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NO. COA05-452

NORTH CAROLINA COURT OF APPEALS

Filed: 7 March 2006

MATTHEW VAUGHN,

Plaintiff,

v.

Harnett County
No. 03 CVD 372

STEPHANIE VAUGHN,

Defendant.

Appeal by plaintiff from order entered 18 January 2005 by Judge Jimmy L. Love, Jr. in Harnett County District Court. Heard in the Court of Appeals 16 January 2006.

Akins, Hunt & Fearon, PC, by Belinda Sukeena, for plaintiff-appellant.

No brief for defendant-appellee.

ELMORE, Judge.

Matthew Vaughn (plaintiff) appeals from an order for civil contempt entered on 18 January 2005. For the reasons stated below, the contempt order is vacated.

Plaintiff and Stephanie Vaughn (defendant) were married on 22 February 1992 and had a child on 13 October 1994. The parties entered into a separation and property settlement agreement on 5 February 2002, and plaintiff filed a complaint on 18 February 2003

in which he sought an absolute divorce. On 9 June 2003 the trial court entered a judgment of divorce. The parties' separation and property settlement agreement, which had been modified on 30 October 2002, was incorporated into the divorce judgment.

On 30 September 2004 plaintiff filed a motion to modify child custody and child support. Following a hearing, the trial court entered a custody order on 27 October 2004 that awarded primary physical custody of the child to plaintiff and terminated plaintiff's child support obligation. The trial court further ordered that "[n]either party shall have guests of the opposite sex at the house between the hours of 8:00 pm and 7:00 am. . . . Any violation of this order shall subject the parties to the contempt powers of this court."

On 28 December 2004 defendant filed a "motion and notice of hearing for contempt" in which she claimed that plaintiff had willfully failed to comply with the custody order. Defendant asserted that the custody order required plaintiff to "have girlfriend (Lace) move out" and that plaintiff's girlfriend had continued to live at plaintiff's home as of 28 December 2004. At the proceeding for civil contempt on 18 January 2005, plaintiff introduced a certificate of marriage between himself and Lacene Fay Koszi dated 15 January 2005. The certificate was filed with the Harnett County Register of Deeds on 18 January 2005.

In entering its "order for civil contempt," the trial court utilized a preprinted "fill-in-the-blank" form. Although the trial court found that the custody order required the parties "[n]ot have

guests of the opposite sex at the house between the hours of 8:00 pm and 7:00 am," the contempt order does not contain a finding as to how plaintiff had violated this requirement. The trial court did not fill in the contempt order's fifth finding of fact as to how "the purpose of the order may still be served by compliance" In addition, the trial court's contempt order failed to specify the action which plaintiff must take to purge himself of the contempt.

After concluding that plaintiff "has no just cause for refusing to abide by the order of the Court and is in willful civil contempt of this Court[,]" the trial court ordered plaintiff to spend fifteen consecutive weekends in jail. Plaintiff gave notice of appeal, and then filed a motion for temporary stay and a petition for writ of supersedeas on 21 January 2005. This Court allowed the motion on 21 January 2005 and the petition on 8 February 2005.

Plaintiff contends the trial court failed to make the requisite findings of fact to support its conclusion that he was in civil contempt of court. He further argues the trial court failed to state how he could purge himself of the contempt. Plaintiff's arguments are persuasive.

At the conclusion of a proceeding for civil contempt, the trial court "must enter a finding . . . on each of the elements set out in G.S. 5A-21(a)." N.C. Gen. Stat. § 5A-23(e) (2005). Those elements are:

- (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(a)(1-3) (2005). If a trial court finds civil contempt, it then "must enter an order finding the facts constituting contempt and specifying the action which the contemnor must take to purge himself or herself of the contempt." N.C. Gen. Stat. § 5A-23(e) (2005).

The trial court's contempt order does not state how the purpose of its custody order dated 19 October 2004 and entered on 27 October 2004 may still be served by compliance. Nor does the contempt order contain a finding as to the alleged act of noncompliance by plaintiff or that his action was willful. The trial court made no finding as to plaintiff's ability to comply with the custody order, and it failed to specify what action plaintiff must take to purge himself of the contempt. Because the trial court's incomplete findings of fact do not support its conclusions of law, the contempt order must be vacated. In his remaining argument, plaintiff contends the trial court's contempt order was contrary to the evidence, an abuse of discretion, and an error as a matter of law. Assuming the trial court had made proper findings of fact consistent with the allegations in defendant's "motion and notice of hearing for contempt," the evidence in the record of plaintiff's marriage to Lacene Fay Koszi on 15 January

2005 appears to show that plaintiff was in compliance with the custody order prior to the proceeding for civil contempt on 18 January 2005. A district court "does not have the authority to impose civil contempt after an individual has complied with a court order, even if the compliance occurs after the party is served with a motion to show cause why he should not be held in contempt of court." *Ruth v. Ruth*, 158 N.C. App. 123, 126, 579 S.E.2d 909, 912 (2003). The order for civil contempt is vacated.

Vacated.

Judges McCULLOUGH and TYSON concur.

Report per Rule 30(e).