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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-373

Filed 5 December 2023

Guilford County, No. 18CVD8698

ALAIN F. HERMOSA, Plaintiff,

v.

ASHLEY R. SPELLANE, Defendant.

Appeal by plaintiff from order entered 15 November 2023 by Judge Teresa H. Vincent in Guilford County District Court. Heard in the Court of Appeals 1 November 2023.

Alain F. Hermosa, pro se, for plaintiff-appellant.

No brief filed on behalf of defendant-appellee.

FLOOD, Judge.

Alain F. Hermosa ("Plaintiff") appeals from the trial court's order holding him in civil contempt and awarding attorney's fees to Ashley R. Spellane ("Defendant"). On appeal, Plaintiff takes issue with findings of fact from the trial court's contempt order and argues the trial court's award of attorney's fees was not supported by adequate findings. For the reasons discussed below, we affirm the trial court's civil

contempt order and award of attorney's fees.

I. Facts and Procedural Background

Plaintiff and Defendant are the biological parents of a minor child (the "minor child"), born on 26 August 2017. The minor child was diagnosed with autism at the age of two. Plaintiff and Defendant never married. Plaintiff is from Peru, and English is not his first language. Plaintiff moved to the United States in 2018 and started working for Spectrum in 2019 as an "internet tech support customer service specialist."

A temporary custody order (the "Custody Order") was entered on 24 September 2020. The Custody Order awarded joint legal and physical custody of the minor child to Plaintiff and Defendant. The Custody Order became permanent on 7 December 2020 by operation of law.

In the Custody Order, the trial court made the following findings of fact:

> 6. [T]he minor child receives ongoing therapeutic treatment for his special needs. It is foreseeable that the minor child will need treatment for his special needs in the future.
>
> . . . .
>
> 8. It appears that ABA therapy[[1]] is available to the minor child . . . and that Plaintiff currently has access to group private health insurance through his employer that will provide coverage for ABA therapies[.]

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[1] ABA therapy, "applied behavior analysis," is a treatment used to "mediate the deficits that are associated with [a] diagnosis of autism." The treatment involves procedures such as "discrete trial teaching" and other "reinforcement procedures."

> 9. The parties shall place the minor child on the Plaintiff's group health insurance as soon as possible.
>
> . . . .
>
> 12. It is in the best interest of the minor child that both parties receive equal and full access with respect to all matters and records involving the minor child's health, education, and welfare.

Based on those findings, the trial court ordered:

> 2. The parties shall fully cooperate with each other to ensure that each has full access to all records concerning the health, welfare, and education of the minor child, including, but not limited to all medical, therapeutic, and educational records.
>
> . . . .
>
> 4. The minor child shall be placed on the Plaintiff's group health insurance as soon as possible.
>
> 5. The parties shall attempt to enroll the minor child in ABA therapy . . . as soon as possible.
>
> . . . .
>
> 9. The parties shall work together in good faith in deciding the medical, therapeutic, and educational needs of the minor child and, the parties shall ensure they serve the best interests of the minor child.
>
> 10. Each party shall provide the minor child's school, and health care providers with the other party's name and contact information.

Following entry of the Custody Order, in late October 2020, the parties began discussing their plans to place the minor child on Plaintiff's insurance plan. The parties agreed to wait to enroll the minor child in ABA therapy until Plaintiff obtained Medicaid coverage to pay for the portion of the therapy expenses not covered

by Plaintiff's insurance.

On 16 October 2020, Plaintiff told Defendant, regarding the insurance coverage, that he would "keep [her] updated about it." After not receiving any updates, Defendant reached out to Plaintiff twice via email, asking him whether the minor child had been added to Plaintiff's insurance plan. It was Plaintiff's understanding, based on representations from his insurance provider, that he was required to wait for the next open enrollment period to occur before he could place the minor child on his insurance plan. The enrollment guidelines, however, indicated that an employee could make coverage changes before open enrollment in certain situations, including qualifying life events.

In November 2020, Defendant asked Plaintiff if he had enrolled the minor child in the insurance plan, to which Plaintiff replied he had but that they had to "wait [un]til it processed . . . ."

On 13 December 2020, while the minor child was in Plaintiff's custody, Defendant asked Plaintiff if they could set up a phone call so Defendant could speak to the minor child. Plaintiff told Defendant he would "get back [to] [her] with [her] request about communication later on." When Defendant did not hear from Plaintiff, she emailed him again asking when a good time would be to call so she could speak with the minor child. To this Plaintiff said, "there is nothing that says in the [Custody] [O]rder to set up telephone time or video chat time." Defendant responded by telling Plaintiff that the parenting guidelines, which were incorporated into the

Custody Order, allowed Defendant reasonable communication with the minor child while he was in Plaintiff's care. Plaintiff did not allow Defendant to contact the minor child that evening and has since not allowed any communication between Defendant and the minor child during his custodial time.

On more than one occasion, Plaintiff communicated to Defendant that Plaintiff would not be taking the minor child during his custodial period without any alternative plan. On 30 November 2021, Plaintiff emailed Defendant to notify her that he would be going out of town during his scheduled custodial time. Just a month later, Plaintiff informed Defendant that Plaintiff would not be picking up the minor child for his custodial time because Plaintiff felt sick.

In early January 2021, Plaintiff sent Defendant a photo of Plaintiff's insurance card with the minor child's name on it. Following this, Defendant asked Plaintiff, on several occasions, to send a hard copy of the insurance card so Defendant could take the minor child to the hospital. The hospital had informed Defendant that it would not accept a photo of the insurance card, which was communicated to Plaintiff. Plaintiff rebuked Defendant's requests, suggesting a photo of the card would be fine as a temporary solution.

Also in January 2021, without consulting Defendant, Plaintiff completed and sent in an application to Butterfly Effects, an ABA therapy provider. Plaintiff did not include Defendant's information on the application because "they didn't have a space to put [Defendant's information] there." Defendant had to show the Custody Order

to gain access to the minor child's information at Butterfly Effects. Butterfly Effects evaluated the minor child and recommended he receive twenty hours of therapy each week.

On 16 March 2021, nearly five months after the Custody Order was entered, Defendant received a hard copy of the insurance card with the minor child's name on it.

Sometime in the summer of 2021, Defendant decided they should no longer delay the process of enrolling the minor child in ABA therapy while they waited for Medicaid coverage to be processed. On 30 August 2021, Defendant told Plaintiff that Medicaid would not be an option going forward because her change in employment would make them ineligible.

In December 2021, Plaintiff decided to move the minor child to a different ABA therapy provider, Mosaic Pediatric Therapy ("Mosaic"). Plaintiff did not consult Defendant before making this change and again, did not include Defendant's information on the application. After enrolling the minor child at Mosaic, Plaintiff scheduled an initial assessment for 10 December 2021. Plaintiff told Jayonice Brooks ("Ms. Brooks"), a board-certified behavior analyst at Mosaic, that Defendant was aware of the initial assessment and that she was not able to attend. In February 2022, the minor child began receiving ABA therapy services at Mosaic.

On 15 September 2022, Defendant filed a Motion for Contempt and Order to Show Cause and Motion for Attorney's Fees, alleging Plaintiff violated the Custody

Order. On 17 October 2022, a hearing took place in Guilford County District Court. At the hearing, Defendant was represented by counsel while Plaintiff appeared *pro se*. The trial court filed its Contempt Order and Attorney's Fees on 15 November 2022.

In its Contempt Order the trial court found as fact:

> 3. Plaintiff has denied the Defendant full access to all records concerning the minor child . . . [and] has not provided Defendant's name and contact information to the educational, medical, and therapeutic providers of the minor child.
>
> 4. Plaintiff has refused to cooperate with and follow the recommendations of the minor child's medical and therapeutic care providers.
>
> 5. Plaintiff failed to place the minor child on his health insurance coverage as soon as possible. The Plaintiff waited until 2021 to add the minor child to his insurance and then refused to give the Defendant an insurance card to be used to receive medical treatment for the minor child.
>
> 6. The actions of the Plaintiff prevented the minor child from being enrolled in ABA therapy as soon as possible. [] Plaintiff switched agencies before the minor child could receive service and delayed the start of services to wait for insurance coverage from Medicaid to cover uninsured costs that his employer's insurance would not.
>
> 7. Plaintiff has on multiple occasions refused to take custody of the minor child during his custodial time and put the responsibility for care on Defendant without any consideration of her plans and schedule.
>
> 8. Beginning in December 2020, [] Plaintiff has on multiple occasions refused to allow the minor child to have reasonable access to the Defendant via telephone.

Based on those findings the trial court concluded:

> 2. Plaintiff has willfully failed to comply with the Order, has the present ability to comply, and is in civil contempt.
>
> 3. Defendant is entitled to recover reasonable attorney's fees for this action in the amount of $9,355.00.

On 22 November 2022, Plaintiff filed his notice of appeal.

II. Jurisdiction

An appeal of right lies with this Court from any interlocutory order that affects a substantial right. N.C. Gen. Stat. § 7A-27(b)(3)(a) (2021). "The appeal of any contempt order, [] affects a substantial right and is therefore immediately appealable." *Guerrier v. Guerrier*, 155 N.C. App. 154, 158, 574 S.E.2d 69, 71 (2002).

III. Contempt Order

On appeal, Plaintiff challenges the veracity of Findings of Fact 3–8 from the Contempt Order. For the reasons outlined below, we decline to review Plaintiff's contentions with respect to Findings of Fact 4, 6, and 7. As for Plaintiff's remaining arguments, we affirm the trial court's holdings.

At the outset, we note that unchallenged findings of fact are "presumed to be supported by competent evidence and [are] binding on appeal." *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). "A party abandons a factual [argument] when [they] fail to argue specifically in [their] brief that the contested finding of fact

was unsupported by the evidence." *Peters v. Pennington*, 210 N.C. App. 1, 16, 707 S.E.2d 724, 735 (2011).

In the instant case, Plaintiff has failed to make any specific arguments that challenge the competency of the evidence used to support Findings of Fact 4, 6, and 7. As to Finding of Fact 4, which states "Plaintiff has refused to cooperate with and follow the recommendations of the minor child's medical and therapeutic care providers[,]" Plaintiff does not argue the finding was unsupported by the evidence and therefore abandons the argument on appeal. *See Peters*, 210 N.C. at 16, 707 S.E.2d at 735.

Finding of Fact 6 states "[t]he actions of the Plaintiff prevented the minor child from being enrolled in ABA therapy as soon as possible." On appeal, Plaintiff does not contend that the finding was unsupported by evidence, but instead simply states that "[t]here is evidence from trial showing that both parties agreed to wait for Medicaid to cover the remaining balance for the ABA therapies[.]" Plaintiff not only failed to explicitly state that the finding was not supported by competent evidence, but he also made no attempt to refute the finding. For that reason, Plaintiff abandons any arguments related to Finding of Fact 6. *See id.* at 16, 707 S.E.2d at 735.

Finally, as to Finding of Fact 7, Plaintiff contends that the only evidence supporting this finding is one email exchange between Plaintiff and Defendant. In essence, Plaintiff argues the finding is not supported by *enough* evidence, rather than refuting the evidence upon which the finding was made. For that reason, Plaintiff

does not satisfy the requirement that a party must argue a particular finding is unsupported by the evidence and thus, abandons the argument on appeal. *See id.* at 16, 707 S.E.2d at 735.

Having concluded that Plaintiff abandoned a substantial number of his claims through failure to specifically argue the findings were unsupported by evidence, we proceed in turn with Plaintiff's remaining arguments as they relate to Findings of Fact 3, 5, and 8.

A. Standard of Review

This Court reviews orders from contempt proceedings to determine whether "competent evidence supports the findings of fact and whether those findings support the conclusions of law." *Blanchard v. Blanchard*, 279 N.C. App. 280, 284, 856 S.E.2d 693, 697 (2021). "This Court is bound by the trial court's findings where there is competent evidence to support them." *Monds v. Monds*, 446 N.C. App. 301, 302, 264 S.E.2d 750, 751 (1980).

B. Finding of Fact 3

Plaintiff first takes issue with Finding of Fact 3, arguing he "showed . . . evidence that he shared portal passwords and information about the whole process of enrolling the minor child in ABA therapies."

Finding of Fact 3 states:

> 3. Plaintiff has denied [] Defendant full access to all records concerning the minor child. Further [] Plaintiff has not provided [] Defendant's name and contact information

> to the educational, medical and therapeutic providers of the minor child.

A thorough review of the Record reveals that Plaintiff, on more than one occasion, failed to include Defendant's contact information on various intake forms, applications, and other official documents provided to the minor child's educational, medical, and therapeutic providers. Plaintiff, who applied to two different ABA therapy providers without consulting Defendant, omitted Defendant's information from both applications. At the hearing, Plaintiff admitted that he did not provide Defendant's information when he enrolled the minor child at Butterfly Effects, the first ABA therapy provider. In fact, Defendant had to resort to using the Custody Order to get access to the minor child's account at Butterfly Effects. As for the second ABA therapy provider, Mosaic, Ms. Brooks testified that when she received the minor child's intake form in December of 2021, Plaintiff's contact information was the only information listed on the form. No information about Defendant was provided. Our review makes clear the evidence relied upon by the trial court was competent to support the finding that Plaintiff has not provided Defendant's information to the minor child's health care providers.

Plaintiff points out he did provide Defendant with the password to access the minor child's portal at Mosaic; however, Plaintiff did not provide this information until Defendant requested it, two weeks after he initially enrolled the minor child at Mosaic. This delay, along with Defendant's need to utilize the Custody Order to gain access to the minor child's account at Butterfly Effects, was competent evidence upon

which the trial court could find that Plaintiff denied Defendant full access to records concerning the minor child.

Accordingly, we conclude Finding of Fact 3 was supported by competent evidence.

C. Finding of Fact 5

Plaintiff next takes issue with the trial court's Finding of Fact 5, arguing "there was no evidence from Defendant that the insurance enrollment was delayed on purpose." Finding of Fact 5 states:

> 5. Plaintiff failed to place the minor child on his health insurance coverage as soon as possible. [] Plaintiff waited until 2021 to add the minor child to his insurance and then refused to give [] Defendant an insurance card to be used to receive medical treatment for the minor child.

The Record demonstrates that Plaintiff did not add the minor child to his health insurance as soon as possible. At the contempt hearing, Plaintiff stated that his Human Resources Department told him he would have to wait until the open enrollment period to add the minor child to his insurance plan. While that may be true, Plaintiff also agreed, and the policy indicated, that he could have added the minor child to his insurance before the open enrollment period, since the change in status was a qualifying life event. Additionally, Defendant explained to Plaintiff that the order "could be used to go to [Plaintiff's] employer and get [the minor child] enrolled within [thirty] days because it's considered a change in circumstances and would qualify to get [the minor child] on the insurance." Despite having this

information, and the policy being readily available, Plaintiff waited until the open enrollment period, which occurred at the start of 2021, to add the minor child to his insurance policy.

As for the insurance card, Defendant reached out to Plaintiff on several occasions requesting a hard copy of the insurance card. Those requests were denied, and Plaintiff did not provide Defendant with a hard copy of the insurance card until March of 2021. Accordingly, we conclude Finding of Fact 5 was supported by competent evidence.

D. Finding of Fact 8

Lastly, Plaintiff challenges Finding of Fact 8, arguing that he agreed to accommodate Defendant by allowing her to call the minor child. Plaintiff's assertion is simply not true based upon the Record.

Finding of Fact 8 states that "[b]eginning in December 2020, [] Plaintiff has on multiple occasions refused to allow the minor child to have reasonable access to [] Defendant via telephone." The Record shows that on 13 December 2020, Plaintiff did not allow Defendant to contact the minor child via telephone or FaceTime call while the minor child was in Plaintiff's care. Our review of the transcript shows that when Plaintiff asked Defendant, "[h]ave I offered you phone time with [the minor child]," and Defendant responded by saying "[n]o." Additionally, Plaintiff told Defendant in an email that Plaintiff had no legal obligation to participate in video chats or phone calls to allow Defendant to check on the minor child. This statement confirms

Plaintiff did not allow communication between the minor child and Defendant when the minor child was in Plaintiff's care. Accordingly, we conclude Finding of Fact 8 was supported by competent evidence.

Because the aforementioned findings of fact were supported by competent evidence, the trial court did not err in holding Plaintiff in civil contempt. The trial court's civil contempt order is therefore affirmed.

IV. Attorney's Fees

In his final argument, Plaintiff contends the trial court erred in awarding attorney's fees to Defendant because the trial court failed to find the adequate facts to support the award. We disagree.

"An award of attorneys' fees will be stricken only if the award constitutes an abuse of discretion." *Cox v. Cox*, 133 N.C. App. 221, 227, 515 S.E.2d 61, 66 (1999). In matters relating to custody, if the trial court makes "adequate findings of fact that the moving party acted in good faith and had insufficient means to defray the expense of the suit," then it can properly award attorney's fees. *Id.* at 227–28, 515 S.E.2d at 66; *see* N.C. Gen. Stat. §50-13.6 (2021). "The trial court must also make specific findings of fact concerning the lawyer's skill, the lawyer's hourly rate and the nature and scope of the legal services rendered." *Id.* at 231, 515 S.E.2d at 68. Whether the trial court has sufficiently met these requirements "is a question of law, reviewable on appeal." *Id.* at 228, 515 S.E.2d at 66.

Here, the trial court's order satisfies the statutory requirements by finding as fact:

> 11. Defendant's counsel submitted an affidavit for $6,788.00 in attorney[']s fees billed prior to the hearing on Defendant's Motion plus an additional $2,567.00 of court time billed at an hourly rate of $395 per hour. The Defendant's total attorney's fees amounted to $9,355.00
>
> 12. Defendant is an interested party in this action to enforce the October 19, 2020, Custody order proceeding on good faith. Defendant has insufficient means to defray the expenses of this action.
>
> 13. Attorney Johnson-Parris is a Board-Certified Family Law Specialist with an hourly rate of $395 per hour, charged to the Defendant at a rate of $395 per hour, and her fees are reasonable in comparison with that of other professionals working in family law. The time spent on this matter, which included two continued hearings, was reasonable.

Although we recognize that the trial court did not make any findings concerning Defendant's monthly income or expenses, Plaintiff did not challenge the reasonableness of the amount awarded, and we decline to create arguments for Plaintiff that were not raised in his brief. *See Cox*, 133 N.C. at 227–28, 515 S.E.2d at 66 (holding the trial court erred in awarding attorney's fees because it did not make findings about plaintiff's monthly income or expenses where defendant argued there was "no disparity between the parties' financial resources and . . . the award of $1,200 in fees [was] unreasonable").

Because the trial court complied with the statutory requirements of N.C. Gen. Stat. §50-13.6 by finding as fact that Defendant "act[ed] in good faith" and had "insufficient means to defray the suit," its award of attorney's fees was not an abuse of discretion; therefore, we affirm. *See Cox*, 133 N.C. at 227–28, 515 S.E.2d at 66.

V. Conclusion

Accordingly, for the foregoing reasons, we affirm both the trial court's Contempt Order and award of attorney's fees.

AFFIRMED.

Judges ARROWOOD and CARPENTER concur.

Report per Rule 30(e).