IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-737

Filed: 19 December 2017

Forsyth County, No. 12 CVD 3312

HEATHER DEAN MILLS, Plaintiff,

v.

CHAD MCKINLEY DAVIS, Defendant.

Appeal by Plaintiff from an order entered 6 November 2015, *nunc pro tunc*, 3 November 2015 by Judge Denise S. Hartsfield in Forsyth County District Court. Heard in the Court of Appeals 7 March 2017.

Tash & Kurtz, P.L.L.C., by Jon Kurtz, for Plaintiff-Appellant.

No brief filed on behalf of Defendant-Appellee.

INMAN, Judge.

Plaintiff Heather Dean Mills ("Mother") appeals from two custody orders concerning her minor child E.M. ("Elizabeth").[1] Mother argues that the trial court erred in: (1) modifying a prior permanent child custody order without necessary findings of fact and conclusions of law; (2) prospectively finding as a fact and

[1] We refer to the minor child by pseudonym to protect her privacy.

decreeing that certain future circumstances would result in a modification of custody; (3) finding as a fact that Mother was in willful contempt of court; (4) modifying an existing child support order *sua sponte*; (5) awarding Father attorneys' fees; and (6) requiring all future hearings in the matter be heard before a particular district court judge. After careful review, we vacate in part and remand for further findings consistent with this opinion.

I. Factual and Procedural History

Mother and Father are the biological parents of Elizabeth, who was born 8 September 2011 at Forsyth County Medical Center. Mother is 37 years old and lives with her parents in Forsyth County, North Carolina. She receives social security disability income. Father also lives with his parents in Davie County and works as a security guard.

Father and Mother have had a dismal relationship since Mother became pregnant with Elizabeth. When Elizabeth was four months old, in January 2012, Father and Mother got into a heated dispute over social media after Father failed to attend a neurosurgery appointment for Elizabeth. The dispute further escalated in May 2012, when Elizabeth was nine months old, after Mother sought assistance from Forsyth County Department of Social Services ("DSS") to compel Father to pay child support. Father refused to pay until a DNA test was taken to establish his paternity; Mother responded to the refusal by filing this action on 14 May 2012. DNA testing

in June 2012 confirmed that Father was the biological father of Elizabeth and, in a separate action, a district court judge ordered Father to pay child support.

On 18 June 2012, in response to Mother's complaint in this action, Father filed his answer and counterclaim seeking joint legal and physical custody of Elizabeth. On 26 July 2012, the trial court entered a temporary order gradually increasing Father's visitation with Elizabeth. Despite the order, Mother refused to let Father see Elizabeth on several days that he was entitled to see her.

Following a hearing on 23 September 2013, the trial court entered a final order (the "Custody Order") on 1 November 2013. The Custody Order provided that legal and physical custody of Elizabeth be shared equally by Mother and Father.

In November 2014, more than a year after the Custody Order was entered, Mother filed a Motion to Show Cause and to Modify Custody asserting that Father had waived his custody rights by failing to participate in Elizabeth's life. Hearings on the motion proceeded in January and April 2015. On 28 April 2015, the same day as the second hearing, Father filed a Motion to Dismiss, Response to Motion to Show Cause and Motion to Modify Custody, asserting that he did not waive his right to shared custody of Elizabeth on the grounds that any failure to engage with Elizabeth was a direct result of hostility and manipulation caused by Mother and her family.

Two more hearings proceeded on the parties' motions on 2 November and 3 November 2015.

The result of these hearings was the entry of two orders: the first entered 6 November 2015, *nunc pro tunc* 3 November 2015 (the "School and Physical Custody Order") and the second entered 23 November 2015, *nunc pro tunc*, 3 November 2015 (the "Modified Custody Order"). The School and Physical Custody Order, which contained no findings of fact or conclusions of law, required Elizabeth to be enrolled immediately in the Davie County public school system (the county of residence of Father) and required Mother to transfer physical custody to Father and his parents at a specified date and time. The Modified Custody Order, which included a finding of fact that Mother was in willful contempt of court, awarded Father attorney's fees, the ability to claim Elizabeth as a dependent on his taxes, and required Mother to provide Father with a copy of Elizabeth's Medicaid card. It also ordered that all of Elizabeth's uninsured medical and dental costs be split evenly between the parties. The Modified Custody Order further decreed that the "undersigned Judge, Denise S. Hartsfield, hereby retains jurisdiction of this child custody matter for all further child custody hearings and enforcement of this Order." Mother appeals both the School and Physical Custody Order and the Modified Custody Order.

II. Analysis

Mother advances six arguments, asserting the trial court erred by: (1) entering the School and Physical Custody Order without findings of fact or conclusions of law; (2) entering a finding and several conclusions of law in its Modified Custody Order

that predetermined when future substantial changes in circumstances would result in custody modification; (3) finding Mother in willful contempt in the Modified Custody Order; (4) modifying, *sua sponte*, an existing child support order by ordering Father to claim Elizabeth as a dependent on his tax returns and requiring an even split of uninsured health expenses in the Modified Custody Order; (5) awarding Father attorney's fees; and (6) entering a decree retaining jurisdiction. We address each in turn.

A. The trial court erred in entering the School and Physical Custody Order.

We agree with Mother's argument that the School and Physical Custody Order must be vacated because the trial court failed to make any findings of fact or conclusions of law to support modifying the Custody Order of 1 November 2013.

The standard of review on appeal "when the trial court sits without a jury is whether there was competent evidence to support the trial court's findings of fact and whether its conclusions of law were proper in light of such facts." *Scoggin v. Scoggin*, ____ N.C. App. ____, ____, 791 S.E.2d 524, 526 (2016) (internal quotation marks and citation omitted). 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, 13-14, 707 S.E.2d 724, 733 (2011). "Whether [the trial court's] findings of fact support [its] conclusions of law is reviewable *de novo*." *Scoggin* at ____, 791 S.E.2d

at 526 (2016) (alterations in original) (internal quotation marks and citations omitted).

This Court has defined and distinguished the nature of temporary versus permanent child custody orders when determining whether or not the trial court acted justifiably in modifying existing custody orders:

> Permanent child custody or visitation orders may not be modified unless the trial court finds there has been a substantial change in circumstances affecting the welfare of the child . . . . [T]emporary orders may be modified by proceeding directly to the best interest analysis . . . . [A]n order is temporary if either (1) it is entered without prejudice to either party[;] (2) it states a clear and specific reconvening time in the order and the time interval between the two hearings was reasonably brief; or (3) the order does not determine all the issues. If the order does not meet any of these criteria, it is permanent.

Woodring v. Woodring, 227 N.C. App. 638, 643, 745 S.E.2d 13, 18 (2013) (alterations in original) (internal quotation omitted).

The Custody Order resolved all issues then before it: (1) the physical and legal custody issues as to Elizabeth; and (2) the parties' respective claims for attorney's fees.[2] Additionally, it stated no reconvening time and was not entered without prejudice. Thus, the Custody Order was a permanent order, and the trial court could

[2] Mother's original complaint also sought child support. However, a separate child support action concerning Elizabeth was already pending against Father in Forsyth County and proceeded to judgment before the custody action was resolved. Thus, the only issues left for resolution in the Custody Order were physical and legal custody and the parties' claims for attorney's fees.

not modify it without finding a substantial change in circumstances affecting the welfare of the child.[3] N.C. Gen. Stat. § 50-13.7(a) (2015).

If a trial court finds a substantial change in circumstances affecting the minor child since the entry of a prior custody order, the trial court must next determine whether a change in custody is in the child's best interest. *Warner v. Brickhouse*, 189 N.C. App. 445, 450, 658 S.E.2d 313, 317 (2008). Critically, "before a child custody order may be modified, the evidence must demonstrate a connection between the substantial change in circumstances and the welfare of the child, and flowing from that prerequisite is the *requirement that the trial court make findings of fact regarding that connection*." *Shipman v. Shipman*, 357 N.C. 471, 478, 586 S.E.2d 250, 255 (2003) (emphasis added).

Here, the School and Physical Custody Order, which on its face "modifies its prior [Custody] Order[,]" contains no findings of fact or conclusions of law establishing a substantial change in circumstances affecting the best interest and welfare of Elizabeth. Therefore, we hold that the trial court's order must be vacated and remanded for entry of an order containing appropriate findings of fact and conclusions of law to support any modification of the earlier Custody Order.

[3] The Modified Custody Order appealed from also constitutes a permanent order under this analysis. It resolved all issues before the court, granted Father's motion to modify custody and dismissed Mothers' motions to modify custody and show cause with prejudice, and does not set forth a reconvening time.

B. Mother's claim that the Modified Custody Order predetermined facts supporting future substantial changes in circumstances is not ripe for review.

Mother next challenges the language in one finding of fact and in several adjudicatory provisions in the Modified Custody Order because these provisions pre-determined issues of potential future changed circumstances that would support modification of custody. Specifically, Mother challenges finding of fact 8, which states that a "pattern of denying [Father] his visitation will not continue or [Mother's] visitation will be terminated," as well as decretal paragraphs 4, 8-10, and 23, which establish certain "pattern[s]" of "unilateral changes" and "behavior[s that will] result in the termination of [Mother's] visitation." We dismiss this portion of her appeal as moot.

We reach our decision based upon the North Carolina Supreme Court's decision in *Young v. Young*, vacating a decision by this Court and dismissing a similar appeal as moot. 169 N.C. App. 31, 609 S.E.2d 795, *vacated and appeal dismissed as moot*, 360 N.C. 58, 620 S.E.2d 674 (2005). In *Young*, the mother and the father consented to an order entered in Cumberland County, North Carolina providing for joint custody of their daughter. 169 N.C. App. at 34, 609 S.E.2d at 797-98. The mother's appeal challenged a provision in the trial court's order that precluded her from seeking an increase in child support from the father or a reduction in his summer visitation under certain enumerated circumstances. *Id.* at 34, 609 S.E.2d at

797. This Court, in a split decision, vacated the challenged provisions. *Id.* at 43, 609 S.E.2d at 803. The dissenting opinion reasoned that the challenge was not ripe for appeal, as the mother had not yet filed and been denied a motion to modify child support. *Id.* at 43-44, 609 S.E.2d at 803 (Tyson, J., concurring in part and dissenting in part). Thus, she was not yet "a party aggrieved" and entitled to an appeal on the issue. *Id.* at 44, 609 S.E.2d at 803 (quoting N.C. Gen. Stat. § 1-271 (2003)). Our Supreme Court vacated the majority opinion in *Young* and dismissed the appeal as moot. 360 N.C. 58, 620 S.E.2d 674.

Consistent with the decision in *Young*, we hold that Mother's argument is not ripe for review. It is well established that "if the appealing party has no right to appeal the appellate court should dismiss the appeal *ex mero* motu." *Harris v. Harris*, 307 N.C. 684, 690, 300 S.E.2d 369, 373 (1983). Until Mother is hurt or "aggrieved" by the prospective findings and conclusions reached by the trial court, this issue does not warrant appellate review. We therefore dismiss this portion of her appeal.

C. The trial court failed to make sufficient findings of fact and conclusions of law to support the finding of willful contempt in the Modified Custody Order.

Next, Mother contends that the trial court erred in finding her in willful contempt. We agree.

In an appeal from contempt proceedings, "the standard of review is . . . limited to determining whether there is competent evidence to support the findings of fact

and whether the findings support the conclusions of law." *Sharpe v. Nobles*, 127 N.C. App. 705, 709, 493 S.E.2d 288, 291 (1997). If evidence supports the trial court's findings, those findings are binding on appeal "even if the weight of the evidence might sustain findings to the contrary." *Hancock v. Hancock*, 122 N.C. App. 518, 527, 471 S.E.2d 415, 420 (1996).

North Carolina recognizes two types of contempt—criminal and civil. N.C. Gen. Stat. § 5A-11(a)(3) (2015) provides that a person is guilty of criminal contempt if he has "willful[ly] disobe[yed] . . . , resist[ed] . . . , or interfere[d] with a court's lawful process, order, directive, or instruction or its execution." A person is under civil contempt pursuant to N.C. Gen. Stat. § 5A-21(a) (2015) if he "[f]ail[s] to comply with [a court] order[;] [t]he noncompliance by the person . . . is willful; and . . . [t]he person to whom the order is directed is able to comply with the order or is able to take reasonable measures that would enable the person to comply with the order."

To hold a person in civil contempt, N.C. Gen. Stat § 5A-23(e) (2015) requires that the trial court "enter an order finding the facts constituting contempt and specifying the action which the contemnor must take to purge himself or herself of the contempt." *Roberts v. Roberts*, 235 N.C. App. 424, 763 S.E.2d 926 (2014). Findings of fact in support of criminal contempt must be made beyond a reasonable doubt. *Cox v. Cox*, 92 N.C. App. 702, 706, 376 S.E.2d 13, 16 (1989).

Here, the trial court found as a fact that:

> 10. . . . *[Mother] is in willful contempt of court for keeping the minor child out of school.* The Court simply cannot understand [Mother]'s objection to school or her desire that the child be kept out of school and away from her peers and appropriate socialization. *[Mother] chose to disregard the court requirements for her child to attend school.*

(emphasis added). The record does not reveal a prior order compelling Elizabeth's attendance at school. Nonetheless, the trial court found as a fact that "[Mother] chose to disregard the court requirements for her child to attend school" and found her in contempt. Because the record before this Court reveals no prior order imposed a schooling requirement, no evidence supports the trial court's finding Mother in contempt.

Even if we were to assume *arguendo* that there were sufficient facts made to hold Mother in civil contempt, the trial court did not specify how Mother could purge herself from said contempt, as required by N.C. Gen. Stat. § 5A-23(e). As to criminal contempt, the trial court failed to indicate whether it applied the reasonable doubt standard necessary to support such a holding under either N.C. Gen. Stat. §§ 5A-14(b) or 5A-15(f). *State v. Ford*, 164 N.C. App. 566, 571, 596 S.E.2d 846, 850 (2004) ("Failure to make such an indication is fatally deficient, unless the proceeding is of a limited instance where there were no factual determinations for the court to make.").

Beyond the singular finding that Mother was in willful contempt, the Modified Custody Order is devoid of any findings of fact or conclusions of law referencing or relating to contempt. Holding a party in contempt absent the necessary findings of

fact and conclusions of law is error. *Thompson v. Thompson*, 223 N.C. App. 515, 518, 735 S.E.2d 214, 216 (2012). Accordingly, the trial court erred in finding Mother in willful contempt. We therefore vacate the portion of finding of fact 10 in the Modified Custody Order concerning contempt and Mother's disregard for any school attendance requirements.

D. The trial court erred in modifying an existing permanent child support order sua sponte.

Mother also argues that the trial court erred in ordering that Father and Mother were to divide equally all uninsured medical and dental expenses and allowing Father to claim Elizabeth as a dependent for income tax purposes each year. We agree.

Our Supreme Court's recent opinion in *Catawba Cnty. ex rel. Rackley v. Loggins*, ____ N.C. App. ____, 784 S.E.2d 620 (2016), *reversed and remanded*, ___ N.C. ___, 804 S.E.2d 474 (2017), bears upon this issue. In that case, parents signed and filed a Voluntary Support Agreement and Order providing that the father make no payments of support for his two children with the mother. *Id.*, ___ N.C. App. at ____, 784 S.E.2d at 622. Without filing a motion to amend the prior order, the parties consented to entry of a Modified Voluntary Support Agreement and Order. *Id.* at ___, 784 S.E.2d at 622. The father later argued that the modification was void and unenforceable because there was no motion in the cause to modify, as contemplated

by N.G. Gen. Stat. § 50-13.7(a) (2013). *Id.* at ___, 784 S.E.2d at 624. Absent such a motion, the trial court concluded that it did not have jurisdiction to enter the consent order. *Id.* at ____, 784 S.E.2d at 624.

On appeal, the mother argued that the trial court erred in concluding that the consent order was void. *Id.* at ____, 784 S.E.2d at 623. This Court disagreed, and held that the trial court did not, in fact, have authority to enter the consent order for lack of motion in the cause. *Id.* at ____, 784 S.E.2d at 625-26. Without such a motion, the trial court was without jurisdiction to accept the second voluntary support agreement and enter the court order. *Id.* at ___, 784 S.E.2d at 626.

Our Supreme Court reversed and remanded our decision, with the majority holding that the trial court maintained continuous jurisdiction to modify the initial order and that the parties' failure to file a motion did not divest the trial court of that jurisdiction. *Id.*, ___ N.C. at ___, 804 S.E.2d at 476. Though it held that the statute's "motion in the cause" language did not constitute a jurisdictional prerequisite or mandatory provision, *id.* at ___, 804 S.E.2d at 479-483, it did not dispense of the necessity that the parties "satisfy the purposes of N.C. Gen. Stat. § 50-13.7(a)." *Id.* at ___, 804 S.E.2d at 483.

Concurring justices in *Catawba County* emphasized that although the trial court had authority to enter the consent order, "[i]t is important . . . that we distinguish in future cases between a court's jurisdiction over a case, on the one hand,

and a court's power to issue a particular order or remedy, on the other." *Id.* at ___, 804 S.E.2d at 486 (Martin, C.J., joined by Ervin, J., concurring in result only). The concurrence argued that since the consent order satisfied subsection 50-13.7(a), "[w]e therefore do not have to decide whether a district court that did act *sua sponte* in this context would be exceeding its jurisdiction," and observed that "[c]ourts always have jurisdiction to determine subject-matter jurisdiction, but they do not always have—in fact, they usually do not have—the power to determine other matters unless asked to do so by a party." *Id.* at ___, 804 S.E.2d at 486. The concurrence also cautioned that "the majority's reasoning should be read narrowly" and that "by focusing on continuing jurisdiction, the majority ducks the real issue: whether, in the absence of a motion or its functional equivalent, a district court has the power to modify a child support order, or instead lacks the power to do so unless and until it receives a request from an interested party to modify the order." *Id.* at ___, 804 S.E.2d at 484-85.

Unlike the trial court in *Catawba County*, which entered a consent order sought by both parents, the trial court in this case acted of its own volition, absent the consent, knowledge, or urging of Mother or Father. No consent order or pleading was filed in this case sufficient to satisfy the purposes of N.C. Gen. Stat. § 50-13.7(a). *Id.* at ___, 804 S.E.2d at 483 ("In light of a [consent order's] inherent satisfaction of the purposes of [N.C. Gen. Stat.] § 50-13.7(a), . . . this Court concludes that plaintiff's failure to file a motion to modify defendant's child support obligation did not divest

the district court of jurisdiction . . . ."); *see also Henderson v. Henderson*, 165 N.C. App. 477, 479, 598 S.E.2d 433, 434, *aff'd per curiam*, 359 N.C. 184 (2004) (holding that a "trial court may not, on its own, modify an existing child support order" where the only motion before the trial court was for modification of custody).

While we recognize, following *Catawba County*, that the trial court had jurisdiction to modify the Custody Order, we hold that it did not have the power and authority to *sua sponte* modify a child support order entered in a separate civil action. *See Ellis v. Ellis*, 190 N.C. 418, 421, 130 S.E. 7, 9 (1925) (holding that although a court retains jurisdiction over a case, it may still lack the power to grant the relief contained in its judgment); *see also State ex rel. Hanson v. Yandle*, 235 N.C. 532, 535, 70 S.E.2d 565, 568 (1952) (holding that where the court is without authority its judgment is void and of no effect). Because the majority in *Catawba County* did not dispose of the necessity that a party satisfy the requirements of N.C. Gen. Stat. § 50-13.7(a), and in light of the concurring justices' cautioned approach, we will not extend the Supreme Court's decision to give the trial court unfettered authority to modify custody orders *sua sponte*. To hold otherwise would disturb several decades of precedent on which domestic relations parties and social service agencies throughout North Carolina have presumably come to rely. *Catawba County*, ___ N.C. at ___, 804 S.E.2d at 485.

For the foregoing reasons, we vacate the trial court's portion of decretal paragraph 48 concerning uninsured medical and dental costs and vacate paragraph 49 in its entirety.

E. The trial court failed to make sufficient findings to support an award of attorney's fees.

This Court very recently considered the award of attorney's fees in child support cases pursuant to N.C. Gen. Stat. § 50-13.6 (2015) in *Sarno v. Sarno* ____ N.C. App. ____, 804 S.E.2d 819 (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.

Id. at ____, 804 S.E.2d at 824 (internal citations omitted).

Mother contends that the trial court's finding in the Modified Custody Order that "[Father] . . . has insufficient means to defray the costs, expenses and counsel fees as a result of this action" is 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). We agree that the trial court failed to make necessary findings to support its award.

Sarno upheld an award of attorneys' fees based upon the trial court's findings that the "[d]efendant ha[d] depleted all of his inheritance to cover fees and borrowed money from his family[,]" he "has no estate, no retirement accounts, or other assets outside of his income[,]" and that 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 ____, 804 S.E.2d at 826-27. 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 ____, 804 S.E.2d at 827. 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 balance, total legal costs, monthly income, and total assets. 231 N.C. App. at 23-24, 752 S.E.2d at 199-200.

But the trial court in this case made no findings concerning Father's total assets, income, total expenses, the nature of his estate, or his past ability to pay his attorney. The absence of these findings renders the attorneys' fees award insufficient. *Dixon v. Gordon*, 223 N.C. App. 365, 373, 734 S.E.2d 299, 304 (2012) ("[T]here are no findings in the trial court's order which detail [the prevailing party's gross income or employment]. . . . [B]ecause the findings in this case contain little

more than the bare statutory language, the order is insufficient to support an award of attorney's fees."). Short of such findings in the Modified Custody Order itself, we must "remand so that the trial court can name additional required findings of fact regarding [F]ather's means to employ counsel." *Id*. at 373, 734 S.E.2d at 305.

F. The trial court erred in declaring exclusive jurisdiction over subsequent matters involving this case.

Finally, Mother challenges the trial court's declaration of exclusive jurisdiction in the Modified Custody Order based on two arguments: (1) the trial court did not have subject matter jurisdiction to retain exclusive jurisdiction; and (2) the trial court did not have express authority or authority per local rules to retain jurisdiction. We vacate this portion of the trial court's order.

Mother contends that the following decree in the order constituted error:

> That the undersigned Judge, Denise S. Hartsfield, hereby retains jurisdiction of this child custody matter for all future child custody hearings and enforcement of this Order. That given the history of this case, violations of this Order shall immediately be brought to the attention of the undersigned Judge.

This kind of decree has been disallowed by this Court for several decades. In *In Re McLean*, 135 N.C. App. 387, 521 S.E.2d 121 (1999), we discussed in detail the validity of attempts by individual district court judges to retain exclusive jurisdiction over family law cases:

> [W]e address the argument that the trial court erred in

> attempting to retain jurisdiction of future hearings in this case. While we are aware that as a matter of practice some trial courts have done this for reasons of consistency and efficiency, particularly in family law cases, there is no express statutory authority for this practice. This court has previously discussed the practice in a child custody case in which the trial judge retained jurisdiction. *Wolfe v. Wolfe*, 64 N.C. App. 249, 307 S.E.2d 400 (1983), *disc. review denied*, 310 N.C. 156, 311 S.E.2d 297 (1984). In *Wolfe*, this Court held that the trial court's effort to retain exclusive jurisdiction was erroneous and impractical, but found that the action was harmless error in the absence of evidence of some prejudice to the defendant in that case.
>
> Although domestic practice has changed dramatically since *Wolfe* was decided in 1983, the legislature has not acted to grant authority to the trial court to retain jurisdiction in a domestic relations case . . . . Therefore, the trial court in this case erred in attempting to retain exclusive jurisdiction over future hearings in this matter and that portion of the dispositional order must be vacated. In any event, we believe the trial court's post-trial statements already discussed herein, could be interpreted as an indication that the trial court has already formed an opinion about the order it intended to enter at future review hearings. Thus, even if the trial court had authority to retain jurisdiction over future hearings, a concept we reject herein, we would vacate that portion of the dispositional order so that the appearance of neutrality and impartiality could be preserved.

135 N.C. App. at 399-400, 521 S.E.2d at 129.

Absent a local rule authorized by statute, the district court was without authority to enter a decree that all future custody matters be heard by Judge Hartsfield. *See In re M.A.I.B.K.*, 184 N.C. App. 218, 645 S.E.2d 881 (2007) (observing that a local rule promulgated pursuant to N.C. Gen. Stat. § 7A-146 required that each

juvenile's abuse, neglect, or dependency action be assigned to an individual judge and that said judge hear all future adjudications relating thereto). Because the Twenty-First Judicial District, where this case proceeded, has not promulgated such a rule, "the trial court in this case erred in attempting to retain exclusive jurisdiction over future hearings in this matter and that portion of the dispositional order must be vacated." *McLean*, 135 N.C. App. at 400, 521 S.E.2d at 129.

III. Conclusion

For the foregoing reasons, we: (1) vacate and remand the School and Physical Custody Order for entry of an order containing appropriate findings of fact and conclusions of law to support any modification of the earlier Custody Order; (2) dismiss for mootness Mother's argument that the trial court erred in its Modified Custody Order by making a finding of fact and adjudicatory provisions that predetermined substantial changes in circumstances; (3) vacate finding of fact 10 in the Modified Custody Order finding Mother in willful contempt; (4) vacate decretal paragraphs 48 and 49 in the Modified Custody Order; (5) vacate and remand the award of attorneys' fees for further findings concerning Father's ability to defray his legal costs; and (6) vacate decretal paragraph 53 of the Modified Custody Order. "On remand, the trial court shall rely upon the existing record, but may in its sole discretion receive 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).

VACATED IN PART AND REMANDED.

Judges BRYANT and ZACHARY concur.

Report per Rule 30(e).