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NO. COA13-310

NORTH CAROLINA COURT OF APPEALS

Filed: 5 November 2013

GUILFORD COUNTY by and through its
Child Support Enforcement Agency,
ex rel. WANETTA C. IJAMES &
CHARLES D. YOES,
Plaintiffs,

v.

Guilford County
No. 05 CVD 9515

DAMIEN A. SUTTON,
Defendant.

Appeal by defendant from order entered 9 October 2012 by Judge Susan R. Burch in Guilford County District Court. Heard in the Court of Appeals 28 August 2013.

J. Mark Payne, for Guilford County, and Deputy County Attorney Matthew J. Turcola, for Guilford County.

Samuel B. Johnson, Attorney, PLLC, by Samuel B. Johnson, for defendant-appellant.

BRYANT, Judge.

Where defendant fails to establish good cause to believe he is not the father of the child, a requirement before he can obtain a court ordered paternity test, we affirm the trial

court's denial of defendant's motion seeking relief from his child support obligation.

The record before us reflects that on 8 September 2005, Guilford County, "on behalf of Charles D. Yoes versus defendant Damien Sutton," filed an "Application, Summons, and Order to Show Cause for Child Support" for why defendant should not be held in contempt for failure to pay child support for the benefit of Antwan Sutton, born 30 October 2004. Following an 18 September hearing, at which defendant was present, the district court entered an 18 October 2005 order finding that "DEFENDANT SIGNED THE AFFIDAVIT OF PARENTAGE FOR THIS CHILD ON 10/30/2004." The district court ordered that defendant obtain health insurance coverage for his child when it is available at a reasonable cost and that defendant pay \$212.00 per month for current support plus \$10.00 per month toward retroactive support owed to the State in the amount of \$690.50.

On 3 March 2006, defendant filed a pro se motion for visitation of his son. Defendant requested that he have the right to visit with his son during weekends, holidays, and during the summer.

On 9 January 2012, Guilford County Child Support Enforcement, on behalf of plaintiffs Wanetta Ijames (Antwan

Sutton's mother) and Charles Yoes (Antwan Sutton's guardian), filed a motion seeking a trial court order directing that defendant appear in Guilford County District Court and show cause why he should not be held in contempt for willful failure to pay court ordered child support. The motion alleged that defendant was in arrears \$3,243.45. Counsel was appointed by the court to represent defendant.

On 16 May 2012, defendant filed a motion for relief from his child support obligation due to disestablishment of paternity requesting that the child support order entered requiring him to pay support for the minor child be set aside. Defendant's motion for relief and plaintiff's motion for order to show cause came on for hearing on 1 June 2012 in Guilford County District Court before the Honorable Susan R. Burch, Judge presiding. The trial court continued the show cause hearing to 10 August 2012.¹ On 9 October 2012, the trial court entered an order denying defendant's motion for relief from his child support obligation. Defendant appeals.

¹ On 10 August 2012, Judge Burch dismissed the order to show cause concluding that defendant was in substantial compliance; then ordered that defendant was to remain under a temporary order to pay \$50.00 per month for current support and \$25.00 per month towards arrears, which totaled \$3,422.08.

On appeal, defendant raises the following issues: whether the trial court erred in (I) denying relief to one who had signed an affidavit of parentage; (II) failing to recognize the mother's statement that she had multiple sex partners; (III) interpreting the underlying statute as denying relief to a felon; and (IV) failing to recognize that the language of the statute is mandatory.

I & II

Defendant contends that his motion for a paternity determination was supported by good cause and that where the trial court denied relief because defendant signed an affidavit of paternity, the trial court erred. We disagree.

Defendant filed his motion for relief from child support obligation due to disestablishment of paternity, pursuant to North Carolina General Statutes, section 50-13.13 - "Motion or claim for relief from child support order based on finding of nonpaternity."

Pursuant to section 50-13.13,

[n]otwithstanding G.S. 8-50.1(b1), the court shall, upon motion or claim of a party in a proceeding under this section, order the moving party, the child's mother, and the child to submit to genetic paternity testing if the court finds that there is *good cause* to believe that the moving party is not the child's father and that the moving party may

be entitled to relief under this section.

N.C. Gen. Stat. § 50-13.13 (d) (2011) (emphasis added).² We note that subsection (b) of section 50-13.13 requires the motion or claim for relief from child support to state “[t]he basis, with particularity, on which the moving party believes that he is not the child's father” and that “[t]he moving party has not acknowledged paternity of the child or acknowledged paternity without knowing that he was not the child's biological father.” N.C.G.S. § 50-13.13(b) (1) & (2).

Defendant cites *In re Helmandollar v. M.A.N. Truck & Bus Corp.*, a case appealed to this Court from the Employment Security Commission, for the proposition that “[g]ood cause is a reason which would be deemed by reasonable men and women as valid” 74 N.C. App. 314, 316, 328 S.E.2d 43, 44 (1985) (citations omitted).

² Section 50-13.13 was enacted in June 2011 and became effective 1 January 2012. Pursuant to section 50-13.13(b), “[a] motion or claim for relief under this section . . . shall be filed within one year of the date the moving party knew or reasonably should have known that he was not the father of the child.” N.C. Gen. Stat. § 50-13.13(b) (2012). “Notwithstanding the provision . . . of this act requiring motions or claims to be filed within one year of discovery that the moving party is not the father, any person who would otherwise be eligible to file a motion or claim may file a motion or claim pursuant to this act prior to January 1, 2013.” 2011 N.C. Sess. Laws 328, sec. 4. Defendant filed his motion for relief from child support on 16 May 2012.

In its 9 October 2007 order, the trial court made the unchallenged finding of fact, in accordance with an assertion in defendant's verified motion for relief, that "at the time the child was conceived, [the child's mother] told [defendant] that she was sexually active with at least two other men; that she used the Internet to seek sexual partners; that she told him he was the father" Defendant also fails to challenge the trial court's findings that both he and Wanetta Ijames signed the Affidavit of Parentage on October 30, 2004 (the child's birthdate) and that defendant has filed motions for custody of the child of this action and participated in mediation regarding child custody arrangements.

In light of the unchallenged findings of fact, the record supports the trial court's determination that there was not good cause shown to believe that defendant was not the child's father and entitled to relief. The record is insufficient to permit the trial court to order defendant, Wanetta Ijames - the child's mother, and Antwan Sutton - the child, to submit to genetic paternity testing based on defendant's motion for relief from his child custody obligation due to disestablishment of paternity. See *Helamndollar*, 74 N.C. App. at 316, 328 S.E.2d at 44. The trial court concluded that defendant "has failed to

establish sufficient facts to support a request for a determination of paternity pursuant to [section] 50-13.13 of the North Carolina General Statutes" and that "[d]efendant has failed to demonstrate good cause to warrant such genetic testing now be ordered." We affirm the trial court's ruling. Accordingly, we need not reach defendant's remaining arguments.

Affirmed.

Judges STEPHENS and DILLON concur.

Report per Rule 30(e).