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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-689

Filed: 2 July 2019

Pitt County, No. 12 CVD 2096

WENDY D. MORTON (formally Wendy M. Combs), Plaintiff,

v.

ALEC L. COMBS, Defendant.

Appeal by defendant from order entered 2 February 2018 by Judge Paul A. Hardison in Pitt County District Court. Heard in the Court of Appeals 10 June 2019.

Van Der Have Family Law, by Leslie G. Van Der Have, for plaintiff-appellee.

The Duke Law Firm, by W. Gregory Duke, for defendant-appellant.

ZACHARY, Judge.

Alec Leon Combs (“Defendant”) appeals from the trial court’s order finding him in contempt based on his failure to comply with prior court orders regarding equitable distribution, child support, alimony, and attorney’s fees. On appeal, Defendant contends that the trial court erred in finding his noncompliance with the prior orders to be willful. Because the trial court’s findings of fact support its conclusion that Defendant’s failure to comply was willful, we affirm the contempt order.

Background

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Defendant and Wendy D. Morton (“Plaintiff”) were married on 4 December 1999, separated on 19 January 2012, and subsequently divorced on 6 June 2013. One child was born of the marriage in 2003.

On 1 August 2012, Plaintiff filed a complaint against Defendant seeking child custody, child support, alimony, attorney’s fees, and equitable distribution. Defendant filed an answer on 6 September 2012, and an amended answer on 5 October 2012, asserting claims for child custody, child support, and equitable distribution.

A trial on the parties’ claims for permanent child custody and permanent child support was held over multiple family court sessions in April and May 2013. During the course of the hearings, Plaintiff filed a Motion for Entry of a Domestic Violence Protective Order (“DVPO”) against Defendant on 3 May 2013, and a DVPO was entered on 7 June 2013. On or about 4 November 2013, the parties entered into a Consent Order resolving Plaintiff’s post-separation support and alimony claims. On 23 February 2014, the trial court entered a Permanent Child Custody and Permanent Child Support Order awarding Plaintiff primary physical custody of the child and ordering Defendant to pay Plaintiff \$691.29 per month in child support to be “paid on or before the first (1st) of every month[.]”

A trial on the parties’ equitable distribution claims commenced on 17 April 2014. The parties reached a resolution prior to the end of trial, and entered into a

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consent order on 22 April 2014. Defendant agreed to pay Plaintiff a distributive award in the amount of \$44,000.00 to be paid in full within ninety days after entry of the order.

On 30 December 2015, Defendant filed a “Motion to Modify Support (Alimony and Child Support).” On 6 January 2016, Plaintiff filed a “Motion for Contempt and Request for Show Cause Order,” alleging that Defendant willfully failed to abide by the prior court orders in that he: (1) failed to pay the full child support amount by the first of every month, but rather paid in weekly installments; (2) failed to reimburse Plaintiff for his share of the child’s uninsured healthcare expenses; (3) refused to accept his payment responsibility for the child’s reasonable and necessary orthodontia care; (4) failed to pay the alimony due; (5) failed to refinance the mortgage in his individual name; and (6) failed to pay the distributive award due to Plaintiff, despite being ordered to do so more than one year prior. The court entered an Order to Show Cause on 2 February 2016. Defendant’s Motion to Modify Support and Plaintiff’s show cause proceeding were scheduled for hearing on 21 March 2016.

On 15 March 2016, Plaintiff filed a Motion to Dismiss and a Motion for Sanctions and noticed the motions for hearing on 21 March 2016. In an order entered 16 March 2016, the trial court awarded attorney’s fees to Plaintiff, ordering Defendant to reimburse Plaintiff in the amount of \$22,550.00. On 18 March 2016, Defendant voluntarily filed for Chapter 13 Bankruptcy in the Eastern District of

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North Carolina. As a result of the automatic stay due to the bankruptcy proceeding, the 21 March 2016 hearing was removed from the calendar.

On 2 May 2016, Plaintiff filed a Motion to Modify Legal and Physical Child Custody and a Motion for Rule 35 Examination. On 29 August 2016, the parties entered into another consent order for child custody, which also resolved several pending motions. In accordance with the parties' agreement, the trial court dismissed with prejudice Defendant's Motion to Modify Support (Alimony and Child Support) and Plaintiff's Motion to Dismiss and Motion for Sanctions. The court also dissolved the 2 February 2016 Order to Show Cause and dismissed without prejudice Plaintiff's 6 January 2016 Motion for Order to Show Cause. Plaintiff was ordered to dismiss a pending claim for a DVPO within five days of entry of the 29 August 2016 order.

On 7 December 2016, Defendant voluntarily dismissed his bankruptcy petition. That same day, Plaintiff filed a "Motion for Contempt Motion for Counsel Fees[.]" alleging that Defendant was in contempt of prior court orders in that he: (1) failed to pay the full child support amount by the first of each month but paid in weekly installments; (2) failed to pay alimony for the months of October through December of 2015, January through March of 2016, and September through December of 2016; (3) failed to refinance the mortgage in his individual name; (4) failed to pay the \$44,000.00 distributive award ordered to be paid in August 2016; and (5) failed to pay the ordered attorney's fees.

Defendant filed a motion to dismiss the contempt motion on 14 February 2017. Defendant argued the parties had entered into a settlement agreement on or about 29 August 2016, but a court order could not be entered on the agreement until the pending bankruptcy matter was resolved. Defendant further argued that he relied upon the representations made by Plaintiff's counsel that the Motion and Order to Show Cause had been resolved in settling Plaintiff's Motion to Modify Legal and Physical Custody and Motion for Rule 35 Examination in seeking a voluntary dismissal of his bankruptcy petition. Therefore, Defendant argued he was not in willful contempt of court because he has been ready, willing, and able to comply with the terms of the parties' settlement agreement, but Plaintiff refused to follow through with the terms of the agreement.

A hearing was held on Plaintiff's Motion for Contempt and Motion for Counsel Fees on 23 February 2017. In an order entered 2 February 2018, the trial court found Defendant to be in willful contempt of court for his failure to comply with the prior court orders. Defendant timely appealed.

Discussion

On appeal, Defendant argues that the trial court erred as a matter of law in finding his noncompliance with the prior court orders to be willful. We disagree.

“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.” *Gandhi v. Gandhi*, 244 N.C. App. 208, 213, 779 S.E.2d 185, 188 (2015) (citation and quotation marks 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.” *Id.* (citations and quotation marks omitted). Legal conclusions are reviewed *de novo*. *Tucker v. Tucker*, 197 N.C. App. 592, 594, 679 S.E.2d 141, 143 (2009) (citation omitted).

To hold a defendant in civil contempt, the trial court must find the following: (1) the order remains in force, (2) the purpose of the order may still be served by compliance, (3) the non-compliance was willful, and (4) the non-complying party is able to comply with the order or is able to take reasonable measures to comply. N.C. Gen. Stat. § 5A-21(a) (2017). “In order to find that a defendant acted willfully, the court must find not only failure to comply but that the defendant presently possesses the means to comply.” *Miller v. Miller*, 153 N.C. App. 40, 50, 568 S.E.2d 914, 920 (2002) (citations and quotation marks omitted).

In support of its conclusion that Defendant’s failure to comply was willful, the trial court made the following unchallenged findings of fact:

22. Defendant pays child support weekly to Plaintiff in the amount of [\$159.52], notwithstanding Plaintiff’s repeated prior requests that the support for the benefit of the child be timely paid in full at the beginning of the month as is the requirement set forth in the Modified Order of Custody and Support.

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. . . .

24. The alimony due and payable to Plaintiff pursuant to the Alimony Order for October, November, and December 2015; January, February, and March 2016; and September, October, November, and December 2016 remains unpaid by Defendant and owing to Plaintiff.

25. Defendant has failed to refinance the mortgage into his individual name, . . . and has failed to pay the distributive award due to Plaintiff almost two and one-half (2.5) years prior to the contempt hearing.

26. Defendant has not paid the ordered sums as set forth in the Counsel Fees Order, notwithstanding Defendant's demand for payment of and compliance.

. . . .

32. The Court reviewed settlement correspondence between counsel that was received into evidence.

33. Defendant has failed and refused to abide by the terms of the Modified Order of Custody and Support, Alimony Order, Equitable Distribution Order, and Counsel Fees Order as set forth hereinabove.

34. Defendant's failure and refusal to abide by the terms of the Modified Order of Custody and Support, Alimony Order, Equitable Distribution Order and Counsel Fees Order as set forth above has been willful and without legal justification or excuse, and at all times relevant herein, Defendant has had, and presently has, the means and ability to comply with the previous directives of the Court.

35. Defendant's disobedience has defeated, impaired, impeded, and prejudiced the rights of Plaintiff.

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The trial court also found that Defendant's motion to dismiss, in which he argued he was not in willful contempt due to his understanding of the parties' settlement of the issues, was without merit.

On appeal, Defendant contends the court erred in finding his noncompliance to be willful. However, he does not specifically challenge any of the trial court's findings of fact, and they are therefore binding on appeal. *Tucker*, 197 N.C. App. at 594, 679 S.E.2d at 143. Rather, Defendant argues the court erred in failing to make any findings regarding Defendant's belief that he had reached a settlement with Plaintiff, and the effect this belief had on Defendant's willfulness in not complying with the prior court orders. Defendant argues that because he believed they had an agreement, he "was not guilty of the 'knowledge and stubborn resistance' to support a finding of willful disobedience." However, "a trial court need not make findings as to all of the evidence, [but] it must make the required ultimate findings, and there must be evidence to support such findings." *Cty. of Durham v. Hodges*, ___ N.C. App. ___, ___, 809 S.E.2d 317, 323 (2018); *see also Townson v. Townson*, 26 N.C. App. 75, 76, 214 S.E.2d 444, 445 (1975) ("[T]he trial court is required only to find the ultimate facts and need not include evidentiary or subsidiary facts required to procure the ultimate facts.").

Here, the trial court made the necessary ultimate findings of fact pursuant to N.C. Gen. Stat. § 5A-21(a), and Defendant does not argue otherwise. The trial court's

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findings demonstrate that the court reviewed the settlement correspondence, determined that Defendant's claim that he was not in willful contempt due to his belief that the parties had reached a settlement lacked merit, and found Defendant's failure to comply to be willful.

We hold that the trial court's unchallenged findings of fact support its conclusion that Defendant's failure to comply was willful. Therefore, we affirm the trial court's order finding Defendant in willful contempt.

AFFIRMED.

Judges STROUD and BERGER concur.

Report per Rule 30(e).