IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-751

Filed: 21 February 2017

Madison County, No. 11 CVD 317

SARA PENNINGA, Plaintiff,

v.

REUBEN TRAVIS, Defendant.

Appeal by Defendant from order entered 15 January 2016 by Judge Hal Harrison in District Court, Madison County. Heard in the Court of Appeals 26 January 2017.

Michael E. Casterline for Plaintiff-Appellee.

Appellate Defender Glenn Gerding, by Assistant Appellate Defendant Joyce L. Terres, for Defendant-Appellant.

McGEE, Chief Judge.

Reuben Travis ("Defendant") appeals from an order finding him in civil contempt for violating child custody and child support orders. We vacate the order and remand for further proceedings.

I. Background

Defendant and Sara Penninga ("Plaintiff") were married on 23 August 1996. Three children were born of their marriage. The parties separated in December 2010, and were divorced on 12 January 2012.

Following a hearing on 24 November 2014, the trial court entered a Memorandum of Judgment/Order on 21 January 2015 memorializing a temporary child custody agreement ("consent agreement") to which Plaintiff and Defendant consented. The consent agreement provided that the parties would share legal and physical custody of the minor children and that neither parent would make child support payments to the other parent. A hearing on final custody matters was held on 20 May 2015. The trial court entered a Final Custody Judgment ("the custody order") on 16 July 2015. The custody order awarded primary legal custody of the children to Plaintiff. It granted joint physical custody of the children to Plaintiff and Defendant, to be shared as stipulated in the custody order. The custody order "specifically reserved" the issue of child support for hearing at a later date.

Plaintiff filed a Motion for Contempt against Defendant on 28 August 2015, alleging Defendant "should be held in Contempt of Court for his willful, deliberate, and continuing failure to abide by the Final Custody Judgment[.]" Plaintiff cited eight "manners" in which Defendant had "intentionally violated directives of [the trial court] and . . . attempted to circumvent the authority of [] Plaintiff, as well as alienate the minor children against [] Plaintiff[.]" Defendant's alleged violations included

> removing one of the [children] from [Plaintiff's] car without [Plaintiff's] knowledge; delaying the issuance of the [children's] passports; texting and calling the [children] at impermissible times; providing substitute cell phones for the [children] to use; denying [the children] reasonable telephone access to [Plaintiff]; deviating from the custody schedule; informing the [children] about the legal matters concerning the custody action; and refusing to participate in the [children's] counseling.

Plaintiff requested that Defendant be required to pay her attorney's fees and costs related to the contempt action.

Following a hearing on child support on 16 September 2015, the trial court entered a Child Support Order ("the child support order") on 9 October 2015. Defendant was ordered to make a monthly payment of $164.00 to Plaintiff. Defendant was also ordered to make a one-time payment to Plaintiff of $2,548.00 as reimbursement for "substantial other extraordinary expenses [incurred by Plaintiff] on behalf of the minor children[.]" Defendant filed a motion on 9 October 2015 seeking a new trial on all child support issues. In his motion, Defendant asserted that he was denied a fair trial because, at the child support hearing, he was not allowed to present evidence or testimony or examine evidence and testimony submitted by Plaintiff.[1] Defendant also alleged that Plaintiff had failed to disclose "[s]ignificant financial information" to the trial court. Defendant filed a second

[1] Defendant concedes he arrived at the child support hearing twenty-seven minutes late.

motion on 9 November 2015 seeking to terminate the child support order and requesting a retrial.

Plaintiff filed a Motion for Contempt Addendum on 7 December 2015, which incorporated Plaintiff's previously-filed contempt motion and asserted four additional grounds in support of her motion for contempt, including Defendant's alleged violation of the child support order. A hearing on Plaintiff's contempt motion was held on 14-15 December 2015. The trial court declined a request by Defendant to "hold[] off on deciding" the issue of contempt with respect to child support specifically until Defendant's motions related to the child support order could be heard. The court found Defendant in civil contempt as to both the custody order and the child support order. Immediately after the contempt hearing, the trial court considered various motions filed by Defendant, including his motions to set aside the child support order.[2]

The trial court entered its contempt order ("the contempt order") on 15 January 2016. In its order, the court enumerated ten ways in which it found Defendant was in violation of the custody and child support orders.[3] It concluded that Defendant's non-compliance was "willful, deliberate and without justification[,]" and that,

[2] A transcript of those proceedings does not appear in the record on appeal.

[3] Specifically, the court found nine individual violations of the child custody order, and separately found that Defendant "ha[d] failed to pay . . . even $1.00 towards his ongoing child support obligation and his share of extraordinary expenses [as] previously ordered[.]"

"throughout all times relevant to this inquiry, [Defendant] had the ability to comply . . . , or the ability to take measures to enable him to comply [with the orders], but ha[d] willfully and deliberately chosen not to do so." Among its purge conditions, the order directed Defendant to pay Plaintiff "$250.00 per month as child support . . . to be credited against the [total] $3,040.00 arrearage owed by [] Defendant." It also ordered Defendant to pay $6,300.00 in attorney's fees to Plaintiff's counsel for the defense of the contempt action. The same day, the trial court entered a judgment denying, *inter alia*, Defendant's motions challenging the child support order. That order directed Defendant to pay Plaintiff an additional $2,600.00 in attorney's fees.

Defendant filed a notice of appeal of the contempt order on 31 December 2015, approximately two weeks after the order was rendered in open court and two weeks prior to its entry.

II. Defendant's Notice of Appeal

Defendant filed a contemporaneous petition for writ of *certiorari* with his brief to this Court in light of "uncertainty, based on current case law, whether his appeal was timely filed." The trial court's order finding Defendant in civil contempt was orally rendered on 15 December 2015. Defendant filed a notice of appeal of that order on 31 December 2015, two weeks before the order was reduced to writing, signed, and filed on 15 January 2016.

N.C.R. App. P. 3 provides that "[a]ny party entitled by law to appeal from a judgment or order of a superior or district court *rendered* in a civil action . . . may take appeal by filing notice of appeal . . . within the time prescribed by subsection (c) of this rule." (emphasis added). In turn, Rule 3(c) provides in pertinent part that a party in a civil action must file and serve a notice of appeal "within thirty days after *entry* of judgment[.]" (emphasis added). In civil actions, entry occurs when a judgment is "reduced to writing, signed by the judge, and filed with the clerk of court." *See* N.C. Gen. Stat. § 1A-1, Rule 58 (2015). "The announcement of judgment in open court is the mere rendering of judgment, not the entry of judgment." *Griffith v. N.C. Dep't of Corr.*, 210 N.C. App. 544, 549, 709 S.E.2d 412, 417 (2011) (citation and quotation marks omitted). "[E]ntry of judgment by the trial court is the event which vests jurisdiction in this Court, and the judgment is not complete for the purpose of appeal until its entry." *Searles v. Searles*, 100 N.C. App. 723, 726, 398 S.E.2d 55, 57 (1990) (citation omitted).

As Defendant notes, this Court recently held that, where a defendant filed a notice of appeal after an order was rendered but prior to its entry, and the defendant "failed to take timely action to perfect his appeal pursuant to Appellate Rule 3, . . . his appeal [was] not properly before this Court." *Mannise v. Harrell*, ___ N.C. App. ___, ___, 791 S.E.2d 653, 656 (2016). Although the defendant in *Mannise* did not file a subsequent or amended notice of appeal following entry of the order, and did not

file a petition for writ of *certiorari*, this Court nonetheless invoked our discretion to issue the writ and reach the merits of the defendant's appeal. *Id.*; *see also* N.C.R. App. P. 21(a)(1) ("The writ of certiorari may be issued in appropriate circumstances by either appellate court to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action[.]"); N.C.R. App. P. 2 ("To prevent manifest injustice to a party, or to expedite decision in the public interest, either court of the appellate division may . . . suspend or vary the requirements . . . of any of these rules in a case pending before it[.]").

Defendant also observes that an earlier decision of this Court appears to conflict with the analysis in *Mannise*. In *In re S.F.*, 198 N.C. App. 611, 682 S.E.2d 712 (2009), a party filed a notice of appeal from a termination of parental rights order after the order was orally announced but more than a month before it was entered. This Court found we had jurisdiction to hear the appeal, citing precedent "squarely [holding] that notice of appeal given within thirty days after rending of judgment in open court, but before entry of judgment, is timely." *Id.* at 613, 682 S.E.2d at 715 (citing *Darcy v. Osborne*, 101 N.C. App. 546, 548, 400 S.E.2d 95, 96 (1991)). We note, however, that the precedent relied upon in *In re S.F.* for this proposition predated 1994 amendments to N.C.G.S. § 1A-1, Rule 58 redefining "entry of judgment." Specifically, "prior to 1994, Rule 58 did not require that an order be in writing, signed, and filed to be deemed 'entered'; indeed, orally rendered judgments were considered

'entered.'" *Dabbondanza v. Hansley*, ___ N.C. App. ___, ___, 791 S.E.2d 116, 119 (2016) (citation omitted). *Mannise* reflects the current definition of "entry" and properly reads N.C.R. App. P. 3 to require that a notice of appeal be filed "within 30 days *after*" (emphasis added) a judgment is "reduced to writing, signed by the judge, and filed with the clerk of court." In the present case, as in *Mannise*, "[a]n entered order did not exist when Defendant filed [his] notice of appeal[.]" *Mannise*, ___ N.C. App. at ___, 791 S.E.2d at 656. Defendant also did not file a new or amended notice of appeal following entry of the contempt order. Accordingly, Defendant's notice of appeal was untimely under N.C.R. App. P. 3 and his appeal is not properly before us.

Notwithstanding this conclusion, we allow Defendant's petition for writ of *certiorari* in order to review the issues Defendant raises in his brief. *Mannise* was not decided until approximately nine months after Defendant filed his notice of appeal, well beyond the thirty-day period provided for in N.C.R. App. P. 3. Thus, at the time Defendant filed his notice of appeal, and during the thirty-day period following entry of the contempt order, existing case law suggested his notice of appeal would be considered timely. Because a contempt order affects a substantial right, we find it appropriate in these circumstances to reach the merits of Defendant's appeal. *See Thompson v. Thompson*, 223 N.C. App. 515, 517, 735 S.E.2d 214, 216 (2012) (citation and quotation marks omitted).

III. Attorney's Fees

Defendant first argues the trial court erred in awarding attorney's fees to Plaintiff without making the requisite statutory findings to support such an award. We agree.

A. Standard of Review

"Whether a trial court has properly interpreted the statutory framework applicable to [the allowance of costs and fees] is a question of law reviewed *de novo* on appeal." *Peters v. Pennington*, 210 N.C. App. 1, 25, 707 S.E.2d 724, 741 (2011) (citation omitted); *see also S. Seeding Serv., Inc. v. W.C. English, Inc.*, 224 N.C. App. 90, 98-99, 735 S.E.2d 829, 835 (2012) ("Whether an award of attorneys' [sic] fees is allowable pursuant to statute is reviewable *de novo*." (citation omitted)). When conducting a *de novo* review, the appellate court "considers the matter anew and freely substitutes its own judgment for that of the trial court." *Blow v. DSM Pharms., Inc.*, 197 N.C. App. 586, 588, 678 S.E.2d 245, 248 (2009) (citation and quotation marks omitted).

B. Analysis

"It is settled law in North Carolina that ordinarily attorney[']s fees are not recoverable either as an item of damages or of costs, absent express statutory authority for fixing and awarding them." *Records v. Tape Corp.*, 18 N.C. App. 183, 187, 196 S.E.2d 598, 602 (1973) (citation omitted). Pursuant to N.C. Gen. Stat. § 50-13.6 (2015), "[a]ttorneys' [sic] fees can be properly awarded in custody [and] child

support . . . cases upon adequate findings of fact that the moving party acted in good faith and had insufficient means to defray the expense of the suit." *Cox v. Cox*, 133 N.C. App. 221, 227-28, 515 S.E.2d 61, 66 (1999). Accordingly, this Court has upheld attorney's fee awards in civil contempt cases involving custody and child support matters. *See*, *e.g.*, *Eakes v. Eakes*, 194 N.C. App. 303, 312, 669 S.E.2d 891, 897 (2008); *Ruth v. Ruth*, 158 N.C. App. 123, 127, 579 S.E.2d 909, 912 (2003). In *Eakes*, this Court held that "the contempt power of the trial court includes the authority to require the payment of reasonable attorney's fees to opposing counsel as a condition to being purged of contempt for failure to comply with a child support order." *Eakes*, 194 N.C. App. at 312, 669 S.E.2d at 897. However,

> [b]efore awarding attorney's fees, the trial court must make specific findings of fact concerning:
>
> (1) the ability of the [party seeking fees] to defray the cost of the suit, i.e., that the [party seeking fees] [is] unable to employ adequate counsel in order to proceed as a litigant to meet the other litigants in the suit;
>
> (2) the good faith of the [party seeking fees] in proceeding in th[e] suit;
>
> (3) the lawyer's skill;
>
> (4) the lawyer's hourly rate; [and]
>
> (5) the nature and scope of the legal services rendered.

Shippen v. Shippen, 204 N.C. App. 188, 192, 693 S.E.2d 240, 244-45 (2010) (quoting *In re Baby Boy Scearce*, 81 N.C. App. 662, 663-64, 345 S.E.2d 411, 413 (1986)).

Defendant contends the trial court "did not make any findings to support its award of attorney['s] fees to Plaintiff. The court simply ordered [Defendant], as part of his purge requirements, to pay the sum of $6,300.00 directly to Plaintiff's counsel within [thirty] days of the entry of the [contempt] order." While Plaintiff "acknowledges that the [contempt] order does not expressly find facts as to the good faith and lack of funds requirements set forth in *Shippen*[,]" she submits that "this Court has previously held that while the better practice is to make express findings as to an interested party's good faith, the lack of such findings is not fatal." Plaintiff contends that "the record establishes" Plaintiff's good faith in bringing the contempt action and that, moreover, "[t]here is . . . evidence . . . to establish" that she had insufficient means to defray the related expenses.

We find Plaintiff's responsive arguments unpersuasive. In *Eakes*, this Court held that "although the trial court did not make findings as to [the] defendant's good faith, the evidence show[ed] that he [was] an interested party acting in good faith." *Eakes*, 194 N.C. App. at 313, 669 S.E.2d at 898. However, this Court proceeded to conclude that the trial court's findings of fact were inadequate to support an award of attorney's fees in that case because "the trial court failed to make a finding that [the] defendant had insufficient means to defray the expense of the suit." *Id.* In the present case, even assuming that "the facts . . . amply demonstrate [Plaintiff's] good faith in bringing [Defendant] before the court to enforce the prior orders," Plaintiff's

argument fails, because the trial court also made no finding regarding Plaintiff's ability to defray the costs of the action.

Plaintiff cites *Middleton v. Middleton*, 159 N.C. App. 224, 583 S.E.2d 48 (2003), as holding "that specific findings were not required for a trial court to make . . . an award [of attorney's fees]." The primary issue addressed in *Middleton*, however, was the *reasonableness of the amount* of the fee award, not whether the trial court made the requisite statutory findings before deciding whether and in what amount to award fees. In that case, this Court concluded there was adequate evidence to support a conclusion that the amount of the fees was reasonable, because "[the] [p]laintiff's counsel submitted an affidavit to support the request for attorney's fees, . . . [the] defendant did not take exception to the court's finding that attorney [sic] fees were incurred[,]" and after reviewing the affidavit, the trial court awarded fees that were "$500 less than requested." *Id.* at 227, 583 S.E.2d at 49. With respect to the trial court's statutory authority to award attorney's fees, this Court observed only that "the contempt power of the district court includes the authority to award attorney [sic] fees as a condition of purging contempt for failure to comply with an order." *Id.* at 227, 583 S.E.2d at 50. There was no discussion of the statutory findings that must precede the trial court's decision to award fees. We emphasize that different standards of review apply to these questions:

> Whether the[] statutory requirements [set forth in N.C.G.S. § 50-13.6] have been met is a question of law,

> reviewable on appeal. Only when these requirements have been met does the standard of review change to abuse of discretion for an examination of the amount of attorney's fees awarded.

Simpson v. Simpson, 209 N.C. App. 320, 323, 703 S.E.2d 890, 892 (2011) (citation and quotation marks omitted).

As Plaintiff concedes, the trial court made no findings with respect to either factor explicitly required under N.C.G.S. § 50-13.6. Accordingly, we vacate the award of attorney's fees and remand for additional findings.

IV. Purge Requirements

Defendant next argues the trial court erred by holding him in civil contempt of the child support and custody orders "without specifying how and when he could purge himself of contempt." We agree.

A. Standard of Review

"In reviewing a trial court's contempt order, the appellate court is limited to determining whether there is competent evidence to support the trial court's findings of fact and whether the findings of fact support the conclusions of law." *Sloan v. Sloan*, 151 N.C. App. 399, 408, 566 S.E.2d 97, 103 (2002) (citation omitted). "We are bound by the trial court's findings of fact where there is some evidence to support those findings, even though the evidence might sustain findings to the contrary. Findings of fact not challenged on appeal are presumed to be supported by competent evidence and are also binding." *In re T.J.C.*, 225 N.C. App. 556, 562, 738 S.E.2d 759,

763-64 (2013) (citations and internal quotation marks omitted). "The trial court's conclusions of law drawn from the findings of fact in civil contempt proceedings are reviewable *de novo*." *Smith v. Smith*, ___ N.C. App. ___, ___, 785 S.E.2d 434, 439 (2016) (citation and quotation marks omitted).

B. Analysis

1. Child Support Order

A trial court's order holding a person in civil contempt "must specify how the person may purge himself of the contempt." N.C. Gen. Stat. § 5A-22(a) (2015). Additionally, the contemnor must have the present ability to comply with purge conditions imposed by an order of civil contempt. *See Scott v. Scott*, 157 N.C. App. 382, 394, 579 S.E.2d 431, 439 (2003). "[A] contempt order must be vacated [if] it fails to specify as required by [N.C.]G.S. 5A-22(a) how the defendant might purge [himself or] herself of contempt. The purpose of civil contempt is not to punish, but to coerce the defendant to comply with the order. Thus, the purging provision is essential to the order." *Bethea v. McDonald*, 70 N.C. App. 566, 570, 320 S.E.2d 690, 693 (1984) (internal citation omitted).

In the present case, Defendant contends that, while the trial court's findings of fact supported a finding that he was in civil contempt of the child support order, the court failed to specify how Defendant could purge himself of that contempt. Defendant characterizes four "purge conditions" in the contempt order as "too vague

and indefinite." The trial court ordered, *inter alia*, (1) that "Defendant shall not violate any Orders of this [c]ourt, including this Order, [and] the [custody and child support orders][;]" (2) that "Defendant shall immediately pay . . . the sum of $250.00 per month as child support[;]" (3) that if "Defendant violates any of the terms of this Order, or any other Orders, a Show Cause Motion may be filed setting this matter for hearing to determine why an Order for his arrest should not enter as a result of his failure to comply[;]" and (4) "such other and further relief as this [c]ourt deems just and necessary to effectuate the terms of this Order of Contempt." According to Defendant, those requirements were impermissibly vague and indefinite because "they did not clearly show what [Defendant] had to do to purge himself of contempt and there was no definitive end date."

Plaintiff argues that of the four purge conditions identified by Defendant, only one "can be rightly interpreted as a purge requirement for [Defendant's] contempt of the child support order[;] " specifically, the requirement that

> Defendant shall immediately pay into the North Carolina Child Support Centralized Collections . . . the sum of $250.00 per month as child support and that same amount will be due and owing on the first day of each month to be credited against the $3,040.00 arrearage owed by [] Defendant. . . . [A]ny deviation or delay in the monthly payment of child support will be a violation of Orders of this [c]ourt and will subject [] Defendant to [the] contempt powers of this tribunal.

Plaintiff describes this condition as "a very precise purge requirement" that "clearly order[ed] [Defendant] to take specific action, directed toward remediating the finding that he had willfully failed to pay any money toward his ongoing child support obligation[.]" However, recent decisions of this Court have rejected similar arguments. In *Spears v. Spears*, ___ N.C. App. ___, 784 S.E.2d 485 (2016), a purge condition required the contemnor to "begin paying at least $900.00 more per month to [the plaintiff] *over and above* his total monthly obligations due under [existing child support and alimony orders]." *Id.* at ___, 784 S.E.2d at 499 (emphasis in original). On appeal, the plaintiff argued that "the absence of an ending date for the monthly payment of $900.00 'over and above' the [pre-existing] obligations indicate[d] that this additional payment [was] simply a monthly payment towards the arrears . . . which would end on a definite date when the arrears were paid in full." *Id.* at ___, 784 S.E.2d at 500-01. This Court held that "[e]ven if this was the trial court's intent, the order [was] impermissibly vague as written . . . in failing to establish a definite date by which [the] defendant could have purged himself of the contempt." *Id.* at ___, 784 S.E.2d at 501. More recently, in *Lueallen v. Lueallen*, ___ N.C. App. ___, 790 S.E.2d 690 (2016), we considered a contempt order's condition that the contemnor "shall purge herself of said contempt by payment of an additional $75.00 per month through Centralized Collections, which shall also be applied towards her [child support] arrears." *Id.* at ___, 790 S.E.2d at 707 (quotation marks omitted). Citing

Spears, we concluded that this purge condition was impermissibly vague, because "[e]ven if the $75.00 per month [was] applied toward arrears, the ending date [was] uncertain." *Id.* at ___, 790 S.E.2d at 708. In the present case, the purge condition requiring Defendant to begin making monthly payments of $250.00 "to be credited against the . . . arrearage owed" is similarly flawed.

It is also unclear from the contempt order as written whether the trial court intended that the $250.00 payment be made *in addition to* Defendant's ongoing monthly obligation of $164.00 under the existing child support order, or whether the court intended to modify Defendant's total monthly obligation. Regardless, "even if the trial court intended to modify [Defendant's existing] child support obligation, it was without authority to do so. An order setting child support only may be modified 'upon motion in the cause and a showing of changed circumstances by either party.'"[4] *Bogan v. Bogan*, 134 N.C. App. 176, 179, 516 S.E.2d 641, 643 (1999) (quoting N.C. Gen. Stat. § 50-13.7(a)).

Finally, although the trial court found as fact that "Defendant has had the present ability to pay towards [his past child support obligation]," this Court has

[4] Defendant filed a motion to modify the child support order on 9 November 2015, in which he alleged he would no longer be employed as of 31 December 2015, had not yet secured other employment, and "[would] therefore no longer have any income" as of that date. Defendant requested that, in light of these changed circumstances, the trial court terminate the existing child support order and grant a retrial on child support issues. At the 15 December 2015 hearing on Plaintiff's motion for contempt, Defendant requested that the trial court "hold[] off on deciding [the issue of contempt with respect to the child support order] until [Defendant's] motion for child support ha[d] been heard[.]" The trial court declined to hold the issue open and, thus, found Defendant in contempt of the child support order while his motion to modify was still pending.

previously held that, while such a finding "justifies a conclusion of law that [a] defendant's violation of the [child] support order was willful," such a finding, "standing alone, . . . does not support the conclusion of law that [the] defendant has *the present ability to purge himself of the contempt by paying the arrearages*." *McMiller v. McMiller*, 77 N.C. App. 808, 809, 336 S.E.2d 134, 135 (1985) (emphasis added). In *McMiller*, a purge condition required the contemnor to pay a large lump sum of arrearages. In vacating the order, this Court noted that the trial court found only that the contemnor "*has had* the ability to pay as ordered," and made no finding regarding the contemnor's present ability to produce the amount of "readily available cash" it would require to satisfy the purge condition. *Id.* at 809-10, 336 S.E.2d at 135-36 (emphasis added). Likewise, in the present case, the trial court made no findings regarding Defendant's ability to begin "immediately pay[ing]" a monthly sum of $250.00.

As Plaintiff appears to agree, the contempt order's remaining conditions do not specify how Defendant may purge himself of contempt with respect to the child support order. In *Wellons v. White*, 229 N.C. App. 164, 748 S.E.2d 709 (2013), this Court reversed a civil contempt order where the only purge condition was a requirement that the contemnor "fully comply[] with [prior court orders and the contempt order]." *Id.* at 182, 748 S.E.2d at 722. We noted that the order "did not establish a date after which [the contemnor's] contempt was purged or provide any

other means for [him] to purge the contempt." *Id.* Additionally, as Plaintiff concedes, the provision for the filing of a Show Cause Motion in the event of Defendant's violation of the contempt order was not a purge condition, but merely a reference to statutory civil contempt procedures. *See*, *e.g.*, N.C. Gen. Stat. §§ 5A-21, 5A-23 (2015). The contempt order's final "requirement" permitting any "further relief as this Court deems just and necessary to effectuate the terms of [the contempt order]" is also not a legitimate purge condition, because it "does not clearly specify what [Defendant] can and cannot do . . . in order to purge [himself] of the civil contempt." *See Cox*, 133 N.C. App. at 226, 515 S.E.2d at 65.

2. Custody Order

For the same reasons the above requirements were insufficient purge conditions with respect to the child support order, they were not valid purge conditions with respect to the custody order. The only condition in the contempt order remaining for this Court's consideration provided as follows:

> That [] Defendant shall terminate all cell phone contracts for telephones utilized by the minor children and shall retrieve those phones from the minor children and thereinafter it will be within the authority and control of [] Plaintiff to provide substitute cell phones for the use of the children on her own account where they may be monitored and utilized for the best interest of the children.

Defendant argues that while this was the only purge requirement "that had any specificity[,]" it was, nonetheless, too vague and indefinite because it "had no

definitive date by which [Defendant] needed to complete this action[,]" and the trial court made no "determination that [Defendant] had the ability or means to comply." We agree. The contempt order provided that Defendant could be taken into custody until purging himself of contempt, but stayed his incarceration "day-to-day so long as [] Defendant *promptly and strictly* complie[d]" with the order's purge requirements. (emphasis added). "Promptly" was not defined in the order, and the specific requirements that Defendant "terminate all cell phone contracts for telephones utilized by the minor children" and "retrieve those phones from the minor children" provided no timeframe for Defendant's compliance.

In *Scott*, a contempt order provided that the defendant could "postpone his imprisonment indefinitely" by, *inter alia*, "*not interfering with the [p]laintiff's custody of the minor children*" and "by not threatening, abusing, harassing or *interfering with the [p]laintiff or the [p]laintiff's custody of the minor children*." 157 N.C. App. at 393, 579 S.E.2d at 438 (emphases in original). This Court found these conditions were impermissibly vague because they "[did] not clearly specify what the defendant [could] and [could not] do . . . in order to purge himself of the civil contempt." *Id.* at 393-94, 579 S.E.2d at 438-39 (citation and internal quotation marks omitted). While terminating a cell phone contract and retrieving phones are certainly more specific actions than general "interference," the contempt order in the present case still failed to provide a specific date by which Defendant was required to take those actions. *Cf.*

id. at 394, 579 S.E.2d at 439 (assuming condition ordering defendant to participate in an anger management program "comport[ed] with the ability of civil contemners [sic] to purge themselves," where order required defendant to enroll in the program "on or before August 1, 2001[.]"). Even assuming, as Plaintiff argues, that "[c]ancelling a cell phone contract requires minimal time and effort . . . [and the] nature of this action obviate[d] the need for the [trial] court to provide a timeline[,]" the order also provided no date by which Defendant was required to retrieve the children's cell phones. We conclude this condition was impermissibly vague.

V. Order for Arrest

In his final argument on appeal, Defendant contends the trial court misapprehended its statutory authority to enter an order for his arrest if Defendant violated the purge conditions set forth in the contempt order. Specifically, the trial court's contempt order provided that

> in the event [] Defendant violates any of the terms of this Order, or any other Orders, a Show Cause Motion may be filed setting this matter for hearing to determine why an Order for his arrest should not enter as a result of his failure to comply with Orders of this [c]ourt.

According to Defendant, although "a person can be arrested and incarcerated after being held in civil contempt[,] . . . there is no provision in the civil contempt statute [allowing] for an arrest based upon future noncompliance with purge requirements[.]" However, because we have concluded the contempt order must be vacated on other

grounds, including its lack of valid purge requirements, we find it unnecessary to address this additional argument. *See Scott*, 157 N.C. App. at 394, 579 S.E.2d at 439.

VI. Conclusion

For the reasons discussed above, we vacate the trial court's contempt order and remand for further proceedings consistent with this opinion. On remand, the trial court shall make the statutory findings required to support an award of attorney's fees. *See Shippen*, 204 N.C. App. at 192-93, 693 S.E.2d at 244-45. Additionally, the trial court shall enter "clear, specific purge conditions and address[] [D]efendant's ability to comply with those purge conditions." *Spears*, ___ N.C. App. at ___, 784 S.E.2d at 502; *see also Lueallen*, ___ N.C. App. at ___, 790 S.E.2d at 708-09 (finding purge conditions impermissibly vague and directing that they be "redefined more precisely on remand.").

VACATED AND REMANDED.

Judges DAVIS and BERGER concur.

Report per Rule 30(e).