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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-467

Filed 21 November 2023

Guilford County, No. 14CVD10126

JOSHUA RYAN, Plaintiff,

v.

ANGELA RYAN, Defendant.

Appeal by defendant-mother from order entered 8 November 2022 by Judge Tabatha Holliday in Guilford County District Court. Heard in the Court of Appeals 18 October 2023.

Spidell Family Law, by Megan E. Spidell, for plaintiff-appellee.

Law Office of Mark L. Hayes, by Mark L. Hayes, for defendant-appellant.

FLOOD, Judge.

Angela Ryan (“Defendant-Mother”) appeals from the 8 November 2022 Order awarding Joshua Ryan (“Plaintiff-Father”) sole legal and physical custody of their two minor children and denying Defendant-Mother any visitation or contact with the minor children and ordering Defendant-Mother to pay certain costs and fees. After careful review, we affirm in part and reverse and remand in part.

I. Factual and Procedural Background

Defendant-Mother and Plaintiff-Father were married on 10 May 2006. On 14 May 2007, Defendant-Mother gave birth to a son, and almost a year later, on 2 May 2008, she gave birth to a daughter (collectively “the minor children”). Plaintiff-Father and Defendant-Mother separated in June 2014. On 5 November 2014, Plaintiff-Father filed a Complaint for Permanent Child Custody in Guilford County District Court. On 15 July 2015, Plaintiff-Father and Defendant-Mother entered into a parenting agreement where the minor children would reside primarily with Defendant-Mother, with Plaintiff-Father having them every other weekend from Friday evening until Tuesday morning.

On 13 April 2020, Defendant-Mother filed a Motion to Modify Custody alleging a substantial change of circumstances had occurred. Specifically, Defendant-Mother alleged Plaintiff-Father and his then-girlfriend, now-wife, had acted inappropriately towards the minor children. While the Motion to Modify Custody was still pending, Defendant-Mother filed a Motion for Emergency Ex Parte Custody Order on 19 August 2020, alleging, *inter alia*, Plaintiff-Father had sexually assaulted the minor children. Defendant-Mother specifically alleged the following:

9. On or about the weekend of [18 July 2020], the minor children left [Plaintiff-Father’s] home without [Plaintiff-Father’s] knowledge and walked home to Defendant[-]Mother’s home, much to [her] surprise. She immediately contacted [Plaintiff-Father] to report the children arrived at her house. The Gibsonville police were also contacted. [Plaintiff-Father] did not respond to [Defendant-Mother]

for about two hours. After this incident, the minor child told Defendant[-]Mother that Plaintiff[-]Father had hit her [and] sent her to her bedroom; that [Plaintiff-Father] then came into her room and began to rub her upper thigh, near her private area which made her very uncomfortable.

10. Then, on or about the weekend of [15 August 2020], the minor child reported further inappropriate touching with his hand by [Plaintiff-Father] on her private areas to Defendant[-]Mother. The minor child expressed extreme fear about being in the home with [Plaintiff-Father], without another adult present, and further expressed fear to [Defendant-Mother] that [Plaintiff-Father] may try to touch her again.

On 19 August 2020, the trial court entered an Ex Parte Custody Order granting Defendant-Mother sole custody of the minor children pending a hearing on the matter.

On 1 June 2021, Plaintiff-Father likewise filed a Motion for Ex Parte Child Custody requesting the trial court grant him temporary and exclusive custody of the minor children. In his Motion, Plaintiff-Father alleged Defendant-Mother coached the minor children into believing they had been sexually abused by Plaintiff-Father. Plaintiff-Father's allegations relied, in part, on a text message the minor son sent Plaintiff-Father on 21 May 2021, which stated:

Hey dad this is [minor son] I'm texting you from my new phone but mom dose [sic] not know, but I'm texting you to say sorry and I have figured out that mom has been manipulating us into believing you sexually abused us and I know this cause I just realized I don't remember you doing that to us and she makes us feel like every [sic] is our fault but I just want to say I'm sorry and I would rather be at your house permanently than moms and [minor daughter]

is going to hate me but she dose [sic] not realize that she was manipulating us but I'm sorry.

On 11 June 2021, the trial court entered a Temporary Custody Order pursuant to Plaintiff-Father's Ex Parte Motion, which granted Plaintiff-Father supervised visitation pending a full hearing. On 6 July 2021, the trial court ordered the minor children to be temporarily placed with the Masonic Home for Children (the "Oxford House") in Oxford, North Carolina, pending the outcome of a Child Family Evaluation ("CFE"). The trial court further ordered that "[n]either party shall have ANY contact, direct or indirect, with the minor children until the CFE is completed. This shall include calls, video chats, social media (Facebook, Snapchat, Tiktok, etc.) or in person visits[.]" Defendant-Mother violated this no-contact order on numerous occasions by attending one of the minor daughter's volleyball games and sending the minor children multiple letters and emails. In these letters and emails, Defendant-Mother told the minor children about the case and what they needed to do and say in order to help Defendant-Mother earn custody. Specifically, Defendant-Mother told the minor children Child Protective Services ("CPS") was trying to "permanently" take the children from their home and place them in foster care and warned the minor children to speak to CPS as little as possible.

On 17, 18, 19, and 24 October 2022, the trial court held hearings on the competing motions filed by both Defendant-Mother and Plaintiff-Father. The trial court heard testimony from Department of Health and Human Services ("DHHS")

social worker Yolanda McDowell (“McDowell”); the minor children’s therapist; Defendant-Mother; Plaintiff-Father; Oxford House employees; Plaintiff-Father’s wife; a Department of Social Services counselor; and the guardian ad litem (“GAL”).

Based on the testimony presented at trial, the trial court entered an Order for Child Custody awarding full legal and physical custody to Plaintiff-Father and denying Defendant-Mother visitation or contact with the minor children. In the written order filed on 8 November 2022, the trial court found Defendant-Mother did not present any evidence to support the claims of abuse and impropriety she made in her Motion to Modify Child Custody or Motion for Ex Parte Child Custody. Additionally, the trial court made the following, relevant, findings of fact:

10. The first DHHS report occurred on [30 September 2014], when [Defendant-Mother] contacted Gibsonville PD reporting that both children have been sexually assaulted by [Plaintiff-Father].

.....

d. [On 28 October 2014], a Child Medical Examination [“CME”] was performed, at which time [the minor daughter] drew a picture of a penis, after denying ever seeing adult genitalia. When asked how she knew what a penis looked like if she had never seen one, she advised that Defendant-Mother had drawn her a picture. . . .

e. During the CME, at one point when being asked about the sexual allegations [the minor daughter] stopped and stated, *“I forgot what my mom told me to say.”*

.....

g. Due to the different variations of information reported by the children during interviews, the Gibsonville Police Department closed their investigation. The evaluators at

Crossroads and DHHS believed the children had been coached by [Defendant-Mother]. . . .

. . . .

54. [DHHS] required the following as part of their investigation:

. . . .

b. The CFE report[] was completed on [20 November 2021]. The conclusions were that it is “highly likely that [the minor children] are not victims of sexual abuse and or being touched sexually inappropriately by [Plaintiff-Father] but the allegations resulted from the intentional manipulation or deliberate false report from [Defendant-Mother].”

55. At the end of December 2021, CPS determined that the sex abuse allegations were not substantiated and that the family was in need of services. This case was then transferred from the CPS social worker to [McDowell], the in-home services social worker.

. . . .

64. Upon completing her investigation, the GAL submitted a report to the [c]ourt on [19 October 2022] and testified regarding same, which recommended as follows:

a. [Plaintiff-Father] be granted sole custody of the [minor] children.

b. That [Defendant-Mother] have no contact with the children, unless [Plaintiff-Father] allows it. If the [c]ourt allows contact or visitation that it be supervised.

. . . .

68. The GAL indicates that throughout her involvement, [Plaintiff-Father] has been truthful, cooperative and polite. There is no indication that he has caused harm to or manipulated the children or anyone else in this case.

[Plaintiff-Father] has not resisted the requirements of DHHS or the [Oxford House] and has supported the work of the [Oxford House].

....

77. Almost from [the] beginning, [Defendant-Mother] violated the no-contact provisions of the Orders advising the children not to trust anyone, not to cooperate, not to talk to therapists, placing them in fear of foster care and adoption and attempting to convince them that she is the only one who loved them and would protect them.

....

82. Visitation or contact by [Defendant-Mother] is detrimental to the minor children, in that it has caused them substantial distress. [Defendant-Mother] is consistently involving the children in communication that is inappropriate and harmful, and restricted access is necessary to protect them.

83. The [trial c]ourt finds by clear, cogent and convincing evidence, that [Defendant-Mother] has waived her constitutional right to parent her children by acting inconsistently with her protected status as a parent, specifically by all of the findings contained herein and the parental alienation described herein.

84. [Plaintiff-Father] is fit and proper person to have custody of the minor children and it is in the best interest[s] of the minor children to award [Plaintiff-Father] sole legal and physical custody.

....

86. The minor children have been placed directly in the middle of the custody dispute between the parties by [Defendant-Mother] and this has a substantial impact on the minor children and it has negatively affected their wellbeing.

....

88. [Defendant-Mother] has coached and manipulated the

minor children into stating things that are untrue and has persuaded the children to believe that they were sexually abused in some way by their father.

89. As a result of [Defendant-Mother's] actions, the [minor] children have been subject to criminal and DHHS investigations, to interviews, to counseling, to therapy and most importantly to having resided in a group home away from both parents from [7 July 2021] to present.

90. [Defendant-Mother's] behaviors have caused psychological and emotional damage to the minor children resulting in diagnoses of Adjustment-Disorder.

Based on these findings of fact, the trial court entered the following relevant conclusions of law:

3. [Defendant-Mother] has severely emotionally abused the minor children and created serious emotional damage to the minor children as defined by [N.C. Gen. Stat. §] 7B-101(1)(e).

4. [Defendant-Mother] is unfit to have legal or physical custody of the minor children or reasonable visitation or contact with the minor children.

5. [Defendant-Mother] has shown by her actions that reasonable visitation or contact by [Defendant-Mother] would be detrimental to the minor children and is not in the [minor] children's best interest[s].

In addition to the custody order, the trial court further ordered Defendant-Mother to pay Plaintiff-Father's reasonable attorney's fees in the amount of \$26,032.76 and the GAL's cost and fees in the amount of \$20,000.

Defendant-Mother filed timely notice of appeal to this Court.

II. Jurisdiction

This Court has jurisdiction to hear this appeal as a final order from a district court pursuant to N.C. Gen. Stat. § 7A-27(b)(2) (2021).

III. Analysis

On appeal, Defendant-Mother argues the trial court: (A) abused its discretion in denying her visitation and contact with the minor children; (B) erred in awarding Plaintiff-Father attorney’s fees; and (C) erred in imposing onto her the entire cost and fees of the GAL. We will review each of Defendant-Mother’s arguments in turn.

A. Best Interests

Trial courts have expansive discretion in child custody matters, including the ability to deny a parent the right to visitation so long as the trial court makes a “written finding of fact that the parent being denied visitation is deemed unfit to visit the child or that visitation would not be in the child’s best interests.” *Routten v. Routten*, 374 N.C. 571, 575, 843 S.E.2d 154, 157 (2020); *see also Davidson v. Tuttle*, 285 N.C. App. 426, 430, 877 S.E.2d 908, 912 (2022) (citation omitted) (“Our trial courts are vested with broad discretion in child custody matters.”). “As long as there is competent evidence to support the trial court’s findings, its determination as to the child’s best interests cannot be upset absent a manifest abuse of discretion.” *Stephens v. Stephens*, 213 N.C. App. 495, 503, 715 S.E.2d 168, 174 (2011). “Under an abuse of discretion standard, we must determine whether a decision is manifestly unsupported by reason, or so arbitrary that it could not have been the result of a reasoned decision.” *Deanes v. Deanes*, 269 N.C. App. 151, 156, 837 S.E.2d 404, 408

(2020). Unchallenged findings of fact are deemed to be supported by competent evidence. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

Defendant-Mother does not challenge any of the findings of fact, and they are therefore binding on appeal. *See id.* at 97, 408 S.E.2d at 731 (unchallenged findings of fact are binding on appeal). Instead, Defendant-Mother argues the ultimate conclusion of unfitness is not supported by the evidence because she is not “incompetent” or “incapable” of caring for her children according to the Merriam-Webster Dictionary’s definition of “unfit.” The trial court, however, is required to make a finding of unfitness *or* that visitation would not be in the child’s best interests. *See Routten*, 374 N.C. at 575, 843 S.E.2d at 157.

Here, the trial court entered findings demonstrating Defendant-Mother was unfit, and visitation was not in the minor children’s best interests. Specifically, the trial court concluded, “[Defendant-Mother] is unfit to have legal or physical custody of the minor children or reasonable visitation or contact with the minor children,” and “[she] has shown by her actions that reasonable visitation or contact by [her] would be detrimental to the minor children and it is not in [their] best interest[s].” As the trial court is not required to make a finding of unfitness *and* best interests, whether Defendant-Mother meets the definition of “unfit” is immaterial so long as the trial court did not abuse its discretion in determining visitation or contact by Defendant-Mother was not in the minor children’s best interests. *See Routten*, 374 N.C. at 575, 843 S.E.2d at 157. For the reasons discussed below, we conclude the

trial court did not abuse its discretion.

The trial court's written order contains ninety-two findings of fact that were based on the extensive evidence presented during the four-day hearing. The trial court found Defendant-Mother had a history of coaching and manipulating the minor children dating back to 2014; her manipulative behavior caused the minor children substantial psychological and emotional distress resulting in "adjustment disorder" diagnoses; and Defendant-Mother had subjected the minor children to criminal and DHHS investigations, and a months' long separation from their parents. It cannot be said, therefore, that the trial court's decision was not "the result of a reasoned decision." *See Deanes*, 269 N.C. App. at 156, 837 S.E.2d at 408.

Thus, the trial court did not abuse its discretion in concluding visitation or contact by Defendant-Mother would be detrimental to the minor children and was not in their best interests. *See Stephens*, 213 N.C. App. at 503, 715 S.E.2d at 174.

B. Attorney's Fees

Next, Defendant-Mother argues the trial court abused its discretion in awarding Plaintiff-Father attorney's fees because the findings of fact are insufficient to support such an award. We agree.

"The question of whether statutory requirements have been met for an award of attorney's fees is a question of law reviewable de novo." *Limerick v. Rojo-Limerick*, 288 N.C. App. 29, 32, 885 S.E.2d 96, 98 (2023). "The amount of attorney's fees awarded is reviewable only for an abuse of discretion." *Barham v. Barham*, 286 N.C.

App. 764, 772, 881 S.E.2d 911, 917 (2022).

In an action or proceeding for the custody or support, or both, of a minor child, including a motion in the cause for the modification or revocation of an existing order for custody or support, or both, the court may in its discretion order payment of reasonable attorney's fees to an interested party acting in good faith who has insufficient means to defray the expense of the suit.

N.C. Gen. Stat. § 50-13.6 (2021). The trial court is required to make two findings of fact in order to award attorney's fees under Section 50-13.6: "that the party to whom attorney's fees were awarded was (1) acting in good faith and (2) has insufficient means to defray the expense of the suit." *Burr v. Burr*, 153 N.C. App. 504, 506, 570 S.E.2d 222, 224 (2002) (citation omitted). While it is the trial court's discretion to determine whether an award of attorney's fees is warranted, this is not an "unbridled discretion." *Id.* at 506, 570 S.E.2d at 224. Instead, "[t]he trial court must make findings of fact to support and show 'the basis of the award, including: the nature and scope of the legal services, the skill and time required, and the relationship between the fees customary in such a case and those requested.'" *Sullivan v. Woody*, 287 N.C. App. 199, 210, 882 S.E.2d 707, 715 (2022) (citation and internal quotation marks omitted).

In this case, the only finding that appears somewhat related to an award of attorney's fees merely states: "[Defendant-Mother] is gainfully employed and has the means and ability to comply with the Orders of the [c]ourt." The trial court did not find that Plaintiff-Father was "acting in good faith" or that he "has insufficient means

to defray the expense of the suit,” N.C. Gen. Stat. § 50-13.6, nor did it make a single finding to show the “basis of the award.” *Sullivan*, 287 N.C. App. at 210, 882 S.E.2d at 715.

Accordingly, the trial court’s award of attorney’s fees was an abuse of discretion, and we vacate and remand for further findings of fact.

C. Guardian ad litem Fees

Finally, Defendant-Mother argues the trial court abused its discretion by ordering her to pay the entire cost of the GAL because GAL fees cannot be ordered in a Chapter 7B case where the children were not adjudicated to be abused, neglected, or dependent.

First, Defendant-Mother contends Chapter 7B controls because juvenile petitions were taken out following her allegations of abuse, and the GAL was appointed to represent the minor children’s interests in those petitions. These arguments are misguided, however, as the GAL costs and fees were awarded as part of a child custody case governed by Chapter 50, not Chapter 7B. The juvenile petitions were filed in July 2021, and the GAL testified she was not appointed until December 2021—after the reports of abuse had already been found unsubstantiated. As explained in further detail below, the GAL was appointed to represent the interests of the children in the Chapter 50 custody dispute, and Chapter 50, therefore, governs the issue of GAL fees.

Alternatively, Defendant-Mother argues the trial court abused its discretion in

assessing GAL costs and fees onto either party because the GAL was not requested by the parties but was a “witness acting on behalf of the court.” We disagree with Defendant-Mother’s assertion that the GAL was a witness acting on behalf of the trial court; nonetheless, we agree the trial court abused its discretion in ordering Defendant-Mother to pay the GAL fees.

Rule 17 of the North Carolina Rules of Civil Procedure permits a trial court to appoint a GAL for “an infant or incompetent person . . . in any case when it is deemed by the court in which the action is pending expedient to have the infant . . . or incompetent person so represented.” N.C. R. Civ. P. 17(b)(3). When a GAL is properly appointed, the trial court has the discretion to assess the costs and fees of a GAL to either party or apportion costs between the parties. *Van Every v. McGuire*, 125 N.C. App. 578, 582, 481 S.E.2d 377, 379 (1997).

In this case, the trial court’s order stated in Finding of Fact 62 that, based on all the motions filed in this case and the subsequent proceedings, the trial court appointed a GAL to represent the minor children’s interests and make a recommendation to the trial court. Contrary to Defendant-Mother’s argument, the GAL was properly appointed per Rule 17(b)(3) and does not make the GAL a “witness of the [trial] court.” Thus, the remaining issue is whether the trial court abused its discretion in ordering Defendant-Mother to pay the costs and fees of the GAL. *See Van Every*, 125 N.C. App. at 582, 481 S.E.2d at 379. As stated, under an abuse of discretion standard this Court can upset the conclusions of the trial court only if they

are “manifestly unsupported by reason.” *See Deanes*, 269 N.C. App. at 156, 837 S.E.2d at 408. As with attorney’s fees, the only finding related to the GAL’s cost and fees was that Defendant-Mother was gainfully employed and capable of complying with the Order. The trial court, therefore, failed to make sufficient findings of fact showing the conclusion that Defendant-Mother shall pay all GAL fees was supported by reason. *See id.* at 156, 837 S.E.2d at 408.

Accordingly, the trial court abused its discretion by ordering Defendant-Mother to pay all costs and fees of the GAL, and we vacate and remand for further findings of fact.

IV. Conclusion

For the reasons stated herein, we hold the trial court’s determination that visitation or contact by Defendant-Mother was not in the minor children’s best interests was not an abuse of discretion. We further hold the trial court did abuse its discretion in ordering Defendant-Mother to pay Plaintiff-Father’s attorney’s fees and the GAL costs and fees without making adequate findings to support the awards.

AFFIRMED in part; VACATED in part AND REMANDED.

Judges COLLINS and GORE concur.

Report per Rule 30(e).