IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 22-975

Filed 5 March 2024

Wake County, No. 19-CVD-15723

STETSON MANSFIELD WEBSTER, Plaintiff,

v.

DANA DANIELLE DEVANE-WEBSTER, Defendant.

Appeals by plaintiff from a series of orders by Judges David Baker, Julie Bell, and Damion McCullers in Wake County District Court. Heard in the Court of Appeals on 6 September 2023.

Stetson Mansfield Webster, pro se, for the plaintiff-appellant.

No brief filed for defendant-appellee.

STADING, Judge.

This appeal is one of three before this Court arising from the same underlying matter. *See Webster v. Devane-Webster*, ___ N.C. App. ___, ___ S.E.2d ___, No. COA22-976 (5 March 2024) (unpublished); *Webster v. Devane-Webster*, ___ N.C. App. ___, ___ S.E.2d ___, No. COA22-977 (5 March 2024) (unpublished). In this case, Stetson Mansfield Webster ("plaintiff") appeals from the trial court's order finding him in civil contempt of court for his willful violation of the trial court's order for

postseparation support, permanent child support and attorney's fees.

As to plaintiff's issues presented for appellate review, he asserts the following: (1) the trial court erred in its findings of facts; (2) the trial court erred because its award of attorney fees contradicted precedent; (3) the trial court violated plaintiff's due process rights; and (4) the trial court's contempt order contradicts its postseparation support order. After careful review, we affirm.

I. Background

On 30 September 2021, the trial court entered an amended order for postseparation support, permanent child support, and attorney's fees. The trial court ordered plaintiff to pay the following: monthly child support; a pro-rata share of dependent medical expenses; postseparation support; the mortgage for the former marital home; utilities and mortgage for the former marital residence; and Dana Devane-Webster's ("defendant") attorney's fees in the amount of $23,742.

Then, nearly a year later, on 26 September 2022, the trial court held plaintiff in civil contempt. Considering the trial court's 30 September 2021 order, defendant sought to force plaintiff to pay for the children's medical care. Defendant sent invoices for the children's medical expenses to plaintiff for $8,447.45—under the previous order, plaintiff owed 83% or $7,011.37. Yet plaintiff refused to pay. Plaintiff was also $22,200 in arrears for postseparation support. Though the trial court noted that plaintiff was unemployed, it found that plaintiff had "earned approximately $332,000 during the prior 16 months and has the current ability to comply with the

Court's orders." The trial court found plaintiff's rebuke of the court's order "willful and without just cause or excuse and therefore constitutes contempt of [ ] [c]ourt." Plaintiff then appealed.

On appeal, plaintiff contends that the trial court's findings of fact were unsupported by the evidence because: 1) plaintiff paid the mortgage and postseparation arrears; 2) plaintiff did not fail to pay unreimbursed medical expenses; 3) defendant was an authorized user of the utilities and mortgage account; 4) plaintiff could not comply with contempt order; and 5) plaintiff's contempt was not willful. Plaintiff further asserted that the trial court violated his due process rights. Plaintiff also argued that the trial court's contempt order conflicted with the postseparation order and caused the mortgage to go unpaid.

II. Jurisdiction

An appeal of a contempt order is interlocutory, and the court has jurisdiction because it affects a substantial right under N.C. Gen. Stat. §§ 1-277(a), 7A-27(d)(1) (2023). Therefore, a contempt order "is immediately appealable." *Ross v. Ross*, 215 N.C. App. 546, 547, 715 S.E.2d 859, 861 (2011); *see Guerrier v. Guerrier*, 155 N.C. App. 154, 158, 574 S.E.2d 69, 71 (2002) ("[t]he appeal of any contempt order affects a substantial right and is therefore immediately appealable.").

III. Analysis

The standard of review for contempt proceedings is limited to determining whether there is competent evidence to support the findings of fact, and whether the

findings support the conclusions of law. *Sharpe v. Nobles*, 127 N.C. App. 705, 709, 493 S.E.2d 288, 291 (1997) (citation omitted). "Findings of fact made by the judge in contempt proceedings are conclusive on appeal when supported by any competent evidence and are reviewable only for the purpose of passing upon their sufficiency to warrant the judgment." *Hartsell v. Hartsell*, 99 N.C. App. 380, 388, 393 S.E.2d 570, 573 (1990). "North Carolina's appellate courts are deferential to trial courts in reviewing their findings of fact." *Harrison v. Harrison*, 180 N.C. App. 452, 637 S.E.2d 284, 286 (2006).

When determining a party's ability to pay, the trial court must look at two periods of time: (1) the period the party did not pay child support; and (2) the date of the hearing—the present ability to comply. *See Shippen v. Shippen*, 204 N.C. App. 188, 190-91, 693 S.E.2d 240, 243 (2010) (citation omitted). Civil contempt is treated as a measure to press compliance with an order of the court. *Scott v. Scott*, 157 N.C. App. 382, 393, 579 S.E.2d 431, 438 (2003). A party is held in civil contempt when:

> (1) The order remains in force;
> (2) The purpose of the order may still be served by compliance with the order;
> (2a) The noncompliance by the person to whom the order is directed is willful; and
> (3) The person to whom the order is directed is able to comply with the order or is able to take reasonable measures that would enable the person to comply with the order.

N.C. Gen. Stat. § 5A-21 (2023). "In order to find that a [party] acted willfully, the court must find not only failure to comply but that the [party] presently possesses the

means to comply." *Miller v. Miller*, 153 N.C. App. 40, 50, 568 S.E.2d 914, 920 (2002). "Though not specific, [a] finding regarding present means to comply is minimally sufficient to satisfy the statutory requirement for civil contempt." *Adkins v. Adkins*, 82 N.C. App. 289, 292, 346 S.E.2d 220, 222 (1986) (internal quotation marks and citations removed).

Upon findings plaintiff in civil contempt, the trial court made these findings:

> 22. Plaintiff admitted that he earned approximately $257,000.00 in 2021. Plaintiff admitted that between January and April 2022, he earned approximately $75,000.
>
> 23. While Plaintiff was "involuntarily terminated" from his position at Amazon Web Services on April 22,2022, he had earned approximately $332,000.00 during the prior 16 months and has had the current ability to comply with the Court's orders.
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> 24. Plaintiff had the ability to comply with the order at all relevant times from July 2021 to Present.
>
> 25. Plaintiff's conduct is willful and without just cause or excuse and therefore constitutes contempt of this Court.

Here, the trial court's findings invoke the minimally sufficient requirement to find a party in civil contempt under N.C. Gen. Stat. § 5A-21. The trial court noted that plaintiff "earned approximately $332,000 during the prior 16 months and has the current ability to comply with the Court's orders." In a similar case, this Court has held that evidence that the contemnor owned three automobiles and at least three tractor-trailers along with his business was competent evidence of the current ability to comply with court-ordered child support payments. *Adkins*, 82 N.C. App. at 292,

346 S.E.2d at 222. Plaintiff's ability to comply includes the present ability to take reasonable measures that would enable him to comply. *Teachey v. Teachey*, 46 N.C. App. at 334–35, 264 S.E.2d at 787–88. The facts as presented to this court indicate that plaintiff's noncompliance with the postseparation support order was deliberate, as plaintiff's own brief concedes his willful payments during the period of noncompliance to the predetermined offset—the mortgage on the premarital residence. We hold that the court's finding of plaintiff's present ability to comply was based on competent evidence. *See Sharpe*, 127 N.C. App. at 709, 493 S.E.2d at 291.

As for the trial court's award of attorney's fees to defendant, we do not discern any error. A spouse is entitled to attorney's fees if that spouse is (1) the dependent spouse, (2) entitled to the underlying relief demanded (*e.g.*, alimony or child support), and (3) without sufficient means to defray the costs of litigation. *Clark v. Clark*, 301 N.C. 123, 135–36, 271 S.E.2d 58, 67 (1980). Entitlement is a question of law, fully reviewable on appeal. *Id.* at 136, 271 S.E.2d at 67. Here, the trial court found that defendant is a dependent spouse and is entitled to receive child support. Thus, our focus hinges on whether plaintiff had sufficient funds to defray the litigation costs. To make this determination, courts can consider the disposable income and estate of the defraying spouse, although comparing the two spouses' estates may sometimes be appropriate. *Van Every v. McGuire*, 348 N.C. 58, 62, 497 S.E.2d 689, 691 (1998). The trial court made the following finding of facts in its amended order for postseparation support, permanent child support, and attorney fees:

> 9. Plaintiff's monthly gross income is $21,666.67
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> 10. Defendant's monthly gross income is $4,343.00. The Defendant's income is comprised of her wages from employment with Crossroads Fellowship and miscellaneous bank deposits into her State Employees Credit Union Account. . . .
>
> 16. After accounting for taxes, Defendant'[s] net monthly income from wages is $2,264.95.
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> 20. Plaintiff has a net monthly income of $14,000.00 after deductions for taxes, health, vision, and dental insurance.
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> 23. Plaintiff has reasonable monthly expenses, including the prospective child support obligation ordered herein, totaling $6,936.00.
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> 24. After deducting Plaintiff's reasonable monthly expenses from his net income, Plaintiff has $7,065.00 available with which to pay Defendant post separation support.
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> 25. With due consideration of the factors under N.C. Gen. Stat. §50-16.2A, including the financial needs of both parties, the parties accustomed standard of living, the present employment income of each party from any source, the Court finds that post separation support, payable from the Plaintiff to the Defendant, in the amount of $3,700 per month is appropriate.
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> 26. Defendant is a dependent spouse within the meaning of N.C. Gen. Stat. § 50-16.1A(2).
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> 27. Plaintiff is a supporting spouse within the meaning of N.C. Gen. Stat. § 50-16.1A(5).

Plaintiff did not contest the foregoing findings. We then conclude that defendant was without sufficient funds to defray the costs of litigation and was entitled to attorney's

fees. *See Barrett v. Barrett*, 140 N.C. App. 369, 374, 536 S.E.2d 642, 646 (2000). "Once a spouse is entitled to attorney's fees, our focus then shifts to the amount of fees awarded. The amount awarded will not be overturned on appeal absent an abuse of discretion." *Id.* (citing *Spencer v. Spencer*, 70 N.C. App. 159, 169, 319 S.E.2d 636, 644 (1984). Here, our review shows that the trial court did not abuse its discretion.

Aside from the foregoing, while we have ruled on the matter as it was presented, plaintiff's brief violates several appellate procedure rules. "[T]he Rules of Appellate Procedure[ ] are mandatory and [the] failure to follow these rules will subject an appeal to dismissal." *Steingress v. Steingress*, 350 N.C. 64, 65, 511 S.E.2d 298, 299 (1999) (citations omitted). In *Dogwood Dev. & Mgmt. Co., v. White Oak Transp. Co.*, the North Carolina Supreme Court identified three categories of appellate rule violations: "(1) waiver occurring in the trial court; (2) defects in appellate jurisdiction; and (3) violation of nonjurisdictional requirements." 362 N.C. 191, 194, 657 S.E.2d 361, 363 (2008). While "a party's failure to comply with nonjurisdictional rule requirements normally should not lead to dismissal of the appeal[,]" it may so if those violations are "gross" or "substantial." *Id.* at 198-99, 657 S.E.2d at 365-66. This Court has recognized that these rules apply when the appellant is self-represented or represented by counsel. *See Bledsoe v. Cnty. of Wilkes*, 135 N.C. App. 124, 125, 519 S.E.2d 316, 317 (1999). "[R]ules of procedure are necessary in order to enable the courts properly to discharge their duty of resolving disputes." *Dogwood Dev. & Mgmt. Co.,* 362 N.C. at 193, 657 S.E.2d at 362 (citation,

quotation marks, brackets, and ellipses omitted). Yet "rules of practice and procedure are devised to promote the ends of justice, not to defeat them." *Id.* at 194, 657 S.E.2d at 363 (citations, quotation marks, and brackets omitted).

A "principal category of default involves a party's failure to comply with one or more of the nonjurisdictional requisites prescribed by the appellate rules" and "[n]oncompliance with rules of this nature . . . does not ordinarily give rise to the harms associated with review of unpreserved issues or lack of jurisdiction." *Id.* at 198, 657 S.E.2d at 365.

> [W]hen a party fails to comply with one or more nonjurisdictional appellate rules, the court should first determine whether the noncompliance is substantial or gross under Rules 25 and 34. If it so concludes, it should then determine which, if any, sanction under Rule 34(b) should be imposed. Finally, if the court concludes that dismissal is the appropriate sanction, it may then consider whether the circumstances of the case justify invoking Rule 2 to reach the merits of the appeal.

Id. at 201, 657 S.E.2d at 367. Appellate Rule 25(b) states the following:

> A court of the appellate division may, on its own initiative or motion of a party, impose a sanction against a party or attorney or both when the court determines that such party or attorney or both substantially failed to comply with these rules, including failure to pay any filing or printing fees or costs when due. The court may impose sanctions of the type and in the manner prescribed by Rule 34 for frivolous appeals.

N.C. R. App. P. 25(b) (2017).

Here, we face several nonjurisdictional defects to such an extent as to impair this Court's task of review and frustrate the adversarial process. Rule 28 of the *North Carolina Rules of Appellate Procedure* requires a party's brief to contain:

> A full and complete statement of the facts. This should be a non-argumentative summary of all material facts underlying the matter in controversy which are necessary to understand all issues presented for review, supported by references to pages in the transcript of proceedings, the record on appeal, or exhibits, as the case may be.

N.C.R. App. P. 28(b)(5) (2022).

While plaintiff includes a "Statement of the Facts" section, it contains several allegations and facts peripheral to each matter in controversy. A party's brief must contain:

> An argument, to contain the contentions of the appellant with respect to each issue presented. Issues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned. . . .
>
> The body of the argument and the statement of applicable standard(s) of review shall contain citations of the authorities upon which the appellant relies. Evidence or other proceedings material to the issue may be narrated or quoted in the body of the argument, with appropriate reference to the record on appeal, the transcript of proceedings, or exhibits.

N.C. R. App. P. 28(b)(6) (2022).

Plaintiff presented a variety of issues that all pertain to the underlying proceedings. Among other arguments, he contends that the trial court's findings of fact and conclusions of law are not factually supported. Still, he does not otherwise cite, analogize, or distinguish relevant authority supporting his arguments. N.C. R. Civ. P. 52(a)(1) (2023); *see also GRE Props. Thomasville L.L.C. v. Libertywood Nursing Ctr., Inc.*, 235 N.C. App. 266, 276, 761 S.E.2d 676, 682 (2014) ("[D]efendant cites only [one case] for the proposition that issues of relevance are reviewed de novo

and fails to cite any further legal authority in support of its argument. As a result, we find [the] defendant has abandoned this argument."); *see also K2HN Constr. NC, LLC v. Five D Contrs, Inc.*, 267 N.C. App. 207, 214 n.6, 832 S.E.2d 559, 565 n.6 (2019) (noting that where a party's "standard of review section does contain citations to authority pertinent to this argument, . . . those cases merely state a general rule and are not analogized or otherwise analyzed in support of [the party's] position.").

Though plaintiff sporadically included cursory citations, including citations unsupported by the record, plaintiff failed to otherwise cite, analogize, or distinguish relevant authority to support his claims. As such, his briefing is merely an amalgamation of conclusory statements that do not apply legal authority. *See Lopp v. Anderson*, 251 N.C. App. 161, 167, 795 S.E.2d 770, 775 (2016) (concluding plaintiff abandoned the issues raised in his appeal where his argument consisted of declaratory statements unsupported by any citation to authority and made only a passing reference to a statute). *See also State v. Summers*, 177 N.C. App. 691, 699, 629 S.E.2d 902, 908 (2006) (declining to address one of the appellant's arguments when he failed to include a statement of the applicable standard of review). Failure to state legal authority or basis for an issue on appeal constitutes a "gross violation" of the *North Carolina Rules of Appellate Procedure*. *See Dogwood Dev. Mgmt. Co.*, 192 N.C. App. at 120, 665 S.E.2d at 498; *State v. Sinnott*, 163 N.C. App. 268, 273, 593 S.E.2d 439, 442–443 (2004); *In re Will of Harts*, 191 N.C. App. 807, 811, 664 S.E.2d 411, 414 (2008). Failure to cite supporting legal authority impairs this Court's ability

to review the merits of the appeal. *Hannah v. Nationwide Mut. Fire Ins.,* 190 N.C. App. 626, 632, 660 S.E.2d 600, 604 (2008) ("As a result of [the] failure to cite any authority . . . we have not considered the merits . . . because that violation of the rules impaired our ability to review the merits of the appeal.").

We have carefully considered what we can discern, and find any remaining arguments abandoned considering the foregoing since "it is not the role of this Court to create an appeal for an appellant or to supplement an appellant's brief with legal authority or arguments not contained therein." *Thompson v. Bass*, 261 N.C. App. 285, 292, 819 S.E.2d 621, 627 (2018) (citations omitted); *Kabasan v. Kabasan*, 257 N.C. App. 436, 443, 810 S.E.2d 691, 697 (2018).

IV. Conclusion

For the foregoing reasons, we discern no error and affirm the trial court's holding.

AFFIRMED.

Judges Wood and Griffin concur.

Report per Rule 30(e).