

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA07-1211

NORTH CAROLINA COURT OF APPEALS

Filed: 6 May 2008

MARY MacKENZIE,  
Plaintiff

v.

Durham County  
No. 04 CVD 847

HARVARD LEWIS,  
Defendant

# Court of Appeals

Appeal by defendant from an order entered 19 August 2006 by Judge Thomas G. Foster, Jr., in Durham County District Court.

Heard in the Court of Appeals 21 April 2008.

## Slip Opinion

*Daniel F. Read for plaintiff-appellee.*

*Mary McCullers Reece for defendant-appellant.*

HUNTER, Judge.

Harvard Lewis ("defendant") appeals from an order finding him in contempt of court. After careful review, we affirm.

Mary MacKenzie ("plaintiff") and defendant were married on 13 June 1985 and separated on 18 April 2004. The parties had three children. On 23 February 2004, plaintiff initiated this action seeking child custody and support, alimony, and attorney's fees. Defendant counterclaimed for custody and support and sought equitable distribution. On 6 December 2004, plaintiff and defendant entered into a consent agreement resolving issues

concerning custody of the parties' children, child support, and alimony and attorney's fees. Pursuant to the agreement, defendant was to pay plaintiff \$1,400.00 per month for child support, with the amount to be "re-evaluated after equitable distribution." On 31 May 2005, a second consent order was entered, this time resolving "all pending issues" between the parties. The 6 December 2004 consent order, as far as it pertained to child support, "remain[ed] in full force and effect."

On 1 August 2005, plaintiff filed a motion to show cause, alleging that defendant was delinquent in his child support obligation in the amount of \$4,200.00. On 11 October 2005, defendant moved to modify his child support obligation. On 8 December 2005, a hearing was held on the motion to hold defendant in contempt. The trial court entered an order to continue so as to allow defendant the opportunity to have his motion for modification heard. The trial court also ordered that defendant pay \$500.00 per month "without prejudice" to either party. On 8 May 2006, the trial court heard defendant's motion to modify his child support obligation. On 26 June 2006, the trial court declined to modify defendant's support obligation.

On 19 August 2006, following a show cause hearing, the trial court entered a child support enforcement order. The court found that defendant had a child support obligation of \$1,400.00 per month and was in arrears in the amount of \$11,850.00. The court stated that it was "not persuaded" that defendant was "not earning enough to pay more toward his support." Therefore, the court found

defendant in civil contempt. The court sentenced defendant to thirty days' confinement, with the order suspended on the condition that defendant purge himself of contempt by payment of \$5,925.00 by 31 December 2006, and a second payment of \$5,925.00 by 31 December 2007. Alternatively, the court permitted defendant to purge himself of contempt by signing over all title and interest he had in a 2002 Honda Accord.

Defendant argues that the trial court erred by ordering that he purge himself of contempt by making two lump sum payments without first finding that he had the ability to pay the amounts ordered. We are not persuaded.

"Our review of a contempt proceeding 'is limited to whether the findings of fact by the trial judge are supported by competent evidence and whether those factual findings are sufficient to support the judgment.'" *Ugochukwu v. Ugochukwu*, 176 N.C. App. 741, 745, 627 S.E.2d 625, 627 (2006) (quoting *McMiller v. McMiller*, 77 N.C. App. 808, 810, 336 S.E.2d 134, 136 (1985)). Defendant contends that he does not have the financial ability to pay the arrears on his alimony obligation and purge himself of contempt. However, as noted previously herein, the two lump sum payments were not the sole method by which defendant could purge himself of contempt. The court also found that defendant had possession of a 2002 Honda automobile, and permitted defendant to purge himself of contempt by signing over title to the vehicle to plaintiff in lieu of the lump sum payments. Defendant has not offered any argument as to why he did not have the ability to purge himself of contempt

by this method, and none appears on the record. Accordingly, we affirm the trial court's contempt order.

Affirmed.

Judges McCULLOUGH and STEELMAN concur.

Report per Rule 30(e).