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NO. COA14-460
NORTH CAROLINA COURT OF APPEALS

Filed: 18 November 2014

IRINA Y. BARCLAY,

Plaintiff,

v.

Watauga County
No. 12 CVD 395

MIKHAIL L. MAKAROV,

Defendant.

Appeal by defendant from orders entered 24 September 2013 by Judge Theodore McEntire in Watauga County District Court. Heard in the Court of Appeals 8 October 2014.

No plaintiff-appellee brief filed.

Law Offices of Daniel O. Klinedinst, P.C., by Daniel O. Klinedinst, for defendant-appellant.

ELMORE, Judge.

Defendant appeals from orders: 1.) granting plaintiff's motion to declare admissions admitted, 2.) granting plaintiff's motion *in limine*, and 3.) modifying child support. While we affirm the orders granting plaintiff's motion to declare

admissions admitted and motion *in limine*, we reverse the order modifying child support.

I. Facts

Irina Y. Barclay (plaintiff) and Mikhail L. Makarov (defendant) married each other in Russia on 29 April 1994. One child was born of the marriage (the minor child) on 5 March 1995. On 3 July 1998, plaintiff and defendant separated. A Russian court awarded plaintiff sole custody of the minor child and ordered (the child support order) defendant to pay 25% of his gross income to plaintiff as child support for the minor child. Plaintiff and the minor child have resided in Watauga County, North Carolina since 2003. Defendant is a citizen of Russia, but has resided in British Columbia, Canada since May 2008.

On 26 June 2012, plaintiff filed a complaint for modification of the child support order. Plaintiff served her first request for admissions on 22 November 2012 and subsequently filed a motion to declare the admissions as admitted by defendant due to his failure to timely respond to the request for admissions.

On 5 August 2013, plaintiff filed a motion *in limine* to exclude "all letters, motions, pleadings, papers, discovery

responses, statements, etc., submitted to this Court by Defendant, which were not properly and timely filed and served, or otherwise did not comply with the Rules for District Court and the local rules of the 24th Judicial District[.]" That same day, the trial court conducted a hearing concerning plaintiff's motions.

After a hearing, the trial court entered orders on 24 September 2013, granting both plaintiff's motion to declare the admissions as admitted by defendant and motion *in limine*. The trial court's order also modified the child support order due to a substantial change in circumstances affecting the minor child, stating, in relevant part, that:

> Defendant is highly-educated, has a PhD in Linguistics and International Communications, is able-bodied, and is capable of earning more than One Hundred Thousand Dollars ($100,000.00) per year.
>
> . . .
>
> Defendant's pro rata share of gross monthly income is Sixty Two Percent (62%), and Plaintiff's pro rata share of gross monthly income is Thirty Eight Percent (38%).
>
> . . .
>
> Defendant shall pay to Plaintiff the sum of Forty Two Thousand One Hundred Ninety Six and 30/100 Dollars ($42,196.30), together with interest thereon accruing at the rate of Eight Percent (8%) per annum from June

> 26, 2012, the date of the institution of this action, the component parts of which said sum are as follows:
>
> a. Twelve Thousand One Hundred Twenty-Seven and 22/100 Dollars ($12,127.22), as child support arrearages for the period of June 26, 2012 through August 5, 2013.
>
> b. Eleven Thousand Five Hundred Seven and 92/100 Dollars ($11,507.92), Sixty-Two Percent (62%) of the uninsured medical and orthodontic expenses incurred by Plaintiff on behalf of the Minor Child, based upon the Court's finding of proportionate income of the parties.

The trial court also awarded plaintiff attorney's fees in the amount of $10,641.97.

II. Analysis

a.) Personal Jurisdiction

First, defendant argues that the trial court erred by determining that it had personal jurisdiction over him. We disagree.

"Any interested party shall have the right of immediate appeal from an adverse ruling as to the jurisdiction of the court over the person or property of the defendant[.]" N.C. Gen. Stat. § 1-277(b) (2013). "Conclusions of law are reviewed de novo and are subject to full review." *State v. Biber*, 365 N.C. 162, 168, 712 S.E.2d 874, 878 (2011); *see also Carolina Power & Light Co. v. City of Asheville*, 358 N.C. 512, 517, 597

S.E.2d 717, 721 (2004) ("Conclusions of law drawn by the trial court from its findings of fact are reviewable *de novo* on appeal.").

"Objections to a court's exercise of personal (in personam) jurisdiction . . . must be raised by the parties themselves and can be waived in a number of ways." *Musarra v. Bock*, 200 N.C. App. 780, 782, 684 S.E.2d 741, 743 (2009) (citation and quotation marks omitted). Accordingly, "[a] defense of lack of jurisdiction over the person . . . is waived . . . if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course." N.C.R. Civ. P. § 1A-1, Rule 12(h)(1).

Moreover, a court can invoke personal jurisdiction over an individual "who makes a 'general appearance' in an action." *Bullard v. Bader*, 117 N.C. App. 299, 301, 450 S.E.2d 757, 759 (1994). In determining whether an individual has made a general appearance in an action, we

> examine whether the defendant asked for or received some relief in the cause, participated in some step taken therein, or somehow became an actor in the cause. Our courts have applied a very liberal interpretation to the question of a general appearance and almost anything other than a challenge to personal jurisdiction or a

> request for an extension of time will be considered a general appearance.

Id. (citations omitted).

Defendant argues that he raised the defense of lack of personal jurisdiction in his answer by stating the following:

> To sum it up, I am still a Russian Federation citizen employed in [sic] Russian Federation and still paying 25% of my income there. At the same time I currently reside in Canada, I am self-employed in Canada and have irregular and mostly very low income there. I agree to adjust the amount of child support for the Minor Child till her majority according to my current 2012 income and ask for a one-time settlement, preferably in a direct deposit form, taking into account the money order I mailed in March 2012 and all the money remitted from Russia. The amount of the child support should not hurt my current family financially and should be in accord with the British Columbia child support guidelines.

After reviewing defendant's entire answer, including the aforementioned excerpt, we conclude that defendant's argument is without merit. Defendant's answer does not allege, directly or implicitly, that the trial court could not render judgment against him personally. *See Musarra*, 200 N.C. App. at 782, 684 S.E.2d at 743 (dismissing defendant's issue on appeal that the trial court lacked personal jurisdiction over him because the defendant "failed to raise the defense of lack of personal jurisdiction in his answer").

To the contrary, defendant's answer constituted a "general appearance" because he addressed factual discrepancies in the complaint and requested that the trial court order a child support amount in accordance with British Columbia law without asserting a lack of personal jurisdiction defense. Thus, defendant waived the lack of personal jurisdiction defense. *See Bader*, 117 N.C. App. at 301-02, 450 S.E.2d at 759 (holding that the defendant waived the lack of personal jurisdiction defense by making a general appearance when he "submitt[ed] information relevant to the merits of the case to the court"). Accordingly, the trial court did not err by determining that it had personal jurisdiction over defendant.

b.) Request for Admissions

Next, defendant argues that the trial court erred by granting plaintiff's motion to declare admissions as admitted by defendant. We disagree.

N.C. Rule of Civil Procedure 36 states:

> A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request.

N.C.R. Civ. P. § 1A-1, Rule 36 (2013). Each matter specifically requested through the admission "is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter[.]" *Id.*

Defendant was served with plaintiff's first request for admissions on 22 November 2012, but defendant's purported answer was not filed until 10 January 2013, which was more than 30 days after service of the request. Defendant did not file a motion for an extension of time to respond to plaintiff's request for admissions, and the trial court did not adjust the time period for answering. Thus, the trial court did not err by granting plaintiff's motion to declare the admissions as admitted by defendant.

c.) Motion *in Limine*

Next, defendant argues that the trial court erred by granting plaintiff's motion *in limine*. Specifically, defendant argues that the motion was filed without proper notice in violation of Rule 6 of the North Carolina Rules of Civil Procedure. We disagree.

"A motion *in limine* seeks pretrial determination of the admissibility of evidence proposed to be introduced at trial; its determination will not be reversed absent a showing of an abuse of the trial court's discretion." *Warren v. Gen. Motors Corp.*, 142 N.C. App. 316, 319, 542 S.E.2d 317, 319 (2001) (citing *Nunnery v. Baucom*, 135 N.C. App. 556, 566, 521 S.E.2d 479, 486 (1999)). In order to preserve an argument on appeal that a trial court erred by granting or denying a motion *in limine*, a party "is required to object to the evidence at the time it is offered at the trial (where the motion was denied) or attempt to introduce the evidence at the trial (where the motion was granted)." *State v. Hill*, 347 N.C. 275, 293, 493 S.E.2d 264, 274 (1997) (citation and internal quotation marks omitted).

Even if we assume, *arguendo*, that the motion was filed without proper notice, defendant failed to preserve this issue for appellate review. There is no evidence in the record that defendant preserved this issue by attempting to introduce any of the suppressed documents during the hearing. Moreover, defendant does not articulate any argument in his brief that the excluded documents prejudiced his case. Accordingly, we decline to address this argument on appeal and affirm the granting of the motion *in limine*.

c.) Modification of Child Support Order

Defendant also argues that the trial court lacked the authority to modify the existing child support order. We agree.

Generally, a party seeking modification of a child support order "issued in another state shall register that order in this State . . . if the order has not been registered." N.C. Gen. Stat. § 52C-6-609 (2013). However, "if an obligee wants to modify an order against an obligor who resides in a different state, the obligee must 'register' the order in the state in which the obligor resides." *Crenshaw v. Williams*, 211 N.C. App. 136, 140, 710 S.E.2d 227, 230 (2011).

Here, plaintiff was required to register the child support order in Canada, the "State" of defendant's residence. *See* N.C. Gen. Stat. § 52C-1-101(19)(b) (2013). However, after reviewing the record, including the trial court's order, there is no evidence that plaintiff registered the order in the proper forum. Accordingly, the trial court had no authority to modify the child support order. *See Crenshaw*, 211 N.C. App. at 140-41, 710 S.E.2d at 230-31 (holding that a North Carolina trial court lacked the authority to modify a Michigan child support order where a North Carolina resident seeking modification failed to

register the order in Georgia, the "State" of residence of the obligor).

Even if we assume, *arguendo*, that North Carolina was the proper state of registration and that defendant in fact registered the child support order in this State, the trial court would have still lacked the authority to modify the child support order pursuant to N.C. Gen. Stat. § 52C-6-611 (2013). That statute, in relevant part, allows a trial court of this State to modify a foreign child support order registered in this State only if, "after notice and hearing[,] it finds that . . . [a] petitioner who is a nonresident of this State seeks modification[.]" N.C. Gen. Stat. § 52C-6-611 (2013). Because plaintiff is a resident of North Carolina, the trial court would be unable to make that required finding.

Consequently, we reverse the trial court's order modifying the child support order. As a result, we need not review defendant's other arguments on appeal relating to the award of attorney's fees, the ordering of retroactive child support, and the imputation of a potential income to defendant in the trial court's child support calculation because these arguments all stem from alleged errors in the order modifying child support.

III. Conclusion

The trial court properly exercised personal jurisdiction over defendant, and it neither erred by deeming plaintiff's request for admissions admitted nor by granting plaintiff's motion *in limine*. Thus, we affirm those two orders.

However, the trial court lacked the authority to modify the child support order. Thus, we reverse the trial court's order modifying defendant's child support obligations.

Affirmed, in part, reversed, in part.

Judges BRYANT and ERVIN concur.

Report per Rule 30(e).