and remand the portion of the order granting the parties joint custody but reserving final decision-making authority in Mother for further findings to support the necessity of deviating from pure joint legal custody; (3) vacate and remand the portion of the order concerning the even split of uninsured medical costs to either exclude the first $250 in uninsured medical expenses or make necessary findings to support a deviation from the Guidelines to include the first $250 in the even split; (4) vacate and remand the portion of the order concerning Richard's prescription costs, payment

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the parties [though it is] *allow[ed]* or *permit[ted]* . . . to do so in a proper case." *Van Every v. McGuire*, 348 N.C. 58, 60, 497 S.E.2d 689, 690 (1998) (emphasis in original).

of uninsured medical expenses, and the child support award to make necessary findings and conclusions to clarify whether such prescription expenses are to be paid solely by Mother, jointly by the parties as uninsured medical costs, or as part of Father's child support while making all necessary findings to support any deviation from the Guidelines relating thereto; and (5) vacate and remand the award of attorneys' fees for further findings concerning Mother's ability to defray her legal costs. "On remand, the trial court shall rely upon the existing record, but may in its sole discretion receive such further evidence and further argument from the parties as it deems necessary and appropriate to comply with the instant opinion." *Heath v. Heath*, 132 N.C. App. 36, 38, 509 S.E.2d 804, 805 (1999).

AFFIRMED IN PART; VACATED AND REMANDED IN PART.

Judges ELMORE and BERGER concur.

Report per Rule 30(e).