NO. COA11-178
NORTH CAROLINA COURT OF APPEALS

Filed: 18 October 2011

DEBORAH R. MOONEY
Plaintiff,

v. Henderson County
No. 03 CVD 1581

MICHAEL D. MOONEY
Defendant.

Appeal by Defendant from order entered 16 June 2010 by Judge David K. Fox in Henderson County District Court. Heard in the Court of Appeals 31 August 2011.

Deborah R. Mooney, pro se.

The Sutton Firm, P.A., by Emily Sutton Dezio, for Defendant.

STEPHENS, Judge.

At issue in this appeal is the trial court's 16 June 2010 "Order [on] Plaintiff's Motion in the Cause & Contempt Motion" (the "June 2010 Order") entered in Henderson County District Court by Judge David K. Fox. The procedural history leading to the issuance of the June 2010 Order is complex and undisputed by the parties. As such, we will not recount the entire history of

the dispute, but, rather, we simply quote Judge Fox's introduction to the June 2010 Order to illustrate the magnitude of this case's history in the North Carolina Court System:

> [This court] is moved to initially note that the stacked court files in the matter of Mooney vs. Mooney are now five inches thick; thicker than the Charlotte telephone book. And that does not reflect the files separately kept by the clerk of the Court of Appeals. These Parties have contrived to consume vast amounts of the [c]ourt's time, unconscionable resources of the beleaguered Henderson County Clerk's Office, have tied up bailiffs, judges, courtrooms, and have cheerfully squandered thousands of their own money and the State's treasure "lawing" one the other during the past seven years. Of course, this hearing isn't the end: other issues than this instant matter have been separately heard in May, 2010 whilst additional disagreements between these contestants are scheduled for venting in court later this month. Considering the Parties have been divorced since 2004, this example of ongoing obduracy makes the efforts of Sisyphus pale by comparison to the labours of the [c]ourt facing calendar after calendar listing "Mooney vs. Mooney".
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> Even though represented by competent counsel, Plaintiff is wont to periodically complicate things by preparing and filing her own pleadings and seeking her own hearings concurrent with the progress of other issues, rather like a patient on an operating table rousing to wrest the scalpel from the surgeon and inflicting a few random incisions herself. Indeed, the record would seem to demonstrate one of the Parties is the chief sinner in this never ending, ever renewing domestic struggle, but the dispositive portion of this Order evidences

> that, in fact, both Parties have indulged in the feckless behaviour which yet again has forced the District Courts of Henderson County to revisit Mooney vs. Mooney, even as a dog returneth to its vomit.

The portions of the June 2010 Order that are at issue on appeal are the following: (1) that portion ordering Defendant to pay, pursuant to a 20 November 2006 consent order, child support owed to Plaintiff during the period of 1 December 2006 to 31 December 2007; (2) that portion finding Defendant in contempt for failure to comply with the parties' earlier 28 January 2005 consent order requiring Defendant to pay medical costs of the parties' child; and (3) that portion finding Defendant in contempt for failure to comply with the parties' 28 January 2005 consent order requiring Defendant to pay the child's private school costs. Each issue is addressed separately below.

I. Child Support

On 4 March 2009, Plaintiff filed a motion in the cause seeking enforcement of a 20 November 2006 consent order, in which the parties agreed

> that child support shall be modified and set according to the North Carolina Guidelines. Parties shall exchange financial information within 10 days of this order and set according to Worksheet B giving Defendant appropriate credit for providing health insurance and paying for after school care. Child support shall be changed effective

December 1, 2006.

As found by the trial court in the June 2010 Order, Defendant

> failed to provide such information to Plaintiff. Instead, [Defendant] submitted a filled-in Worksheet B, concluded unilaterally that his monthly obligation for child support due Plaintiff was $699.00 based upon an income figure which was grossly less than he later testified under oath he was in fact earning, and thereafter arbitrarily undertook paying child support to Plaintiff in that amount.

Based on evidence presented at the hearing on Plaintiff's motion, the court ordered Defendant to pay Plaintiff $15,441.27 (the difference between the amount calculated by the trial court and the amount actually paid by Defendant) in unpaid child support for the period between 1 December 2006 and 31 December 2007. The court attached to the June 2010 Order a "Worksheet B" completed with the appropriate figures as found by the court.

On appeal, Defendant first argues that this award of unpaid child support is erroneous because it constitutes "retroactive child support," which is only recoverable for amounts actually expended on a child's behalf during the relevant period. *See, e.g.*, *Robinson v. Robinson*, __ N.C. App. __, __, 707 S.E.2d 785, 795 (2011). However, because the trial court's order is not an award for retroactive support or reimbursement for expenses

incurred by Plaintiff, Defendant's argument is unavailing. The trial court's order simply enforces a previously-entered consent judgment with which Defendant failed to comply. Accordingly, the appropriate award is the amount owed to Plaintiff under the consent judgment, not the amount Plaintiff actually expended. Defendant's argument is overruled.

Defendant next argues that the trial court's award was erroneously based on two documents that the court "disallowed reference to" and that were "not admitted into evidence for its consideration." Our review of the record on appeal, however, does not indicate that the trial court "disallowed reference to" these documents. Further, both documents are included in the record and the information contained in those documents is available in the record elsewhere. Defendant's argument is overruled.

Defendant next argues that the trial court erred in determining several of the values used to calculate Defendant's obligation under Worksheet B. Defendant asserts we should review these issues on appeal for abuse of discretion and, in support of that assertion, Defendant cites ***Cauble v. Cauble***, 133 N.C. App. 390, 395, 515 S.E.2d 708, 712 (1999), for the proposition that "[t]he amount of a trial court's child support

award will not be disturbed on appeal except upon a showing of abuse of discretion." However, in this case, the trial court is not setting the amount of support for the parties' child. Rather, the court is enforcing the parties' agreement that Defendant will pay "X amount" calculated by entering "Y values" into "Z formula." In so doing, beyond determining that "the utilization of Worksheet B" does not "compromise[] the best interests of [the] minor child," the trial court is simply finding as fact the existence and size of the values used to complete Worksheet B. As such, instead of leaving these findings to the trial court's discretion, we will apply the usual standard of review for a trial court sitting without a jury, *viz.*, determining "whether there was competent evidence to support the trial court's findings of fact and whether its conclusions of law were proper in light of such facts." *Oakley v. Oakley*, 165 N.C. App. 859, 861, 599 S.E.2d 925, 927 (2004) (citation, quotation marks, and brackets omitted).

Defendant first disputes the trial court's finding that Defendant incurred $183.00 in work-related child care costs, arguing that there was no evidence to support that figure. We disagree. As noted by Defendant, "[b]oth parents presented evidence that Defendant[] paid [$244.00] per month" in child

care expenses. Further, the North Carolina Child Support Guidelines – which the parties agreed would govern the modification of Defendant's support obligation – provide that "[w]hen the income of the parent who pays child care costs exceeds [$1,850.00 for one child], only 75% of actual child care costs are added (because the parent is entitled to the income tax credit for child care expenses)." N.C. Child Support Guidelines, 2011 Ann. R. N.C. 52. Because 75% of $244.00 is $183.00, Defendant's argument is overruled.

Defendant also argues that the trial court's finding of $183.00 in work-related child care costs was erroneous because it failed to take into account $2,500.00 worth of summer camp costs. This argument is unpersuasive. This Court has previously upheld a trial court's consideration of summer camp costs as extraordinary expenses in a child support calculation. *See **Mackins v. Mackins***, 114 N.C. App. 538, 549-50, 442 S.E.2d 352, 359, (concluding that the trial court's inclusion of the child's summer camp expenses as an extraordinary expense was not an abuse of discretion), ***disc. review denied***, 337 N.C. 694, 448 S.E.2d 527 (1994). However, Defendant points to no authority suggesting that summer camp costs should be included in the calculation of work-related child care costs. Furthermore, the

Child Support Guidelines state that "[r]easonable child care costs that are, or will be, paid by a parent *due to employment or job search* are added to the basic child support obligation." N.C. Child Support Guidelines, 2011 Ann. R. N.C. 52. The evidence presented at the hearing did not show that Defendant's payment of the cost of a two-week sleep-away camp was "due to employment." Accordingly, Defendant's argument is overruled.

Defendant next contends that the trial court erroneously awarded Plaintiff $536.00 of extraordinary expenses. We agree. In the June 2010 Order, the court found that "what [Plaintiff] asserts are extraordinary expenses" "do not constitute an extraordinary circumstance meriting some form of remuneration to Plaintiff." Despite this finding, the court awarded Plaintiff the requested extraordinary expenses in Worksheet B. In light of this inconsistency, we remand to the trial court to address the propriety of Plaintiff's alleged extraordinary expenses and to make any necessary changes in the Worksheet B calculations.

Defendant next argues that the trial court erred by not finding that Defendant had incurred extraordinary expenses for therapy and tutoring. We disagree. The Child Support Guidelines state that "extraordinary child-related expenses . . . *may* be added to the basic child support

obligation and ordered paid by the parents in proportion to their respective incomes *if* the court determines the expenses are reasonable, necessary, and in the child's best interest." N.C. Child Support Guidelines, 2011 Ann. R. N.C. 53 (emphasis added). Accordingly, the trial court was not obligated, but rather permitted, to award extraordinary expenses, and only if the court found the expenses to be reasonable, necessary, and in the child's best interest. The lack of such findings supports the trial court's decision not to award extraordinary expenses to Defendant. This argument is overruled.

Finally, Defendant argues that the trial court's findings regarding the parties' incomes was erroneous. We agree. The only finding regarding the parties' incomes in the June 2010 Order is as follows:

> Both parties inveigh the [c]ourt to consider the respective incomes each assert the other actually enjoyed during the [relevant time]. The [c]ourt respectfully declines to so do as it appears to the [c]ourt that its mandate is to establish the [p]arties' child support obligation as of 30 November, 2006 utilizing the figures then available.

Despite this finding, it appears that the court used the income figures offered by Plaintiff in her closing argument, which figures were calculated based on Defendant's actual earnings during the 13-month period beginning December 2006.

These earnings figures obviously were not available on 30 November 2006. Further, although the trial court used in its calculations some of Defendant's actual earnings figures during that 13-month period, the court declined to use all actual earnings figures for the parties during that period. Based on the absence of any consistent reasoning supporting the court's findings on income, we remand to the trial court to make findings supporting its calculation of the parties' incomes and to make any necessary changes to Worksheet B based upon those calculations.

II. Medical Costs

Plaintiff also moved the trial court to hold Defendant in contempt for failing to comply with the portions of the parties' 28 January 2005 consent order mandating that (1) "Defendant shall maintain the minor child's health and dental insurance coverage" and "shall pay in full any medical care, dental care, optical care or prescription drug costs not covered by his insurance plan"; and (2) until the parties receive from physicians "any contrary diagnosis," "the parties shall follow the diet and related recommendations that have been provided by the minor child's current physicians; at [the] present time, he is currently under care and treatment of Dr. Alan Lieberman."

In its order, the trial court found that Defendant (1) unilaterally ceased payments to Dr. Lieberman, after which Plaintiff incurred bills from Dr. Lieberman in the amount of $8,534.80; and (2) failed to pay or reimburse Plaintiff for $1,215.40 worth of medical costs that were not covered by insurance. Based on Defendant's failure to pay these costs, the court found Defendant in contempt of the parties' consent order.

On appeal, Defendant argues that the trial court erroneously found him in contempt for failing to pay $8,534.80 worth of medical costs associated with treatment by Dr. Lieberman. Specifically, Defendant contends that he was not responsible for the costs of shipping the medications prescribed by Dr. Lieberman. We disagree. The consent order states that Defendant "shall pay in full" "any prescription drug costs." Because the cost of shipping prescription drugs clearly is included in *any* prescription drug costs, Defendant's argument is overruled.

Defendant further contends that he was not responsible for paying the cost of Dr. Lieberman's deposition taken in a previous proceeding in this case. We agree. As noted by Defendant, one statement from Dr. Lieberman's office indicates a charge for a deposition. Because litigation costs are not costs

of medical care, we remand this matter to the trial court to recalculate the total cost of Dr. Lieberman's treatment, exclusive of non-medical care costs.

Defendant also argues that the trial court's finding of contempt based on the fact that Defendant failed to pay $1,215.40 in medical costs was erroneous. We agree. In its order, the court listed the following medical costs for which Plaintiff was owed reimbursement: $1,005.00, $84.00, $418.00, $760.00, $15.00, $290.00, $1,057.80, $15.00, and $35.80. In the next paragraph, the trial court stated "[t]hat none of these billings, totaling $1,215.40 was covered by insurance and none of them was paid or reimbursed by [Defendant] upon demand." The obvious discrepancy is that the sum of the costs listed is far more than $1,215.40. Because it is unclear what costs constitute the $1,215.40 figure, we are unable to address Defendant's arguments on this issue. We, therefore, remand this matter to the trial court to address this inconsistency by making appropriate findings and amending the contempt order as necessary.[1]

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[1]We note that two of the medical cost figures – $1,005.00 for care provided by Dr. Kathryn Murphy-Carlson and $760.00 for care provided by Judy McClung – are disputed by Defendant. As discussed *supra*, Defendant was required only to pay for medical *care*, and on remand the trial court should include in its

III. Private School Costs

Finally, Plaintiff moved the trial court to hold Defendant in contempt for failing to comply with that portion of the parties' 28 January 2005 consent order providing as follows:

> In the event Plaintiff elects to place child in private school, Defendant shall pay for minor child's educational expenses related to tuition and books. Incidentals (public or private school) such as extracurricular activities, school trips, etc. shall be equally divided between Plaintiff and Defendant.

In the June 2010 Order, the trial court found that (1) the parties' child attended private school during the relevant period; and (2) "Plaintiff contrived to incur $1,065.77 expenses of a sort requiring [Defendant's] reimbursement pursuant to the [28 January 2005 consent order]. [Defendant] has refused to pay."

On appeal, Defendant argues that the trial court's conclusion that the child attended private school was erroneous. We agree. The evidence at the hearing showed that Plaintiff placed the child in a home school. Under the North Carolina General Statutes, a home school may qualify as a private school if it meets certain requirements. N.C. Gen. Stat. § 115C-563,

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calculations only costs Plaintiff incurred for actual medical care.

et. seq. (2009). In this case, there was no evidence that the home school qualified as a private school. Accordingly, the trial court's findings that the parties' child attended private school and that Plaintiff incurred expenses associated with that attendance are unsupported by the evidence. Because Defendant was not bound by the consent order to pay for educational expenses for a home school that is not a private school, the court erroneously found Defendant in contempt of the consent order for nonpayment of the home school expenses. We reverse the trial court's order to the extent it holds Defendant in contempt for nonpayment of home school expenses.

IV. Conclusion

As discussed *supra*, we remand this matter for further findings on and clarification of the trial court's order regarding Defendant's liability for unpaid child support and unpaid medical expenses, and we reverse the trial court's order finding Defendant in contempt of the 28 January 2005 consent order's requirement that Defendant pay private school costs.

AFFIRMED in part; REMANDED in part; REVERSED in part.

Judges ERVIN and BEASLEY concur.

Report per Rule 30(e).