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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-177

Filed: 3 December 2019

Pitt County, No. 11 CVD 318

PITT COUNTY by and through the PITT COUNTY DEPARTMENT OF SOCIAL SERVICES, on behalf of SUSAN L. LABRECQUE, Plaintiff,

v.

JAMIE S. WORTHINGTON, Defendant.

Appeal by defendant from order entered 26 September 2018 by Judge G. Galen Braddy in Pitt County District Court. Heard in the Court of Appeals 3 October 2019.

The Graham Nuckolls Conner Law Firm, PLLC, by Timothy E. Heinle, for plaintiff-appellee Pitt County Department of Social Services.

Mills & Alcorn, L.L.P., by Cynthia A. Mills, for defendant-appellant.

DIETZ, Judge.

Defendant Jamie Scott Worthington appeals two related child support orders. He contends that, despite evidence of a substantial change in circumstances, the trial court rejected his arguments based on a mistaken belief that the court was “bound” by a previous ruling.

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As explained below, we agree with Worthington that the trial court may have acted under a misapprehension of the law—although, to be fair, the court also may have understood the law and simply rejected Worthington’s arguments. Nevertheless, because we review the court’s determination for abuse of discretion, we cannot engage in meaningful appellate review when there is a possibility that the court misapprehended the law. In these circumstances, our precedent requires us to vacate and remand the matter to ensure that the trial court, applying the proper law, renders a decision within its sound discretion.

Facts and Procedural History

Defendant Jamie Scott Worthington pays child support for three children, two of whom are the subject of support orders challenged in this appeal, and the third subject to support orders in a companion case. In 2017, the trial court increased Worthington’s support obligations after determining that it should impute his earlier, higher salary. At the time, Worthington had left two jobs he worked in North Carolina, sometimes amounting to more than 140 hours of work per week, and moved to Nevada with a girlfriend. He intended to work as a paramedic in Nevada, but the state would not recognize his North Carolina license and he was forced to take work in another field. This resulted in a decreased monthly income from \$6,625.37 to approximately \$1,000. The trial court determined that this underemployment was

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the result of bad faith or deliberate income suppression to avoid or minimize Worthington's child support obligation.

Nearly a year later, the trial court entered an order directing Worthington to show cause for his failure to comply with the previous child support order. Worthington filed a corresponding motion to modify child support based on a substantial change in circumstances.

Worthington asserted that he had since returned to North Carolina and found work as a paramedic. But, because of health concerns, Worthington could not work the same long, irregular hours that he did in his previous North Carolina jobs, so he accepted a salaried position which earns \$3,500 per month. Worthington acknowledged that he is earning less than he did before but argued that his previous income should no longer be imputed because of several changed circumstances including his return to North Carolina, his health, and the birth of his new baby.

After hearing the parties' evidence, the trial court stated that "[b]asically, in my previous ruling about collateral estoppel and the same factual issue there was not an appeal or motion set aside. Judge Leech's orders say the order is bound in this course at hand by the decision he made about the issue of imputation of a prior salary." The court entered orders that did not reduce Worthington's child support payments to the level Worthington contends is necessary based on the changed circumstances and his new salary. Worthington timely appealed.

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Analysis

Worthington argues that the trial court erred by determining that it was bound by an earlier ruling and thus unable to assess whether changed circumstances at the time of the hearing warrant the relief he sought. As explained below, we are unable to engage in meaningful appellate review of the trial court's discretionary decision because the court may have acted under a misapprehension of the law.

We review child support orders for abuse of discretion. *Orange County ex rel. Clayton v. Hamilton*, 213 N.C. App. 205, 210, 714 S.E.2d 184, 188 (2011). A trial court order “may be reversed for abuse of discretion only upon a showing that its actions are manifestly unsupported by reason.” *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985). A misapprehension of the law is *per se* abuse of discretion. *Blitz v. Agean, Inc.*, 197 N.C. App. 296, 312, 677 S.E.2d 1, 11 (2009). When it appears that the trial court acted under a misapprehension of the law in making a discretionary decision, this Court will vacate and remand the matter to ensure that the trial court properly exercises its discretion. *Id.*

Here, in defense of both the order to show cause and his own motion to modify, Worthington argued that circumstances had substantially changed since the trial court's earlier orders in this matter. Specifically, he argued that he had returned to North Carolina and obtained full-time employment in good faith but that, largely due to health and life restrictions, he could not work the long hours at two jobs as he once

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had done. Thus, he asked the court to recognize these changed circumstances and adjust his support obligations accordingly.

The trial court rejected Worthington's arguments. After hearing witness testimony and argument from counsel, the trial court explained that it was "bound in this course at hand" by the court's earlier order "made about the issue of imputation of a prior salary":

The Court: All right, after hearing and looking at these, I'll give you all a last second chance if you all want to resolve it between yourself. I've got in my mind what I'm going to do if you can't resolve it, and I think I'm going to be sound in the ruling I make. Basically, in my previous ruling about collateral estoppel and the same factual issue there was not an appeal or motion set aside. Judge Leech's orders say the order is bound in this course at hand by the decision he made about the issue of imputation of a prior salary. I'm going to adopt – let's see. Does that result in a decrease in Ms. Labrecque's?

[DSS Counsel]: Yes.

The Court: I'm going to reduce her child support beginning . . . June 21st –

[Worthington Counsel]: Yes, sir.

The Court: – so it will be effective July 1st, and I believe it also results in a decrease in Ms. McLamb's from \$1,042.00 to \$859.00. That will also begin July 1st. I'll order one month's payment in each case under new guidelines by – today is the 26th, by next Friday at 5:00 P.M. And that's going to be the order.

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The trial court later entered written orders in this case and the companion case, but those orders do not contain any reasoning or discussion indicating that the court had changed its determination that it was bound by its earlier order.

Much of the parties' briefing addresses the doctrine of collateral estoppel and whether there was evidence supporting the application of that doctrine here. But the trial court did not identify collateral estoppel as the basis for its determination. Although the court referenced a "previous ruling about collateral estoppel," the court explained only that it was "bound" by its earlier determination concerning imputation of Worthington's previous salary.

This might mean that the trial court analyzed the test for collateral estoppel and determined that it barred Worthington's arguments. But the court's statement also could mean the court believed it lacked authority to depart from previous determinations concerning salary imputation. This would be a misapprehension of the law. When a party moves to modify a child support obligation based on a substantial change in circumstances, it necessarily frees the court to consider those changed circumstances and, as a result, render a decision different from an earlier one. *See Fink v. Fink*, 120 N.C. App. 412, 423, 462 S.E.2d 844, 852 (1995).

Were this *de novo* review, we could independently review the record on appeal and evaluate whether the trial court's orders are supported by the record and applicable law. *Reeder v. Carter*, 226 N.C. App. 270, 274, 740 S.E.2d 913, 917 (2013).

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But the parties acknowledge that these child support determinations are not reviewed by this Court *de novo*; we review solely to determine if the trial court exercised its sound discretion. *Hamilton*, 213 N.C. App. at 210, 714 S.E.2d at 188. We cannot determine whether the trial court exercised its sound discretion when it appears that the court may have acted under a misapprehension of the law. *Hines v. Wal-Mart Stores East, L.P.*, 191 N.C. App. 390, 393, 663 S.E.2d 337, 339 (2008). Thus, we must vacate and remand this matter.

We emphasize that our holding is not a determination that the trial court's order is erroneous or that the record would not support the court's orders. We hold only that, to engage in meaningful appellate review of a discretionary decision, we must be confident that the court exercised its sound discretion based on a proper application of the law. Here, the trial court may have believed that it was bound by earlier determinations and that, being bound by those determinations, it had no choice but to rule in the manner that it did. And, because that mistaken belief would have impacted both the motion to modify and portions of the order of civil contempt, we must vacate both orders and remand for further proceedings.

On remand, the trial court, in its discretion, may enter new orders on the existing record or conduct any further proceedings the court deems necessary in the interests of justice. We do not address Worthington's remaining arguments, which may be mooted by the trial court's new order after remand.

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Conclusion

We vacate the trial court's orders and remand for further proceedings.

VACATED AND REMANDED.

Judges INMAN and BROOK concur.

Report per Rule 30(e).