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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-907

Filed: 7 July 2020

Wake County, No. 15 CVD 11932

JOSE AQUINO, Plaintiff,

v.

LAPRECIOUS Z. CHAVIS, Defendant.

Appeal by defendant from order entered 26 April 2019 by Judge Anna Worley in Wake County District Court. Heard in Court of Appeals 29 April 2020.

Wyrick Robbins Yates & Ponton LLP, by R. Maria Hawkins, for plaintiff-appellee.

Marshall & Taylor, PLLC, by Travis Taylor, for defendant-appellant.

DIETZ, Judge.

Defendant LaPrecious Chavis appeals from an order modifying child custody. As explained below, our review is constrained by the narrow standard of review applicable to orders modifying child custody. The trial court's findings are supported by sufficient evidence in the record and those findings, in turn, support the court's determination that there was a substantial change in circumstances and that the new

custody arrangement is in the child's best interests. We therefore find no abuse of discretion in the trial court's modification order.

Facts and Procedural History

Jose Aquino and LaPrecious Chavis are the parents of a minor child. In 2016, as part of a family law proceeding, the court approved a parenting agreement and incorporated it into a custody order that provided for joint legal and physical custody.

Both parties later moved to modify the custody order. In November 2018, the trial court held a hearing and received evidence on the parties' respective motions. Following the hearing, the trial court entered an order modifying child custody. The order maintained joint legal custody but awarded primary physical custody to Aquino with regular visitation for Chavis. The order included detailed findings of fact and conclusions of law. Chavis timely appealed the modification order.

Analysis

I. Change in circumstances supporting modification

Chavis first argues that there was insufficient evidence to support the trial court's conclusion that there was a substantial change in circumstances. Chavis also argues that the order fails to explain the nexus between the changed circumstances and their impact on the welfare of the child. Under the applicable standard of review, we must reject these arguments.

“It is a long-standing rule that the trial court is vested with broad discretion in cases involving child custody.” *Pulliam v. Smith*, 348 N.C. 616, 624, 501 S.E.2d 898, 902 (1998). The decision of the trial court should not be upset on appeal absent a “clear showing” of abuse of discretion. *Id.* at 625, 501 S.E.2d at 902. We review a trial court’s fact-finding in a modification order to determine if those findings are supported by “substantial evidence,” defined as evidence that “a reasonable mind might accept as adequate to support a conclusion.” *Id.* at 625, 501 S.E.2d at 903.

A trial court “may order a modification of an existing child custody order between two natural parents if the party moving for modification shows that a ‘substantial change of circumstances affecting the welfare of the child’ warrants a change in custody.” *Shipman v. Shipman*, 357 N.C. 471, 473, 586 S.E.2d 250, 253 (2003). “When a trial court modifies a custody order, the requisite change in circumstances cannot be inconsequential or minor, but rather must significantly affect the welfare of the children.” *Stephens v. Stephens*, 213 N.C. App. 495, 499, 715 S.E.2d 168, 171 (2011). “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.” *Id.* at 499, 715 S.E.2d at 172. If the court finds a substantial change in circumstances affecting the child’s welfare, the court must then determine, in its discretion, whether modifying the existing custody order serves the child’s best interests. *Id.* at 503, 715 S.E.2d at 174.

Here, the trial court found that the child had reached the age to be “registered for full-time public school.” At the time of the initial custody order, the parties lived relatively close to each other, with Aquino living in Wake County and Chavis in Oxford. Chavis later moved to Mecklenburg County. The existing order provided for equal physical custody in an alternating week on/week off schedule.

The court found that because Chavis moved to Mecklenburg County, the parties were now living much further apart and “the parties can no longer exercise a week on/week off custodial schedule” while also providing the child with a stable, full-time school opportunity. These findings were the primary basis for the court’s determination of a substantial change in circumstances.

The trial court also found that Aquino’s living and employment conditions were more suitable for full-time schooling. Specifically, the trial court made detailed findings addressing the importance of stability and the availability of appropriate schooling options and why the court’s decision based on these factors served the child’s best interests:

15. The Court has concerns regarding the lack of stability Defendant will be able to provide, due to Defendant moving several times in a short period of time and her changes in employment.

...

19. Plaintiff can provide stability and consistency for the minor child. Plaintiff has lived in the same home since the parties separated and has worked in the same field for over

ten years. Up until recently Plaintiff worked for the same company, but he moved employers within the last year to have more flexibility in his schedule for his family.

20. Plaintiff obtained a new job title a little over a year ago that allows more flexibility in his schedule and he does not have to work when there is inclement weather, including rain.

Based on these findings and the court's further finding that "[s]tability is important for the minor child, especially considering her age," the court found that "it is in the best interests of the minor child" that custody be modified to grant Aquino primary physical custody with regular visitation for Chavis.

These findings of fact are supported by the record and are sufficient to permit the trial court, in the exercise of its broad discretion, to find both a substantial change in circumstances warranting the modification of custody and an evident nexus between the change in circumstances (the need for a stable, full-time schooling opportunity) and the welfare of the child. *Stephens*, 213 N.C. App. at 499, 715 S.E.2d at 172. Accordingly, we hold that the trial court's decision to modify custody based on a substantial change in circumstances was within the trial court's sound discretion.

II. Failure to resolve disputed issues in the findings of fact

Chavis next argues that the trial court failed to resolve key factual disputes in its findings of fact. Specifically, she contends that the trial court failed to resolve fact disputes concerning allegations that Aquino's wife caused the child physical and emotional distress. We reject this argument.

“[W]hen the court fails to find facts so that this Court can determine that the order is adequately supported by competent evidence,” we must vacate the order and remand for further findings of fact. *Crosby v. Crosby*, 272 N.C. 235, 238–39, 158 S.E.2d 77, 80 (1967). Here, Chavis argues that she raised “allegation[s] of physical abuse on more than one occasion by Mr. Aquino’s wife, Jasmine Aquino, against the minor child.” Chavis argues that the trial court failed to resolve this issue as well as other, related issues that arise from interpersonal conflicts between Chavis and Aquino’s wife, and that these unresolved issues prevent this Court from engaging in meaningful appellate review.

We do not agree that the trial court ignored these fact disputes. The court addressed those allegations in a number of findings:

34. Defendant has accused Plaintiff’s wife of corporally punishing the minor child. Plaintiff first became aware of this allegation when Defendant filed her motion to modify child custody almost a month after the alleged incident occurred in June of 2018.

35. On or about August 5, 2017, Defendant notified Plaintiff of a bruise whose color was that of a bruise that was at least a day old. Plaintiff was unaware of where this bruise came from and his wife denies ever corporally punishing or physically assaulting the minor child.

36. Defendant has never called Child Protective Services or taken any other action related to allegations of abuse or corporal punishment by Plaintiff or his wife other than filing her motion to modify child custody. . . .

37. Plaintiff’s wife became uncomfortable with Defendant

when Defendant did not ask her about the allegations of corporal punishment.

These findings demonstrate that the court heard the parties' conflicting evidence and found Chavis's allegations of abuse not sufficiently credible to impact its determination concerning the child's best interests. *See Peters v. Pennington*, 210 N.C. App. 1, 12–13, 707 S.E.2d 724, 733 (2011). We are bound by those findings, which are sufficient to permit this Court to engage in meaningful appellate review, and we therefore reject Chavis's challenge based on the purported failure to resolve disputed questions of fact.

Conclusion

We affirm the trial court's order.

AFFIRMED.

Judges ZACHARY and MURPHY concur.

Report per Rule 30(e).