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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-241

Filed: 1 October 2019

Cabarrus County, No. 13 CVD 179

SARAH E. RIOPELLE (COOPER), Plaintiff,

v.

JASON B. RIOPELLE, Defendant,

v.

LINDSEY and AVERY FULLER, Intervenors.

Appeal by defendant from orders entered 17 July 2018 and 8 November 2018 by Judge Donna H. Johnson in Cabarrus County District Court. Heard in the Court of Appeals 4 September 2019.

No brief filed for plaintiff-appellee.

Jason Riopelle, pro se defendant-appellant.

The Law Offices of Annette R. Heim, PA, by Annette R. Heim, for intervenors-appellees.

YOUNG, Judge.

RIOPELLE V. RIOPELLE

Opinion of the Court

Where the matter was no longer before the juvenile court, and a custody motion was properly before the court, the trial court did not lack subject matter jurisdiction to hear the custodial dispute. Where the parties stipulated to prior orders and filings, and the trial court considered these while relying upon its own reasoning, its findings of fact were properly supported by the evidence, and in turn supported its conclusions of law. Where appellant failed to show any evidence of misconduct, the trial court did not violate its duty of impartiality. Where the trial court's findings of fact and conclusions of law supported its determination, the trial court did not abuse its discretion in ordering that the father have supervised visitation with the minor child. We affirm the orders of the trial court.

I. Factual and Procedural Background

On 2 April 2013, the trial court entered a parenting agreement order, signed by Sara Emily Riopelle (mother) and Jason Bradley Riopelle (father), the parents of a minor child, which would govern custody and care of the minor child, R.R.¹ Mother subsequently filed a motion for emergency custody, and on 2 February 2015, the trial court entered an order on this motion, finding, *inter alia*, that R.R. had been severely injured while in mother's care, that R.R. was exposed to drug use while in father's care, and that while R.R. was present in his home, father beat his girlfriend, leaving her with life-threatening injuries. The court concluded that neither party was a fit

¹ To protect the privacy of the minor and for ease of reading, a pseudonym is used.

RIOPELLE V. RIOPELLE

Opinion of the Court

or proper person for custody of R.R. at the time, and ordered the parties to meet with the Cabarrus County Department of Human Services (DHS), which would place R.R. in nonsecure custody pending its investigation. Specifically, this order urged DHS to place R.R. with a relative, if possible.

On 6 February 2015, DHS filed a juvenile petition, alleging that R.R. was abused and neglected. In a reasonable efforts report, DHS expressed concerns “regarding father’s ongoing and severe history of domestic violence in the presence of the juvenile.” As a result, the trial court entered an order for nonsecure custody, placing R.R. in the custody of DHS and authorizing DHS to provide foster placement and any medical treatment needed.

On 12 September 2016, the trial court entered a permanency planning hearing review order. The court noted that, subsequent to its prior orders, R.R. had been placed with Lindsey and Avery Fuller (the Fullers), his maternal aunt and uncle. The court found that although mother had made some progress in addressing the issues which led to R.R.’s removal, this progress was not sufficient to ensure R.R.’s safety nor that mother could meet R.R.’s needs if he were returned to her care. The court found similarly with respect to father, that he had made progress in addressing the issues which led to R.R.’s removal but that the progress was not sufficient. The court also found that R.R.’s current placement with the Fullers was positive, and that R.R. got along well with his cousins and was receiving proper care. The court found that

visitation with both parents was appropriate, and concluded that legal guardianship of R.R. ought to be placed with the Fullers. The trial court therefore ordered legal guardianship with the Fullers and visitation with the parents, and a monitoring review hearing to be calendared several months later.

Father appealed this decision. In an unpublished opinion filed 5 July 2017, this Court held that, because the trial court awarded custody of R.R. to a third party without finding that father was unfit or acted inconsistently with his constitutional right to custody of R.R., failed to make other statutorily mandated findings, and failed to verify that the Fullers understood the legal consequences of guardianship or had appropriate resources to care for R.R., the trial court erred in ceasing reunification efforts, awarding guardianship to the Fullers, and awarding visitation to father. We therefore vacated the trial court's decision and remanded the matter for further proceedings. *In re R.R.*, ___ N.C. App. ___, 801 S.E.2d 711 (2017) (unpublished).

On 15 August 2017, father filed a motion for emergency custody, alleging that subsequent to this Court's decision, DHS was relieved of further obligation with respect to R.R., but R.R. remained in the care of the Fullers. Father therefore requested that the court return R.R. to his custody. Father subsequently filed an amended motion, alleging substantially the same facts.

On 20 December 2017, the trial court entered a status order on the case, outlining the timeline of the facts thus far. The court concluded that because the

RIOPELLE V. RIOPELLE

Opinion of the Court

jurisdiction of the juvenile court was terminated, the Chapter 50 action – that is, mother’s initial complaint which led to the DHS petition – was no longer stayed. The court further concluded that because father was not found unfit or to have acted inconsistently with his protected status as parent, he was entitled to visitation, but because of his history, visitation would have to be supervised. The trial court held that the temporary order of 2 February 2015,² ordering that R.R. be placed with a relative if possible, was still in effect; that a subsequent hearing should be held to consider whether father was a proper person to have custody of R.R.; and pending a hearing on the merits, R.R. was to remain in the custody of the Fullers. The court further noted that because mother’s whereabouts were unknown, visitation with her was not practical at that time.

On 28 December 2017, the Fullers moved to intervene, alleging their substantial relationship with R.R. The Fullers further alleged that mother and father “are unfit and have acted inconsistently with their parental rights and abdicated all parental responsibilities to” the Fullers. They further moved, as intervenors, to modify custody of R.R., granting the Fullers temporary and permanent custody. On 2 March 2018, the trial court entered a written consent order, in which the parties agreed to permit the Fullers to intervene, and calendared for subsequent hearing the

² The order refers to one dated 29 January 2015. However, it is clear from context that it refers to the 2 February 2015 order.

RIOPELLE V. RIOPELLE

Opinion of the Court

question of whether mother and father were proper persons to have custody of R.R., and whether custody with the Fullers was appropriate.

On 17 July 2018, the trial court entered an order on father's parental fitness (the parental fitness order). The order made extensive findings regarding the history of the case, and cited the DHS and police investigations into father's conduct, as well as the review hearings and various orders. The trial court then concluded that father had acted inconsistently with his constitutionally protected status as a parent, and calendared a further hearing to determine what would be in R.R.'s best interests.

On 2 August 2018, father moved to amend the findings of fact and conclusions of law in the parental fitness order, and for new trial. Specifically, father contended that there was no pending action to determine his parental fitness and that many of the findings in the order were unsupported by the evidence. Father therefore requested that the court amend its findings and conclusions, specifically that it lacked subject matter jurisdiction to enter an order on father's parental fitness, or alternatively that father be granted a new trial.

On 11 September 2018, the trial court entered an order on father's motions. The trial court found that father's motions were not timely filed; that there was in fact an order placing R.R. with a relative prior to the filing of the juvenile case by DHS; that the trial court entered a Chapter 50 status order which neither party appealed; that when father moved for emergency custody he failed to serve the

Fullers as required, and the order on that motion noted the need to determine father's parental fitness; and that the matter ultimately proceeded to hearing only after the Fullers were properly served and moved to intervene. The trial court concluded that, once the juvenile proceeding was terminated, the Chapter 50 action was no longer stayed, and that if third parties – such as the Fullers – become necessary litigants in a custody matter, it is mandatory for the trial court to determine parental fitness. The court therefore denied father's motions.

On 9 November 2018, the trial court entered an order modifying custody (the modification order). Once again, the trial court made extensive findings of fact regarding the history of the case. Specifically, the trial court took judicial notice of the prior orders of the case, and further found that father had failed to take responsibility for his conduct, that he had a history of dishonesty and violence, and that he had a lack of insight into his own behavior. The court concluded that there had been a substantial change in circumstances to warrant modification, that the Fullers were fit and proper persons to have care of R.R., and that placement with the Fullers was in R.R.'s best interests. The trial court therefore ordered that the Fullers receive full custody of R.R., that mother and father receive supervised visitation, and that father submit to counseling to “address his oppositional behavior.”

From the parental fitness order and the modification order, defendant appeals.

II. Subject Matter Jurisdiction

In his first argument, father contends that the trial court lacked subject matter jurisdiction to hear the issue of custody. We disagree.

A. Standard of Review

“Whether a trial court has subject-matter jurisdiction is a question of law, reviewed de novo on appeal.” *McKoy v. McKoy*, 202 N.C. App. 509, 511, 689 S.E.2d 590, 592 (2010).

B. Analysis

After the termination of the juvenile proceeding initiated by DHS, the trial court resumed jurisdiction over the Chapter 50 case. On appeal, father contends that this was error. Specifically, father argues that the legal status of R.R. and the custodial rights of the parents revert to what they were prior to the juvenile proceeding. Therefore, he argues, there was no case to be heard by the trial court in a Chapter 50 proceeding, and the court lacked subject matter jurisdiction.

In his 15 August 2017 motion for emergency custody, and in his brief on appeal, father correctly notes that “[t]he legal status of the juvenile and the custodial rights of the parties shall revert to the status they were before the juvenile petition was filed[.]” However, this is not the complete statutory language. The sentence continues, “unless applicable law or a valid court order in another civil action provides otherwise.” N.C. Gen. Stat. § 7B-201(b) (2017). Additionally, Chapter 50A provides that “a court of this State which has made a child-custody determination consistent

with G.S. 50A-201 or G.S. 50A-203 has exclusive, continuing jurisdiction over the determination” until either the child or parents no longer reside in, or have any connection to, the state. N.C. Gen. Stat. § 50A-202(a) (2017).

In other words, upon the entry of either the parenting agreement order, or the 2 February 2015 emergency custody order, the trial court acquired jurisdiction of this matter pursuant to Chapter 50A of the General Statutes. That jurisdiction was stayed during the pendency of the juvenile proceeding. Father correctly notes that, normally, upon the termination of the juvenile proceeding, custody would revert to where it was before. However, as the statute provides, custody reverts “unless applicable law or a valid court order in another civil action provides otherwise.” There was a valid court order – the 2 February 2015 emergency custody order, which ordered R.R. to be placed “with an appropriate relative for his safety and wellbeing.” This order, deciding the custody of a child, placed “exclusive, continuing jurisdiction” over that determination in the custody of the trial court, and we hold that it possessed subject matter jurisdiction to resume hearing the matter.

III. Child Custody

In his second, third, fourth, and fifth arguments, father challenges the trial court’s decision regarding child custody. For the following reasons, we disagree.

A. Standard of Review

“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.” *Shipman v. Shipman*, 357 N.C. 471, 474, 586 S.E.2d 250, 253 (2003). “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.” *Id.* at 475, 586 S.E.2d at 254.

“Absent 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).

B. Findings of Fact

Father first contends that the trial court abused its discretion in entering findings of fact which were not supported by competent evidence.

Father first argues that, in the parental fitness order, forty-nine out of fifty of the trial court’s findings of fact were “directly copied” from DHS material. He further alleges that the only “new” finding in the parental fitness order, that he “has about \$60,000.00 in the bank[,]” was erroneous. Father proceeds to list his issues with numerous findings, in detail. He then challenges the sufficiency of the findings of fact in the modification order, alleging “yet another massive misrepresentation” in regard to other allegations.

RIOPELLE V. RIOPELLE

Opinion of the Court

Father is correct that “the trial court’s factual findings must be more than a recitation of allegations.” *In re Anderson*, 151 N.C. App. 94, 97, 564 S.E.2d 599, 602 (2002). They must constitute “ultimate facts . . . sufficient for the appellate court to determine that the judgment is adequately supported by competent evidence.” *Montgomery v. Montgomery*, 32 N.C. App. 154, 156-57, 231 S.E.2d 26, 28 (1977).

Where father errs, however, is his insistence that the trial court’s reliance upon DHS records was improper. With regard to the parental fitness order, in one of the findings unchallenged by father, the trial court found that “[a]ll parties stipulated and agreed for the court to take judicial notice of [R.R.]’s juvenile file and his chapter 50 file.” Likewise, in the modification order, the trial court found that “[a]t the parties’ request, the Court takes judicial notice of all prior orders in this Chapter 50 file, all orders in the Chapter 7B file[], and, all evidence heard in the fitness portion of this matter[.]” Again, father does not challenge this finding.

Findings unchallenged on appeal are presumed supported by competent evidence, and binding upon this Court. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). “All parties” clearly includes father, which means that the trial court found that father stipulated to the trial court taking judicial notice of these records. And, with regard to the modification order, this stipulation included “all evidence heard in the fitness portion of this matter[.]”

RIOPELLE V. RIOPELLE

Opinion of the Court

The trial court did not err in relying on prior orders. The question is therefore whether the trial court was able to form its own basis for its ultimate findings, or whether it merely reiterated earlier findings verbatim.

With regard to the parental fitness order, setting aside the stipulated basis for the trial court's findings, the trial court entered extensive and detailed findings as to its reasoning. The court found that father "has acted inconsistent with his constitutionally protected status throughout [R.R.]'s life by clear, cogent and convincing evidence by creating an environment in which there is a substantial risk of harm to [R.R.]'s safety, health and welfare." The court found, *inter alia*, that father sold Percocet, a prescription medication; that father at one time dragged mother into a bedroom, held a gun to her head, smothered her with a pillow and tied her up; that father had on at least one occasion failed to return R.R. to mother at the end of his custody period; that while R.R. was placed in DHS custody, father failed to make reasonable progress in addressing the issues which led to R.R.'s removal; that father failed drug tests and failed to maintain contact with his social worker; that father had multiple issues of domestic violence throughout the proceeding; and that father continued to deny any wrongdoing or responsibility.

Likewise, the trial court's findings in the modification order were substantial and detailed. The court found that father used illegal drugs and was physically abusive and threatening towards his girlfriend; that mother left R.R. in the custody

RIOPELLE V. RIOPELLE

Opinion of the Court

of her boyfriend, during which time R.R. suffered severe injuries; that during R.R.'s time in DHS custody, both parents failed to make reasonable progress in addressing the issues which led to R.R.'s removal; that father has consistently failed to take responsibility for his conduct; and that father has shown "an elevated level of hostility toward others and a lack of insight into his own behavior."

In both orders, the trial court's findings show an analytical pattern and reason, not merely the prohibited regurgitation of prior text. And that is the test: whether the trial court reached its ultimate findings based upon its own reasoning, rather than merely adopting past reasons. It is clear to this Court, upon review of the record, that the trial court did indeed reach its own determinations about the facts of this case, despite relying upon the stipulated DHS reports before it.

Father's argument that these findings are simply based on the DHS reports may not have merit, but it does demonstrate father's understanding that these findings are supported by evidence. They in turn support the conclusions in each order: in the parental fitness order, that father "has acted inconsistent with his constitutionally protected status as a parent[,]" and in the modification order, that father is a fit and proper person to have visitation, but that it is in R.R.'s best interest to remain in the custody of the Fullers. In short, there is evidence to support the trial court's findings of fact, which in turn support its conclusions of law. As such, we hold that the trial court did not abuse its discretion in so finding.

C. Award of Custody

Father next contends that the trial court erred in granting custody of the minor child based on allegations not supported by competent evidence. Father offers bald, if concerning, allegations suggesting that the Fullers' counsel and the trial court "collectively worked together to prejudice the rights of the Defendant-Appellant father and his minor child[.]" Father offers no basis for his claims, simply alleging that the Fullers "fraudulently [made] accusations knowingly in an attempt to usurp custody of the minor child[.]" and that their attorney "made fraudulent hearsay accusations of drug use, domestic violence, unfitness, acting inconsistent with protected status as a parent," and other similar claims.

While these are unsettling allegations, they do not form the basis of an appeal. In essence, father argues that the Fullers' attorney engaged in misconduct. If he believes this to be true, the proper venue for such a grievance would not be an appeal to this Court.

Father also alleges that "the failure to plead and prove a substantial change of circumstances and the lack of appropriate findings in the order under review require reversal." Again, however, this allegation is erroneous. The Fullers were permitted to intervene by stipulation of the parties. As parties to the cause, the Fullers filed a motion to modify custody, properly pleading a substantial change of circumstances. Subsequently, in the modification order, the trial court entered findings to support a

determination that a substantial change of circumstances had indeed occurred, and conclusions which followed suit.

In sum, father's contention that the Fullers filed fraudulent allegations against him is baseless. Likewise, his contention that there was no proper pleading of a substantial change in circumstances, or findings or conclusions regarding same, is erroneous. We therefore hold that the trial court did not abuse its discretion with regard to considering the Fullers' pleadings.

D. Impartiality

Father further contends that the trial court violated its duty of impartiality. Specifically, father contends that the trial court would periodically interject with observations on father's guilt. However, the record is devoid of any evidence to substantiate father's claim. He refers to comments made by the trial court which are not found in the transcript. Given that there is no evidence in the record to support father's contention of improper conduct by the trial court, we dismiss father's allegations that the trial court erroneously violated its duty of impartiality. *See* N.C.R. App. P. 28(b)(6) (“[i]ssues . . . in support of which no reason or argument is stated, will be taken as abandoned”).

E. Visitation

Finally, father contends that the trial court erred in determining that visitation was reasonable. He contends that the trial court did not adequately

RIOPELLE V. RIOPELLE

Opinion of the Court

address why supervised visitation was required, why reasonable visitation was denied, or why he was a danger to the safety of R.R., among other issues.

Once again, however, father's argument is inaccurate. The trial court's findings show an inability by father to recognize his role in the removal of R.R. The findings show, quite simply, that custody with father is not presently appropriate or in R.R.'s best interests, and that based on his hostility and denial, leaving R.R. unsupervised with father would likewise not be in R.R.'s best interests. The court's order does leave open the possibility that, should father address his oppositional behavior and learn to create a safer home for R.R., unsupervised visitation might remain a future option. All of this is supported by the trial court's findings of fact and conclusions of law. Accordingly, we hold that the trial court did not abuse its discretion in ordering supervised visitation with father.

AFFIRMED.

Judges DIETZ and TYSON concur.

Report per Rule 30(e).