NO. COA10-917
NORTH CAROLINA COURT OF APPEALS

Filed: 2 August 2011

COURTNEY S. GRAHAM,
Plaintiff,

v. New Hanover County
No. 07-CVD-4129

JAMES DAVID KEITH, JR., and
SANDRA FAYE KEITH,
Defendants.

Appeal by defendants from judgment and order entered on or about 13 January 2010 by Judge Jeffrey E. Noecker in District Court, New Hanover County. Heard in the Court of Appeals 12 January 2011.

The Lineberry Law Firm, PC, by Chas M. Lineberry, Jr., for plaintiff-appellee.

Lea, Rhine & Rosbrugh, PLLC, by James W Lea, III, for defendant-appellants.

STROUD, Judge.

Defendants appeal the trial court's order which declares the adoption of their granddaughter void. For the following reasons, we affirm.

I. Background

This case arises from a custody dispute over Mary,[1] an approximately 13 year-old-girl; plaintiff is Mary's biological mother and defendants are Mary's biological paternal grandparents. On 29 January 2002, plaintiff signed a consent form to allow defendants to adopt Mary.[2] On or about 13 November 2002, the trial court decreed that Mary had been adopted by defendants ("2002 adoption decree"). Despite the adoption, Mary continued to live with plaintiff except for some brief periods of time when plaintiff needed another place for Mary to stay.

Mary was still living with plaintiff on or about 13 September 2007, when plaintiff filed a complaint against defendants requesting, *inter alia*, (1) permanent custody of Mary pursuant to Chapter 50 of the North Carolina General Statutes, (2) the trial court vacate the 2002 adoption decree, and (3) entry of an emergency temporary custody order maintaining Mary in the custody of plaintiff. On or about 31 January 2009, the trial court awarded plaintiff "temporary emergency care, custody and control of the minor child" ("emergency custody order"). On 9 February 2009, defendants answered plaintiff's complaint,

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[1] A pseudonym will be used to protect the identity of the minor.

[2] All of the parties agree that Mary's father signed a consent form allowing defendants to adopt Mary.

substantially denying the material allegations; defendants also requested Mary be returned to them immediately.[3] On or about 8 April 2009, defendants filed an "amended counterclaim[,]" (original in all caps), which consisted of a motion to dismiss plaintiff's challenge to the 2002 adoption decree because it was barred by the statute of limitations. Also in April of 2009, defendants filed a motion to vacate the emergency custody order. On or about 26 August 2009, the trial court set aside the emergency custody order and gave sole custody of Mary to defendants.

On 28 October 2009, a hearing upon plaintiff's claims was held. According to the trial court's order, entered on or about 13 January 2010, at some prior time, the trial court had "denied and dismissed" the Chapter 50 custody claim "for Plaintiff's lack of standing."[4] The trial court, ***inter alia***, vacated the 2002 adoption decree. Defendants appeal.

II. Public Policy

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[3] The answer was signed by counsel and verified by defendants on 31 October 2008, although it was not filed until 9 February 2009.

[4] The order denying and dismissing plaintiff's Chapter 50 custody claim is not included in the record and the record does not show when this determination was made; no arguments are raised on appeal as to the propriety of this order.

Defendants first contend that "the trial court's conclusion of law that plaintiff is entitled to have the decree of adoption, entered on 13 November 2002, declared void *ab initio*, vacated and set aside, is contrary to North Carolina law and violates established State policy concerning the necessary finality of adoptions." (Original in all caps.) Defendant then states that "[t]he fact that this kind of relief is possible so many years after an adoption decree is filed should be very disturbing to adoptive parents throughout this State" and "[f]or trial courts to allow people such as the Plaintiff to overturn adoption decrees after so many years have passed, defies the logic and policy behind North Carolina's adoption statutes." In this argument, defendants do not contest the actual legal grounds upon which the trial court based its decision, but rather focus on a general public policy argument.

Public policy does not prevent relief when an adoption is induced by fraud. *See* N.C. Gen. Stat. § 48-2-607(c) (2007). Here, the trial court determined that the adoption was void for fraud. N.C. Gen. Stat. § 48-2-607(c) provides a legal route upon which adoption may be set aside for fraud; *see id.*, the trial court determined that relief was available pursuant to N.C. Gen. Stat. § 48-2-607(c). Accordingly, we reject

defendant's argument regarding public policy.

III. Fraud in the Inducement

Defendants next contend that "the trial court's conclusion of law that plaintiff is entitled to an order setting aside the 13 November 2002 prior decree of adoption on the grounds that the judgment is void for fraud in the inducement, is contrary to North Carolina law, and constitutes an abuse of discretion." (Original in all caps.) While defendants frame their contention as a challenge to "the trial court's conclusion of law" regarding fraud, defendants are actually challenging the sufficiency of the evidence to support the trial court's findings of fact. Defendant's analysis of the trial court's errors begins by arguing that "the evidence and testimony that the Plaintiff submitted at trial was insufficient to establish the elements of fraud, and therefore the consent executed by the Plaintiff was irrevocable." Defendants then cite seven times to the transcript to support their argument. Yet the transcript is not part of the record on appeal, and a transcript of the testimony is necessary for us to consider an argument which challenges the sufficiency of the evidence to support the findings of fact:

> The burden is on an appealing party to show, by presenting a full and complete record,

> that the record is lacking in evidence to support the trial court's findings of fact. Our Rules of Appellate Procedure state: The record on appeal in civil actions shall contain so much of the evidence as is necessary for an understanding of all errors assigned. Furthermore, where the evidence is not in the record, it will be assumed that there was sufficient evidence to support the findings. In other words, when the evidence is not in the record the matter is not reviewable. Since the record on appeal is devoid of evidence . . . we are unable to determine what evidence was before the trial court and are unable to perform a meaningful review of this [issue].

Walker v. Penn Nat'l Sec. Ins. Co., 168 N.C. App. 555, 560, 608 S.E.2d 107, 110-11 (2005) (citations, quotation marks, ellipses and brackets omitted). Defendant's brief focuses on specific statements made during the hearing and not on whether the findings of fact, as the trial court made them, support the conclusions of law. Just as in *Walker*, without a transcript we are unable to conduct a meaningful review of defendants' argument on appeal.[5] *See id.*

IV. Conclusion

For the foregoing reasons, we affirm.

AFFIRMED.

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[5] We note that the record on appeal includes "DEFENDANTS' DESIGNATION FOR ARRANGEMENT FOR TRANSCRIPTION OF PROCEEDINGS" and a "CERTIFICATION OF DELIVERY" of the transcript; however, the transcript is not in the record on appeal and has not been filed with this Court.

Judges CALABRIA and HUNTER, JR., Robert N. concur.

Report per Rule 30(e).