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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-839

Filed: 1 September 2020

Mecklenburg County, No. 10 CVD 16884

DARREN HOPKINS, Plaintiff

v.

HEIDI HOPKINS, Defendant

Appeal by Defendant from Order entered 28 May 2019 by Judge Gary L. Henderson in Mecklenburg County District Court. Heard in the Court of Appeals 14 April 2020.

No brief filed for plaintiff-appellee.

Heidi Hopkins, pro se, for defendant-appellant.

HAMPSON, Judge.

Heidi Hopkins (Defendant) appeals from the trial court's Order granting a Motion for a New Trial filed by Darren Hopkins (Plaintiff) arising out of proceedings by Defendant to recoup child support arrears under a foreign consent order for child custody and support registered by the parties in North Carolina in 2010. Although Defendant appeals from the 2019 Order granting a new trial, Defendant makes no

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argument the trial court erred in setting aside a prior order awarding her child support arrears and granting a new trial. Instead, Defendant challenges a 2011 Order “temporarily” modifying custody and further contends the trial court lacks authority to now modify child support arrears and is required to award interest on those arrears from 26 April 2017. As discussed herein, we dismiss Defendant’s appeal because (1) any challenge to child custody is rendered moot by the fact the parties’ children have reached the age of majority and (2) the trial court, after granting a new trial and setting aside its earlier order, has not yet entered a final order establishing child support arrears owed by Plaintiff—making Defendant’s arguments in that regard interlocutory in nature.

Factual and Procedural Background

The Record in this case tends to show the following:

On or about 7 December 2000, Plaintiff and Defendant entered into a Consent Order in the Family Court in and for the Parish of East Baton Rouge, Louisiana, establishing joint custody of the parties two then-minor children along with establishing Plaintiff’s child support obligations (Louisiana Order). On 10 August 2010, Plaintiff filed a Petition for Registration of Foreign Child Custody Order seeking to register the Louisiana Order in Mecklenburg County, North Carolina, District Court. The following day, 11 August 2010, Defendant filed her own Petition

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for Registration of Foreign Child Custody Order to register the Louisiana Order in Union County, North Carolina, District Court.¹

In the Mecklenburg County proceeding, on 23 August 2010, Plaintiff filed a Motion to Modify Child Custody, Child Support, and for Attorneys' Fees. The next day, Plaintiff also filed a Motion for Emergency and Temporary Custody. On or about 25 August 2010, the trial court in Mecklenburg County entered an Order Granting Ex Parte Temporary Emergency Custody (Ex Parte Order) of the minor children to Plaintiff. This Ex Parte Order also concluded the two separate pending matters related to child support and custody should be consolidated. Separately, in the Union County proceedings, on 18 October 2010, a district court judge ordered the Union County matter transferred to Mecklenburg County.

On 11 May 2011, following a hearing in October 2010, the trial court in Mecklenburg County entered a Temporary Custody Order granting Plaintiff temporary primary physical custody of the children and providing for the children's visitation with Defendant and a holiday schedule. On or about 25 May 2011, Plaintiff filed a Motion for Temporary and Permanent Child Support seeking modification of the existing child support obligation established by the Louisiana Order on the basis

¹ The Notice of Registration of Foreign Child Custody Order issued by the Union County Clerk of Court's Office reflects Defendant's Petition was filed on 23 July 2010. While it does appear Defendant's Petition was notarized on that date, the file-stamped Petition in the Record reflects it was filed on 11 August 2010.

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he now had primary physical custody of the children. Plaintiff subsequently took a voluntary dismissal without prejudice of his Motion for Temporary Child Support.

Almost six years later, on 26 April 2017, Defendant filed a new Notice of Registration of Foreign Support Order in Mecklenburg County along with supporting materials. On or about 14 July 2017, Defendant filed a Motion to Confirm Registration of Foreign Child Support Order seeking to set a payment schedule for child support arrears owed by Plaintiff under the Louisiana Order. On 6 November 2017, the parties entered into a Memorandum of Judgment/Order in which the parties' stipulated the Louisiana Order would be confirmed as registered in North Carolina and to a subsequent hearing to determine the arrearages owed by Plaintiff.

The Record reflects the trial court heard from the parties on the issue of arrearages on 6 February 2018. At this hearing, it appears the trial court gave the parties the opportunity to submit additional briefing and reconvene at a later date to resume the hearing. Plaintiff and his counsel appeared on 8 June 2018 for the resumption of the hearing, but the matter was not heard. Instead, on 9 November 2018, the trial court entered an Order setting the child support arrearage owed by Plaintiff under the Louisiana Order at \$154,000.00 along with judgment interest from 6 February 2018 at 8% per annum to be paid in 118 monthly installments.

This Order was not served on Plaintiff until 27 November 2018. On 31 November 2018, under N.C.R. Civ. P. Rule 59, Plaintiff timely served his Motion for

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New Trial and Motion to Set Aside the 9 November 2018 Order, which was subsequently filed with the trial court on 14 December 2018. Plaintiff alleged the trial court's 9 November 2018 Order erroneously found Plaintiff had dismissed his claim for Permanent Child Support and alleged as further irregularities that when Plaintiff and his counsel appeared on 8 June 2018 with the intention to present additional evidence and argument, they were told the matter had been removed from the calendar. They subsequently learned Defendant had submitted a proposed order to the trial court and were only made aware of the trial court's decision upon receiving the 9 November 2018 Order. On 28 May 2019, the trial court entered its Order Granting Rule 59 Motion for New Trial and setting aside the earlier 9 November 2018 Order. On 27 June 2019, Defendant filed Notice of Appeal from the trial court's 28 May 2019 Order granting a new trial. Although the Record before us suggests there were some additional subsequent proceedings in the trial court, no final order on the issue of child support arrears appears in the Record before us.

Issue

The dispositive issue is whether the arguments raised by Defendant in this appeal from the trial court's 28 May 2019 Order granting a new trial are properly before this Court.

Analysis

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In her Notice of Appeal, Defendant erroneously refers to the trial court's 28 May 2019 Order setting aside the earlier order of arrearages and granting a new trial as a "final" order. It is not a final order but rather an interlocutory order because it leaves open the issue of the amount of child support arrearages to which Defendant may be entitled for future determination. *See Carriker v. Carriker*, 350 N.C. 71, 73, 511 S.E.2d 2, 4 (1999) ("Interlocutory orders are those made during the pendency of an action which do not dispose of the case, but instead leave it for further action by the trial court in order to settle and determine the entire controversy." (citation omitted)). Nevertheless, in briefing, Defendant does allege N.C. Gen. Stat. § 7A-27(b)(3)(d) as a ground for appellate review, which permits immediate appellate review of an interlocutory order entered in superior or district court in civil cases that "[g]rants or refuses a new trial." N.C. Gen. Stat. § 7A-27(b)(3)(d) (2019).

Beyond asserting a right to immediate appeal from this Order, Defendant advances no direct argument the trial court erred in setting aside the prior arrearages order and granting a new trial. Instead, Defendant first argues the trial court lacked authority to enter the Temporary Custody Order back on 11 May 2011. Defendant, however, acknowledges—and the Record reflects—both of the parties' children have reached the age of majority. Thus, arguments directed to the Temporary Custody Order are moot. *See Swanson v. Herschel*, 174 N.C. App. 803, 805, 622 S.E.2d 159, 160 (2005) ("As any orders regarding the custody of [a child] when he was a minor no

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longer apply now that he has reached the age of majority, this issue is moot and is thus dismissed.”).

Next, Defendant argues the trial court lacks authority to “modify” child support arrears and is thereby required to award interest on the arrears beginning from 26 April 2017—the date Defendant filed the second Notice of Registration of Foreign Support Order seeking to register the Louisiana Order in Mecklenburg County. However, as noted above, the Record contains no final order setting the award of arrearages. Indeed, to the extent Defendant argues the trial court erred in the 9 November 2018 Order, the trial court has already set aside that Order and ordered a new trial. Thus, there is no final order setting arrearages or awarding judgment interest thereon, rendering Defendant’s arguments premature and “interlocutory in nature.” *Kirkman v. Wilson*, 328 N.C. 309, 311, 312, 401 S.E.2d 359, 360, 361 (2001) (emphasizing where “the proceedings in the trial court have not established the essential factual and legal foundation for the issues the parties seek to have decided in this appeal[,]” the Court of Appeals should not consider the appeal). Consequently, “mindful of our duty to avoid fragmentary, premature and unnecessary appeals by permitting the trial court to bring the case to final judgment before it is presented to the appellate courts,” we dismiss this interlocutory appeal. *Denney v. Wardson Constr., Inc.*, ___ N.C. App. ___, ___, 824 S.E.2d 436, 439-40, *disc.*

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rev. denied, 372 N.C. 701, 831 S.E.2d 73 (2019) (citation and quotation marks omitted).

Conclusion

Accordingly, for the foregoing reasons, we dismiss Defendant's appeal.

DISMISSED.

Judges STROUD and ARROWOOD concur.

Report per Rule 30(e).