IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 22-976

Filed 5 March 2024

Wake County, No. 19-CVD-15723

STETSON MANSFIELD WEBSTER, Plaintiff,

v.

DANA DANIELLE DEVANE-WEBSTER, Defendant.

Appeals by plaintiff from a series of orders by Judges David Baker, Julie Bell, and Damion McCullers in Wake County District Court. Heard in the Court of Appeals on 6 September 2023.

Stetson Mansfield Webster, pro se, for the plaintiff-appellant.

No brief filed for defendant-appellee.

STADING, Judge.

This appeal is one of three before this Court arising from the same underlying matter. *See Webster v. Devane-Webster*, ___ N.C. App. ___, ___ S.E.2d ___, No. COA22-975 (5 March 2024) (unpublished); *Webster v. Devane-Webster*, ___ N.C. App. ___, ___ S.E.2d ___, No. COA22-977 (5 March 2024) (unpublished). In this case, Stetson Mansfield Webster ("plaintiff") appeals from the trial court's 27 August 2021 custody order.

Plaintiff asserts the following for appellate review: (1) the trial court erred in its findings of facts; (2) the trial court erred in not admitting evidence produced by plaintiff; (3) the trial court modified the custody order absent a change in circumstances; (4) the trial court erred in drafting the permanent custody order; (5) the trial court abused discretion by modifying the permanent custody order by issuing a temporary custody order; and (6) the parent coordinator did not act in the child's best interest. After careful review, we affirm.

I. Background

Plaintiff's second of three appeals arises from the trial court appointment of a parenting coordinator to file a report with the court on 17 March 2021. Then, on 18 June 2021, with the parenting coordinator's report pending, the trial court entered a permanent custody order. Five days later, the parenting coordinator issued their report, requesting that the trial court address concerns about plaintiff's unilateral decision-making for the child. The parenting coordinator listed various examples, including, plaintiff scheduling and taking the child to a vision appointment despite Dana Devane-Webster ("defendant") already having one scheduled for the child; plaintiff enrolling the child in public school without defendant's knowledge; plaintiff having the child academically tested without the defendant's knowledge; enrolling a child in driver's education without the defendant's knowledge; and having a child tested for ADD/ADHD without the defendant's knowledge. The parenting

coordinator testified that plaintiff's unilateral decision-making "was creating problems for the children. . . ."

Based on the parenting coordinator's report, the trial court modified the permanent custody order on 26 August 2021, granting sole legal custody of the children to defendant. Plaintiff then appealed, arguing that the trial court's factual findings were unsupported by the evidence. Plaintiff also argues that the trial court erred in not admitting or considering the evidence he offered at trial. Further, it is argued that the trial court erred by modifying the custody order without finding a substantial change in circumstances and subsequently abused its discretion in issuing the modified permanent custody order. Lastly, plaintiff asserted that the parent coordinator was biased against him.

II. Jurisdiction

"As a general rule, interlocutory orders are not immediately appealable." *Turner v. Hammocks Beach Corp.*, 363 N.C. 555, 558, 681 S.E.2d 770, 773 (2009). "A temporary child custody order is normally interlocutory and does not affect any substantial right which cannot be protected by timely appeal from the trial court's ultimate disposition on the merits." *Sood v. Sood*, 222 N.C. App. 807, 809, 732 S.E.2d 603, 606 (2012) (citation omitted). And, although a trial court may label a custody order as temporary, this label is not dispositive. *Id.* (citation omitted). A custody order is temporary if either (1) it is entered without prejudice to either party, (2) it states a clear and specific reconvening time in the order and the time interval

between the two hearings was reasonably brief; or (3) the order does not determine all the issues. *Id.* (citation omitted).

> This Court has held that temporary child custody orders are interlocutory, that they do not affect a substantial right, and that no immediate right to appeal lies therefrom, *Sood v. Sood*, 222 N.C. App. [at] 809, 732 S.E.2d [at] 606 [ ]; but that an appeal of right does lie from the final, permanent custody order reflecting the trial court's ultimate disposition.

Brown v. Swarn, 257 N.C. App. 418, 422-23, 810 S.E.2d 237, 240 (2018). Though denominated a "temporary order," the underlying order is in fact a permanent order and is immediately appealable. *See id*.

III. Analysis

Trial courts are vested with broad discretion in child custody matters. When modifying a permanent custody order, this Court has held that:

> The trial court has the authority to modify a prior custody order when a substantial change in circumstances has occurred, which affects the child's welfare. The party moving for modification bears the burden of demonstrating that such a change has occurred. The trial court's order modifying a previous custody order must contain findings of fact, which are supported by substantial, competent evidence. The trial court is vested with broad discretion in cases involving child custody, and its decision will not be reversed on appeal absent a clear showing of abuse of discretion. In determining whether a substantial change in circumstances has occurred: Courts must consider and weigh all evidence of changed circumstances which effect or will affect the best interests of the child, both changed circumstances which will have salutary effects upon the child and those which will have adverse effects upon the child. In appropriate cases, either may support a modification of custody on the ground of a change in circumstances.

Karger v. Wood, 174 N.C. App. 703, 705–06, 622 S.E.2d 197, 200 (2005) (citations, brackets, and quotation marks omitted), *appeal dismissed*, 360 N.C. 481, 630 S.E.2d 665 (2006). Accordingly, should we conclude that there is substantial evidence in the record to support the trial court's findings of fact, such findings are conclusive on appeal, even if record evidence "'might sustain findings to the contrary.'" *Pulliam v. Smith*, 348 N.C. 616, 625, 501 S.E.2d 898, 903 (1998) (quoting *Williams v. Pilot Life Ins. Co.*, 288 N.C. 338, 342, 218 S.E.2d 368, 371 (1975)). This discretion is based on the trial court's opportunity to see the parties; to hear the witnesses; and to "detect tenors, tones, and flavors that are lost in the bare printed record read months later by appellate judges," *Surles v. Surles*, 113 N.C. App. 32, 37, 437 S.E.2d 661, 663 (1993) (quoting *Newsome v. Newsome*, 42 N.C. App. 416, 426, 256 S.E.2d 849, 855 (1979) (internal quotation marks omitted).

Plaintiff's objections offered nothing for us to avoid deferring "to the trial court's judgment and not disturb[ing] its decision to modify an existing custody agreement." *Shipman v. Shipman*, 357 N.C. 471, 475, 586 S.E.2d 250, 254 (2003). Based on the parenting coordinator's report that highlighted plaintiff's inability to seek input from defendant concerning the children, "there was substantial evidence supporting the trial court's findings and conclusion that there had been a substantial change in circumstances and that these changes had affected the welfare of the children." *See Mitchell v. Mitchell*, 199 N.C. App. 392, 408, 681 S.E.2d 520, 531 (2009). We discern no error.

There is also no transcript in the record from the 11 August 2021 hearing concerning the parent coordinator's testimony or report, and thus plaintiff's argument about the parenting coordinator's testimony violates *North Carolina Rule of Appellate Procedure Rule* 9(a) (2022). We have stated that:

> "It is the duty of the appellant to ensure that the record is complete." *Hicks v. Alford*, 156 N.C. App. 384, 389, 576 S.E.2d 410, 414 (2003). Rule 9(a)(1)(j) of the *Rules of Appellate Procedure* requires that the record on appeal in civil actions contain "copies of all other papers filed and statements of all other proceedings had in the trial court which are necessary to an understanding of all errors assigned unless they appear in the verbatim transcript of proceedings. . . ."

First Gaston Bank of North Carolina v. City of Hickory, 203 N.C. App. 195, 198, 691 S.E.2d 715, 718 (2010). As much as plaintiff disputes the parenting coordinator's testimony, plaintiff's argument as presented must be dismissed.

As we noted in *Webster v. Devane-Webster*, ___ N.C. App. ___, ___ S.E.2d ___, No. COA22-975 (5 March 2024) (unpublished), plaintiff's brief violates several rules of appellate procedure and does not comply with the standards therein. "[T]he Rules of Appellate Procedure[ ] are mandatory and [the] failure to follow these rules will subject an appeal to dismissal." *Steingress v. Steingress*, 350 N.C. 64, 65, 511 S.E.2d 298, 299 (1999) (citations omitted). In *Dogwood Dev. & Mgmt. Co., v. White Oak Transp. Co.*, the North Carolina Supreme Court identified three categories of appellate rule violations: "(1) waiver occurring in the trial court; (2) defects in appellate jurisdiction; and (3) violation of nonjurisdictional requirements." 362 N.C. 191, 194, 657 S.E.2d 361, 363 (2008). While "a party's failure to comply with

nonjurisdictional rule requirements normally should not lead to dismissal of the appeal[,]" it may so if those violations are "gross" or "substantial." *Id.* at 198-99, 657 S.E.2d at 365-66. This Court has recognized that these rules apply when the appellant is self-represented or represented by counsel. *See Bledsoe v. Cnty. of Wilkes*, 135 N.C. App. 124, 125, 519 S.E.2d 316, 317 (1999). "[R]ules of procedure are necessary in order to enable the courts properly to discharge their duty of resolving disputes." *Dogwood Dev. & Mgmt. Co.,* 362 N.C. at 193, 657 S.E.2d at 362 (citation, quotation marks, brackets, and ellipses omitted). Yet "rules of practice and procedure are devised to promote the ends of justice, not to defeat them." *Id.* at 194, 657 S.E.2d at 363 (citations, quotation marks, and brackets omitted).

A "principal category of default involves a party's failure to comply with one or more of the nonjurisdictional requisites prescribed by the appellate rules" and "[n]oncompliance with rules of this nature . . . does not ordinarily give rise to the harms associated with review of unpreserved issues or lack of jurisdiction." *Id.* at 198, 657 S.E.2d at 365.

> [W]hen a party fails to comply with one or more nonjurisdictional appellate rules, the court should first determine whether the noncompliance is substantial or gross under Rules 25 and 34. If it so concludes, it should then determine which, if any, sanction under Rule 34(b) should be imposed. Finally, if the court concludes that dismissal is the appropriate sanction, it may then consider whether the circumstances of the case justify invoking Rule 2 to reach the merits of the appeal.

Id. at 201, 657 S.E.2d at 367. Appellate Rule 25(b) states the following:

> A court of the appellate division may, on its own initiative or motion of a party, impose a sanction against a party or attorney or both when the court determines that such party or attorney or both substantially failed to comply with these rules, including failure to pay any filing or printing fees or costs when due. The court may impose sanctions of the type and in the manner prescribed by Rule 34 for frivolous appeals.

N.C.R. App. P. 25(b) (2017).

Here, we face several nonjurisdictional defects that impair the court's task of review and frustrates the adversarial process. Rule 28 of the *North Carolina Rules of Appellate Procedure* requires a party's brief to contain:

> A full and complete statement of the facts. This should be a non-argumentative summary of all material facts underlying the matter in controversy which are necessary to understand all issues presented for review, supported by references to pages in the transcript of proceedings, the record on appeal, or exhibits, as the case may be.

N.C.R. App. P. 28(b)(5) (2022).

While plaintiff includes a "Statement of the Facts" section, it contains several allegations and facts peripheral to each matter in controversy. More poignant to the analysis, per Rule 28(b)(6), a party's brief must contain:

> An argument, to contain the contentions of the appellant with respect to each issue presented. Issues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned. . . .
>
> The body of the argument and the statement of applicable standard(s) of review shall contain citations of the authorities upon which the appellant relies. Evidence or other proceedings material to the issue may be narrated or quoted in the body of the argument, with appropriate reference to the record on appeal, the transcript of proceedings, or exhibits.

N.C. R. App. P. 28(b)(6) (2022).

Among plaintiff's arguments, he contends that the trial court's findings of fact and conclusions of law are not factually supported. Still, he does not otherwise cite, analogize, or distinguish relevant authority in support of his arguments. N.C. R. Civ. P. 52(a)(1) (2023); *see also GRE Props. Thomasville L.L.C. v. Libertywood Nursing Ctr., Inc.*, 235 N.C. App. 266, 276, 761 S.E.2d 676, 682 (2014) ("[D]efendant cites only [one case] for the proposition that issues of relevance are reviewed de novo and fails to cite any further legal authority in support of its argument. As a result, we find [the] defendant has abandoned this argument."); *see also K2HN Constr. NC, LLC v. Five D Contrs., Inc.*, 267 N.C. App. 207, 214, 832 S.E.2d 559, 565 (2019) (noting that where a party's "standard of review section does contain citations to authority pertinent to this argument, . . . those cases merely state a general rule and are not analogized or otherwise analyzed in support of [the party's] position.").

Though plaintiff sporadically included cursory citations, including citations unsupported by the record, plaintiff failed to otherwise cite, analogize, or distinguish relevant authority to support his claims. Plaintiff's arguments consist of generalized declarations unsupported by any citation to authority. Thus, his "arguments violate Rule 28(b)(6) of the North Carolina Rules of Appellate Procedure, and these arguments are therefore abandoned. *Lopp v. Anderson*, 251 N.C. App. 161, 167, 795 S.E.2d 770, 775 (2016) (concluding plaintiff abandoned the issues raised in his appeal where his argument consisted of declaratory statements unsupported by any citation

to authority and made only a passing reference to a statute). *See also State v. Summers*, 177 N.C. App. 691, 699, 629 S.E.2d 902, 908 (2006) (declining to address one of the appellant's arguments when he failed to include a statement of the applicable standard of review). Failure to state legal authority or basis for an issue on appeal constitutes a "gross violation" of the *North Carolina Rules of Appellate Procedure*. *See Dogwood Dev. Mgmt. Co.*, 192 N.C. App. at 120, 665 S.E.2d at 498; *State v. Sinnott*, 163 N.C. App. 268, 273, 593 S.E.2d 439, 442–43 (2004); *In re Will of Harts*, 191 N.C. App. 807, 811, 664 S.E.2d 411, 414 (2008). Failure to cite supporting legal authority impairs this Court's ability to review the merits of the appeal. *Hannah v. Nationwide Mut. Fire Ins. Co.*, 190 N.C. App. 626, 632, 660 S.E.2d 600, 604 (2008) ("As a result of [the] failure to cite any authority . . . we have not considered the merits . . . because that violation of the rules impaired our ability to review the merits of the appeal.").

While we have gleaned what we can, we hold any remaining arguments abandoned considering the foregoing as "it is not the role of this Court to create an appeal for an appellant or to supplement an appellant's brief with legal authority or arguments not contained therein." *Thompson v. Bass*, 261 N.C. App. 285, 292, 819 S.E.2d 621, 627 (2018) (citations omitted); *Kabasan v. Kabasan*, 257 N.C. App. 436, 443, 810 S.E.2d 691, 697 (2018).

IV. Conclusion

For the foregoing reasons, we discern no error and affirm the trial court's holding.

AFFIRMED.

Judges Wood and Griffin concur.

Report per Rule 30(e).