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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-872

No. COA22-287

Filed 20 December 2022

Pitt County, No. 16 CVD 2869

ANTHONY F. SKALAK, Plaintiff

v.

JENNIFER R. SKALAK, Defendant

Appeal by plaintiff from judgment entered 6 October 2021 by Judge Mark E. Galloway in Pitt County District Court. Heard in the Court of Appeals 4 October 2022.

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

No brief for defendant-appellee.

TYSON, Judge.

¶ 1 Anthony Skalak (“Plaintiff”) appeals from an order finding and holding him in civil contempt. We dismiss in part and affirm in part.

I. Background

¶ 2 Plaintiff and Jennifer Skalak (“Defendant”) married on 7 June 2003, separated on 11 December 2015, and divorced on 28 February 2017. Plaintiff and Defendant

are parents of three minor children born of the marriage. The district court entered an “Order for Postseparation Support Child Support & Attorney Fees” on 12 February 2018 “Order” containing provisions for Child Support and Postseparation Support.

The Postseparation Support termination paragraph provides:

Plaintiff’s payment of post separation support shall continue until the entry of an order awarding or denying alimony, the death of Plaintiff or Defendant, the remarriage of Defendant, cohabitation by the Defendant in an intimate relationship as prescribed by statute *or* for a period of thirty-six months to allow the parties to resolve pending Equitable Distribution.

(emphasis supplied).

¶ 3

After thirty-six months, Plaintiff stopped paying all amounts set forth in Paragraph One of the Order. Defendant filed a Contempt Motion, resulting in Judge Galloway finding and holding Plaintiff in contempt for not paying the amounts set forth in Paragraph One, excepting the cash Postseparation Support on 6 October 2021. Judge Galloway ordered Plaintiff may purge his contempt by reimbursing the Defendant \$40,402.62 and by paying Defendant’s attorney’s fees the amount of \$12,280.00. Plaintiff appeals

II. Jurisdiction

¶ 4

Jurisdiction lies in this Court pursuant to N.C. Gen. Stat. §§ 7A-27(b)(3), 1-277(a) (2021).

III. Issues

¶ 5

Plaintiff argues the trial court erred by: (1) determining which payments were ordered as spousal support and child support; (2) enforcing through contempt the combined spousal and child support order; (3) failing to determine spousal support terminated in November 2020; (4) requiring payment of Defendant’s medical insurance premiums after 31 October 2020; (5) finding Plaintiff in contempt based upon Plaintiff’s interpretation of the order; (6) determining child support obligations remaining in effect; (7) requiring Plaintiff to pay Defendant the school tuition amount as a purging condition of his contempt; (8) requiring Plaintiff to pay Defendant for the amount owed to a third party for a child’s psychiatric services as a purging condition of his contempt; and, (9) requiring Plaintiff to repay Defendant for the amount of debt payments for Plaintiff’s boat debt as a purging condition of his contempt.

IV. Spousal Support, Child Support Payments, Termination of Spousal Support, and Medical Insurance Premiums

¶ 6

“A judgment is either interlocutory or the final determination of the rights of the parties.” N.C. Gen. Stat. §1A-1, Rule 54(a) (2021). “An interlocutory order is one made during the pendency of an action, which does not dispose of the case, but leaves it for further action by the trial court in order to settle and determine the entire controversy.” *Veazey v. City of Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950) (citations omitted). “[I]mmediate appeal of interlocutory orders and judgments is

available in at least two instances. First, immediate review is available when the trial court enters a final judgment as to one or more, but fewer than all, claims or parties and certifies [under Rule 54(b)] there is no just reason for delay. . . . Second, immediate appeal is available from an interlocutory order or judgment which affects a substantial right.” *Sharpe v. Worland*, 351 N.C. 159, 161-62, 522 S.E.2d 577, 579 (1999) (citations and quotation marks omitted).

¶ 7 “It is not the duty of this Court to construct arguments for or find support for appellant’s right to appeal from an interlocutory order; instead, the appellant has the burden of showing this Court that the order deprives the appellant of a substantial right which would be jeopardized absent a review prior to a final determination on the merits.” *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 380, 444 S.E.2d 252, 254 (1994) (citations omitted).

¶ 8 The trial court made rulings concerning child support, postseparation support, and attorney’s fees in the Order. The issue of equitable distribution remains pending at the time this Order was entered, as specifically shown by the provision “a period of thirty-six months to allow the parties to resolve pending Equitable Distribution,” in Paragraph 2 of the Order. The Order did not finally dispose of all issues in the case. Plaintiff has failed to demonstrate this Order affects a substantial right absent immediate review.

V. Spousal and Child Support Contempt

A. Standard of Review

¶ 9

This Court's review of "contempt proceedings is limited to determining whether . . . competent evidence . . . support[s] the findings of fact and whether the findings support the conclusions of law." *Watson v. Watson*, 187 N.C. App. 55, 64, 652 S.E.2d 310, 317 (2007) (citation 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 [conclusions in the] judgment." *Id.* (quoting *Hartsell v. Hartsell*, 99 N.C. App. 380, 385, 393 S.E.2d 570, 573 (1990)). "When the trial court fails to make sufficient findings of fact and conclusions of law in its contempt order, reversal is proper." *Thompson v. Thompson*, 223 N.C. App. 515, 518, 735 S.E.2d 214, 216 (2012) (citing *Bishop v. Bishop*, 90 N.C. App. 499, 506, 369 S.E.2d 106, 110 (1988)).

B. Analysis

Failure to comply with an order of a court is a continuing civil contempt as long as: (1) the order remains in force; (2) the purpose of the order may still be served by compliance with the order; (2a) the noncompliance by the person to whom the order is directed is willful; and (3) the person to whom the order is directed is able to comply with the order or is able to take reasonable measures that would enable the person to comply with the order.

N.C. Gen. Stat. § 5A-21(a) (2021).

¶ 10

The court concluded the Order remained in force concerning: (1) the insurance premiums; (2) the purpose of the multiple payments to Defendant outlined may still

be served by compliance with the Order; (3) noncompliance was willful as well as disobedient; and, (4) Plaintiff was able to comply and is able to take measures to comply with the Order through purge conditions. The court made sufficient findings of fact and conclusions of law to find and hold Plaintiff in contempt.

¶ 11 The court found and concluded the Order remained in force concerning a child's medical bills for eyeglasses, the purpose of the multiple payments to Defendant outlined may still be served by compliance with the Order, noncompliance was willful, as well as disobedient, and Plaintiff has been able to comply with the Order and is able to take measures to comply through a purge condition. The court made sufficient findings of fact and conclusions of law to find and hold Plaintiff in contempt.

¶ 12 The court found and concluded the Order remained in force concerning the children's medical co-pay, the purpose of the multiple payments to Defendant outlined may still be served by compliance with the order, noncompliance was willful as well as disobedient, and Plaintiff has been able to comply with the order and is able to take measures to comply with the order through a purge condition. The court made sufficient findings of fact and conclusions of law to find Plaintiff in contempt.

¶ 13 The court found and concluded the 12 February 2018 order remained in force concerning a child's psychiatric counseling bills, the purpose of the multiple payments to Defendant outlined may still be served by compliance with the Order, noncompliance was willful as well as disobedient, and Plaintiff was able to comply

and is able to take measures to comply with the Order through a purge condition. The court made sufficient findings of fact and conclusions of law to find Plaintiff in contempt.

¶ 14 The court also found and concluded the Order remained in force concerning a child's psychiatrist oral swab bill, the purpose of the multiple payments to Defendant outlined may still be served by compliance with the Order, noncompliance was willful as well as disobedient, and Plaintiff has been able to comply and is able to take measures to comply with the Order through a purge condition. The court made sufficient findings of fact and conclusions of law to find Plaintiff in contempt under this basis.

¶ 15 The court also found and concluded the Order remained in force concerning the children's tuition at St. Peter Catholic School, the purpose of the multiple payments to Defendant outlined may still be served by compliance with the Order, noncompliance was willful as well as disobedient, and Plaintiff was able to comply and is able to take measures to comply with the Order through a purge condition. The court made sufficient findings of fact and conclusions of law to find Plaintiff in contempt under this basis.

¶ 16 The court further found and concluded the Order remained in force concerning the payment of a Grady White boat's indebtedness, the purpose of the multiple payments to Defendant outlined may still be served by compliance with the Order,

noncompliance was willful as well as disobedient, and Plaintiff was able to comply and is able to take measures to comply with the Order through a purge condition. The court made sufficient findings of fact and conclusions of law to find Plaintiff in contempt under this basis.

¶ 17 The court's evidence concerning each of the child and spousal support payments is relevant, competent, and meets the requirements of N.C. Gen. Stat. § 5A-21(a) (2021). The court's findings of fact and conclusions of law in the 6 October 2021 Order for Contempt and Attorneys' Fees are sufficient and supported by competent evidence, resulting in holding Plaintiff's in civil contempt. Plaintiff argument is without merit.

VI. Tuition Purging Condition

The order of the court holding a person in civil contempt must specify how the person may purge himself of the contempt. The court's conditions under which defendant can purge [him]self of contempt cannot be vague such that it is impossible for defendant to purge [him]self of contempt, and a contemner cannot be required to pay compensatory damages.

Watson, 187 N.C. App. at 65, 652 S.E.2d at 317 (citations and quotation marks omitted).

¶ 18 The trial court's purge conditions are specific. Plaintiff is able to purge himself of contempt by paying \$22,491.00 for his children's tuition at St. Peter Catholic School. The contempt order specified Plaintiff may purge himself of the contempt by

paying Defendant the children's tuition at St. Peter Catholic School, \$22,491.00. The \$22,491.00 is not compensatory damages. The purge conditions in the court's order properly satisfy the purge condition elements. Plaintiff's argument is overruled.

VII. Psychiatric Services Purging Condition

¶ 19 Plaintiff is able to purge himself of contempt by paying \$3,825.00 for a child's psychiatric counseling. The contempt order specified Plaintiff may purge himself of the contempt by paying Defendant the child's psychiatric counseling bills, in the amount above, which are not compensatory damages. The purge conditions in the court's order are not vague and properly satisfy the purge condition elements. Plaintiff's argument is without merit.

VIII. Boat Purging Condition

¶ 20 The trial court's purge conditions here are also specific. The Plaintiff is able to purge himself of contempt by paying \$8,318.70 for the Grady White boat's debt. The contempt order specified Plaintiff may purge himself of the contempt by paying Defendant \$3,000 she paid on the debt, and pay the debt balance of \$5,318.70. The \$3,000.00 is not compensatory damages. The purge conditions in the court's order satisfies the purge condition elements. Plaintiff's argument is overruled.

IX. Conclusion

¶ 21 Plaintiff does not have a right to an immediate appeal from this interlocutory order to review the postseparation support and child support. Plaintiff's purported

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Opinion of the Court

appeal is dismissed in part without prejudice.

¶ 22 Plaintiff failed to show the court's contempt order is unsupported by competent evidence, which in turn supports the findings of fact and conclusions of law. The trial court's contempt order met all requirements for the imposition of civil contempt. The contempt order contained clear purge conditions detailing how Plaintiff could purge himself of contempt.

¶ 23 Plaintiff failed to show that the 12 February 2018 Order will affect a substantial right if not immediately reviewed. The trial court's 6 October 2021 contempt order is affirmed. *It is so ordered.*

DISMISSED IN PART AND AFFIRMED IN PART

Judges INMAN and COLLINS concur.

Report per Rule 30(e).