IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-440

No. COA21-26

Filed 17 August 2021

Catawba County, No. 17 CVD 1148

CASSANDRA MICHELE STARNES, Plaintiff,

v.

CARRIE ELIZABETH STARNES, Defendant.

Appeal by Defendant from order entered on 30 July 2020 by Judge David Aycock in Catawba County District Court. Heard in the Court of Appeals 25 May 2021.

No brief for the Plaintiff-Appellee.

Wesley E. Starnes for the Defendant-Appellant.

JACKSON, Judge.

¶ 1 Carrie Starnes ("Defendant") appeals from the trial court's order awarding Cassandra Starnes ("Plaintiff") primary physical custody and joint legal custody of their children. We affirm the order of the trial court.

I. Background

¶ 2 Defendant gave birth to triplets on 16 November 2011. At the time of the children's birth, the parties were not married. Plaintiff and Defendant, however,

married on 31 July 2015. Plaintiff later adopted the children in March 2017. From the minor children's birth until the parties separated on 21 April 2017, the children resided with both parties, under the same roof. Following the separation, Plaintiff filed a Complaint, Motion for Emergency Child Custody, Motion for Comprehensive Parental Fitness Evaluation, and Motion for Interim Distribution.

¶ 3 In the Complaint, Plaintiff alleged that Defendant is neither fit nor proper to have custody of the minor children. Plaintiff alleged further that Defendant has a history of mental illness, prescription drug abuse, and violence; that Defendant has physically assaulted and threatened to kill Plaintiff on several occasions in the presence of the children; that Plaintiff has also physically assaulted the parties' friends and associates in the presence of the minor children; that Defendant shot and killed the family dog; that Defendant was diagnosed with a personality disorder and bipolar disorder; that Defendant has a history of suicidal ideations, threats, and actions; and that Defendant fails to appropriately care for and supervise the minor children.

¶ 4 An *ex parte* order was entered on the issue of emergency child custody on 25 April 2017, granting Plaintiff "exclusive sole legal and physical custody of the minor children[.]" In the order, the court found that Plaintiff was fit and proper to have custody of the minor children, and it was in the best interests and welfare of the children that their temporary custody, care, and control be vested with Plaintiff.

Defendant filed an Answer, Motion to Dismiss, and Counterclaim on 30 May 2017. Defendant's counterclaim included causes of action for child custody, child support, post separation support, alimony, equitable distribution, and attorney's fees.

¶ 5 On 23 June 2017, a Memorandum of Judgment/Order of temporary custody was filed, directing the parties to follow a 50/50 custodial schedule pending further order of the court. The matter came on for trial on 8 July 2020 and concluded on 9 July 2020 before the Honorable David Aycock in Catawba County District Court. Following the hearing, the court took the matter under advisement and later filed a custody order on 30 July 2020 awarding Plaintiff primary physical custody of the minor children.

¶ 6 Defendant filed a notice of appeal on 28 August 2020.

II. Analysis

A. Infidelity Evidence

¶ 7 First, Defendant argues that the trial court erred when it refused to allow her to offer evidence of Plaintiff's infidelity. We disagree.

¶ 8 Our courts have long recognized that trial judges have the difficult task of sorting through highly contested domestic matters that involve innocent children. *In re Custody of Peal*, 305 N.C. 640, 645, 290 S.E.2d 664, 667 (1982). Because the presiding judge in these matters have "the unique opportunity of seeing and hearing the parties, witnesses and evidence at trial," the judge is entrusted with broad

discretion in choosing the "environment which will, in his judgment, best encourage full development of the child's physical, mental, emotional, moral and spiritual faculties." *Id.* at 645, 290 S.E.2d at 667 (internal citation omitted).

¶ 9 This discretion is authorized in N.C. Gen. Stat. § 50-13.2, which provides that:

> An order for custody of a minor child entered pursuant to this section 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) (2019) (emphasis added).

¶ 10 Thus, "the paramount consideration and polar star, which have long governed and guided the discretion of our trial judges in [these] matters, are the welfare and needs of *the child*, not the persons seeking his or her custody, and even parental love must yield to the promotion of those higher interests." *Peal*, 305 N.C. at 645-46, 290 S.E.2d at 667-68 (internal marks and citations omitted). To that end, "[a] trial court may be reversed for abuse of discretion only upon a showing that its actions are manifestly unsupported by reason . . . [or] upon a showing that [its ruling] was so arbitrary that it could not have been the result of a reasoned decision." *White v.*

White, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985).

¶ 11 Here, the presiding judge, upon hearing evidence from both parties, took the matter under advisement. Following the hearing, the court made the following relevant findings, on the record, regarding the environment in which the minor children were living: (1) the boys were oftentimes still wet from the night before and had not been fed breakfast while left in Defendant's care; (2) Defendant exhibited a short temper, frequently cursed at the children, and was less involved with the day-to-day needs of the children; (3) friends of the parties were concerned about the number of pills Defendant took and Defendant's mood swings; (4) Defendant shot and killed the family dog while the children were present and on one instance beat a horse in the face with her fist; (4) the family's mental health counselor testified that while counseling the family, Defendant would express agreement with a plan and then undermine the plan at home by changing rules and would not follow recommendations made by the counselor; (5) several individuals reported that Defendant hit the minor children—on one occasion with a spatula that left a bruise; (6) the children reported to their therapist that they feel more comfortable while being in Plaintiff's home and more anxious while in Defendant's home; (7) Defendant physically assaulted several individuals including Plaintiff and a close friend of the parties; and (8) Defendant had issues with prescription drug abuse and exhibited signs of depression. The court also recognized that (1) Plaintiff had testified that

Defendant had been diagnosed with bipolar disorder and postpartum depression, and at some time had entered a rehab facility; and (2) Defendant had provided testimony denying many of the allegations and providing that she did not agree with the diagnosis made by doctors about her mental health. The court also noted that it found Defendant's testimony to be "evasive, defensive, hyperliteral, self-serving and not remotely credible."

¶ 12 Altogether, the trial judge's recount of testimony and evidence presented during the trial shows that the judge considered all the *relevant evidence*—including possible domestic violence, drug use, mental health issues, and neglect—needed to "resolve important questions raised by the evidence which bear directly on the best interests of the child[ren][.]" *Green v. Green*, 54 N.C. App. 571, 575, 284 S.E.2d 171, 174 (1981). Here, such relevant evidence did not include evidence of infidelity, because there was never a showing that infidelity somehow effected the wellbeing of the children. This Court, in *In re McCraw Children*, 3 N.C. App. 390, 395, 165 S.E.2d 1, 4 (1969), explained that "[e]vidence of adulterous conduct, like evidence of other conduct, is relevant upon an inquiry of fitness of a person for the purpose of awarding custody of minor children to him or to her." However, it is not the court's function "to punish or reward a parent by withholding or awarding custody of the minor children; the function of the court in such a proceeding is to diligently seek to act for the best interests and welfare of the minor child." *Id.* at 395, 165 S.E.2d at 5.

¶ 13 It is clear from Plaintiff's own testimony that she was, for some period of time, unfaithful in her marriage, which without question could destabilize her relationship with Defendant, but no evidence tends to show she was ever neglectful of the care of the children. Indeed, Defendant's only claim is that Plaintiff's infidelity played a role in *Defendant's "issues,"* as if to justify her anger and prescription drug abuse. These accusations, however, only confirm the trial court's original finding that Defendant is "defensive and evasive" about her own shortcomings, and in no way proves that the admitted infidelity negatively affected the children's wellbeing—which is the court's paramount consideration. *See In re Poole,* 8 N.C. App. 25, 29, 173 S.E.2d 545, 548 (1970) (holding that "[t]he welfare of the children is the determining factor in the custody proceedings and the award of custody based on that factor will be upheld when supported by competent evidence").

¶ 14 Accordingly, the trial court did not abuse its discretion in refusing to consider evidence regarding infidelity on the part of Plaintiff as disabling, as Defendant failed to make a showing that the Plaintiff's infidelity negatively affected the welfare or best interest of the children.

B. Challenged Factual Findings

¶ 15 Next, Defendant challenges Findings of Fact 31 and 56, in which the court found:

> 31. After the triplets were born, the Plaintiff Cassandra

> Michele Starnes noticed a change in Defendant Carrie Elizabeth and that those changes were exacerbated by the Defendant's use of pain medication and alcohol. The Defendant Carrie Elizabeth Starnes was more often angry, depressed and stayed in bed frequently. The Defendant had received more prescriptions for pain medicine without the Plaintiff knowing and kept stashed [sic] of those medications around the house. She ultimately sought medical treatment with Dr. Thomas McKean in Hickory. The Defendant Carrie Elizabeth Starnes was diagnosed with bi-polar disorder as well as postpartum depression and that prior to entering a rehab facility the plaintiff specifically recalled holding the Defendant while she was shaking due to the withdrawal from these prescription medications. That condition never got any better during the period of their marriage prior to the date of separation.
>
> 56. The Defendant Carrie Elizabeth Starnes specifically denies ever being diagnosed as bipolar in contradiction of the medical records that were received both in Plaintiff's Exhibit #4 and Defendant's Exhibit #1.

¶ 16 Defendant contends that these findings are not supported by the evidence. Specifically, Defendant argues that the medical records entered into evidence do not indicate that she was diagnosed with a bipolar disorder, but indicate that Defendant suffered from an "unspecified mood disorder" or "episodic mood disorder." Thus, Defendant believes that the trial court misinterpreted the evidence. We disagree.

¶ 17 In child custody cases, "[t]he trial court's findings of fact are conclusive on appeal if there is [competent] evidence to support them, even though the evidence might sustain findings to the contrary." *Estroff v. Chatterjee*, 190 N.C. App. 61, 68, 660 S.E.2d 73, 77 (2008) (internal marks and citation omitted). Unchallenged

findings of fact, however, are "presumed to be supported by competent evidence and [are] binding on appeal." *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) (internal citations omitted). Competent evidence is such relevant evidence as "a reasonable mind might accept as adequate to support the finding." *State v. Wiles*, 270 N.C. App. 592, 597, 841 S.E.2d 321, 325 (2020).

¶ 18 In the present case, the court heard from several lay witnesses about Defendant's health. Our Court has explained that

> [t]he North Carolina Rules of Evidence permit lay witnesses to offer opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue. Further, Rule 602 of the North Carolina Rules of Evidence provides that lay witnesses may not testify to a matter unless they have personal knowledge of the matter. A lay witness who has had a reasonable opportunity to observe another may offer an opinion on the issue of mental capacity. Lay witnesses who have personal knowledge of a person's mental state may also give an opinion as to an emotional state of another. However, lay witnesses may not offer a specific psychiatric diagnosis of a person's mental condition.

State v. Storm, 228 N.C. App. 272, 277-78, 743 S.E.2d 713, 717 (2013) (internal marks and citations omitted).

¶ 19 During the hearing, Plaintiff gave the following testimony regarding Defendant's mental health:

> Q: Did she receive a diagnosis from Dr. McKean that you were present for?

> A: The diagnosis at the time was bipolar, postpartum.
>
> Q: By that you mean postpartum depression?
>
> A: Uh-huh.
>
> . . .
>
> Q: Your notes tell me that you testified that Carrie had been diagnosed with bipolar?
>
> A: Uh-huh.
>
> Q: Who do you say diagnosed her?
>
> A: Dr. McKean
>
> Q: Who?
>
> A: First Dr. Chambers, which is a family doctor and then Dr. McKean later on.

¶ 20 In giving her testimony, Plaintiff did not offer a specific psychiatric diagnosis. Instead, Plaintiff provided testimony about an event for which she allegedly possessed firsthand knowledge. Indeed, the question posed by counsel simply called for Plaintiff to recall a doctor's visit in which Plaintiff was present. Plaintiff testified that during that visit, the doctor diagnosed Defendant with bipolar disorder and postpartum depression. Plaintiff's testimony was supported by the following testimony, offered by Defendant, regarding a neuropsychological evaluation performed in the summer of 2016:

> Q: And so you are aware, therefore, that it said, Ms. Starnes was diagnosed with bipolar disorder, postpart [sic] depression six months after giving birth to her triplets?

A: (Unintelligible.)

Q: Ma'am, are you familiar that it says that?

A: (No audible response.)

Q: You said you were familiar with your records; correct?

A: Yes.

Q: So you know that Bluff Plantation, the neuropsychological evaluation of 6/4/ of '16 specifically says diagnosed with bipolar disorder and postpart [sic] depression.

A: There are –

Q: You know that the neuropsychological evaluation says that?

A: No.

. . .

Q: And you are aware, therefore, that the professional neuropsychological evaluation says diagnosed bipolar disorder and postpart [sic] depression, yes or no?

A: No.

Q: I didn't say whether you agreed with it, you're aware that it says that?

A: No.

Q: So if I'm reading those verbatim, you're not familiar with it or you just disagree with it, which one?

A: Both

¶ 21 Because our courts have long recognized that it is the duty of the trial judge to

"pass upon the credibility of the witnesses and the weight to be given their testimony and the reasonable inferences to be drawn therefrom," *In re D.L.W.*, 368 N.C. 835, 843, 788 S.E.2d 162, 168 (2016) (internal marks and citations omitted), and the court received testimony from Plaintiff regarding a firsthand event for which Plaintiff acknowledged that Defendant was diagnosed with bipolar disorder by a doctor, we hold that the trial court's Findings of Fact 31 and 56 are supported by competent evidence.

C. Vouching

¶ 22 Next, Defendant argues that the trial court erred in allowing Tara Carlson Hedrick, a licensed mental health counselor ("Ms. Hedrick"), to testify about the veracity of the claims of the minor children. We disagree.

¶ 23 Our Court has held that "when one witness 'vouch[es] for the veracity of another witness,' such testimony is an opinion which is not helpful to the jury's determination of a fact in issue and is therefore excluded by Rule 701." *State v. Gobal*, 186 N.C. App. 308, 318, 651 S.E.2d 279, 286 (2007) (quoting *State v. Robinson*, 355 N.C. 320, 335, 561 S.E.2d 245, 255 (2002)). Thus, "testimony of an expert to the effect that a prosecuting witness is believable, credible, or telling the truth is inadmissible evidence." *State v. Bailey*, 89 N.C. App. 212, 219, 365 S.E.2d 651, 655 (1988).

¶ 24 Here, Ms. Hedrick was tendered by the Plaintiff and accepted by the court, without objection from Defendant, as an expert in the field of licensed clinical mental

health counseling. She testified that she had begun providing counseling to the parties' family in September 2019. During that time, Ms. Hedrick provided recommendations and tools to assist the family based on conversations she had with the minor children and her own observations and assessment of the minor children's behavior.

¶ 25 During her testimony, Ms. Hedrick made the following statements:

> Q: If you can, I'm going to ask you about you said you had a conversation with Cassandra that was I think borne out by your sessions that things were escalating after the sessions. What does that mean?
>
> A: That the boys seemed to -- when I would try to implement things for them to be helpful at home, specifically Carrie's house, that the boys would come back very distressed with the undermining that was happening which I agreed with. With what they were indicating to me it seemed as though it was creating more stress than what needed to be there. And so, you know, about, hey, do you continue counseling. Do we pause for now. I encouraged, hey, you know, my recommendation is that they continue counseling, whether with me or with someone else.
>
> Q: Did you address with Carrie the fact that you felt that your suggestions or implementations at her house to help the boys were being undermined?
>
> A: There were times that she and I communicated with each other regarding the implementation and the barriers surrounding my recommendations at her home, so the implementing the specific rules, writing them down. We discussed how the rules were phrased in a negative fashion and we needed to phrase them in a more positive, encouraging way and there was some lack of want to do that.

¶ 26 Defendant contends that by making these statements, Ms. Hedrick vouched for the veracity of the minor children. This contention, however, is without merit. Ms. Hedrick's testimony only related to her expert knowledge and personal observation/examination of the minor children. Indeed, she only repeated statements that were made to her while counseling the boys and provided her professional observation that the children were stressed and anxious when they returned to her after staying with Defendant.

¶ 27 Thus, Ms. Hedrick's testimony was admissible because her statements only entailed what she observed throughout her counseling sessions with the minor children and in no way weighed upon the truthfulness or credibility of the minor children.

D. Unresolved Factual Issues

¶ 28 Lastly, Defendant argues that the trial court erred by failing to resolve numerous factual issues that were raised by the evidence. Specifically, Defendant argues that the issues raised regarding Plaintiff's alleged infidelity and whether Plaintiff had previously shot the family dog were unresolved. Defendant further contends that 14 of the court's findings of fact do not resolve the evidence raised, but merely restate testimony. We address each issue in turn.

1. 14 Challenged Findings

In all actions tried upon the facts without a jury or with an

> advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment. Pursuant to Rule 52(a), the trial court's findings of fact must be more than mere evidentiary facts; they must be the specific ultimate facts . . . sufficient for [an] appellate court to determine that the judgment is adequately supported by competent evidence.

Williamson v. Williamson, 140 N.C. App. 362, 363-64, 536 S.E.2d 337, 338 (2000) (internal marks and citation omitted).

¶ 29 However, "[w]e have said that the trial judge is not required to find all the facts shown by the evidence, but only enough material facts to support the judgment." *Green*, 54 N.C. App. at 575, 284 S.E.2d at 174. Thus, the trial court is not required to make findings regarding all the evidentiary facts of the case, but only the ultimate facts. *In re Custody of Stancil*, 10 N.C. App. 545, 549, 179 S.E.2d 844, 847 (1971).

¶ 30 As Defendant correctly points out, a number of the trial court's findings of fact "are not the 'ultimate facts' required by Rule 52(a), but rather are mere recitations of the evidence and do not reflect the 'processes of logical reasoning[.]'" *Williamson*, 140 N.C. App. at 364, 536 S.E.2d at 339 (citations omitted). Specifically, findings of fact 39, 41, 47, 48, 55, 58, and 59 summarize small portions of testimony given by Plaintiff, Defendant's stepfather, Defendant's mother, and Defendant. "This is indicated by the trial court's repeated statements that a witness 'testified' to certain facts or other words of similar import." *Id.*

¶ 31 Even still, our Supreme Court has recognized that where a challenged finding is not necessary to support a trial court's conclusions, appellate review is unnecessary. *In re C.J.*, 373 N.C. 260, 262, 837 S.E.2d 859, 860 (2020). Accordingly, we hold that Findings of Fact 39, 41, 47, 48, 55, 58 and 59 were not necessary to support the trial court's conclusions of law. Indeed, the court had ample unchallenged findings of fact, which are binding on appeal, to support its conclusions of law. *Koufman*, 330 N.C. at 97, 408 S.E.2d at 731.

¶ 32 Defendant's remaining challenges to Findings of Fact Eight, 15, 17, 23, 27, 29, and 32, are without merit. Each of these findings are specific ultimate facts "reached by processes of logical reasoning" and derived from testimony given by witnesses. *Williamson*, 140 N.C. App. at 364, 536 S.E.2d at 339. For example, Finding of Fact 15 provides:

> 15. The court heard testimony from the boys' two Godmothers, the first of whom was Carolyn Moretz, who met the parties through their care of her dog at their business, Paw Tales, LLC. Prior to separation, 2017, Ms. Moretz often visited with the boys as often as she could, usually at the house in the late morning. Many times, when she arrived in late morning, she found the boys at the time still wet from the night before, that they had often not been fed breakfast. Oftentimes the Defendant Carrie Elizabeth Starnes, who was caring for the boys while Plaintiff Cassandra Michele Starnes was at work, would often not be out of bed. Ultimately these observations caused discord between Ms. Moretz and Carrie. She did not always feel good about Carrie's care of the boys, that she exhibited a short temper, and was less involved with

> their day to day needs that she felt was appropriate. She was also concerned about the number of pills Carrie was taking. While Ms. Moretz was visiting in the home prior to separation she saw what she described as the "disintegration of a person." She saw Carrie exhibit signs of frequent cursing, road rage, throwing food. That cursing was frequent and directed toward the boys as well as others.

¶ 33 This finding is not a mere recitation of testimony. Instead, the court explained that it heard testimony from the children's godmothers and then goes on to find as fact that portions of their testimony are factual and supported by the testimony given. Because the trial court was in the best position to pass upon the "credibility of the witnesses and the weight to be given [to] their testimony," *In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000), we find that the Findings of Fact Eight, 15, 17, 23, 27, 29, and 32 are sufficient.

2. Unresolved Issues

¶ 34 Lastly, Defendant argues that Findings of Fact 20 and 54 failed to resolve factual disputes raised by the evidence. Specifically, Defendant argues that the trial court should have made findings regarding whether Plaintiff also shot the family dog and whether Plaintiff was unfaithful in their marriage.

¶ 35 As the Court previously stated, "the trial judge is not required to find all the facts shown by the evidence, but only enough *material* facts to support the judgment." *Green*, 54 N.C. App. at 575, 284 S.E.2d at 174. Thus, the court was not required to

make findings regarding Plaintiff's admitted infidelity, as it was not necessary to support the court's findings and conclusions.

¶ 36 Findings of Fact 20 and 54 provide:

> 20. Ms. McCall frequently saw Carrie have mood swings that would occur out of the blue and frequently used bad language in front of the children. She also witnessed incidents of road rage with Carrie driving the car. She frequently saw her exhibit little to no patience. She was aware that there had been an instance in which Carrie shot and killed the family dog. She personally saw Carrie beat a horse in the face with her fist.
>
> 54. The Defendant Carrie Elizabeth Starnes does acknowledge that she did shoot the family dog based on her belief that it was aggressive. At the time the boys were in the garage and approximately two (2) years old.

¶ 37 Defendant contends that the court failed to consider her testimony in which she testified that Plaintiff also shot the family dog two weeks prior to Plaintiff killing the dog. Defendant's objection to the trial court's characterization of this testimony amounts to a request that we re-assess the credibility of her testimony, which "we cannot and will not do." *Laprade v. Barry*, 253 N.C. App. 296, 302, 800 S.E.2d 112, 116 (2017). The trial court was in the best position to pass upon the "credibility of the witnesses and the weight to be given [to] their testimony." *Gleisner*, 141 N.C. App. at 480, 539 S.E.2d at 365. Accordingly, we hold that Findings of Fact 20 and 54 are supported by competent evidence.

III. Conclusion

¶ 38 The trial court has wide discretion in custody cases and did not err in consideration of evidence of Plaintiff's admitted infidelity without a proper showing that the infidelity somehow negatively affected the children's wellbeing. Furthermore, the trial court's findings of fact regarding Defendant's bipolar disorder were supported by competent evidence, and the remaining findings and conclusions sufficiently resolved the ultimate facts of the case. Thus, we affirm the trial court's order awarding Plaintiff primary physical custody and joint legal custody of the minor children.

AFFIRMED.

Judges DILLON and TYSON concur.

Report per Rule 30(e).