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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-854

No. COA22-406

Filed 20 December 2022

Cabarrus County, No. 20-CVD-302

KELLY TAYLOR GRAEFF, Plaintiff,

v.

MICHAEL FREEMAN GRAEFF, Defendant.

Appeal by defendant from order entered 16 September 2021 by Judge Michael G. Knox in Cabarrus County District Court. Heard in the Court of Appeals 1 November 2022.

Touchstone Family Law, by Brione B. Pattison, for the Plaintiff.

Michael Freeman Graeff, Pro Se.

DILLON, Judge.

¶ 1 Plaintiff (“Mother”) appeals from an order granting Defendant (“Father”) primary physical custody of their two minor children, Charles and Hailey¹.

I. Background

¶ 2 Mother and Father were married in 1994 and separated in 2020. They have

¹ Pseudonyms. See N.C. R. App. P. 42(b)(1).

five children together, two of which are currently minors and the subject of this custody action.

¶ 3 The parties and children previously lived in Germany. In August 2019, Mother and the children moved into a home in North Carolina. Two months later, in October 2019, Mother informed Father she wanted a divorce. The next month, Father moved back to North Carolina.

¶ 4 Three months later, on 7 February 2020, the trial court entered an *ex parte* order upon Mother’s motion, which in part awarded Mother custody of the children.

¶ 5 On 17 April 2020, the trial court entered a temporary custody order, awarding the parties joint legal and physical custody of the children. Both parties followed this weekly custody schedule.

¶ 6 Finally, on 16 September 2021, the trial court entered a permanent custody order (“Order”), awarding primary physical custody of the children to Father. Mother timely appealed.

II. Analysis

¶ 7 Mother argues on appeal that the trial court committed reversible error by entering the Order granting primary physical custody of the two minor children to Father. We affirm the trial court’s Order.

¶ 8 Trial courts are vested with great deference in matters related to child custody. *In re C.V.D.C.*, 374 N.C. 525, 529, 843 S.E.2d 202, 204 (2020). In making a custody

determination, the trial court must determine which party will promote the best interest and welfare of the minor children. *Price v. Howard*, 346 N.C. 68, 72, 484 S.E.2d 528, 530 (1997).

¶ 9 We review a trial court’s custody determination for abuse of discretion. *Pulliam v. Smith*, 348 N.C. 616, 631, 501 S.E.2d 898, 906 (1998). “A trial court may be reversed for abuse of discretion only upon a showing that its actions are manifestly unsupported by reason. . . . [and] 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) (internal citation omitted).

¶ 10 Mother argues on appeal that the factual findings contained in the Order do not support the custody award.

¶ 11 Mother first challenges many of the trial court’s findings on the basis that they are “merely recitations of testimony”, which are insufficient to support conclusions of law. *See Sherrill v. Sherrill*, 275 N.C. App. 151, 167, 853 S.E.2d 246, 257 (2020); *In re Anderson*, 151 N.C. App. 94, 96-97, 564 S.E.2d 599, 601-02 (2002). While Mother is correct that recitations of testimony alone are insufficient to sustain a custody order, the remaining factual findings in the Order which are not mere recitations of the evidence, but are in fact findings, are sufficient to support the trial court’s award of custody to Father. Specifically, the court found:

38. That [Father] became very involved with the children’s

schooling in April of 2020.

52. That [Father] is more attentive than [Mother] to the physical hygiene of the minor children including making sure they are showered; their nails are clean and manicured; their teeth are brushed; and [Hailey's] hair is appropriately brushed and styled often putting her hair into elaborate braids and designs which he has done throughout her life.

56. That since returning to the United States [Father] has become much more involved in the day to day activities of the children, particularly their schooling, and [Mother] has become much less involved with the day to day activities of the children.

64. [Mother] has engaged in activities which make the minor children feel uncomfortable when they are in her care including sunbathing nude on the back deck of the former marital home.

69. That schoolwork for [Charles and Hailey] has been challenging as Covid 19 has required remote learning. This has been especially challenging for [Charles] which has required extra effort to make certain his assignments are completed. While each parent had their own method of handling this, [Father] was more hands on and attentive to the children's schoolwork than was [Mother].

Based on these findings, we cannot say that the trial court abused its discretion in determining that it is in the best interests of Charles and Hailey that Father have

primary physical custody.

¶ 12 Next, Mother challenges many of the trial court’s findings on the basis that the trial court neglected to resolve numerous disputed issues in the case. *See Carpenter v. Carpenter*, 225 N.C. App. 269, 737 S.E.2d 783 (2013) (reversing a trial court’s custody order because “many of the findings of fact are actually recitations of evidence which do not resolve the disputed issues”). *See also Hall v. Hall*, 236 N.C. App. 657, 765 S.E.2d 553 (2014). However, Mother mischaracterizes many of the trial court’s factual findings as disputed issues when in fact, they are factual statements that *did not* raise a dispute at trial but instead provided support for the trial court’s ultimate conclusions of law. For example, Mother contends that the trial court failed to resolve how Father’s “attentiveness” towards Charles and Hailey related to the welfare of the children; how Mother’s habit of bathing nude negatively impacted the children; how Father’s continuation of the weekly Sunday dinner tradition related to the welfare of Charles and Hailey, among others. Below we address the three issues Mother raises that *were* disputed during litigation.

¶ 13 First, Mother argues the trial court failed to resolve a dispute the parties had while choosing a therapist for Charles and Hailey. The trial court made the following relevant findings in its Order:

28. That while the parties were still residing together [Father] refused to allow the older children to take [Charles and Hailey] to a counselor which was arranged by

[Mother] and advised [Charles and Hailey] not to speak with a counselor without his approval. [Father] also advised the school that he did not want the children to see a counselor without his approval. [Mother] had not told [Father] about her plans to have the children see a therapist.

30. That after the entry of the Temporary Custody Order [Charles and Hailey] began counseling with individual therapists selected by [Father]. [Father] did not consult [Mother] as the Temporary Custody Order had a no contact provision in it, but he did give both therapists [Mother's] contact information. Charles is no longer seeing a therapist.

Although it is clear there was conflict between Mother and Father, there is nothing in the trial court's factual findings to indicate that the dispute was left unresolved. Both Charles and Hailey had the opportunity to visit with a therapist. Father did not discourage this from happening. If, alternatively, Father prohibited Charles and Hailey from beginning therapy while Mother attempted to do the opposite, the outcome would likely be different. However, both children were afforded the opportunity to see a therapist, and there is nothing pertaining to this issue that was left unresolved.

¶ 14 Second, Mother argues that the trial court failed to resolve Father's interference with Charles' Individualized Education Plan ("IEP"). The trial court's findings address a dispute between the parties that occurred during the time of Charles' diagnosis for ADHD and/or dysgraphia. At the time of the diagnosis, the

parties disagreed regarding the documentation Mother provided medical providers to support the diagnosis, with Father arguing that Mother misled medical providers by failing to provide all past medical information. However, the trial court resolved the issue in its Finding of Fact 32, which stated that:

...Another evaluation for [Charles] is scheduled through the school, and the Court finds that this is the only way to ascertain what [Charles] requires in regards to his educational needs and concerns.

The trial court further found that both Mother and Father attended the IEP review in December of 2020 and both parties “verbally agreed to the latest IEP and both agree that [Charles] is in need of assistance with his studies and would benefit from an IEP.” Thus, the issue of Charles’ diagnosis and subsequent IEP was resolved.

¶ 15 Lastly, Mother argues that Father engaged in a “smear campaign” against her with Charles and Hailey and as a result, the custodial award to Father was not in the best interests of Charles and Hailey. She further contends that the trial court should have made additional findings to resolve the issue. However, the trial court did address this issue, finding as follows:

43. That [Father] has had extensive talks with all the children concerning this litigation....

44. ... The [Father] seems intent on denigrating [Mother] at every opportunity.

47. [Father] made a report to the Cabarrus County Department of Health and Human Services (“CCDHHS”) that [Mother] was leaving [Charles and Hailey] at home

unsupervised and was not cooking for them...

48. That none of the reported events to CCDHHS were substantiated...

61. All of the children's relationships with [Mother] have declined, particularly since the return to the United States...

62. The Court has concerns and is conscious of the fact that [Father's] discussions about the case with the children may have tainted their opinions of their mother and are likely the cause of the decline in their relationship with her.

63. [Father] told the minor children to call him if/when [M]other left the home. [Charles] was very communicative in this regard.

67: [Father] interferes and attempts to control matters when the children are in the care of [Mother]...

Despite Mother's contention, the trial court's acknowledgment of Father's attempt to control matters and his pattern of "denigrating [Mother] at every opportunity" does not negate its ultimate custodial award to Father. To mitigate this fact, the trial court designated the case as high conflict and required the parties to utilize a parenting coordinator. The trial court further required both parties to complete the "Between Two Homes" program, which was initially recommended by the CCDHHS upon its investigation of Father's report against Mother.

¶ 16 Furthermore, the trial court's findings regarding Father's bad behavior does not require, as Mother contends, that Father not be awarded custody of Charles and Hailey. As our Supreme Court has recognized, "child custody disputes are often

hotly-contested, bitter affairs in which the innocent children in issue suffer as confused and unwilling pawns.” *In re Custody of Peal*, 305 N.C. 640, 645, 290 S.E.2d 664, 667 (1982). As a result, “the presiding judge, who has the unique opportunity of seeing and hearing the parties, witnesses and evidence at trial, is vested with *broad* discretion in cases concerning the custody of children.” *Id.*; *see, e.g., Hamlin v. Hamlin*, 302 N.C. 478, 276 S.E. 2d 381 (1981). This broad discretion does not limit a custodial award only to a parent the trial court deems without fault. *Wilson v. Wilson*, 269 N.C. 676, 678, 153 S.E.2d 349, 351 (1967) (recognizing that a parents right to custody of their child should not be denied except for the most cogent reasons). Instead, many custody cases concern scenarios, as is the case here, where the trial court concludes that both parties are fit to have custody of the minor children. In these situations, the trial court must make its determination based solely on the best interest and welfare of the children. *Phelps v. Phelps*, 337 N.C. 344, 354, 446 S.E.2d 17, 23 (1994); *see also Hinkle v. Hinkle*, 266 N.C. 189, 196, 146 S.E.2d 73, 78 (1966).

¶ 17 Here, the trial court’s factual findings clearly state that Defendant’s flexible work schedule, attentiveness to the children’s hygiene and involvement with the children’s schooling among other findings, support the custodial award to Father. These findings provide direct support for the trial court’s conclusion that awarding primary physical custody to Father is in the best interests of Charles and Hailey.

¶ 18 In sum, a trial judge is given wide discretion to evaluate the evidence and

determine what custody arrangement is in the best interest of minor children, provided the trial judge does not strip a parent of the constitutional right to be involved. It may be that it would not have been an abuse of discretion for the trial court to award Mother more custody rights. However, as long as the judge does not abuse his discretion in making a custody determination, our Court should not disturb the custody award.² We have reviewed the record and the Order, and we conclude that the trial court did not abuse its discretion in this case.

III. Conclusion

¶ 19 We conclude that the trial court did not abuse its discretion when it awarded primary physical custody of Charles and Hailey to Father.

AFFIRMED.

Judges DIETZ and INMAN concur.

Report per Rule 30(e).

² Father has filed motions to dismiss the appeal and to disqualify Mother's counsel. We deny both motions.