NO. COA02-389

NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2002

COUNTY OF DURHAM, by and
through DURHAM DSS, ex rel:
KATINA HARRIS,
Plaintiff,

v.

Durham County
No. 90 CVD 4729

ANTHONY MANGUM,
c/o Lisa Williams
P. O. Box 1382
Durham, N.C. 27702,
Defendant.

Appeal by defendant from order entered 2 October 2001 by Judge Ann E. McKown in Durham County District Court. Heard in the Court of Appeals 7 October 2002.

Deputy County Attorney Thomas W. Jordan, Jr., for plaintiff appellee.

Lisa Anderson Williams for defendant appellant.

McCULLOUGH, Judge.

Defendant Anthony Mangum appeals an order finding him in contempt of court for failure to pay child support entered on 2 October 2001. Defendant was adjudged to be the father of the minor child Orlanda Lamont Harris by order entered in Durham County District Court on or about 26 November 1990. Thereafter, on or about 17 December 1990, the district court entered an order of

voluntary support for the maintenance and support of the minor child. The order provided that defendant make child support payments in the amount of $31.00 per week. At that time, defendant's gross income was $779.94 per month.

Defendant was incarcerated for approximately five years at some time subsequent to the entry of the child support order. Notably, however, during the last year of imprisonment, defendant obtained a job through the prison's work release program and paid a portion of his child support obligation by income withholding from 2 October 1998 through 3 December 1999. Defendant did not make any child support payments from 3 December 1999 until his release in March 2000. Upon his release from prison, defendant immediately began employment with Alltech, earning $12.00 per hour. Defendant also worked at Picadilly Cafeteria during this time, and testified that he even detailed cars on the weekends for extra money. Though employed either through work release or private employment from 4 December 1999 through 9 May 2000, defendant failed to make any child support payments during this time. Defendant, however, made child support payments from 10 May 2000 through 21 February 2001.

Since his release from prison, defendant has lived with his mother rent-free, making contributions toward the food bill. Just four months after his release from prison, defendant purchased an automobile and is making monthly payments on that purchase. Defendant was terminated by Alltech in the beginning of 2001. Thereafter, defendant started detailing cars, eventually doing

business under the name of M & M Auto Detailing.

Defendant did not make any child support payments from 22 February 2001 through 14 June 2001. Accordingly, the court upon the motion of Department of Social Services issued a show cause order to compel defendant to show why he should not be held in contempt for failure to pay support. Subsequently, defendant made child support payments totaling $218.34 from 15 June to 19 September 2001. At the time of the show cause hearing, defendant was self-employed in his detailing business, earning $150-$200 per week, and was approximately $13,767.28 in arrears on his child support obligation.

The trial court concluded that defendant had not shown just cause for failing to make court-ordered child support payments and found him in contempt of court. Defendant appeals.

On appeal, defendant argues that the trial court erred in concluding that he had no just cause for failing to make court-ordered child support payments. We disagree.

Statutes governing proceedings for civil contempt in child support cases place the burden of proof on the alleged delinquent party to show why he should not be found in contempt. *Belcher v. Averette*, 136 N.C. App. 803, 807, 526 S.E.2d 663, 665 (2000). To make such a showing, "a party must establish a lack of means to pay support or an absence of willfulness in failing to pay support." *Id.*; *see also Sharpe v. Nobles*, 127 N.C. App. 705, 709, 493 S.E.2d 288, 290-91 (1997) ("Although the statutes governing civil contempt do not expressly require willful conduct, *see* N.C. Gen. Stat. §§

5A-21 to 5A-25 (1986), case law has interpreted the statutes to require an element of willfulness."). "[T]his Court's 'review of contempt proceedings is confined to whether there is competent evidence to support the [trial court's] findings of fact and whether those findings support the judgment.'" *McKillop v. Onslow County*, 139 N.C. App. 53, 58, 532 S.E.2d 594, 598 (2000).

Here, we conclude defendant failed to make the requisite showing that he should not be held in contempt. Indeed, the evidence tends to show that defendant was at all times aware of his child support obligation of $31.00 per week ($134.00 per month), pursuant to a 17 December 1990 voluntary child support order. At times, however, despite being employed, defendant failed to meet these obligations. Defendant made partial payments or no payments at all. Virtually no payments were made from 10 January 1997 through 5 May 2000. While defendant was incarcerated and unemployed during part of that time period, a year before his release from prison, defendant was employed through the work release program; and after his release from jail, immediately began to work for Alltech, earning $12.00 per hour. Defendant worked at Alltech from March 2000 until January or February 2001, but his payment record shows only partial payments toward his child support obligation and arrearage. After his termination from employment with Alltech, defendant's payment of support was extremely sporadic. The record shows defendant was more than $13,767.28 in arrears (subject to a $4,163.00 credit for incarceration) at the time of the show cause hearing. Defendant testified at trial that

he did not seek additional employment after his termination from Alltech, because he *believed* that it would be difficult for him to obtain employment with a prison record. Defendant, therefore, made a conscious decision to depend solely on his income from car-detailing, and thereafter began to operate under the title of M & M Detailing. Significantly, defendant's gross monthly income from his car detailing service at the time of the contempt hearing was not a great deal less than his income at the time of the entry of the trial court's 1990 voluntary order of support. Taking into account his nominal living expenses, car payment, auto insurance, life insurance and other miscellaneous expenses, defendant is left with an excess well over the $134.00 he was previously ordered to pay in support.

Contrary to defendant's argument, the record shows that trial court did indeed evaluate, but rejected defendant's contention that he had made a good faith effort to satisfy his child support obligation. Indeed, the trial court findings are supported by the evidence, and those findings, in turn, support its conclusion that defendant has not shown just cause for not complying with the prior court order and should be held in contempt of court. Accordingly, the trial court's order of contempt is affirmed.

Affirmed.

Chief Judge EAGLES and Judge HUDSON concur.

Report per Rule 30(e).