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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-263

Filed: 4 October 2016

Pitt County, No. 11 CVD 10

LESLIE AARON BUNCH, Plaintiff,

v.

DANIELLE KENNEDY BUNCH, Defendant.

Appeal by plaintiff from order entered 15 September 2015 by Judge Lee F. Teague in Pitt County District Court. Heard in the Court of Appeals 7 September 2016.

W. Gregory Duke for plaintiff-appellant.

The Graham.Nuckolls.Conner Law Firm, by Jon G. Nuckolls and I. Alexander Neal, for defendant-appellee.

ZACHARY, Judge.

Leslie Aaron Bunch (plaintiff) appeals from an order concluding that Danielle Kennedy Bunch (defendant) was not in civil contempt of a prior order of the court. On appeal, plaintiff argues that the trial court erred by failing to make sufficient findings of fact, and by failing to order that defendant was in contempt of court. For the reasons that follow, we conclude that the trial court did not err and that its order should be affirmed.

I. Factual and Procedural Background

The parties are the parents of a son, Brennan Lane Kennedy, born in Texas on 22 February 2009, when the parties were not married. The parties subsequently moved to North Carolina and married on 30 September 2009, when the child was about seven months old. Plaintiff and defendant separated in December 2010, and later obtained a divorce. The present appeal arises from the parties' dispute regarding the child's last name.

On 10 January 2011, plaintiff filed an amended complaint for custody of Brennan and equitable distribution. Defendant filed her answer on 3 February 2011, making a counterclaim for child custody and seeking post-separation support. On 5 October 2011, the parties signed a consent order resolving their claims for child custody, child support and equitable distribution. The order, which provided for the parties to share joint legal and physical custody of Brennan, stated that "[t]he minor child's last name shall be legally changed to "Bunch" by the time the minor child enters grade school. Both parties shall sign any documents necessary to comply with this provision." A modified consent order was entered on 6 February 2012, making changes to the child support provisions and stating that "except as modified specifically herein the terms of the 5 October 2011 Consent Order are to remain in full force and effect." The modified consent order did not change the earlier provision regarding Brennan's name, which accordingly remained in effect.

On 24 September 2013, defendant filed a motion to modify custody, seeking primary physical custody of Brennan. Defendant alleged that plaintiff had engaged in behaviors that were detrimental to the child and which constituted a substantial change in circumstances since the parties execution of the 2011 consent order. Plaintiff filed a "countermotion" for custody of Brennan on 17 January 2014. Plaintiff alleged, as relevant to this appeal, that:

> The Defendant continues to refuse to change Brennan's last name from "Kennedy" to "Bunch" even though she is required to do so by prior court order between the parties. The Defendant will likely contend that she is not obligated to change the minor child's last name until Brennan attends Kindergarten. Even assuming this is correct, the Defendant's conduct in refusing to change the minor child's last name has created confusion on the part of the minor child, makes it more difficult for Brennan to develop a sense of self-identity, and, as importantly, is an attempt by the Defendant to keep the minor child from identifying with the Plaintiff and the minor child's extended family on the Plaintiff's side.

On 9 June 2014, the parties signed a consent order resolving the issues that had been raised in their respective motions and providing in relevant part that:

> 4. The parties shall move forward with changing the legal name of the minor child from Brennan Lane Kennedy to Brennan Lane Kennedy Bunch. Within a reasonable period of time, not to exceed ten (10) days upon reception of the documentation by her attorney, Defendant shall execute said documents necessary to implement this change of legal name.

Thereafter, defendant prepared documents for transmittal to Texas to effect the change of the child's name from Brennan Lane Kennedy to Brennan Lane Kennedy Bunch. Defendant alleges that she completed the forms consistently with her understanding that the child's last name was to be Kennedy Bunch, without a hyphen. Plaintiff disagreed with defendant's interpretation of the consent order, and contended that the parties had agreed to change the child's last name to Bunch with Lane and Kennedy as two middle names. In order to thwart the change of the child's last name to Kennedy Bunch, plaintiff intentionally signed his name incorrectly on the name change forms, so that the name change would be rejected and the forms would be returned.

On 5 August 2015, plaintiff filed a "motion for contempt" in which he alleged, in relevant part, that:

. . .

> 3. This Court entered a Consent Order on October 5, 2011 which, in pertinent part, provides as follows: . . . The minor child's last name shall be legally changed to 'Bunch' by the time the minor child enters grade school. Both parties shall sign any documents necessary to comply with this provision.
>
> 4. Defendant has failed and refused to comply with the prior Consent Order of this Court entered on October 5, 2011 in that she has willfully and intentionally refused to change the minor child's name from "Kennedy" to "Bunch." Instead, she is insisting that the minor child's last name be "Kennedy Bunch."

> 5. Defendant has had the means and ability to comply with the prior Order of this Court, presently has the means and ability with which to comply with said Order or is able to take reasonable measures that would enable her to comply with the said Order. Defendant's failure to abide by the terms of this Court's Order, or to take reasonable measures to do so, has been willful and without legal justification or excuse.

Plaintiff asked that "Defendant be adjudged in willful contempt of this Court for her failure to abide by the prior order of this Court." A hearing on plaintiff's motion was conducted on 14 September 2015. On 15 September 2015, the trial court entered a summary order stating only that "the Court does not find Defendant in civil contempt due to separate orders in the file that in the Court's opinion are confusing [on] the issue of the minor child's last name." Plaintiff filed timely notice of appeal to this Court from the trial court's order.

II. Standard of Review

"The standard of review for contempt proceedings is limited to determining whether there is competent evidence to support the findings of fact and whether the findings support the conclusions of law." *Watson v. Watson*, 187 N.C. App. 55, 64, 652 S.E.2d 310, 317 (2007), *disc. review denied*, 362 N.C. 373, 662 S.E.2d 551 (2008) (citation omitted). "Findings of fact made by the judge in contempt proceedings are conclusive on appeal when supported by any competent evidence and are reviewable only for the purpose of passing upon their sufficiency to warrant the judgment." *Hartsell v. Hartsell*, 99 N.C. App. 380, 385, 393 S.E.2d 570, 573 (1990) (citation

omitted). "When the trial court fails to make sufficient findings of fact and conclusions of law in its contempt order, reversal is proper." *Thompson v. Thompson*, 223 N.C. App. 515, 518, 735 S.E.2d 214, 216 (2012) (citing *Bishop v. Bishop*, 90 N.C. App. 499, 506-07, 369 S.E.2d 106, 110 (1988)).

III. Discussion

On appeal, plaintiff argues that the trial court erred by finding and concluding that defendant was not in civil contempt of court. The standard for determination of whether a party is in contempt of court is set out in N.C. Gen. Stat. § 5A-21(a) (2015), which states that "[f]ailure to comply with an order of a court is a continuing civil contempt as long as:

> (1) The order remains in force;
>
> (2) The purpose of the order may still be served by compliance with the order;
>
> (2a) The noncompliance by the person to whom the order is directed is willful; and
>
> (3) The person to whom the order is directed is able to comply with the order or is able to take reasonable measures that would enable the person to comply with the order.

In this case, it is undisputed that the parties were not married when Brennan was born, and that defendant gave the child the name Brennan Lane Kennedy. The parties signed consent orders in 2011 and 2014. The 2014 order specified that "[e]xcept as modified by the provisions set forth hereinabove, the parties' Consent

Order regarding Child Custody shall remain in full force and effect." As a result, one of the disputed issues between the parties is whether the 2014 order modified the 2011 order such that the 2011 order was no longer in effect when plaintiff sought to have defendant held in contempt. Review of the consent orders reveals that the language in the orders differed as follows regarding the change to Brennan's name:

1. Name Change:

    a. The 2011 order states that the "minor child's last name shall be legally changed to 'Bunch.' "

    b. The 2014 order states that the "parties shall move forward with changing the legal name of the minor child from Brennan Lane Kennedy to Brennan Lane Kennedy Bunch.

2. Timeline for Compliance:

    a. The 2011 order states that Brennan's name will be changed "by the time the minor child enters grade school."

    b. The 2014 order states that the name change will be initiated "[w]ithin a reasonable period of time not to exceed ten (10) days upon [defendant's] reception of documents from her attorney[.]"

3. Description of Required Compliance:

    a. The 2011 order states that "[b]oth parties shall sign any documents necessary to comply with this provision."

    b. The 2014 order states that within ten days of defendant's receiving the appropriate documents from her attorney "Defendant shall execute said

> documents necessary to implement this change of legal name."

The parties have not disputed the fact that the two orders use differing language regarding the timeline for compliance with the name change and the description of the required compliance. Plaintiff and defendant disagree strongly, however, about whether the 2014 consent order modified, and thus replaced, the 2011 order by providing that Brennan's last name would be changed to "Kennedy Bunch" instead of "Bunch."

Plaintiff argues that both the 2011 order and the 2014 order require Brennan's last name to be changed to Bunch, and that the 2014 order did not modify the 2011 order but simply added the child's first name - Brennan - and intended that Kennedy would become the child's second middle name, in addition to Lane, instead of being the child's last name. Plaintiff supports his position by noting that in both orders the "last" or "final" name is Bunch. On the other hand, defendant contends that the 2014 order reflects the parties' agreement that, instead of changing Brennan's last name to Bunch as specified in the 2011 order, the child's last name would be changed to Kennedy Bunch. Defendant asserts that the only logical reason for the 2014 order to include Brennan's prospective full name of Brennan Lane Kennedy Bunch was that it represented a change from the 2011 order.

It is axiomatic that:

> [I]n order to be held in contempt, a party must have willfully violated a court order. . . . With respect to contempt, willfulness connotes knowledge of, and stubborn resistance to, a court order. If the prior order is ambiguous such that a defendant could not understand his respective rights and obligations under that order, he cannot be said to have "knowledge" of that order for purposes of contempt proceedings.

Blevins v. Welch, 137 N.C. App. 98, 103, 527 S.E.2d 667, 671 (2000) (citing *Hancock v. Hancock*, 122 N.C. App. 518, 523, 471 S.E.2d 415, 418 (1996), and *Mauney v. Mauney*, 268 N.C. 254, 257, 150 S.E.2d 391, 393 (1966)). "The extent to which a consent judgment is ambiguous is a question of law. An ambiguity exists in the event that the relevant contractual language is fairly and reasonably susceptible to multiple constructions." *DeRossett v. Duke Energy Carolinas, LLC,* 206 N.C. App. 647, 656, 698 S.E.2d 455, 462 (2010) (citation omitted).

In this case, neither order indicates whether the name "Kennedy" was to be a second middle name or part of the child's last name. Simply put, neither of the consent orders at issue in this case addresses or resolves the central dispute raised on appeal. The 2011 order states that the child's last name will be changed to Bunch, while the 2014 order, although it retains Bunch as the final name, recites four names without delineating whether Kennedy was intended by the parties to be a second middle name or part of the last name "Kennedy Bunch." Given that the literal language of the consent orders was "reasonably susceptible to multiple constructions," *id.*, we hold that the trial court did not err by ruling that "the Court

does not find Defendant in civil contempt due to separate orders in the file that in the Court's opinion are confusing [on] the issue of the minor child's last name."

We have carefully considered plaintiff's argument urging us to reach a contrary result. Plaintiff argues that the trial court erred by failing to make the findings required by N.C. Gen. Stat. § 5A-23(e), which states that:

> At the conclusion of the [contempt] hearing, the judicial official must enter a finding for or against the alleged contemnor on each of the elements set out in G.S. 5A-21(a). If civil contempt is found, the judicial official must enter an order finding the facts constituting contempt and specifying the action which the contemnor must take to purge himself or herself of the contempt.

As noted above, the elements set out in N.C. Gen. Stat. § 5A-21(a) are that "(1) The order remains in force; (2) The purpose of the order may still be served by compliance with the order; (2a) The noncompliance by the person to whom the order is directed is willful; and (3) The person to whom the order is directed is able to comply with the order or is able to take reasonable measures that would enable the person to comply with the order." Plaintiff correctly notes that the trial court did not make findings regarding each of these elements. We conclude, however, that the trial court's finding that the orders were confusing on the issue was the functional equivalent of a finding that, because neither consent order resolves or addresses the question of whether Kennedy was to be part of the child's middle or last name, it was *not possible* to resolve the issues raised by the elements stated in § 5A-21(a). We

further conclude that no purpose would be served by remanding for the trial court to make further findings, given that the fundamental problem is that plaintiff is seeking to have defendant held in contempt of a consent order that does not address the disputed issue.

For the reasons discussed above, we conclude that the trial court did not err and that its order should be

AFFIRMED.

Judges ELMORE and ENOCHS concur.

Report per Rule 30(e).