IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1049

Filed: 19 November 2019

Alamance County, No. 17 CVD 491

MATTHEW SOMMER, Plaintiff,

v.

AMANDA SOMMER, Defendant.

Appeal by defendant from order entered 23 April 2018 by Judge Kathryn Whitaker Overby in Alamance County District Court. Heard in the Court of Appeals 27 March 2019.

Harrison Whitaker, PLLC, by Wade Harrison, for plaintiff-appellee.

Kelly Fairman for defendant-appellant.

BRYANT, Judge.

We first hold that the trial court had subject matter jurisdiction to enter the orders challenged on appeal. The trial court's numerous findings of fact support its conclusion and award of child custody; therefore, we affirm the trial court's order as to child custody. However, because there was not substantial evidence to support the trial court's finding of fact regarding plaintiff's gross annual income, we reverse the

trial court's order as to the parties' child support obligation and remand the matter to the trial court for recalculation and/or additional findings of fact.

On 15 March 2017, plaintiff Matthew Phillip Sommer filed a summons and complaint against defendant Amanda Rich Sommer in Alamance County District Court seeking an absolute divorce. Plaintiff and defendant married on 31 March 2001 and separated on 13 March 2016. The parties had three children: Jamie and Clayton, born in 1996 and 1998, respectively (both of whom are emancipated), and Maxwell—a minor child—born in 2005. Plaintiff moved for summary judgment. The trial court granted plaintiff's summary judgment motion and on 31 May 2017, entered a judgment of divorce.

After entry of the judgment of divorce and without objection to the validity of the divorce, defendant initiated a separate action by filing a civil summons and a complaint seeking custody and visitation for the minor child, who resided with plaintiff (17 CVD 1992). The next day, plaintiff filed a motion in the cause under the same docket number as his complaint for absolute divorce (17 CVD 491). Plaintiff sought sole custody, care, and control of the minor child and an order directing defendant to pay reasonable child support as well as a share of medical and dental costs, and attorney's fees.

On 7 December 2017, the trial court entered an order to consolidate "actions involving the custody of the minor child." Each party had made a claim for the

custody of the minor child. Thus, the court ordered that no further pleadings regarding the issue would be required.

On 23 April 2018, the trial court entered an order in which the court found that defendant was a recovering alcoholic; she had been sober for almost two years but struggled with depression and was in counseling. During the course of the marriage, defendant's alcohol abuse had resulted in multiple episodes of violence. And even after the parties had separated and defendant had stopped abusing alcohol, plaintiff and defendant still had contentious encounters. On 14 March 2016, plaintiff filed a complaint for a domestic violence protective order (DVPO). The parties signed a consent DVPO which required defendant to attend AA meetings and be sober (receiving a 90-day chip from AA) in exchange for a dismissal of the DVPO complaint. Defendant did complete 90 days of sobriety, and the DVPO complaint was dismissed. In April 2017, plaintiff entered into a new romantic relationship and contentious encounters occurred between plaintiff and defendant. In October 2017, defendant brought the minor child to plaintiff's workplace and confronted plaintiff in a hostile manner. The next day, plaintiff filed a complaint for a second DVPO. On 30 October 2017, the parties executed a consent DVPO, effective for one year, which included a child custody addendum. The consent order awarded plaintiff temporary custody of the minor child with defendant receiving visitation on alternating weekends.

In its 23 April 2018 order, the trial court concluded that a substantial change in circumstances affecting the welfare of the minor child had occurred and that it was in the best interests of the minor child to modify the prior custody order. The court awarded primary physical and legal custody of the minor child to plaintiff and awarded defendant secondary physical "placement." The court further ordered that plaintiff was entitled to child support payments from defendant in the amount of $412.45 per month. Defendant appeals.

On appeal, defendant raises the following arguments: (I & II) the trial court lacked subject matter jurisdiction to hear and enter orders in this matter; (III) the trial court erred by improperly calculating child support payments; (IV) the evidence did not support findings of fact; and (V) the findings of fact do not support the conclusions of law.

I

Defendant argues that the trial court lacked subject matter jurisdiction to enter a custody and child support order. (A) Defendant contends that the assertion in plaintiff's complaint for absolute divorce that the parties separated on or before 13 March 2016 is in conflict with the sequence of events set forth in other court documents. As a consequence, there exists evidence to suggest that the parties had not been separated for a full year prior to the filing of the complaint for absolute

divorce on 15 March 2017. Plaintiff's complaint for an absolute divorce "was therefore improperly filed and the court never acquired jurisdiction over the parties or subject matter" and any subsequent order entered is likewise void for lack of jurisdiction. (B) Defendant further contends that even if the parties had been separated for at least a year, the court lacked jurisdiction over plaintiff's motion for custody and child support where plaintiff did not sufficiently evidence that his summons and complaint in the divorce action was properly served. Defendant contends that plaintiff's divorce action was discontinued as a matter of law and any subsequent order entered in docket number 17 CVD 491 was void for lack of jurisdiction. We dismiss this argument in part and disagree in part.

A

Defendant first challenges the date of separation asserted in plaintiff's complaint for absolute divorce. We dismiss this argument.

Plaintiff's complaint for absolute divorce was filed 15 March 2017 and the judgment of divorce entered 31 May 2017. Now, on appeal of the trial court's 23 April 2018 order addressing the parties' child custody and/or child support claims, which the parties filed 25 and 26 October 2017, defendant contends that the erroneous date of separation stated in plaintiff's divorce complaint renders all orders entered subsequent to the filing of the divorce complaint void for lack of jurisdiction. We note that the date of separation defendant now contends is invalid is the same date

defendant acknowledged as the date of separation in the notarized Separation Agreement the parties entered into 1 August 2016.

Regardless, "[i]t is a well-settled rule, and one which is supported by a multitude of authorities, that a party cannot, by varying the form of action or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated between the same parties or their privies." *Jernigan v. Stokley*, 34 N.C. App. 358, 360, 238 S.E.2d 318, 319 (1977) (quoting *Mann v. Mann*, 176 N.C. 353, 357, 97 S.E. 175, 177 (1918)). Defendant may not now litigate the validity of her judgment of divorce by challenging an allegation set forth in the complaint defendant failed to answer or otherwise challenge on appeal upon entry of the order granting summary judgment in plaintiff's favor. *See generally id.*

The validity of the parties' judgment of divorce based on the date of separation asserted in plaintiff's unanswered complaint is *res judicata*. Defendant's argument is dismissed.

B

Next, defendant argues that the trial court lacked jurisdiction to address the custody matter where plaintiff failed to provide sufficient proof of service of the initially filed complaint for absolute divorce. Defendant contends that plaintiff's

affidavit of service stating service was performed by certified mail, return receipt requested failed to satisfy the requisites of our General Statutes. We disagree.

There is no indication in the record that defendant filed an answer in response to plaintiff's complaint for absolute divorce and no indication that defendant appeared during the divorce proceeding. However, the record does indicate that service, as required by statute, was properly effected.

> Where a defendant fails to appear in the action within apt time the court shall, before entering a judgment against such defendant, require proof of service of the summons in the manner required by G.S. 1-75.10 and, in addition, shall require further proof as follows:
>
> (1) **Where Personal Jurisdiction Is Claimed Over the Defendant.**—Where a personal claim is made against the defendant, the court shall require proof by affidavit or other evidence, to be made and filed, of the existence of any fact not shown by verified complaint which is needed to establish grounds for personal jurisdiction over the defendant.

N.C. Gen. Stat. § 1-75.11(1) (2017).

General Statutes, section 1-75.10, requires that proof of service of process by registered or certified mail be satisfied as follows:

> **Service by Registered or Certified Mail.**—In the case of service by registered or certified mail, by affidavit of the serving party averring:
>
> a. That a copy of the summons and complaint was deposited in the post office for mailing by registered or certified mail, return receipt requested;

> b. That it was in fact received as evidenced by the attached registry receipt or other evidence satisfactory to the court of delivery to the addressee; and
>
> c. That the genuine receipt or other evidence of delivery is attached.

Id. § 1-75.10(a)(4). *Cf. Hunter v. Hunter*, 69 N.C. App. 659, 663, 317 S.E.2d 910, 912 (1984) (holding United States Postal Service delivery notice receipt insufficient to establish the defendant received the summons and complaint where the affidavit and accompanying delivery receipt showed only that the summons was forwarded to the defendant's place of business).

Here, the record contains an affidavit of service by certified mail signed by plaintiff's counsel and a letter from the United States Postal Service. The affidavit states that on 15 March 2017, a copy of plaintiff's complaint and summons was sent by certified mail, return receipt requested and that the complaint and summons were delivered to defendant on 22 March 2017, "as evidenced by the attached letter from the United States Postal Service." The letter states that "[t]he [United States Postal Service] delivery record shows that th[e] item [sent certified mail with an item specific tracking number] was delivered on March 22, 2017 . . . ." The letter also reflects the scanned image of the recipient information, which is a signature of defendant's name and an address matching the address listed on the complaint as defendant's address. Thus, the trial court had sufficient evidence to find that the summons and complaint

was delivered to defendant in satisfaction of sections 1-75.10(a)(4) and 1-75.11(1). The complaint asserts that plaintiff was a citizen and resident of Alamance County and had been a resident of North Carolina for at least six consecutive months preceding the filing of the complaint. *See* N.C. Gen. Stat. § 50-8 (2017) ("The plaintiff shall set forth in his or her complaint that the complainant or defendant has been a resident of the State of North Carolina for at least six months next preceding the filing of the complaint[.]"). Therefore, the trial court had subject matter jurisdiction over the parties to properly enter the judgment for absolute divorce, as well as subsequent orders. Accordingly, we overrule defendant's argument.

II

Next, defendant argues that the consolidation of the parties' separately filed actions for custody and visitation did not cure the defect in plaintiff's proof of service of process in the initial action for an absolute divorce. More specifically, defendant contends that the trial court could not exercise personal jurisdiction over defendant where, as she argued in Issue I, part B, the proof of service of plaintiff's summons and complaint seeking an absolute divorce was deficient.

However, as discussed in Issue I, part B, the record reflects that plaintiff's proof of service of the summons and complaint on defendant by certified mail, return receipt requested was sufficient to satisfy the statutory criteria set forth in section 1-75.10 ("Proof of service of summons, defendant appearing in action") in conjunction

with section 1-75.11 ("Judgment against nonappearing defendant, proof of jurisdiction"). Accordingly, we need not further address defendant's second argument.

III

Next, defendant argues that the trial court erred by hearing and calculating child support and leaving open the issue of attorney fees. Defendant first contends that despite consolidating plaintiff's motion in the cause seeking child custody and child support (docket number 17 CVD 491) with defendant's complaint for custody and visitation (docket number 17 CVD 1992), the issue of child support did not survive.

As raised in Issue I, part B, defendant contends that a defect in plaintiff's proof of service of process in regard to the summons and complaint seeking absolute divorce (docket number 17 CVD 491) resulted in the action filed in docket number 17 CVD 491 being discontinued, and as a consequence, any order entered in that action was void for lack of jurisdiction. Defendant contends that because the issue of child support was raised exclusively in plaintiff's motion in the cause (filed in docket number 17 CVD 491), the trial court lacked jurisdiction to enter an order on this claim. However, as fully addressed in Issue I, part B, we disagree with defendant's contention regarding the sufficiency of plaintiff's proof of service of process. Defendant also contends that the trial court had no jurisdiction to hear the issue of

attorney fees. Because this contention is contrary to the statutory discretion of trial courts[1] and defendant fails to provide any basis for this assertion, we do not further address this argument.[2]

Secondly, defendant argues that the trial court did not properly calculate the child support obligations of the respective parties. Defendant contends that in calculating child support, the court used inaccurate gross income figures for both plaintiff and defendant and failed to consider the health insurance premiums defendant was already paying.

> [Child support] [p]ayments ordered for the support of a minor child shall be in such amount as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case.

N.C. Gen. Stat. § 50-13.4(c) (2017). "Child support orders entered by a trial court are accorded substantial deference by appellate courts and our review is limited to a

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[1] Pursuant to our General Statutes, section 50-13.6 ("Counsel fees in actions for custody and support of minor children"),

> [i]n an action or proceeding for the custody or support, or both, of a minor child, including a motion in the cause for the modification or revocation of an existing order for custody or support, or both, the court may in its discretion order payment of reasonable attorney's fees . . . .

N.C. Gen. Stat. § 50-13.6 (2017).

[2] Pursuant to our Rules of Appellate Procedure, "[i]ssues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned." N.C. R. App. P. 28(b)(6) (2019).

determination of whether there was a clear abuse of discretion." *Biggs v. Greer*, 136 N.C. App. 294, 296, 524 S.E.2d 577, 581 (2000) (citation 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." *Beamer v. Beamer*, 169 N.C. App. 594, 597, 610 S.E.2d 220, 223 (2005) (citation omitted).

Defendant argues that in calculating each parties' child support obligation, the trial court attributed inaccurate gross income amounts to each party. Plaintiff gave the following testimony on direct examination:

> Q Now, is -- is number -- Exhibit Number 17, is that your W-2 form for 2017?
>
> A This is -- it is, yes, sir.
>
> Q And your gross income in 2017 was $103,214?
>
> A That's correct. That was the gross.

However, in its 23 April 2018 order, the trial court found that plaintiff's gross annual income was $93,486.74. Further, in calculating the parties' respective child support obligations, the child support obligation worksheet attached to the trial court order sets plaintiff's monthly gross income amount as $7,790.56 ($7,790.56 multiplied by 12 equals $93,486.72).

While the amount of $7,790.00 as plaintiff's gross monthly income was included in a proposed child support obligation worksheet submitted as an exhibit to

the court during plaintiff's testimony, the exhibit reflects an income amount inconsistent with plaintiff's testimony describing his gross annual income as reflected on his 2017 W-2 statement. Beyond the proposed child support obligation worksheet exhibit itself, we find no support for the trial court's finding of $93,486.74 as plaintiff's gross annual income ($7,790.56 per month). Thus, it appears that the trial court's child support calculation predicated on $7,790.00 as plaintiff's monthly gross income amount is premised on a conflicted, if not unsupported, finding that plaintiff's gross annual income was $93,486.74. Accordingly, we reverse the trial court's 23 April 2018 order and remand the matter for recalculation of the parties' respective child support obligations.

Defendant further argues that the trial court erred in calculating the child support obligation by attributing to her income earned in 2017 when the order entered did not consider the income of the parties in 2018, the year the order was entered.

> It is well established that child support obligations are ordinarily determined by a party's actual income at the time the order is made or modified. Although this means the trial court must focus on the parties' current income, past income often is relevant in determining current income. . . .
>
> . . . .
>
> What matters in these circumstances is the reason *why* the trial court examines past income; the court's findings must show that the court used this evidence to accurately assess

current monthly gross income.

Kaiser v. Kaiser, ___ N.C. App. ___, ___, 816 S.E.2d 223, 228 (2018) (citations omitted).

Here, the record reflects that plaintiff testified to defendant's annual salary during the course of their marriage. Plaintiff testified that in 2015 or 2016, defendant earned $68,000.00 a year but defendant had more recently informed plaintiff that she worked three jobs and made $20,000.00 less than in previous years. On direct examination, defendant presented several 2017 W-2 statements to reflect her income. The trial court admitted into evidence the W-2 statements reflecting income from employers with whom defendant testified that she was still employed. In aggregate, defendant's 2017 W-2 statements reflected income of $45,115.29. The trial court found that defendant's gross annual income was $45,114.00. We do not see and defendant does not state that the record provides evidence of defendant's gross income during the first two months of 2018 (the child support hearing was held 12–13 March 2018).

In calculating the parties' respective child support obligations, the trial court found that defendant's monthly gross income was $3,759.50 ($45,114.00 divided by 12 equals $3,759.50). The evidence presented during the child support hearing, supports the trial court's finding of fact that defendant's gross annual income was $45,114.00. Thus, as to this point, defendant's argument is overruled.

IV

Next, defendant challenges several of the trial court's findings of fact. More specifically, defendant contends that "[m]any of the[] [trial court's] findings were not supported by the evidence. Some of the findings were based on parts of the evidence while leaving other parts of the same evidence that would make these findings tell a different story."

> In a child custody case, 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. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Unchallenged findings of fact are binding on appeal. The trial court's conclusions of law must be supported by adequate findings of fact. . . . Absent an abuse of discretion, the trial court's decision in matters of child custody should not be upset on appeal.

Carpenter v. Carpenter, 225 N.C. App. 269, 270, 737 S.E.2d 783, 785 (2013) (alteration in original) (citation omitted).

Defendant challenges twenty-six (8, 13, 14, 18, 19, 24, 25, 26, 27, 28, 30, 33, 36, 37, 40, 41, 46, 49, 50, 51, 60, 61, 74, 79, 85, and 97) of the trial court's ninety-nine findings of fact. We agree with defendant's challenge to finding of fact 14, that plaintiff's gross annual income is $93,486.74, as we address is Issue III.

We note that in defendant's brief to this Court, defendant acknowledges that evidence exists to support the trial court's findings of fact in findings 18, 19, 24, 25, 28, 30, 37, 41, 50, and 51 though the finding may not reflect all of the evidence presented. *Id.* ("[T]he 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."). Therefore, defendant's challenge to these findings of fact is overruled.

Challenging finding of fact 36 (finding that plaintiff began receiving hostile text messages from Maxwell's phone after plaintiff introduced his girlfriend to Maxwell), defendant argues that the finding reflects plaintiff's hearsay testimony recounting text messages that could have been produced for the trial court. We note that defendant failed to object to the admission of this evidence during the hearing, thus this issue is not preserved for our review. *See* N.C.R. App. P. 10(a)(1) (2019) ("In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context.").

Defendant challenges finding of fact 40 (finding that spectators attending the Maxwell's soccer game noticed the hostility which occurred during an encounter between defendant and plaintiff and his girlfriend) on the basis that there was insufficient evidence to support this finding of fact. After review of the hearing transcript, we overrule defendant's challenge.

Defendant challenges findings of fact 61 and 79 (finding that Jamie and Clayton testified under subpoena in part because each believed defendant would

otherwise retaliate against them) on the basis that there was insufficient evidence to support this finding of fact. After review of the transcript, we overrule defendant's challenge.

Defendant challenges finding of fact 85 (finding that Clayton has never heard plaintiff say anything negative about defendant to Maxwell) on the basis that there was insufficient evidence to support this finding of fact. After review of the transcript, we overrule defendant's challenge.

Defendant challenges finding of fact 97 (finding that plaintiff changed his plans to move to a new neighborhood after defendant—who already lived in the neighborhood—stated that they could not live within sight of each other) on the basis that there was insufficient evidence to support this finding of fact. After review of the transcript, we overrule defendant's challenge.

As to the remaining challenged findings of fact—8 (finding the issue before the trial court included a modification of child custody), 13 (finding defendant attends AA meetings infrequently), 26 (finding defendant and Jamie argued about Jamie communicating with plaintiff), 27 (finding Jamie chose to reside in plaintiff's home during her school break after arguing with plaintiff), 33 (reciting provisions of the parties' separation agreement but not addressing the parties' child support agreement), 46 (finding that defendant directed Maxwell to fake a stomachache during his soccer games if plaintiff's girlfriend was in attendance), 49 (finding that

defendant admitted to texting plaintiff from Maxwell's smart phone asking for the meaning of "tramp stamp"), 60 (finding plaintiff had to hire an attorney for the action to modify custody), and 74 (finding defendant has dated multiple men following the parties' separation)—even if we were to strike these findings from the order, the remaining findings of fact would support the trial court's conclusions that it was in the best interests of the minor child, Maxwell, that plaintiff have primary legal and physical custody and that defendant have secondary physical placement.

Defendant further argues that the 23 April 2018 order does not resolve substantial issues, such as: what was plaintiff's role in the incidents of domestic violence; what was the parties' date of separation; why only 15 of the 99 findings of fact directly relate to Maxwell; and why do the findings "say very little" about plaintiff's fitness as a parent or make a determination of Maxwell's best interests. Moreover, defendant argues that there was no prior child custody order to modify, as the child custody order in effect was imposed in a DVPO, authorized under Chapter 50B.

> Our trial courts are vested with broad discretion in child custody matters. This discretion is based upon the trial courts' opportunity to see the parties; to hear the witnesses; and to detect tenors, tones, and flavors that are lost in the bare printed record read months later by appellate judges.

Miller v. Miller, 201 N.C. App. 577, 578, 686 S.E.2d 909, 911 (2009) (citation omitted).

In its 23 April 2018 order, the trial court states that "[t]he issue before this Court today is modification of child custody, child support and attorney's fees."

> Except as otherwise provided in G.S. 50-13.7A, an order of a court of this State for support of a minor child may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party or anyone interested subject to the limitations of G.S. 50-13.10. Subject to the provisions of G.S. 50A-201, 50A-202, and 50A-204, an order of a court of this State for custody of a minor child may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party or anyone interested.

N.C. Gen. Stat. § 50-13.7(a) (2017). Defendant contends there is no prior court order addressing custody of Maxwell or the parties' child support obligation. While we acknowledge defendant's argument, we note that the absence of a prior order implies that the trial court did not need to conclude a substantial change in circumstances occurred prior to awarding child custody and child support. *See id.*

On 1 August 2016, the parties entered into a separation agreement which included a custody schedule for Maxwell and a child support obligation. However, this agreement was never incorporated into a court order.[3]

[3] "A custody agreement is a contract . . . . A domestic agreement remains modifiable by traditional contract principles unless a party submits it to the court for approval or if a court order specifically incorporates the separation agreement." *Peters v. Pennington*, 210 N.C. App. 1, 14, 707 S.E.2d 724, 734 (2011) (citation omitted); *see id.* (holding the separation agreement—which included child custody provisions—was not incorporated or approved by a court, thus, the court order addressing child custody was not required to find changed circumstances).

On 30 October 2017, the parties entered a DVPO consent order pursuant to General Statutes, section 50B-2, -3, -3.1. The order stated that it was to remain in effect until 30 October 2018. The record provides no indication that defendant appealed the order. Per the DVPO consent order, defendant and plaintiff were entitled to unsupervised visitation in accordance with the following provisions: the minor child will be placed with plaintiff except, "defendant will have placement on alternate weekends . . . ."

General Statutes, section 50B-3, provides the following:

> (a) If the court . . . finds that an act of domestic violence has occurred, the court shall grant a protective order restraining the defendant from further acts of domestic violence. A protective order may include any of the following types of relief:
>
> . . . .
>
> (4) Award temporary custody of minor children and establish temporary visitation rights . . . pursuant to subsection (a1) of this section if the order is granted after notice or service of process.
>
> . . . .
>
> (a1) . . . [T]he court shall consider and may award temporary custody of minor children and establish temporary visitation rights as follows:
>
> . . . .
>
> (4) . . . *Nothing in this section shall be construed to affect the right of the parties to a de novo hearing under Chapter 50 of the General Statutes. Any*

> *subsequent custody order entered under Chapter 50 of the General Statutes supersedes a temporary order issued pursuant to this Chapter.*

N.C. Gen. Stat. § 50B-3(a)(4), -3(a1)(4) (2017) (emphasis added). Thus, we agree with defendant, the trial court's determination "[t]hat there has been a substantial change in circumstances that affects the welfare of the minor child" was not necessary. The court was authorized to immediately consider the best interests of the child in determining the custody arrangement. *See Peters v. Pennington*, 210 N.C. App. 1, 13, 707 S.E.2d 724, 734 (2011) ("If a child custody or visitation order is permanent, a court may not modify that order unless it finds there has been a substantial change in circumstances affecting the welfare of the child. . . . If a prior order is temporary, the trial court can proceed directly to the best-interests analysis." (citation omitted)).

Pursuant our General Statutes codified within Chapter 50,

> [a]n order for custody of a minor child entered pursuant to . . . [section 50-13.2] shall award the custody of such child to such person, agency, organization or institution as will best promote the interest and welfare of the child. In making the determination, the court shall consider all relevant factors including 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. 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) (2017).

Here, the trial court clearly considered defendant's acts of domestic violence, the safety of the minor child, and the safety of the parties from defendant's acts of domestic violence, as well as plaintiff's ability to care for the minor child. In unchallenged findings of fact, the trial court found that plaintiff was "very strict and had high expectations of the children. He would provide resources for the children to reach their goals, even if he did not personally understand why they participated in the event." "Plaintiff and the minor child[, Maxwell] relate to each other very well." Clayton had never heard plaintiff denigrate defendant in front of Maxwell.

We hold that the trial court's findings of fact as stated in its 23 April 2018 order support its conclusion that it is in the best interests of the minor child, Maxwell, that plaintiff be awarded primary legal and physical custody and that defendant be awarded secondary physical placement. Accordingly, defendant's argument is overruled.

DISMISSED IN PART; REVERSED IN PART AND AFFIRMED IN PART AND REMANDED.

Judges DILLON and ARROWOOD concur.

Report per Rule 30(e).