IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1094

Filed: 1 October 2019

Forsyth County, No. 15 CVD 7405

AMANDA BURNS, Plaintiff,

v.

STEPHEN SKJONSBY, Defendant.

Appeal by plaintiff from order entered 18 May 2018 by Judge Carrie F. Vickery in Forsyth County District Court. Heard in the Court of Appeals 6 August 2019.

Woodruff Family Law Group, by Jessica S. Bullock, for plaintiff-appellant.

Spidell Family Law, by Megan E. Spidell and Kettles Law, PLLC, by Sarah L. Kettles, for defendant-appellee.

BERGER, Judge.

Amanda Burns ("Plaintiff") appeals a custody modification order changing primary physical custody from Plaintiff to Stephen Skjonsby ("Defendant"). On appeal, Plaintiff contends that: (1) she did not receive adequate notice that the hearing on Defendant's motion to modify custody would include modification in primary custody; (2) nine of the trial court's findings of fact are not supported by substantial evidence; and (3) the trial court's findings of fact do not support its

conclusion there had been a substantial change in circumstances affecting the child and that modification was in the child's best interest. We affirm in part, and reverse and remand in part.

Factual and Procedural Background

Plaintiff and Defendant were married on March 30, 2013 in Canada, and separated in July 2015. Their minor child was born on April 24, 2014. Upon separation and through a temporary order, Plaintiff had primary physical custody of the minor child in Forsyth County and Defendant, who remained in Canada, had visitation privileges.

On April 4, 2017, a Custody Order was entered, in which the trial court granted Plaintiff primary physical custody of the minor child. Defendant was granted visitation with the following pertinent restrictions: (1) Defendant was to visit the child for seven-day periods each month and visitations were to occur in the Piedmont Triad Area (Forsyth, Stokes, Yadkin, or Davie County); (2) Defendant was required to provide an itinerary of the location and planned events with the minor child prior to his visit; (3) Defendant was to ensure the minor child attended day care at Rainbow Child Care in King, North Carolina during his custodial time and to provide the transportation to and from the day care; and (4) Defendant was allowed to video chat with the minor child three times per week.

On December 14, 2017, Defendant filed a motion to modify custody. In his motion, Defendant alleged several substantial and material changes in circumstances that affected the welfare of the child. The main factors he alleged were his change in employment and Plaintiff's interference with his limited visitation schedule.

The trial court entered an Order on May 18, 2018, in which the trial court concluded as a matter of law that "[a] substantial change in circumstances has occurred since the entry of the [Custody] Order", and that it was in "the best interest of the minor child that Defendant have primary physical custody of the minor child." It is from this Order that Plaintiff appeals.

Analysis

I. Adequacy of Notice

Plaintiff argues that Defendant's motion to modify custody did not adequately apprise her of the fact that a hearing on the motion would review possible custody changes as opposed to only visitation changes. We disagree.

"N.C. Gen. Stat. § 50-13.5(d)(1) 'is designed to give the parties to a custody action adequate notice in order to insure a fair hearing.' " *Anderson v. Lackey*, 163 N.C. App. 246, 255, 593 S.E.2d 87, 92 (2004) (internal citation and quotation marks omitted). "Unless a contrary intent is clear, the word 'custody' shall be deemed to include custody or visitation or both." N.C. Gen. Stat. § 50-13.1(a) (2017). "Adequate notice is defined as " 'notice reasonably calculated, under all circumstances, to apprise

interested parties of the pendency of the action and afford them an opportunity to present their objections.' " *Anderson*, 163 N.C. App. at 255, 593 S.E.2d at 92 (quoting *Randleman v. Hinshaw*, 267 N.C. 136, 140, 147 S.E.2d 902, 905 (1966) (citations omitted)).

In the present case, Defendant's motion is titled "Motion to Modify Custody." In his motion, Defendant requested that the trial court modify the April 2017 Custody Order "to include expanded visitation" *or* "[f]or such relief as the Court deems just and proper." Plaintiff was on notice and fully apprised that a modification in custody was a possibility. Accordingly, Plaintiff's argument is overruled.

II. Modification of Custody

Plaintiff argues that nine findings of fact were not supported by substantial evidence. Plaintiff also contends that the findings of fact supported neither the trial court's conclusion of law that a substantial change in circumstances affecting the minor child had occurred, nor that granting Defendant primary physical custody was in the child's best interests. We address each argument below.

> The trial court's examination of whether to modify an existing child custody order is twofold. The trial court must determine whether there was a change in circumstances and then must examine whether such a change affected the minor child. If the trial court concludes either that a substantial change has not occurred or that a substantial change did occur but that it did not affect the minor child's welfare, the court's examination ends, and no modification can be ordered. If, however, the trial court determines that there has been a substantial change in

> circumstances and that the change affected the welfare of the child, the court must then examine whether a change in custody is in the child's best interests. If the trial court concludes that modification is in the child's best interests, only then may the court order a modification of the original custody order.
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> When reviewing a trial court's decision to grant or deny a motion for the modification of an existing child custody order, the appellate courts must examine the trial court's findings of fact to determine whether they are supported by substantial evidence. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.
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> . . . .
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> In addition to evaluating whether a trial court's findings of fact are supported by substantial evidence, this Court must determine if the trial court's factual findings support its conclusions of law. With regard to the trial court's conclusions of law, our case law indicates that the trial court must determine whether there has been a substantial change in circumstances and whether that change affected the minor child. Upon concluding that such a change affects the child's welfare, the trial court must then decide whether a modification of custody was in the child's best interests. If we determine that the trial court has properly concluded that the facts show that a substantial change of circumstances has affected the welfare of the minor child and that modification was in the child's best interests, we will defer to the trial court's judgment and not disturb its decision to modify an existing custody agreement.

Shipman v. Shipman, 357 N.C. 471, 474, 586 S.E.2d 250, 253-54 (2003) (citations, quotation marks, and brackets omitted). Thus, "[a]bsent an abuse of discretion, the trial court's decision in matters of child custody should not be upset on appeal." *Everette v. Collins*, 176 N.C. App. 168, 171, 625 S.E.2d 796, 798 (2006).

Moreover, "[w]here no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal." *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). Therefore, "[u]nchallenged findings of fact are binding on appeal." *Peters v. Pennington*, 210 N.C. App. 1, 13, 707 S.E.2d 724, 733 (2011).

A. Findings of Fact

Plaintiff challenges nine of the trial court's findings of fact and argues that they were not supported by substantial evidence. We address each finding in turn.

> 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. Accordingly, should we conclude that there is substantial evidence in the record to support the trial court's findings of fact, such findings are conclusive on appeal, even if record evidence might sustain findings to the contrary.

Shipman, 357 N.C. at 474-75, 586 S.E.2d at 253-54 (citations and quotation marks omitted).

Here, most of the trial court's findings of fact are uncontested. On appeal, Plaintiff challenges findings of fact 8, 10, 17, 18, 20, 27, 29, 35, and 38.

Findings of fact 8 and 10 state:

> 8. Leading up to the April 4, 2017 Order, Defendant had suffered from mental health issues, including three inpatient treatments, one of which took place after the birth of the minor child. The inpatient treatment directly

> affected the minor child as [Defendant] was away from the minor child during his treatment.
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> 10. Defendant's improved mental health has directly impacted the minor child because he has not required any inpatient treatment which would interfere with his custodial time with the minor child.

In finding 8, Plaintiff takes issue with the last sentence: "The inpatient treatment directly affected the minor child as he was away from the minor child during his treatment." The trial court relied on the Custody Order, in which the trial court found that "the final treatment was scheduled to last five weeks but the Defendant didn't complete the full five weeks." However, there is no evidence in the record that his fifth treatment directly affected the minor child. Accordingly, that portion of finding 8 is not supported by the evidence.

Finding 10 is supported by substantial evidence. Finding 9, which Plaintiff does not challenge, states that Defendant "has not suffered from any mental health issues," that he "sees a psychotherapist every few months," and that he is "prescribe[d] an anti-depressant." Moreover, during the hearing, Defendant testified to these facts and stated that in April 2017, his anti-depressant dosage was lowered to half. He further testified that the mild sleep aid he takes does not hinder his ability to care for the minor child as he is still able to address any needs she may have at night. Both findings 9 and 10 support the determination that Defendant's mental health has improved, and as a result, any mental health issues he may have had or

been experiencing has not had an impact on his custodial time with the minor child. Thus, finding 10 was supported by substantial evidence.

Findings of fact 17 and 18 state:

> 17. Despite there being no communication limits in the April 4, 2017 Order, Plaintiff has refused to communicate with Defendant via telephone. She only communicates with Defendant via email and only via email sent to a specific email address. Plaintiff admitted only checking the specific email address three times per month. This refusal to communicate with Defendant detrimentally affects the minor child as Defendant is kept from day-to-day information concerning the minor child. One example was in September 2017 when the minor child was sick but Defendant did not know she was sick until Plaintiff informed Defendant that the minor child would not be participating in the scheduled video chat.
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> 18. Since the entry of the April 4, 2017 Order, Plaintiff has refused to provide Defendant with a working phone number and instead only provided Defendant with a Google Hangout phone number. In one instance Plaintiff's refusal to provide Defendant with a regular working phone number had a negative effect on the minor child's health. On May 23, 2017, the minor child developed a rash while in Defendant's care. The Defendant took the minor child to the doctor and was trying to get in touch with Plaintiff via email and her Google Hangout phone number but was unable and didn't have a regular working phone number. The Plaintiff has legal custody of the minor child and Defendant was attempting to discuss the potential medical course of action with the Plaintiff.

In finding 17, Plaintiff argues that the statements she "has refused to communicate with the Defendant via telephone" and that "Defendant is kept from day to day information concerning the minor child" is unsupported by substantial

evidence. These two statements cannot be read in isolation because when the finding is read in its entirety, it is clear that the trial court was stating that Defendant's inability to reach Plaintiff via phone detrimentally affects the minor child. While missing three phone calls is not dispositive of refusing to communicate via telephone, the record reflects that Plaintiff does in fact exclusively rely on email to communicate with Defendant. Moreover, although Defendant could only point to one medical instance where reaching Plaintiff via telephone would have been beneficial, communicating via email is not the most conducive form of communication for parties living in separate countries. This is especially true given that Plaintiff testified that she only checks her email about two to three times a month. Thus, there was substantial evidence to support finding 17.

In finding 18, Plaintiff takes issue with the portion that states she "refused to provide Defendant with a working phone number." However, the remainder of the sentence, "and instead only provided Defendant with a Google Hangout phone number," illustrates that Plaintiff did not provide Defendant with her regular phone number and only provided Defendant with a Google phone number. Moreover, Defendant testified that he thought the Google number did not work because Plaintiff did not respond to any of the calls made to the Google phone number. Overall, finding 18 was supported by substantial evidence.

In finding 20, Plaintiff takes issue with the trial court's assertion that she made "repeated demands."

> 20. Despite Defendant's work schedule preventing him from scheduling visitation very far in advance, Plaintiff has made repeated demands to Defendant via email to establish his visit for a year at a time. Plaintiff repeated these requests from the witness stand, after again hearing evidence that Defendant was unable to plan that far in advance due to this changing working schedule.

The record reflects that Plaintiff did in fact request in at least four different emails that they set up Defendant's visitation schedule in advance. In one instance, Plaintiff did email Defendant, "I am ready to schedule the entire year." While one email does not amount to "repeated demands," the record does reflect that she did continuously insist on setting out his schedule far in advance, even though he would respond that he could not in light of his work schedule. At the hearing when asked why he never scheduled anything a year out, he replied that he cannot schedule "dates up to one year in advance because I'm self-employed. I have to adjust my work schedule several times because I take blocks of one-week periods off to come down to visit my daughter, which I have done so over the past year." Therefore, finding 20 was supported by substantial evidence.

Findings 27 and 29 state:

> 27. Certainly it would be preferable for the parties and the minor child if the Plaintiff and Defendant lived closer together such that they could have a more 'traditional' custodial schedule, however, those are not the facts of this case. In this case, Defendant is attempting to exercise

> meaningful custody time with the minor child by commuting over 2,000 miles each trip and the Plaintiff appears to arbitrarily make those visits difficult to schedule. Plaintiff's arbitrariness ultimately results in Defendant missing time with the minor child and negatively impacts the minor child.
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> 29. In July 2017, Defendant requested to take the minor child to the Asheboro Zoo in Randolph County during his custodial time. Plaintiff refused to consent to this request as Randolph County was not a county in which the Defendant was allowed to exercise custodial time per the April 4, 2017 Order. However, in light of the fact that Plaintiff moved to Guilford County with the minor child and enrolled the minor child in daycare in Guilford County even though Guilford County was not on the approved list of counties in which Defendant could exercise visitation, the Court finds Plaintiff's refusal arbitrary. This arbitrary refusal ultimately affected the minor child as it prevented the minor child in participating in enriching and meaningful activities with Defendant.

Plaintiff takes issue with the last sentence in finding 27: "Plaintiff's arbitrariness ultimately results in Defendant missing time with the minor child and negatively impacts the minor child." However, Plaintiff does not challenge finding 28, which illustrates examples of when her refusals to accommodate Defendant's work schedule appear to be arbitrary. Moreover, Defendant testified that Plaintiff only accepted two of Defendant's proposed visitation schedules, and that the remainder were denied. He further testified that three of the eleven months had to be cut short and that Plaintiff would not accommodate any missed time. While three of those months were work related, Plaintiff was aware of Defendant's unpredictable work schedule. Furthermore, one of the work-related issues was a result of

Defendant's co-worker having suffered a heart attack. While three visits may not seem like a substantial amount of time, it does add up, especially if the visits only last seven days and the child may be in day care for a couple of hours during those seven days. Therefore, finding 27 was supported by substantial evidence.

In finding 29, Plaintiff disagrees with the assertion that refusing to allow Defendant to take the child to the zoo was an "arbitrary refusal [that] ultimately affected the minor child as it prevented the minor child in participating in enriching and meaningful activities with Defendant." While Defendant has still been able to engage in meaningful experiences with the minor child in approved counties, Plaintiff's refusal to allow a trip to the zoo was arbitrary, especially since Defendant has asked Plaintiff several times and, according to his testimony, in previous orders he was permitted to take her to the zoo. Thus, this finding was supported by substantial evidence.

Findings 35 and 38 state:

> 35. Plaintiff's refusal to meet with Defendant when he has made so many attempts to co-parent and be involved with the minor child's life appears to be motivated by her dislike of Defendant. Her personal animosity towards Defendant appears to prevent her from acting in the minor child's best interest.
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> 38. Plaintiff has done nothing to foster the minor child's relationship with the Defendant. In many cases, it appears that she has attempted to thwart Defendant's attempts to maintain a close relationship with the minor child despite the considerable distance. One example of this is where

> the April 4, 2017 Order provides for Defendant to have three weekly video chats with the minor, on occasion Defendant has missed a video chat for various reasons, including poor Wi-Fi reception or the minor child is sick. Plaintiff provides no make-up opportunities for the missed video chat. By contrast, the April 4, 2017 Order does not provide for any video chats between the minor child and Plaintiff when the minor child is in Defendant's custody, but Plaintiff has requested daily video chats with the minor child and the Defendant complies with her request.

In opposition to finding 35, Plaintiff points to the fact that Defendant has not missed a single visit and that Plaintiff sends non-court-ordered emails updating Defendant on the child's life, as evidence of co-parenting. While these facts may be true, the record reflects that sending those emails is as much as she is willing to do to co-parent with Defendant. In an email sent by Defendant asking Plaintiff to co-parent, she replied, "I do not co-parent with you." Furthermore, in findings of fact 32 and 34, which Plaintiff does not challenge, the trial court described two prior occasions where Defendant emailed Plaintiff in an attempt to meet outside of his scheduled visitation time with the child to discuss her upbringing and co-parenting, to which Plaintiff responded that they had "nothing to meet about." Finding 35 was supported by substantial evidence.

With regard to finding 38, Defendant testified that he has had multiple issues connecting to Google video, and when he does connect, the frame is not always directed on the minor child or there are a lot of distractions near-by. In one instance when the minor child was video conferencing with Plaintiff during Defendant's

custodial time, he heard Plaintiff telling the child, "I know you're going through this hardship. It won't be long. Don't worry. Mommy loves you and I'll protect you and Mommy's in your heart. Don't worry." Thus, finding 38 was supported by substantial evidence.

Except for a portion of finding 8, we conclude that all nine challenged findings of fact were supported by substantial evidence. Even if we were to ignore these nine challenged findings, the remaining unchallenged findings support our determination that a substantial change of circumstances had occurred. *See Hall v. Hall*, 188 N.C. App. 527, 532, 655 S.E.2d 901, 905 (2008) ("[T]he record still contains findings of fact, not challenged by defendant or already determined to be supported by competent evidence by this Court, to support the trial court's 'best interest' determination."). With this mind, we turn to Plaintiff's remaining arguments.

B. Substantial Change of Circumstances

Plaintiff contends that the "trial court's findings are conclusory statements on the 'affect' to the minor child, that are (1) not supported by the evidence presented and (2) not sufficient to support its Conclusion of Law that a substantial change of circumstances has occurred." We disagree.

> Changes in circumstances may be either negative or positive. *See, e.g.*, *Pulliam v. Smith*, 348 N.C. 616, 619, 501 S.E.2d 898, 899 (1998) ("[C]ourts must consider and weigh all evidence of changed circumstances which affect or will affect the best interests of the child, both changed circumstances which will have salutary effects upon the

> child and those which will have adverse effects upon the child. In appropriate cases, either may support a modification of custody on the ground of a change in circumstances.").

Shell v. Shell, ___ N.C. App. ___, ___, 819 S.E.2d 566, 571 (2018).

> Unless the effect of the change on the children is "self-evident," the trial court must find sufficient evidence of a nexus between the change in circumstances and the welfare of the children. *Shipman*, 357 N.C. at 478, 586 S.E.2d at 255-56. The moving party maintains the burden of proving a substantial change in circumstances exists that affects the welfare of the children. *Tucker v. Tucker*, 288 N.C. 81, 87, 216 S.E.2d 1, 5 (1975).
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> A substantial change in circumstances that affects the welfare of the children can occur when a parent demonstrates anger and hostility in front of the children and attempts to frustrate the relationship between the children and the other parent. *Correll v. Allen*, 94 N.C. App. 464, 471, 380 S.E.2d 580, 585 (1989). Additionally, although interference alone is not enough to merit a change in the custody order, "where 'interference [with visitation] becomes so pervasive as to harm the child's close relationship with the noncustodial parent,' " it may warrant a change in custody. *Shipman*, 357 N.C. at 479, 586 S.E.2d at 256 (quoting *Woncik v. Woncik*, 82 N.C. App. 244, 248, 346 S.E.2d 277, 279 (1986)) (alteration in original).

Stephens v. Stephens, 213 N.C. App. 495, 499, 715 S.E.2d 168, 172 (2011).

In the present case, the trial court made the following unchallenged findings of fact demonstrating that a substantial change affecting the welfare of the child had taken place:

> 9. Since the entry of the April 4, 2017 Order, Defendant has not suffered from any mental health issues. Defendant sees a psychotherapist every few months in Canada. He

also sees a family doctor who prescribed an anti-depressant.

13. On September 12, 2017, Plaintiff informed Defendant via email that the minor child's day care had been moved to a facility at UNC-Greensboro in Guilford County. Guilford County is not on the list of counties in which Defendant can exercise visitation.

15. Until the hearing on March 28, 2018, Defendant did not know the address where Plaintiff and the minor child were residing. Plaintiff had refused to provide this information and address on January 15, 2018. Defendant went approximately two and a half months not knowing where Plaintiff and the minor child resided.

19. The parties have experienced numerous difficulties in scheduling Defendant's visits. Defendant schedules his visits to North Carolina to see the minor child around his work schedule. Until January 9, 2018, Defendant worked at mines in Canada, however on that date the mine closed and Defendant received a severance package. Since that time, Defendant performs contract mining work in various mines around Canada and sometimes other locations. Defendant works on a contract basis. His schedules changes frequently and is not established very far in advance. As a result, he is unable to schedule his visits for very far in the future.

21. On some occasions, Defendant's work schedule has resulted in him having to request alterations of his visitation schedule. Specifically, Defendant had been scheduled to exercise his custodial time for May 2017 beginning on May 17, 2017 for one week. On May 12, 2017 at 4:12 PM, Defendant emailed Plaintiff informing her that he had picked up an additional contract in South Carolina and would have to report on May 16, 2017 to the mine in South Carolina. As a result of the schedule, he requested to start his visitation on May 18, 2017 or May 19, 2017. Plaintiff did not respond.

25. Finally, on May 15, 2017 at 6:10 PM, Plaintiff responded that she would stick to the prior arranged schedule (i.e. one week beginning on May 17, 2017) and if Defendant had to "end visitation early or change your pick up day," to let Plaintiff know. Plaintiff refused to work with Defendant's schedule despite the fact that her refusal meant the minor child would miss out on custodial time with Defendant.

26. Also in Plaintiff's response on May 15, 2017 at 6:10 PM, Plaintiff told the Defendant: "I will not respond to wishy washy plans and attempts to change them several times every visit and will not reply back and forth to unnecessary communication." Plaintiff has arbitrarily limited her communication with Defendant to e-mail. Plaintiff's failure to communicate via any other means and her failure to respond quickly to time-sensitive e-mails resulted in more than one email being sent by Defendant.

28. In an attempt to make scheduling easier for Defendant's work, Defendant requested that his one week visits be scheduled consecutively on several occasions. In May 2017, Defendant requested that his June visit take place the last week in June and his July visit take place the first week of July. Defendant was able to take off two consecutive weeks easier than he could take off weeks that were non-consecutive. In addition, this would save Defendant a round of transportation from Canada to North Carolina. Plaintiff refused stating the weeks were "too close together." No limitations on scheduling are present in the April 4, 2017 Order. Defendant made a similar request for his July and August 2017 visitation, and his April and May 2018 visitation, all of which Plaintiff refused for the same reason that the visits were too close together. No such language exists in the April 4, 2017 Order to support Plaintiff's refusal. These refusals to schedule on times more convenient to the Defendant's work schedule appear arbitrary to the Court.

> 31. Plaintiff has refused to co-parent with Defendant. On February 21, 2018 at 11:12 PM Plaintiff emailed Defendant: "[i]t has already been stated that I do not coparent with you for now OBVIOUS REASONS so no need to keep requesting it." Plaintiff further testified from the witness stand that she would no[t] co-parent with Defendant.

These findings show that Defendant made positive changes in his mental health, that Defendant's change in employment and work schedule made it difficult for the parties to abide by the Custody Order, and that Plaintiff's form of communication and unwillingness to communicate at times made it difficult to schedule visitation with the minor child in light of his new employment. These findings support that a change in circumstances had occurred since the entry of the Custody Order.

Plaintiff argues that even if a substantial change in circumstances has occurred, it had no effect on the child. She specifically contends that Defendant's change in employment has not affected the child because he still visits her every month, and that difficulty with communication has not affected the child because they have always had trouble communicating. However, Plaintiff's interference and unwillingness to adapt to Defendant's new job and work schedule supports an inference that these changes can affect the welfare of the child. *See Stern v. Stern*, ___ N.C. App. ___, ___, 826 S.E.2d 490, 497 (2019) (determining that the father "allege[d] at least one substantial change of circumstances[, a new employment schedule,] which would directly affect the child by entirely changing his availability

to care for the child" in his motion for modification of custody); *see Woncik v. Woncik*, 82 N.C. App. 244, 248-49, 346 S.E.2d 277, 280 (1986) (reasoning that the trial court correctly concluded that a substantial change of circumstances warranted a change of custody based on its supported findings that the plaintiff's "interference with visitation rights as well as conduct undertaken deliberately to belittle the defendant in the mind of his child" affected the welfare of the child). Moreover, although the parties had difficulty with communication prior to the entry of the Custody Order, this Court addressed a similar argument in *Laprade v. Barry*:

> While father is correct that this case overall demonstrates a woeful refusal or inability of both parties to communicate with one another as reasonable adults on many occasions, we can find no reason to question the trial court's finding that these communication problems are *presently* having a negative impact on Reagan's welfare that constitutes a change of circumstances. . . . In fact, it is foreseeable the communication problems are likely to affect Reagan more and more as she becomes older and is engaged in more activities which require parental cooperation and as she is more aware of the conflict between her parents. Therefore, we conclude that the binding findings of fact support the conclusion that there was a substantial change of circumstances justifying modification of custody. This argument is overruled.

Laprade v. Barry, ___ N.C. App. ___, ___, 800 S.E.2d 112, 117 (2017).

The findings reflect that Plaintiff's unwillingness to work with Defendant's schedule has caused him to miss custodial time with the minor child. Also, the findings show that Plaintiff's failure to communicate via telephone has resulted in her not responding quickly to time-sensitive emails regarding his custodial time with

the child. The findings demonstrate that Defendant is more willing to communicate reasonably with Plaintiff, and Plaintiff is resistant to, and less willing to communicate with, Defendant. As in *Laprade*, "it is foreseeable the communication problems are likely to affect [the parties' five year old child] more and more as she becomes older and is engaged in more activities which require parental cooperation and as she is more aware of the conflict between her parents." *Id.* Thus, these unchallenged findings of fact support the determination that "[Plaintiff]'s actions have interfered with [Defendant]'s visitation of his child[ ] and frustrated their relationship." *Stephens*, 213 N.C. at 502, 715 S.E.2d at 174. Accordingly, the trial court's findings show that a substantial change of circumstances affecting the welfare of the child had occurred.

Plaintiff also argues that omitting "affected the child's welfare" from its conclusion of law that "[a] substantial change in circumstances has occurred since the entry of the April 4, 2017 Order" was erroneous. However, this argument is overruled. As long as "the 'nexus' between a substantial change in circumstances and an effect on the children involved was actually stated in, . . . or was plainly evident from, . . . other parts of the order," making "a specific conclusion of law as to whether that change affected the welfare of the child" is not necessary. *Davis v. Davis*, 229 N.C. App. 494, 503-04, 748 S.E.2d 594, 601 (2013). As stated above, the trial court's findings of fact demonstrate that Defendant's new employment schedule and

Plaintiff's interference with Defendant's ability to visit his child has affected the welfare of the child. This argument is overruled, and we turn to whether modification was in the child's best interest.

C. Best Interests

Plaintiff also argues that the trial court's findings of fact do not support its conclusion that modification was in the child's best interests. Plaintiff specifically contends that the child's best interests were not considered because the trial court's findings do not indicate that Defendant was fit and proper to have primary custody of the child or the effect that relocation to Canada would have on the child. We agree.

"Upon determining that a substantial change in circumstances affecting the welfare of the minor child occurred, a trial court must then determine whether modification would serve to promote the child's best interests." *Shipman*, 357 N.C. at 481, 586 S.E.2d at 257. "Whether those findings of fact support the trial court's conclusions of law is reviewable *de novo*." *Carpenter v. Carpenter*, 225 N.C. App. 269, 270, 737 S.E.2d 783, 785 (2013) (citation omitted).

"[A]lthough it would be the better practice that an express finding of fitness be made, the absence of such an express finding will not be fatal where . . . such a finding is implicit in the findings which the Court did make." *In re Williamson*, 32 N.C. App. 616, 622, 233 S.E.2d 677, 681 (1977).

> Findings of fact regarding the competing parties must be made to support the necessary legal conclusions. These

> findings may concern physical, mental, or financial fitness or any other factors brought out by the evidence and relevant to the issue of the welfare of the child. However, the trial court need not make a finding as to every fact which arises from the evidence; rather, the court need only find those facts which are material to the resolution of the dispute.

Carpenter, 225 N.C. App. at 271, 737 S.E.2d at 785-86 (citations and quotation marks omitted).

Findings of fact "discuss[ing] the impact of [a] proposed move on the child" is warranted in making a best interests analysis. *Evans v. Evans*, 138 N.C. App. 135, 141, 530 S.E.2d 576, 580 (2000) (determining that the "trial court made no other findings about the effect of the proposed relocation on the child," which does not support the conclusion that "it is in the best interest of the child that the custody decree be amended."). "The trial court must make a comparison between the two applicants considering all factors that indicate which of the two is best-fitted to give the child the home-life, care, and supervision that will be most conducive to its well-being." *Id.* (internal citation and quotation marks omitted). In evaluating the best interests of a child in a proposed relocation, the trial court may consider the following factors:

> The advantages of the relocation in terms of its capacity to improve the life of the child; the motives of the custodial parent in seeking the move; the likelihood that the custodial parent will comply with visitation orders when he or she is no longer subject to the jurisdiction of the courts of North Carolina; the integrity of the noncustodial parent in resisting the relocation; and the likelihood that a

> realistic visitation schedule can be arranged which will preserve and foster the parental relationship with the noncustodial parent.

Id. at 142, 530 S.E.2d at 580 (citation, quotation marks, and brackets omitted).

In the present case, the trial court did not make an express finding that Defendant was a "fit and proper" person to have physical custody of the minor child. While an express finding is not fatal, it is when, as here, it is not implicit in the findings which the court did make. *In re Williamson*, 32 N.C. App. at 622, 233 S.E.2d at 681. The trial court made the following unchallenged findings that could arguably speak to Defendant's physical, mental, or financial fitness:

> 9. Since the entry of the April 4, 2017 Order, Defendant has not suffered from any mental health issues. Defendant sees a psychotherapist every few months in Canada. He also sees a family doctor who prescribes an anti-depressant.
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> 19. Until January 9, 2018, Defendant worked at mines in Canada, however on that date the mine closed and Defendant received a severance package. Since that time, Defendant performs contract mining work in various mines around Canada and sometimes other locations. . . .
>
> 43. On some occasions when Defendant is not working in the mines, he stays with his parents in Canada at their home.

While the trial court did address some aspects of fitness and it "need not make a finding as to every fact which arises from the evidence," it is required to "find those facts which are material to the resolution of the dispute." *Carpenter*, 225 N.C. App.

at 271, 737 S.E.2d at 785-86. In the present case, the material fact in issue is whether relocating the child to Canada is in the child's best interests.

Apart from the findings above, the only other finding the trial court made regarding the child and her relationship with Defendant was the following:

> 36. Defendant and the minor child have a good relationship. They bake together, including baking cake, bread and cookies. They also go fishing and pick figs and muscadines. At Easter, Defendant dyed Easter eggs with the minor child.

The trial court's findings instead focused on how Plaintiff's interference was not in the best interest of the child. While describing these difficulties is relevant to the best interests analysis, its overall findings fail to actually resolve the parties' disputes as to their respective fitness to exercise care, custody, and control of the child, and sufficiently explain why awarding primary custody to Defendant in Canada is in the child's best interests. The trial court did not make a comparison between the parties, and did not indicate Defendant would "be best-fitted to give the child the home-life, care, and supervision" that would be most conducive to the child's well-being. It is unclear where the child would live in Canada when not staying at Defendant's parents' home, and the findings do not indicate where the child would go to school, who would watch the child while Defendant was at work, and more importantly, how moving the child to Canada would affect the child's life.

"Overall, the trial court's findings of fact do not resolve the primary disputes between the parties and do not explain *why* awarding primary custody of [the minor

child] to [D]efendant is in [the minor child]'s best interest, and for this reason we must reverse the order and remand to the trial court for additional findings of fact, as well as conclusions of law and decretal provisions based upon those findings." *Carpenter*, 225 N.C. App. at 278-79, 737 S.E.2d at 790. Therefore, we reverse and remand.

Conclusion

Defendant's motion to modify custody adequately apprised Plaintiff of the possibility that modification could include a new custody arrangement. The trial court's findings of fact support its conclusions of law that a substantial change in circumstances affecting the welfare of the child had occurred since the entry of the Custody Order. However, we reverse and remand for the trial court to make additional findings regarding the effect relocation would have on the child and whether relocation is in the child's best interests. On remand, the trial court's conclusions of law must then reflect the impact of these additional findings.

AFFIRMED IN PART; REVERSED AND REMANDED IN PART.

Chief Judge MCGEE and Judge COLLINS concur.

Report per Rule 30(e).