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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-543

Filed: 5 January 2016

Franklin County, No. 12 CVD 00589

JOSHUA WILLIAMSON, Plaintiff,

v.

JENNIFER WHITFIELD, Defendant.

Appeal by Plaintiff from order entered 4 December 2014 by Judge Randolph Baskerville and order entered 31 December 2014 by Judge Daniel F. Finch in Franklin County District Court. Heard in the Court of Appeals 21 October 2015.

*Turrentine Law Firm, PLLC, by Karlene S. Turrentine, for the Plaintiff-Appellant.*

*No brief for the Defendant-Appellee.*

DILLON, Judge.

This is a child custody dispute between Joshua Williamson (“Father”) and Jennifer Whitfield (“Mother”). Father appeals from the trial court’s order granting Mother’s motion for relief from an earlier order and declaring that earlier order to be a nullity, as well as from the court’s later order denying his motion for relief from the second order. For the following reasons, we affirm.

I. Background

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The record tends to show the following: Father and Mother are the unmarried parents of a minor child. The trial court entered four orders relevant to the present appeal, all concerning the custodial rights of the parties in their minor child:

1. The trial court entered its first order awarding Father and Mother joint custody.
2. Father moved to modify the first order. Specifically, in his motion, Father alleged Mother was involved in illegal drug use. Mother was not present at the hearing, nor was she represented at the hearing. The trial court entered its second order granting Father's motion to modify the first order, thereby awarding Father sole custody.
3. Mother moved for relief from the second order pursuant to Rule 60 of the Rules of Civil Procedure, contending that she never received notice as required by G.S. 50-13.5. The trial court entered its third order, granting Mother's motion, thereby declaring its second order – in which it had modified the first order by giving Father sole custody – invalid.
4. The trial court entered a fourth order denying Father's motion for relief from the third order.

Father appeals the trial court's third and fourth orders, seeking to reinstate the second order which had granted him sole custody of the minor child.

II. Analysis

The dispositive question presented by all five iterations of Father's argument in his appellate brief is that the trial court no longer retained jurisdiction over the subject matter of this case when it entered its third and fourth orders because neither party nor the minor child still resided in North Carolina when those orders were entered. Alternatively, Father argues that the trial court failed to make the

necessary findings to determine whether it retained subject matter jurisdiction.<sup>1</sup> We disagree.

We have held that there are circumstances where under N.C. Gen. Stat. § 50A-202(a) that North Carolina trial courts may lose subject matter jurisdiction to modify a previously-entered valid custody order when all the parties and the minor child move out of North Carolina. *See Gerhauser v. Van Bourgondien*, \_\_\_ N.C. App. \_\_\_, 767 S.E.2d 378 (2014). In the present case, though, we hold that the third order was not an order modifying custody. It is true that the third order, which invalidated the second order, had an effect on the custody arrangement. However, the trial court was not being called upon to consider the merits of any argument concerning custody. Rather, the trial court was being called upon to determine whether Mother was entitled to Rule 60 relief due to a procedural defect, namely that she did not receive proper notice of the hearing which gave rise to the trial court's second order.

There is no dispute that the North Carolina trial court had *subject matter* jurisdiction to enter the second order. We believe the North Carolina trial court retained subject matter jurisdiction to consider a Rule 60 motion for relief from that second order even though neither party nor the minor child still resided in North Carolina. Accordingly, the trial court's third and fourth orders are affirmed.

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<sup>1</sup> Mother did not file an appellate brief.

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AFFIRMED.

Judges GEER and HUNTER, JR., concur.

Report per Rule 30(e).