IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-438

Filed: 5 May 2020

Mecklenburg County, No. 17 CVD 13888

MICHAEL MEJIA, Plaintiff,

v.

MARILYN MEJIA, Defendant.

Appeal by defendant from order entered 4 December 2018 by Judge Kimberly Best in Mecklenburg County District Court. Heard in the Court of Appeals 31 October 2019.

Adkins Law, PLLC, by C. Christopher Adkins and Kelsey J. Queen, for plaintiff-appellee.

Wofford Law, PLLC, by J. Huntington Wofford and Rebecca B. Wofford, for defendant-appellant.

DIETZ, Judge.

In this family law proceeding, Plaintiff Michael Mejia argued that he entered into a separation agreement with Defendant Marilyn Mejia under duress. The trial court set aside the agreement and then entered new child support and child custody terms based on the court's findings. Ms. Mejia appealed.

As explained below, we affirm the trial court's order. The parties litigated the issue of duress in the trial court with Ms. Mejia's implied consent and the trial court's findings concerning duress, although disputed, are supported by competent evidence. Under the applicable standard of review, we must therefore affirm that portion of the order. The trial court then entered new child custody and child support terms based on its findings. Those determinations were reasoned ones and well within the court's sound discretion in light of its findings.

Facts and Procedural History

In July 2005, Michael Mejia and Marilyn Mejia were married. They separated more than a decade later. The parties had two minor children during the marriage.

In March 2016, the parties signed a separation agreement which included terms for child support and custody. The agreement required Mr. Mejia to pay Ms. Mejia $2,000 in child support per month. Mr. Mejia paid monthly support pursuant to the agreement until around September 2017.

In August 2017, Mr. Mejia filed a complaint for child custody and child support. Ms. Mejia filed an answer with counterclaims alleging breach of the separation agreement and seeking specific performance of the agreement.

Mr. Mejia filed a reply to the counterclaims asserting unconscionability, breach of fiduciary duty, and unjust enrichment as affirmative defenses. He also requested a declaratory judgment that the separation agreement is "null and void."

The trial court conducted its evidentiary hearings in early April and late June 2018. Following the hearings, the court entered a detailed order with findings of facts and conclusions of law that ultimately set aside the separation agreement and imposed terms for child custody and child support that differed from what was in the separation agreement. Ms. Mejia appealed.[1]

Analysis

I. Separation Agreement

Ms. Mejia first challenges the portion of the trial court's order that set aside the settlement agreement as unenforceable. She asserts a number of arguments to oppose that ruling and we address them in turn below.

Ms. Mejia begins by asserting that the trial court lacked authority to set aside the settlement agreement. Specifically, she contends that Mr. Mejia cited the Declaratory Judgment Act in his reply to the counterclaim but "did not seek an interpretation" of the agreement. Instead, Mr. Mejia sought to have the agreement "declared null and void which is not a proper remedy" under the Declaratory Judgment Act.

[1] Mr. Mejia asserts that there are other, unresolved claims for alimony, postseparation support, and equitable distribution pending below, and that this appeal is impermissibly interlocutory. We have reviewed the record and conclude that we have jurisdiction because the challenged order involves the adjudication of claims for child custody and child support and is appealable under N.C. Gen. Stat. § 50-19.1.

We first note that the Declaratory Judgment Act provides trial courts with authority to set aside contracts—it permits an interested party to "have determined any question of construction *or validity* arising under the . . . contract . . . and obtain a declaration of rights, status, or other legal relations thereunder." N.C. Gen. Stat. § 1-254 (emphasis added). Thus, there is nothing unusual about invoking the Declaratory Judgment Act to set aside a contract entered into under duress.

More importantly, however, the trial court did not enter a declaratory judgment. The court entered direct, affirmative relief to Mr. Mejia on the counterclaim to enforce the settlement agreement, holding that the agreement was unenforceable because it was entered into under duress. That is not a declaratory judgment.

Ms. Mejia next argues that the trial court never should have considered the duress issue because Mr. Mejia did not plead it as an affirmative defense in his reply to the counterclaim. Ordinarily, duress is an affirmative defense and it must be pleaded "with particularity" in a responsive pleading or it is waived. N.C. Gen. Stat. § 1A-1, Rules 8(c), 9(b). But when "issues not raised by the pleadings are tried by the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings." *Id.* § 1A-1, Rule 15(b).

Here, Mr. Mejia argues that, although his reply did not use the word "duress," he "included allegations that he was not acting of his own free will" and that these

allegations were sufficient to put Ms. Mejia "on notice of the duress alleged." We agree with Mr. Mejia that an affirmative defense of duress can be properly pleaded without using that word, although it is a better practice to do so. *Sutton v. Duke*, 277 N.C. 94, 102, 176 S.E.2d 161, 165 (1970).

But even if we were to reject Mr. Mejia's argument and find the duress defense not properly pleaded at the outset, that defense unquestionably entered the case by the implied consent of the parties under Rule 15(b). When asked in court about his pleadings, Mr. Mejia testified that he was challenging the separation agreement because "I signed it under duress." Moreover, a key focus of Mr. Mejia's testimony was how he felt compelled to sign the agreement because Ms. Mejia otherwise would deprive him of access to his children.

Far from objecting to this testimony, Ms. Mejia's counsel vigorously cross-examined Mr. Mejia about the alleged duress and, during closing argument, argued to the court that Mr. Mejia had not offered sufficient evidence of duress. At no point during the proceeding did Ms. Mejia assert to the trial court that duress was not a proper issue for the court's consideration.

Under these circumstances, we hold that the duress issue was litigated with Ms. Mejia's implied consent and the pleadings are "regarded as amended to conform to the proof" to the extent that the duress defense was not properly pleaded at the

outset. *Magnum v. Surles*, 281 N.C. 91, 98, 187 S.E.2d 697, 702 (1972). Accordingly, the trial court did not err by addressing and ruling on the duress issue.

Finally, Ms. Mejia argues in the alternative that the trial court erred because there was insufficient evidence of duress. Under the narrow standard of review applicable to this question, we must affirm the trial court.

In a non-jury proceeding like this one, where the trial court heard testimony and other evidence and then made detailed findings of fact, this Court is "strictly limited to determining whether the trial judge's underlying findings of fact are supported by competent evidence, in which event they are conclusively binding on appeal." *Johnson v. Johnson*, 259 N.C. App. 823, 826, 817 S.E.2d 466, 470 (2018). We then review whether those findings support the trial court's conclusions as a matter of law. *Lee v. Lee*, 167 N.C. App. 250, 253, 605 S.E.2d 222, 224 (2004).

Courts will refuse to enforce a separation agreement if it was procured by duress. *Stegall v. Stegall*, 100 N.C. App. 398, 401, 397 S.E.2d 306, 307 (1990). "Duress" exists where a person, by the "[w]rongful act or threat" of another, is induced to enter a contract under circumstances that prevent him from exercising his free will. *Link v. Link*, 278 N.C. 181, 194, 179 S.E.2d 697, 704–05 (1971). A "[w]rongful act or threat" is an essential element of duress, and the act done or threatened need not be unlawful per se to be considered "wrongful." *Id.* at 194, 179 S.E.2d at 705.

We begin with the trial court's findings. The court found that "Mother told Father he was prohibited from seeing the minor children unless he signed the Settlement Agreement." The court further found that "Father believed that by signing the agreement he was doing what he had to do in order to see his children." The court later made its ultimate finding that the separation agreement "was entered under duress" because "Father believed he had to sign the Separation Agreement in order to see his children."

These findings are supported by at least some competent evidence in the record. The court heard testimony that Ms. Mejia threatened to prevent Mr. Mejia from seeing their children again if he did not sign the separation agreement. Specifically, according to Mr. Mejia, Ms. Mejia contacted him the morning he signed the agreement, telling him that "if you want to see your kids, you'll meet me at the bank." Mr. Mejia arrived at the bank and found Ms. Mejia there with the children. Then, Ms. Mejia told him in front of the children that "[i]f you don't sign this, I will take the kids away" and "[i]f you don't sign this, you're not going to see your kids."

The court also heard testimony that Ms. Mejia improperly cut off Mr. Mejia's communication with the children in the past, typically when she became upset with him. This provides evidence that Ms. Mejia was capable of acting on the threat, and that Mr. Mejia thus reasonably believed he might not see his children if he refused to sign the agreement. Finally, Mr. Mejia testified that the only reason he signed the

agreement was because he felt compelled to do so because of the threat that he would not see his children again.

Simply put, evidence in the record supports the trial court's findings, which in turn support the court's conclusion that the settlement agreement "is not an enforceable contract as it was signed under duress and is therefore set aside."

Ms. Mejia also argues that, even if Mr. Mejia presented sufficient evidence to prove duress, he later ratified the agreement by routinely making monthly support payments as the agreement required. The doctrine of ratification can create a binding contract even if the initial contract was entered into under duress. *Cox v. Cox*, 75 N.C. App. 354, 356, 330 S.E.2d 506, 507–08 (1985). But in this situation, actions that are otherwise consistent with ratification do not ratify the contract if the underlying condition which gave rise to the duress still existed at the time. *See Housing, Inc. v. Weaver*, 37 N.C. App. 284, 300, 246 S.E.2d 219, 228 (1978), *aff'd*, 296 N.C. 581, 251 S.E.2d 457 (1979). Here, Mr. Mejia testified that he made the monthly payments required by the agreement because, based on Ms. Mejia's threats, he believed that if he failed to make the payments Ms. Mejia would cut off his communication with his children. This is competent evidence to support the trial court's rejection of the ratification doctrine. Accordingly, because we must accept the trial court's findings and those findings support the court's conclusion that the separation agreement was unenforceable, we affirm this portion of the court's order.

II. Child Support and Child Custody

After setting aside the separation agreement, the trial court imposed new terms for child custody and child support. Ms. Mejia argues that neither the trial court's findings of fact nor the evidence presented at the hearings supports the trial court's determinations. As explained below, we disagree.

Trial courts have wide discretion when making child custody and child support determinations, and therefore our review is limited to whether the trial court clearly abused its discretion. *In re Custody of Cox*, 17 N.C. App. 687, 689, 195 S.E.2d 132, 133 (1973) (child custody); *Biggs v. Greer*, 136 N.C. App. 294, 296, 524 S.E.2d 577, 581 (2000) (child support). "Under an abuse of discretion standard, we must determine whether a decision is manifestly unsupported by reason, or so arbitrary that it could not have been the result of a reasoned decision." *Stephens v. Stephens*, 213 N.C. App. 495, 503, 715 S.E.2d 168, 174 (2011). Any findings of fact entered by the trial court are conclusive on appeal if supported by competent evidence. *Dixon v. Dixon*, 67 N.C. App. 73, 76, 312 S.E.2d 669, 671–72 (1984).

We begin with the court's custody ruling. A trial court must base its child custody determinations on the best interests and welfare of the child. N.C. Gen. Stat. § 50-13.2(a). The court must also enter sufficient findings of fact to support its best interests determination. *Id.* As for child support, the trial court must order support payments that meet the "reasonable needs" of the child; in doing so, the court must

consider the parties' earnings. *Id.* § 50-13.4(c). Again, the trial court must enter sufficient findings of fact to allow meaningful appellate review. *Spicer v. Spicer*, 168 N.C. App. 283, 287, 607 S.E.2d 678, 682 (2005).

Here, the court ordered joint legal custody and granted primary physical custody to Ms. Mejia. The court granted Mr. Mejia "liberal visitation rights" and ordered that he have physical custody of the children during holidays and school breaks every other year.

The trial court's findings of fact support its custody award. The court found that the children had lived with Ms. Mejia in North Carolina since May 2016 and they were already enrolled in school there. The court also found that Mr. Mejia resided in California, was still on active duty with the Marine Corps, and had been deployed several times throughout the children's lifetimes. Thus, the court's decision to award primary physical custody to Ms. Mejia and to allow Mr. Mejia extensive visitation during summers and holidays was a reasoned one.

Ms. Mejia argues that it is not in the children's best interests to have visitation with their father because Mr. Mejia's home "cannot adequately accommodate the children" and because he only sought "sporadic" treatment for post-traumatic stress disorder, which resulted from his time in the Marine Corps. But the trial court found that "there is no evidence or reason . . . to believe that an historical diagnosis of PTSD or any underlying anxiety or depression presents any danger to the children." This

finding is supported by competent evidence. Accordingly, we affirm the trial court's custody determination.

As for child support, the trial court properly applied the North Carolina Child Support Guidelines and ordered Mr. Mejia to pay prospective support of $1,660 per month and to pay for the children's health insurance coverage, while requiring the parties to share responsibility for the children's uninsured health expenses.

Ms. Mejia argues that the trial court erred by entering an amount less than the child support obligation established in the (now unenforceable) separation agreement, and that the court erred by ordering the parties to share responsibility for certain health expenses of the children.

The trial court entered multiple findings concerning the parties' financial status in support of its child support determination. Ms. Mejia does not directly challenge any of these findings, and they are binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). Based on those findings, the trial court was well within its sound discretion to follow the Child Support Guidelines and to impose child support obligations different from those in the separation agreement, which the court found unenforceable as a result of duress. That finding of duress distinguishes this case from those in which an unincorporated settlement agreement should be considered by the court in its determination. *See Pataky v. Pataky*, 160 N.C. App. 289, 303, 585 S.E.2d 404, 413, *aff'd*, 359 N.C. 65, 602 S.E.2d 360 (2004).

Likewise, the court's findings support its determination to order Mr. Mejia to maintain health insurance but order both parties to share responsibility for uninsured healthcare needs of the children. Accordingly, we affirm the portion of the trial court's order addressing child custody and child support.

Conclusion

We affirm the trial court's order.

AFFIRMED.

Judges DILLON and YOUNG concur.

Report per Rule 30(e).