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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-986

Filed: 3 November 2020

Mecklenburg County, No. 18 CVD 23070, 19 CVD 9282

COREY DALE REECE, Plaintiff

v.

JENNIFER RHODES HOLT, Defendant.

Appeal by plaintiff from orders entered on or about 14 June 2019 by Judge Paulina N. Havelka in District Court, Mecklenburg County. Heard in the Court of Appeals 13 May 2020.

Corey Reece, pro se, for plaintiff-appellant.

No brief filed for defendant-appellee.

STROUD, Judge.

Plaintiff-father appeals two orders in two separate actions. Because the trial court correctly determined North Carolina is not the “home state” of the minor child, the trial court did not err by dismissing the Chapter 50 child custody action based upon lack of subject matter jurisdiction. Because the trial court properly considered the evidence presented by both parties and determined the weight and credibility of

the evidence, the trial court did not err by dismissing plaintiff-father's claim for a Chapter 50B domestic violence protection order. For the following reasons, we affirm.

I. Background

On 13 December 2018, plaintiff-father filed a pro se verified complaint pursuant to North Carolina General Statute § 50-13.5 against defendant-mother requesting permanent custody of their approximately two-month-old child.¹ Father alleged both he and Mother, as well as the child, resided in Mecklenburg County, North Carolina. Father also alleged "there is a substantial risk that the (Minor) Child will be removed from The State of North Carolina for the purpose of avoiding North Carolina Courts jurisdiction" and that the child would be "hidden from the" Father.

On 16 January 2019, Mother filed a pro se verified answer and counterclaimed for custody. Mother alleged that she resided at a specific address in Catawba, South Carolina since November of 2017, and the child had also lived in South Carolina at the same address in Catawba since his birth in Rock Hill, South Carolina. On or about 15 February 2019, Father filed a verified answer to Mother's counterclaim and denied that she and the child resided in South Carolina though he did admit Mother's driver's license was issued in South Carolina. Father also alleged that on 29 December 2018, Mother was served with the complaint, and on 7 January 2019 she took the minor child to South Carolina and did not return until 19 January 2019.

¹ We will refer to the action filed under Chapter 50 as the child custody action.

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Thereafter, on 30 January 2019, while Father was at work, she removed all of her and the child's belongings and returned to South Carolina. Father again requested custody, and he moved for a temporary parenting agreement and for "[t]he appointment of the Council for Children's Rights[.]"

On 30 April 2019, Father filed another verified pro se motion for a temporary custody order and a hearing for a temporary parenting arrangement. Father alleged many of the same facts as he had in his complaint and answer but changed the date Mother removed her and the child's belongings from Charlotte to 28 January 2019. On 8 May 2019, the trial court scheduled a hearing on the motion for a temporary parenting arrangement for 14 June 2019.

On 22 May 2019, under Chapter 50B Father obtained an *ex parte* domestic violence order of protection ("DVPO") which required Mother "to stay away from the minor child[.]" "immediately return the minor child[] to the care of" Father, and "not to remove the minor child[] from the care of" Father; a hearing was set for the matter on 31 May 2019.² Our record on appeal does not include the Father's complaint in the Chapter 50B action, but based upon the *ex parte* order, Father alleged: on December 11 2018, Mother had "threatened to [get or cut] his throat if he filed for custody[;]" on 3 April 2019, Mother had "attacked [Father] by grabbing him by the throat leaving a severe cut of his neck and cut his nose and face[;]" and on 8 May

² We will refer to the action filed under Chapter 50B as the domestic violence action.

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2019, Mother had “hit him in the head with a cell phone” while in the presence of the child. Thereafter, the hearing regarding domestic violence was continued to 14 June 2019, the same date as the hearing for the temporary parenting arrangement.

On the morning of 14 June 2019 -- the day the hearing was scheduled on both the child custody and domestic violence actions -- Father filed a pro se motion for an order of protection and for temporary custody alleging Mother had issues with alcohol and drug abuse, drinking and driving, suicidal ideation, threatening Father, and that she was being investigated by Child Protective Services upon Father’s report.

The trial court heard both the child custody and domestic violence actions together; both parties were pro se. After swearing in all potential witnesses, the trial court began by *sua sponte* raising the issue of jurisdiction based upon allegations Mother and the child had lived “in South Carolina since November of 2017.” Mother testified she had “paperwork for day care, his Medicaid, the food stamps” to demonstrate she and her son resided in South Carolina. Father disagreed and stated he, Mother, and their child lived in North Carolina. Mother noted she had further proof -- “case reports from January and February of some harassment charges that I made against him [in South Carolina]. My address is listed on there.”

Mother testified she often went to visit Father for “about three days” at a time in North Carolina in an attempt to reconcile and “be a family” but since at least six months prior to the filing of the complaint, “June of 2018,” she had been residing in

and still resided in South Carolina with the child. Mother further testified that she lived in her mother's house in South Carolina, and she had her "own bedroom there. My son is set up there. My son was born in Rock Hill, South Carolina. You know, I don't know what else I need. I work in Fort Mill. His doctor's actually Dr. Alexander at Rock Hill Pediatrics." Mother then further explained that she and defendant had "history" and had previously been together for four years, separated, gotten back to together; then upon finding out she was pregnant, she moved in with her Mother.³ Mother testified she would take "a weekend vacation" to see Father and attempt to work on their relationship but those visits became less and less frequent over time. The trial court then determined it did not have subject matter jurisdiction regarding the Chapter 50 child custody action and that this claim would need to be filed in South Carolina.

The trial court then addressed Father's domestic violence claim and noted Father filed his complaint on 21 May 2019, and Mother had also filed a domestic violence complaint on 24 May 2019.⁴ Both parties then testified about the prior physical abuse from the other party and each had other witnesses testify.

³ We note that Mother could not have known she was pregnant with the child at issue in November of 2017 as the child was born 11 months later in October of 2018, but Mother did not state where she lived before November of 2017. However, by the time Mother realized she was pregnant, she testified she had made the choice to live with her own mother.

⁴ There are no Chapter 50B domestic violence complaints in our record and the only *ex parte* order is from the action filed by Father against Mother.

Ultimately, the trial court dismissed Father’s domestic violence claim because he “failed to prove grounds for issuance of a domestic violence order.”

In summary, as a result of the hearing, the trial court entered two orders: (1) an order dismissing with prejudice the Chapter 50 child custody action and counterclaim because “[j]urisdiction resides in South Carolina[,] and (2) an order dismissing Father’s Chapter 50B domestic violence action because he had “failed to prove grounds for issuance of a” DVPO and the *ex parte* order was now “null and void.”⁵ Father filed timely notice of appeal from both orders.

II. Subject Matter Jurisdiction as to Child Custody

Father contends that the “the trial court erred in dis[]mis[s]ing plaintiff’s claims based on jurisdiction.” (Original in all caps.) Father’s entire argument to this Court is:

Defendant was served the complaint for Custody in Mecklenburg County, State of North Carolina, having personal jurisdiction under NC Civil Procedure Rule 4(j), 4(j)1, 4(j)3. Pursuant to NCGS 50A-201 (a)1, and GS 50A-204(a), North Carolina has initial child custody, and acquired exclusive continuing jurisdiction, by a Valid, Temporary Order of Custody entered on 22 May 2019, and holds the same until the child or the parents no longer reside in or have any connection to the state. *REOPELLE V REOPELLE, COA19-241*. Under NCGS. Rule 50-13.5 (f) Venue is maintained by the Plaintiff.

⁵ Based upon the transcript, the trial court also dismissed Mother’s domestic violence claim, but none of the documents from that claim are in our record nor did Mother file a notice of appeal.

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We first note that Father has conflated the two separate actions before the trial court; the trial court correctly addressed the two actions separately. The jurisdictional issue as to the child custody claim addressed by the trial court was not personal jurisdiction over Mother. Father is correct that Mother was served with the child custody complaint in North Carolina, but there was no question raised as to *personal* jurisdiction over Mother.

Contrary to Father's argument, the entry of the Chapter 50B *ex parte* order in the domestic violence action months after the filing of the child custody action did not establish subject matter jurisdiction over the separate Chapter 50 child custody action. No court order was ever entered in the Chapter 50 child custody action; the 22 May 2019 order was the *ex parte* order in the domestic violence action.

We also note *Riopelle v. Riopelle*, ___ N.C. App. ___, 833 S.E.2d 258 (2019) (unpublished), *writ of supersedeas and writ of cert. denied*, 373 N.C. 579, 840 S.E.2d 797 (2020), is an unpublished case with no precedential value before this Court. *See* N.C. R. App. P. 30(e) ("An unpublished decision of the North Carolina Court of Appeals does not constitute controlling legal authority."). In addition, even if *Riopelle* had precedential value, it addresses an entirely different question of jurisdiction of the trial court where there were prior juvenile proceedings initiated by DHS under Chapter 7B. *See generally Riopelle*, ___ N.C. App. ___, 833 S.E.2d 258.

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The issue raised *sua sponte* by the trial court was subject matter jurisdiction under Chapter 50A. The Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”) controls the issue of subject matter jurisdiction which is at issue in this child custody case. *See generally* N.C. Gen. Stat. Chap. 50A (2017). “Whether the trial court has jurisdiction under the UCCJEA is a question of law subject to *de novo* review.” *In re J.H.*, 244 N.C. App. 255, 260, 780 S.E.2d 228, 233 (2015).

Specifically, the evidence tended to show, and the trial court determined, that North Carolina is not the child’s home state.

“Home state” means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

N.C. Gen. Stat. § 50A-102(7) (2017). Here, the “home state” must make the initial child custody determination. *See generally* N.C. Gen. Stat. §50A-201 (2017). Therefore, the trial court did not err in dismissing Father’s action for custody.

Father also argued the trial court did not adhere “to due process” because he was not allowed to present testimony as to the residence of the child. (Original in all caps.) The transcript of the hearing belies Father’s argument. The trial court specifically noted it would first consider the issue of subject matter jurisdiction as to child custody, and both Mother and Father presented testimony regarding the

residence of Mother and the minor child. Based upon this evidence, the trial court determined Mother and the minor child had resided in South Carolina during the six months next preceding the filing of the child custody complaint. The trial court afforded Father a hearing on this issue and did not deprive him of due process. This argument is without merit.

III. Domestic Violence Action

Father also argues “the trial court erred in dismissing the order of protection after the evidence of such had occurred.” (Original in all caps.) We note here that Father contends that the *ex parte* order established a “presumption” supporting his claim. But contrary to Father’s contention, entry of the *ex parte* order did not establish any sort of “presumption” in favor of Father nor has Father cited any law supporting this argument. An *ex parte* order does not establish a “presumption” but instead “is intended to be entered on relatively short notice in order to address a situation in which quick action is needed in order to avert a threat of imminent harm.” *Rudder v. Rudder*, 234 N.C. App. 173, 182, 759 S.E.2d 321, 328 (2014) (citation and quotation marks omitted).

Father also argues he was entitled to entry of a DVPO because he presented evidence of domestic violence by Mother. Father is correct that he presented evidence of actions which could support a DVPO, if the trial court determined the evidence was credible and of sufficient weight. But Father’s argument asks this Court to substitute

its own determination of the credibility of the evidence for that of the trial court, and we do not have this authority. *See Stancill v. Stancill*, 241 N.C. App. 529, 531–32, 773 S.E.2d 890, 892 (2015).

Where the trial court sits as the finder of fact, and where different reasonable inferences can be drawn from the evidence, the determination of which reasonable inferences shall be drawn is for the trial court.

This Court can only read the record and, of course, the written word must stand on its own. But the trial judge is present for the full sensual effect of the spoken word, with the nuances of meaning revealed in pitch, mimicry and gestures, appearances and postures, shrillness and stridency, calmness and composure, all of which add to or detract from the force of spoken words.

The trial court's findings turn in large part on the credibility of the witnesses, and must be given great deference by this Court.

Id. (citation omitted).

The trial court did not find Mother or Father credible noting each appeared to use the Chapter 50B domestic violence actions to support their Chapter 50 child custody claims. Thus, the trial court did not find credible evidence of actual abuse and was not presented with evidence either party was fearful of any future abuse or of specific criminal behavior which would qualify as domestic violence. *See* N.C. Gen. Stat. § 50B-1(a) (2017) This argument is also without merit. (defining domestic violence as attempted or intentional bodily injury, fear of imminent serious bodily

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injury or harassment that rises to a level of substantial emotional distress, or committing specifically enumerated criminal acts).

IV. Conclusion

Because the trial court correctly determined North Carolina is not the “home state” of the minor child, the trial court did not err by dismissing the Chapter 50 child custody action based upon lack of subject matter jurisdiction. Because the trial court properly considered the evidence presented by both parties and determined the weight and credibility of the evidence, the trial court did not err by dismissing plaintiff-father’s claim for a Chapter 50B domestic violence protective order. We affirm.

AFFIRMED.

Judges DILLON and YOUNG concur.

Report per Rule 30(e).