NO. COA05-1662

NORTH CAROLINA COURT OF APPEALS

Filed: 7 November 2006

ROGER WILLIAM MARTIN,
Plaintiff-Appellee,

v.

Catawba County
No. 92-CVD-2939

CHERYL WALKER MARTIN
(now Davidson),
Defendant-Appellant.

Appeal by Defendant from order entered 29 August 2005 by Judge Amy R. Sigmon in District Court, Catawba County. Heard in the Court of Appeals 13 September 2006.

Starnes and Killian, PLLC, by Wesley E. Starnes, for Plaintiff-Appellee.

Respess & Jud, by W. Wallace Respess, Jr.; and Marshall Hurley, PLLC, by Marshall Hurley, for Defendant-Appellant.

McGEE, Judge.

Roger William Martin (Plaintiff) and Cheryl Walker Martin (now Davidson) (Defendant) were married on 19 May 1979. The parties separated on 16 September 1987 and were divorced on 4 November 1988.

The parties have one child, Anita Carol Martin (Anita). Anita was born 26 February 1986 and has Down's Syndrome. Plaintiff filed a complaint seeking custody of Anita and child support on 23 December 1992. Defendant filed an answer and counterclaim for

custody and child support on 19 April 1993. The parties entered into a consent order on 21 June 1994 (the 1994 order), which placed primary custody of Anita with Defendant and secondary custody with Plaintiff. The 1994 order also required Plaintiff to maintain health insurance for Anita and provided as follows:

> Plaintiff shall pay the sum of $513.00 per month payable $119.00 each week beginning Friday, June 3, 1994 and continuing each Friday thereafter during the lifetime of Anita . . . or until such time during Anita['s] . . . lifetime that she is able to care for herself and provide for herself economically or until such time as Anita . . . shall marry, whichever shall first occur.

Plaintiff filed a motion in the cause to modify the 1994 order on 23 January 1997. In his motion, Plaintiff alleged the following change of circumstances:

> a. . . . Plaintiff was terminated from his employment at Norandex, Inc. on May 2, 1996, not through any fault on the part of . . . Plaintiff, but because of corporate downsizing;
>
> b. Since May 2, 1996, . . . Plaintiff has sought employment with several companies but has been unsuccessful;
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> c. Since August 1, 1996, . . . Plaintiff has been self employed at R & R Connections, with a substantial reduction in Plaintiff's income since his employment at Norandex, Inc.;
>
> d. After Plaintiff's termination of employment from Norandex, Inc., Plaintiff has had to procure different medical insurance for himself and the minor child at a substantial cost to Plaintiff;
>
> e. . . . [D]efendant has remarried and is no longer employed;
>
> f. . . . Defendant[] no longer requires

work-related child care.

Plaintiff requested that the trial court "enter an order of child support in accordance with . . . Plaintiff's income and in accordance with the North Carolina Child Support Guidelines." Defendant filed a reply and moved for a deviation from the child support guidelines to provide for Anita's extraordinary needs.

The trial court entered a consent order on 22 July 1997 (the 1997 order), determining the "Motion in the Cause filed by . . . Plaintiff seeking a reduction in support and a counter-motion [by] . . . Defendant for a modification of the prior support orders and a deviation from the Child Support Guidelines." The 1997 order provided "[t]hat commencing with the month of July, 1997, . . . Plaintiff shall pay into the Office of the Clerk of Superior Court of Catawba County the sum of $95.00 per week, commencing with Friday, July 4, 1997, and continuing weekly thereafter until further orders of this Court." The 1997 order also required Defendant to carry medical insurance for Anita and provided that Plaintiff and Defendant would each pay fifty percent of any of Anita's hospital, doctor, drug, dental, opthalmological, and orthodontic expenses which were not otherwise covered by Defendant's medical insurance. The 1997 order further stated: "Except as modified herein, this Court's prior Orders are to remain in full force and effect."

Plaintiff filed a motion in the cause to terminate child support on 24 November 2004, alleging that Anita had reached the age of eighteen and did not attend secondary school. Plaintiff

sought an order terminating his obligation to pay child support for Anita as of 29 May 2004. Defendant filed a response to Plaintiff's motion in the cause on 8 December 2004, alleging that Plaintiff remained obligated to pay child support for Anita pursuant to the 1994 order.

The trial court entered a child support order on 29 August 2005, finding and concluding that the 1997 order superseded the 1994 order as to issues of amount and duration of child support. The trial court also found that child support under the 1997 order terminates in accordance with N.C.G.S. § 50-13.4(c), which provides:

> Payments ordered for the support of a child shall terminate when the child reaches the age of 18 except:
>
> > (1) If the child is otherwise emancipated, payments shall terminate at that time;
> >
> > (2) If the child is still in primary or secondary school when the child reaches age 18, support payments shall continue until the child graduates, otherwise ceases to attend school on a regular basis, fails to make satisfactory academic progress towards graduation, or reaches age 20, whichever comes first, unless the court in its discretion orders that payments cease at age 18 or prior to high school graduation.
>
> In the case of graduation, or attaining age 20, payments shall terminate without order by the court, subject to the right of the party receiving support to show, upon motion and with notice to the opposing party, that the child has not graduated or attained the age of 20.

N.C. Gen. Stat. § 50-13.4(c) (2005). The trial court further found that Anita was attending Western Piedmont Community College, which qualified as a secondary school. Therefore, the trial court ordered Plaintiff to continue to pay child support as set forth in the 1997 order until Anita turned twenty, so long as she remained continuously enrolled in her present program or a substantially similar program. In the event that Anita ceased attending classes prior to her twentieth birthday, child support would immediately end. Defendant appeals.

Defendant argues the trial court erred by ordering that Plaintiff's obligation to pay child support terminate when Anita reached the age of twenty, or before, if Anita ceased attending classes. Specifically, Defendant contends the trial court erred in its conclusion of law that the 1997 order superseded the 1994 order as to the duration of Plaintiff's child support obligation. Conclusions of law are reviewable *de novo* by this Court. *Evans v. Evans*, 169 N.C. App. 358, 360, 610 S.E.2d 264, 267 (2005).

"In North Carolina, there is no longer a statutory obligation for parents to support their disabled adult children." *State v. Benfield*, 95 N.C. App. 451, 453, 382 S.E.2d 776, 777 (1989). However, "a parent can assume contractual obligations to his child greater than the law otherwise imposes. . . . Thus, a parent may expressly agree to support his child after emancipation and beyond majority, and such agreements are binding and enforceable." *Williams v. Williams*, 97 N.C. App. 118, 122, 387 S.E.2d 217, 219

(1990) (citations omitted).

In the present case, it is uncontested that in the 1994 order Plaintiff agreed to pay child support for Anita beyond the age of her majority until either (1) Anita was able to care for herself and provide for herself economically, or (2) Anita married. What the parties dispute in this action is the effect of the 1997 order.

We hold that the 1997 order controls only as to the amount of child support; it does not control the duration of Plaintiff's child support obligation. In Plaintiff's 23 January 1997 motion in the cause to modify child support, Plaintiff only sought a reduction in the amount of child support, rather than a reduction in the duration of his child support obligation. In his motion, Plaintiff's alleged change of circumstances solely addressed the reduction in Plaintiff's income. Moreover, Plaintiff requested that the trial court "enter an order of child support in accordance with . . . Plaintiff's *income* and in accordance with the North Carolina Child Support Guidelines." In his 1997 motion, Plaintiff never sought a reduction in the duration of his child support obligation.

Furthermore, in the 1997 order, the parties recognized that the matter came before the trial court solely upon Plaintiff's motion "seeking a reduction in support" and Defendant's counter-motion. The 1997 order also expressly states that "[e]xcept as modified herein, this Court's prior Orders are to remain in full force and effect." Although it would have been a better practice for the 1997 order to have restated all the provisions of the 1994

order with regard to duration, it was not required. Because Plaintiff's motion requested only a reduction in the amount of child support, and in view of the provision that prior orders remained in full effect, the durational language in the 1997 order that child support continue "weekly thereafter until further orders of this Court[,]" dealt only with the amount of child support. In other words, the amount of child support determined by the 1997 order would remain in effect until further orders of the trial court.

Plaintiff relies on *Jackson v. Jackson*, 102 N.C. App. 574, 402 S.E.2d 869 (1991) in arguing that, "'further Orders of the Court' language serve[d] as a portion of the Court's reasoning in rejecting a contention that a parent had obligated himself beyond the statutorily mandated support period." Plaintiff argues the same result is mandated in the present case. We disagree.

In *Jackson*, the plaintiff and the defendant, who were divorced, entered into a consent judgment in which the defendant was required to pay child support for the parties' two minor children, the younger of whom was disabled. *Jackson*, 102 N.C. App. at 574, 402 S.E.2d at 869. The judgment required the defendant to pay support until the older child reached age eighteen and further provided that at that time, the support payments "may be reduced by agreement of the parties or may be subject to further Orders of the Court." *Id.* The parties' older child became eighteen years old in 1980; the plaintiff filed a motion to increase the defendant's payments for support of the younger child in 1989, when the younger

child was nineteen years old. *Id.* at 574-75, 402 S.E.2d at 869. The trial court increased the defendant's payments, and the defendant filed a motion under N.C. Gen. Stat. § 1A-1, Rule 60(b)(5) and Rule 60(b)(6), arguing the trial court's order was entered under a mistaken impression that North Carolina still required parents to support their disabled children past the age of majority. *Id.* at 575, 402 S.E.2d at 869-70. The trial court agreed with the defendant and vacated the order, and the plaintiff appealed to this Court. *Id.* at 575, 402 S.E.2d at 870.

Our Court interpreted the following provision of the parties' consent judgment:

> 1. It is understood and agreed that nothing in this Judgment shall effect [sic] the obligation of either party to provide for the continued support and/or necessary medical expenses and necessities of [the younger child] beyond the age of her majority and that all matters pertaining to her support and maintenance are subject to further Orders of the Court.

Id. Our Court held as follows:

> The only thing that the parties agreed to in this provision, it seems to us, was that they were obligated under the law to continue supporting the child; it cannot be construed as an agreement to continue supporting her independent of that obligation. Since [the] defendant's obligation to continue supporting the child beyond its minority had been abrogated by the General Assembly and he had not contracted to continue the payments apart from that obligation, the order requiring him to continue supporting the child had no legal basis, as the trial court correctly ruled in setting it aside.

Id. at 576, 402 S.E.2d at 870.

In the present case, despite Plaintiff's contention to the

contrary, our Court in *Jackson* did not construe the language "further Orders of the Court." Our Court simply held that the parties did not obligate themselves to provide support greater than that required by law. *Id.*

In the present case, Plaintiff obligated himself in the 1994 order to support Anita beyond the age of her majority. We hold the trial court erred by concluding that the 1997 order superseded the 1994 order as to the duration of Plaintiff's child support obligation and in ordering Plaintiff's child support obligation to terminate if Anita failed to attend classes or reached the age of twenty, whichever first occurred. The durational terms of the 1994 order remain in full force and effect. We reverse and remand the matter to the trial court.

Reversed and remanded.

Judges BRYANT and ELMORE concur.

Report per Rule 30(e).