NO. COA14-374

NORTH CAROLINA COURT OF APPEALS

Filed: 2 December 2014

CHRISTIE LYNN MOORE,
Plaintiff

v. Rowan County
No. 06 CVD 3462

HAROLD GAIL MOORE, JR.,
Defendant

Appeal by defendant from order entered 30 September 2013 by Judge Beth S. Dixon in Rowan County District Court. Heard in the Court of Appeals 8 September 2014.

No Brief, for Plaintiff.

Homesley & Wingo Law Group PLLC, by Andrew J. Wingo, for Defendant.

BELL, Judge.

Defendant Harold Gail Moore, Jr. appeals from an order modifying a previous consent order addressing child support, alimony equitable distribution, court costs and counsel fees. The order from which Defendant appeals maintained the prior custody arrangements between the parties with respect to their minor daughter, awarded sole custody of the parties' minor son to Defendant, maintained the existing child support payment amounts, mandated that Defendant pay all uninsured medical

expenses, and held Defendant in contempt for unlawfully withholding child support payments. On appeal, Defendant contends that the trial court abused its discretion by requiring him to pay 100% of the educational expenses for the parties' minor children, requiring the retroactive payment of medical and extraordinary expenses, and in requiring him to pay 100% of the uninsured medical expenses. After a careful consideration of the parties' arguments in light of the record and applicable law, we conclude that the trial court's order should be reversed in part and remanded to the Rowan County District Court for the entry of a new order not inconsistent with this opinion.

I. Factual Background

Plaintiff and Defendant married on 11 March 1996. Over the course of their marriage, the couple had two children: one son and one daughter, the son being the older of the two. The parties separated in 2006 and divorced on 5 June 2007. In a consent order~~ed~~ dated 30 August 2007, the trial court ordered, among other things, that Defendant pay $1,000 per month in child support, that Defendant continue to pay for the children's educational expenses, and that the parties equally share uninsured medical and dental expenses. Custody of their minor children was to be shared equally.

Despite this order, the parties' son began living with Defendant exclusively in March of 2012 after a physical altercation with Plaintiff. Additionally, from 2010 through 2012, Defendant unilaterally deducted amounts from his monthly child support payment on the grounds that Plaintiff had not paid her half of the uninsured medical expenses. Although Defendant deducted over $7,000 for various expenses, the evidence demonstrated that Plaintiff's unpaid share of the children's uninsured medical expenses was $3,166.83. Furthermore, Defendant unilaterally enrolled the parties' daughter in numerous extracurricular activities, even when the activities were scheduled during Plaintiff's custodial time, and then deducted the associated costs from his child support payments.

The parties' daughter attended Davidson Day for the 2011 - 2012 school year, at a cost of $15,000. Defendant unilaterally removed the parties' daughter from Davidson Day and enrolled her in Southlake Christian Academy, a school with a cost of attendance of $8,900 annually, for the 2012-13 school year. Defendant enrolled the parties' son in Davidson Day in 2011 but moved him to Mooresville High School in 2012.

Plaintiff worked part-time at Home Depot in October of 2012, earning $9 per hour. Although Plaintiff initially was

able to arrange her work schedule around her custodial time with the parties' daughter, she eventually chose to quit her job because she was no longer able to schedule her job obligations in a way that did not interfere with her parenting time. Plaintiff had no income other than alimony payments made by Defendant, the last of which was made in February of 2013.

Defendant, on the other hand was the sole shareholder and owner of a corporation from which he received pass through income. Defendant was paid a weekly compensation of $1,750, however his last available tax return indicated that he had received $405,969 from his business. At the time of the hearing in 2013, the trial court determined that Plaintiff's gross monthly income for the purposes of child support was $780, stemming from her prior work at Home Depot, and Defendant's monthly gross income was $41,413.

Based on this evidence, the trial court determined that it was in the best interest of the parties' son that he be primarily placed with Defendant and granted Defendant sole custody. The court further ordered that the custody of the parties' daughter would remain the same, that child support would remain unchanged at $1,000 per month, and that Defendant would be responsible for 100% of the unreimbursed medical

expenses. The trial court further found Defendant in civil contempt of court for failing to comply fully with the previous child support order. Defendant noted an appeal to this Court from the trial court's order.

II. Legal Analysis

A. Apportionment of Education Expenses

Defendant argues on appeal that the trial court abused its discretion when it required him to pay 100% of the private school tuition for the parties' minor children. According to Defendant, at the time the 2007 consent order was entered into, the parties' children were in preschool and public school and "the parties had not contemplated private primary school at that time." Furthermore, Defendant contends that the 2007 order was ambiguous because it required him to "continue" to pay educational expenses. According to Defendant, the term "educational expenses" was not defined and the term "continue" could be construed to mean that Defendant was only required to pay whatever education expenses were in existence in 2007, which were minimal compared to the expenses currently being incurred. Defendant reasons that because the language in the 2007 order is ambiguous, the trial court erred in requiring Defendant to continue paying for all educational expenses, including private

school tuition, in the order appealed from because it required him to pay an increased, uncontemplated amount and apportioned a new extraordinary expense to be paid solely by Defendant. This issue, however, is not properly before this Court.

According to N.C.R. App. P. 3(a) and 3(c), a party may appeal from a particular order or judgment by filing a notice of appeal within thirty days after entry of the judgment or order. A properly filed notice of appeal, which gives jurisdiction to this Court, *Chee v. Estes*, 117 N.C. App. 450, 452, 451 S.E.2d 349, 350 (1994), must "designate the judgment or order from which appeal is taken and the court to which appeal is taken." N.C.R. App. P. 3(d). Therefore, "the appellate court obtains jurisdiction only over the rulings specifically designated in the notice of appeal as the ones from which the appeal is being taken." *Id.* Here, Defendant did not appeal from the 2007 order; he specifically appealed from the 2013 order modifying custody and reapportioning uninsured medical expenses. The 2013 order appealed from by Defendant made no conclusion of law concerning private school tuition or ongoing education expenses and did not order Defendant to pay any percentage of private school tuition or ongoing education expenses. Put simply, the order was silent with respect to the parties' obligations

concerning the private school tuition or ongoing education expenses of their children.

The trial court did address educational expenses, other than tuition, indirectly in two ways. First, it found Defendant in contempt for withholding amounts from his monthly child support payments to Plaintiff. While some of these amounts were for school-related expenses such as application fees, yearbooks, uniforms, supplies, registration fees and bus route payments, none were for tuition. The trial court found that "[t]he Defendant [was] in willful violation of the prior Order of this Court by failing to pay Plaintiff child support as ordered by the court." Second, the trial court concluded that Defendant "had at all times, and continues to have, the means and ability to comply with the prior Orders of this Court," without interpreting that order's mandate with regard to education expenses or private school tuition. While the testimony at trial addressed the purported intent of the parties regarding the payment of education expenses, the trial court, in its order, did not adopt either parties' interpretation. As such, the issues raised by Defendant regarding education expenses and private school tuition are not before this Court.

B. Uninsured Medical Expense Determination

Defendant next contends that the trial court erred in ordering him to pay 100% of the uninsured medical expenses for the parties' minor children. According to Defendant, the trial court failed to make sufficient findings of fact to support an order requiring him to pay for all expenses, considering the fact that he now has full custody of one of the minor children, and the court additionally erred in reapportioning uninsured medical expenses because the issue was not before the trial court.

"Our review of a child support order is limited to determining whether the trial court abused its discretion." *Brind'Amour v. Brind'Amour*, 196 N.C. App. 322, 327, 674 S.E.2d 448, 452 (2009). Generally, "an order of a court of this State for support of a minor child may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party or anyone interested." N.C. Gen. Stat. § 50-13.7(a). Therefore, a "trial court may not, on its own, modify an existing child support order"; its jurisdiction is "'limited to the specific issues properly raised by a party or interested person.'" *Henderson v. Henderson*, 165 N.C. App. 477, 479, 598 S.E.2d 433, 434 (2004) (quoting *Bogan v. Bogan*, 134 N.C. App. 176, 179, 516 S.E.2d 641, 643 (1999)).

Both parties made motions before the trial court prior to the entry of the 2013 order. Defendant made a motion to (1) modify the child custody agreement, (2) recalculate child support, and (3) order Plaintiff to pay her half of the past out-of-pocket medical expenses. Plaintiff filed a motion to hold Defendant in contempt for failing to make necessary child support payments. Neither party requested that the court reevaluate the apportionment of the uninsured medical expenses. Moreover, uninsured medical expenses were not subsumed in the child support payments pursuant to the 2007 order; the trial court provided for separate payment of the uninsured medical expenses. The facts before us now are strikingly similar to those addressed in a previous unpublished decision rendered by this Court.

In the case of *Parrott v. Kriss*, No. COA09-593, slip op. at 8 (N.C. Ct. App. May 18, 2010), this Court noted that certain education expenses were not included in the prior child support obligation and that the defendant did not seek a modification of those obligations in his motion for a modification of his child support payments. This Court found that "the only issue properly before the [trial] court was the issue of the amount of [defendant's] child support" because the defendant's "motion to

modify requested a reduction in his monthly child support obligation" and not "to modify other provisions regarding expenses for private school tuition and extracurricular expenses." *Id.* at 10. Likewise, despite the fact that Defendant sought reimbursement for out-of-pocket medical expenses not paid for by Plaintiff, Defendant never sought in his motion to modify the percentages paid with respect to this issue. Because neither party requested a modification of the existing uninsured medical expense obligation, the trial court was without authority to act as it did in making a modification to the previously agreed upon provision on its own motion. Therefore, we reverse this portion of the trial court's order and remand this case for reinstatement of the previous provisions regarding uninsured medical expenses.

III. Conclusion

For the reasons set forth above, we conclude that the trial court's order should be reversed and remanded for entry of a new order not inconsistent with this opinion. All portions of the order unchanged by this opinion shall remain as currently provided; the portion of the trial court's order requiring Defendant to pay all uninsured medical expenses should be

stricken and replaced by the terms of the previous order, which requires an equal sharing of the responsibility.[1]

REVERSED and REMANDED.

Judge MCCULLOUGH concurs.

Judge ERVIN concurs in part and concurs in the result in part by separate opinion.

[1]Defendant also argued on appeal that the trial court abused its discretion in ordering him to pay the modified medical expense amount and education expenses retroactively. We will not address this issue, however, due to the fact that our holding renders Defendant's argument moot.

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ERVIN, Judge, concurring in part and concurring in the result in part.

Although I concur in the result that my colleagues have reached in this case and in much of the reasoning upon which they have based their decision, I am unable to join their discussion of Defendant's challenge to the trial court's decision with respect to the education expense issue. As a result, I concur in the Court's opinion in part and concur in the result reached by the Court in part.

In his brief, Defendant argues that the trial court erred by requiring him to pay all of the educational expenses incurred on behalf of the parties' minor children, with this argument being predicated on the assertion that the provisions of the 2007 consent judgment governing the payment of the children's educational expenses were ambiguous and that the reference to Defendant's obligation to "continue" to pay the children's

educational expenses should be limited to the amount that was being incurred for that purpose at the time that the parties entered into the 2007 consent judgment. Instead of directly addressing the argument advanced in Defendant's brief, however, the Court declines to consider Defendant's contention on the grounds that the trial court's "order was silent with respect to the parties' obligation concerning the private school tuition or ongoing education expenses of their children." As a result, my colleagues conclude that, in the absence of a decision by the trial court in any way relating to the educational expense issue, the Court need not address Defendant's contention with respect to this subject on the merits.

A careful reading of the trial court's 2013 order has convinced me that the trial court did, contrary to my colleagues' apparent conclusion, address Defendant's contention that his exposure to education-related costs should be limited to the level that he was incurring for that purpose in 2007 and hold him in contempt for violating the relevant provision of the 2007 consent order. Admittedly, the trial court's order does not clearly delineate the specific acts which led to the decision that Defendant should be held in contempt. However, as I read its order, the trial court concluded as a matter of law

that Defendant was under a continuing obligation to pay for all of the children's educational expenses and held Defendant in contempt for unilaterally reducing the child support payments that he made to Plaintiff in an amount equal to a sum consisting, in part, of one-half of certain private school-related expenses.

In its order, the trial court stated in Finding of Fact No. 63 "[t]hat[,] pursuant to a prior consent Order . . . [,] Defendant is to pay the children's educational expenses[.]" Although the quoted language is denominated as a finding of fact in the trial court's order, this "finding" is more properly understood as a legal conclusion given that it explains the legal basis upon which Defendant's liability for the disputed educational expense is predicated. *See Coble v. Coble*, 300 N.C. 708, 713, 268 S.E.2d 185, 189 (1980) (construing the trial court's finding that "plaintiff is in need of financial assistance for the support of the minor children and that defendant is capable of providing such assistance" as a conclusion of law). As a result, the trial court did, contrary to my colleagues' determination, conclude that Defendant was obligated to pay all of the children's educational expenses.

In addition, the trial court went on to hold that Defendant had violated the 2007 consent order by unilaterally withholding from the child support payments that he made to Plaintiff amounts relating to the children's school uniforms, school application fees, school supply expenses, bus route payments, and academic registration fees. As should be obvious, these expenses appear to be unique to the private school setting and were not being incurred at the time that the parties entered into the 2007 consent order. Thus, the trial court did, in fact, hold Defendant in contempt for withholding from the monthly child support payments that he made to Plaintiff an amount that Defendant contended that he was not required to pay under his interpretation of the 2007 consent order.[2] For that reason, I am unable to join my colleagues' apparent decision that the trial court did not make any decision in the order that is currently before us for review relating to the educational expense issue that was adverse to Defendant.

[2]Although the argument that Defendant has advanced in his brief with respect to this issue focuses on tuition payments rather than other educational expenses, I do not believe that that fact should have any bearing on the ultimate outcome that we reach with respect to this issue given that the logic of Defendant's argument would be equally applicable to all education-related expenses rather than being solely applicable to tuition payments.

I do not, however, believe that the challenge to the trial court's decision with respect to the educational expense issue that Defendant has attempted to assert on appeal has merit. As Defendant notes, "'[a] consent judgment must be construed in the same manner as a contract to ascertain the intent of the parties.'" *Allison v. Allison*, 51 N.C. App. 622, 626-27, 277 S.E.2d 551, 554 (quoting *Martin v. Martin*, 26 N.C. App. 506, 508, 216 S.E.2d 456, 457 (1975)), *disc. review denied*, 303 N.C. 543, 281 S.E.2d 660 (1981). The primary purpose sought to be effectuated in the contract construction process is determining the intent of the parties "at the moment of its execution." *Lane v. Scarborough*, 284 N.C. 407, 409-10, 200 S.E.2d 622, 624 (1973). "It is a well-settled principle of legal construction that it must be presumed the parties intended what the language used clearly expresses, and the contract must be construed to mean what on its face it purports to mean." *Hagler v. Hagler*, 319 N.C. 287, 294, 354 S.E.2d 228, 234 (1987) (internal citation and quotation omitted). As a result, "[i]f the plain language of a contract is clear, the intention of the parties is [to be] inferred from the words of the contract." *Walton v. City of Raleigh*, 342 N.C. 879, 881, 467 S.E.2d 410, 411 (1996); *see also Corbin v. Langdon*, 23 N.C. App. 21, 25, 208 S.E.2d 251, 254

(1974) (stating that, "[w]here the language is clear and unambiguous, the court is obliged to interpret the contract as written, and cannot, under the guise of construction, reject what parties inserted or insert what parties elected to omit") (citation and quotation omitted). "An ambiguity exists in a contract when either the meaning of words or the effect of provisions is uncertain or capable of several reasonable interpretations." *Register v. White*, 358 N.C. 691, 695, 599 S.E.2d 549, 553 (2004).

After carefully reviewing the relevant contractual language, I am unable to agree with Defendant's contention that the provisions of the 2007 consent order dealing with responsibility for the children's educational expenses can be read to limit his liability for the children's educational expenses to the level being incurred at the time that the parties entered into the 2007 consent order. According to the 2007 consent order, "Defendant will continue to pay for the minor children's education expenses," with the children "currently attend[ing]" two specified educational institutions. According to ordinary English usage, the word "continue" means to "persist in an activity or process." *New Oxford American Dictionary* 376 (3rd ed. 2010). Although Defendant contends that

the use of the word "continue," coupled with the reference to the educational institutions that the children were attending in 2007, sufficed to render the educational expense provisions of the 2007 consent order ambiguous on the theory that the presence of this verbiage suggested that his obligation to pay to educate the children should be commensurate with the level of expense that he was incurring for that purpose in 2007, I am not persuaded by Defendant's argument. Instead, when read in light of the language that the parties actually used and the complete absence of any language suggesting that Defendant's obligation to pay for the education of his children was subject to any explicit or implicit dollar limit, the relevant provision seems to me to unambiguously mean that Defendant would continue, as he had in the past, to pay whatever level of expense had been reasonably incurred for the children's education. Thus, given the fact that the language contained in the 2007 consent judgment with respect to the manner in which the parties were to pay for the children's education was clear and unambiguous and given the absence of any indication that the level of expense being incurred to educate the children was exorbitant or unreasonably high, the trial court did not err by determining

that Defendant was obligated to pay all of the children's educational expenses.

As a result, although I disagree with the Court's decision to refrain from reaching the merits of Defendant's challenge to the educational expense provision, I do not believe that Defendant is entitled to relief from the trial court's order on the basis of his educational expense claim. For that reason, I concur in the result that the Court has reached with respect to this issue without joining the relevant portion of its decision. I do, however, concur in the remainder of the Court's opinion.