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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1071

Filed: 17 July 2018

Harnett County, No. 14CVD487

JENNIFER MATHIS, Plaintiff,

v.

JORY DILLON MATHIS, Defendant.

Appeal by Plaintiff from order entered 28 March 2017 by Judge Caron H. Stewart in Harnett County District Court. Heard in the Court of Appeals 4 April 2018.

Doster, Post, Foushee, Post & Patton, P.A., by Kristy Gaines Patton, for the Plaintiff.

Ryan McKaig for the Defendant.

DILLON, Judge.

Jennifer Mathis (“Mother”) appeals from the trial court’s order modifying custody of her two minor children and granting primary physical custody of the children to their father, Jory Dillon Mathis (“Father”). Mother claims that the trial court erred by modifying the custody award where there was insufficient evidence to support its findings of fact and its determination that there was a substantial change

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in circumstances. After careful review of Mother's arguments, we affirm the trial court's order.

I. Background

Mother and Father married in 2006 and divorced in May of 2014. Two minor children were born from the marriage. Mother and Father incorporated a child custody agreement into their divorce (the "Initial Custody Order"), which granted joint legal custody to both parents and primary physical custody to Mother.

In 2015, while Father was on active duty in the United States Army, Father transferred to Texas and filed a motion to modify custody of the children. In May 2017, the trial court entered an order (the "Modified Custody Order") modifying the Initial Custody Order and granting Father primary physical custody. Mother appeals.

II. Analysis

Mother challenges the trial court's Modified Custody Order, arguing that the evidence did not show a substantial change of circumstances warranting a modification. Additionally, Mother argues that there was insufficient evidence to support a majority of the trial court's findings of fact.

A trial court's decision in a child custody case will not be overturned absent an abuse of discretion because the trial court has the opportunity to see the proceedings firsthand and weigh the credibility of the evidence. *Pulliam v. Smith*, 348 N.C. 616,

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624, 501 S.E.2d 898, 902 (1998) (“It is a long-standing rule that the trial court is vested with broad discretion in cases involving child custody.”). Under this standard of review, the trial court’s findings of fact are conclusive on appeal if supported by substantial evidence, even if contradictory evidence was presented at trial. *See Williams v. Pilot Life Ins. Co.*, 288 N.C. 338, 342, 218 S.E.2d 368, 371 (1975). Typically, we treat the trial court’s findings as inconclusive only where they are “manifestly unsupported by reason.” *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985).

“It is well established in this jurisdiction that a trial court may order a modification of an existing child custody order between two natural parents if the party moving for modification shows that a substantial change of circumstances affecting the welfare of the child warrants a change in custody.” *Shipman v. Shipman*, 357 N.C. 471, 473, 586 S.E.2d 250, 253 (2003) (internal citations omitted); N.C. Gen. Stat. § 50-13.7 (2015). Modification of a child custody order is a two-step process: First, the trial court must determine whether there has been a substantial change of circumstances. Second, the court must ascertain whether the change has affected the welfare of the child such that modification is in the best interests of the child. Modification is only proper where a substantial change of circumstances exists and a change of custody would be in the child’s best interests. *Shipman*, 357 N.C. at 473, 586 S.E.2d at 253. It is acceptable for the trial court to consider both the adverse

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effects and benefits of the change of circumstances when determining whether to modify child custody. *Pulliam v. Smith*, 348 N.C. 616, 620, 501 S.E.2d 898, 900 (1998).

Mother makes a number of challenges to the trial court's findings of fact. Mother claims either that each finding was not supported by the evidence at trial or that the findings do not make any connections between the change in circumstances and the well-being of the child. For each challenged finding, Mother lists evidence presented at trial that conflicts with the trial court's findings of fact.

We have reviewed the record and conclude that though Mother is correct that there was evidence which conflicted with many of the trial court's findings, there was also other evidence before the trial court which supported these findings. For instance, Mother contends that there was "uncontradicted" evidence that she made efforts to facilitate visitation sessions; to create healthy relationships between herself, Father, and their significant others; and that her living situation was acceptable for the children's well-being. While this evidence was before the trial court, and it may be credible, it was far from uncontradicted. The trial court weighed Mother's evidence against other evidence presented by Father, and made its own, reasonable determination that living with Father was in the children's best interests.

Further, the link between the trial court's findings of fact on the issues it believed to be material and the effects on the children's best interest are self-evident.

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In *Shipman*, our Supreme Court found that a total of ten, relatively sparse findings of fact were sufficient to uphold a child custody modification. *Shipman*, 357 N.C. at 479, 586 S.E.2d at 256. The findings in *Shipman* described how the change in circumstances and the actions of the parties had resulted in repeat denial of or difficulty in allowing the moving party to realize visitation sessions. *Id.* The findings included that the children enjoyed time with their father and were hurt that they were unable to see him. *Id.* Our Supreme Court found that, despite the brevity of the trial court's findings, the effects of denying the children visitation with their parent were clear. *Id.*

Here, the trial court made nine findings of fact as to the circumstances surrounding the Initial Custody Order and juxtaposed those findings with approximately thirty-six (36) findings detailing how the circumstances had changed and, where appropriate, the effect on or experience of the children. Among other things, the trial court found that the children enjoyed spending time with Father while in Texas, and that a considerable amount of the difficulties experienced in facilitating visitation sessions resulted from (1) the distance between Mother and Father, (2) the decay of Mother and Father's relationship, and (3) refusal to cooperate between Mother, Father, and their significant others. The trial court found that Father's living situation would be more beneficial to the children, and we conclude that the trial court did not err by not drawing express links between its findings of

fact and the children’s best interests. Under these circumstances, the benefits are self-evident. *Shipman*, 357 N.C. at 479, 586 S.E.2d at 256.

Rather than successfully contend that there was insufficient evidence to support the trial court’s findings, a majority of Mother’s arguments are attempts to show that substantial evidence existed in support of alternative findings.¹ “Evidentiary issues concerning credibility, contradictions, and discrepancies are for the trial court—as the fact-finder—to resolve and, therefore, the trial court’s findings of fact are conclusive on appeal if there is competent evidence to support them despite the existence of evidence that might support a contrary finding.” *Smallwood v. Smallwood*, ___ N.C. App. ___, ___, 742 S.E.2d 814, 817 (2013). We conclude that there was enough sufficient and competent evidence such that a reasonable mind could make the findings found by the trial court. Further, the findings of fact support the conclusions of law, and we therefore affirm the trial court’s decision.

AFFIRMED.

Judges DIETZ and ARROWOOD concur.

Report per Rule 30(e).

¹ We note that some details in the findings challenged by Mother may not be supported by the evidence at trial. To the extent that errors exist within the trial court’s extensive findings, we find that any such error is immaterial. “When . . . ample other findings of fact support an adjudication . . . , erroneous findings unnecessary to the determination do not constitute reversible error.” *In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006). Our review shows that the findings, collectively, support the trial court’s decision and we do not find any mistaken findings prejudicial to Mother’s case.