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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-804

No. COA 22-37

Filed 6 December 2022

Mecklenburg County, No. 15 CVD 12199

JASON GRIER, Plaintiff,

v.

CHRISTINE GRIER, Defendant.

Appeal by defendant from order entered 29 April 2021 by Judge Christy T. Mann in Mecklenburg County District Court. Heard in the Court of Appeals 6 September 2022.

Godley, Glazer & Funk, PLLC, by Seth A. Glazer, for Defendant-Appellant.

Collins Family Law Group, by Rebecca K. Watts, for the Plaintiff-Appellee.

DILLON, Judge.

¶ 1 Defendant Christine Grier (“Mother”) appeals from an order directing her to pay \$25,000 in attorney’s fees incurred by Plaintiff Jason Grier (“Father”) in connection with this custody action. We reverse.

I. Background

¶ 2 This appeal concerns the appropriateness of an award of attorney’s fees against a parent found to be in criminal contempt of a custody order.

¶ 3 Mother and Father were married in 1995 and divorced in 2015. In July 2017, the trial court entered a permanent child custody order, which awarded both parties joint legal custody of their minor child.

¶ 4 On 16 June 2020, Father filed a motion seeking an order holding Mother in criminal contempt and attorney’s fees, alleging that Mother willfully violated the terms of the 2017 custody order. The next day, the trial court entered an order directing Mother to show cause why she should not be held in criminal contempt.

¶ 5 In February 2021, after a hearing on the matter, the trial court entered an order finding Mother in criminal contempt of the 2017 custody order.

¶ 6 In April 2021, after a separate hearing on the attorney’s fees issue, the trial court entered an order awarding Father \$25,000 in attorney’s fees relating to the criminal contempt matter. Mother appealed this attorney’s fees order only.

II. Appellate Jurisdiction

¶ 7 We first consider whether we have appellate jurisdiction to consider a direct appeal of an order awarding attorney’s fees incurred during a proceeding finding Mother in criminal contempt of a custody order.

¶ 8 A district court order establishing child custody is civil in nature and is appealed as such directly to our Court. *See Crutchley v. Crutchley*, 306 N.C. 518, 522, 293 S.E.2d 793, 796 (1982) (describing an action for custody as a “civil action”); N.C. Gen. Stat. § 7A-27(b)(2) (2021) (“final judgment of a district court in a civil action”

appealable directly to the Court of Appeals).

¶ 9 A criminal contempt proceeding “may be resorted to in civil or criminal actions”, but is itself not civil in nature, but rather “is *sui generis*, criminal in its nature[.]” *Safie Mfg. Co. v. Arnold*, 228 N.C. 375, 389, 45 S.E.2d 577, 586 (1947). Our General Assembly has provided a district court order finding a parent in criminal contempt is appealable like a criminal action, which is *not* directly to our Court, but rather first to superior court for a trial *de novo*. N.C. Gen. Stat. § 5A-17(a) (2021).

¶ 10 However, a district court order directing a party to pay attorney’s fees in the context of a criminal proceeding is *itself* civil in nature and, therefore, immediately appealable to our Court. *See, e.g., State v. Jacobs*, 361 N.C. 565, 566, 648 S.E.2d 841, 842 (2007) (order directing a criminal defendant to pay attorney’s fees is civil in nature); *State v. Ricks*, 378 N.C. 737, 740-41, 862 S.E.2d 835, 838 (2021) (satellite-based monitoring order entered in a criminal case is civil in nature and, therefore, appealable as a civil order).

¶ 11 Since Mother’s appeal is from an order directing her to pay attorney’s fees and *not* from the underlying criminal contempt order, her appeal is properly before us.

III. Analysis

¶ 12 Mother argues that Section 50-13.6, which provides authority to award attorney’s fees in custody actions, does not apply to criminal contempt proceedings. Indeed, generally, a court may not award attorney’s fees in any context absent

express statutory authority. *Bowman v. Comfort Chair*, 271 N.C. 702, 704, 157 S.E.2d 378, 379, (1967). And there is nothing in our contempt statutes (Chapter 5A) generally authorizing the award of attorney’s fees in contempt proceedings. Notwithstanding, it could be argued that attorney’s fees are authorized here by Section 50-13.6 of our General Statutes, which provides, in relevant part, that:

[i]n an action or proceeding for the custody or support, or both, of a minor child, including a motion in the cause for the modification or revocation of an existing order for custody or support, or both, the court may in its discretion order payment of reasonable attorney’s fees to an interested party acting in good faith who has insufficient means to defray the expense of the suit

N.C. Gen. Stat. § 50-13.6 (2021).

¶ 13 However, we need not decide whether Section 50-13.6 authorizes the imposition of attorney’s fees where a parent is found to be in criminal contempt in a custody action. That is, even assuming Section 50-13.6 applies, Father’s evidence and the trial court’s findings are insufficient to support the conclusion that Father has insufficient means to pay \$25,000 to his attorneys, as explained below. *See* N.C. Gen. Stat. § 50-13.6 (a party seeking attorney’s fees in a custody matter must show that he “has insufficient means to defray the expense of the suit”).

¶ 14 Though the trial court found that Father has insufficient means, this determination by the trial court is a conclusion of law, which we review *de novo*. *Atwell v. Atwell*, 74 N.C. App. 231, 237, 328 S.E.2d 47, 51 (1985).

¶ 15 The trial court essentially found that Father makes \$300,000 per year and that he has “a significant and high amount of expense, in line with the nature of the American economic system (with significant money comes significant expenses).” The trial court found that Father pays for his adult son’s tuition at MIT, though he has no legal obligation to do so; that he owns two boats, only one of which has debt on it; that he drives a new BMW (the evidence showing that he purchased the BMW new, during the pendency of the contempt hearing; and that he has \$25,000 in an investment account. Father testified, in part, that he recently remarried and helps pay some expenses for his two stepchildren (though his new wife works and receives child support from her children’s father); that he lives in a highly leveraged home worth over \$1 million; and that he has over \$200,000 in a retirement account as well as a company 401(k) that he voluntarily contributes \$20,000 to each year.

¶ 16 We have reviewed the trial court’s findings and the uncontradicted evidence from Father and conclude that they are insufficient as a matter of law to support a conclusion that Father has insufficient means to pay the reasonable fees of his attorneys in this matter. We, therefore, reverse the trial court’s order directing Mother to pay Father’s attorney’s fees associated with the proceeding in which she was found to be in criminal contempt of the custody order.

IV. Conclusion

¶ 17 We reverse the trial court’s order awarding Father attorney’s fees. The trial

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court's findings and the father's evidence are insufficient to support a conclusion that Father has insufficient means to defray the costs of that proceeding, as required by Section 50-13.6.

REVERSED.

Judges INMAN and MURPHY concur.

Report per Rule 30(e).