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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-794

Filed 6 February 2024

Wake County, Nos. 21-CVD-602190; 22-CVD-1497

PAUL YONGO ODINDO, Plaintiff,

v.

MARY TERRY KANYI, Defendant.

Appeal by plaintiff from orders entered 1 November 2022 and 3 January 2023 by Judge Anna Worley in Wake County District Court. Heard in the Court of Appeals 10 January 2024.

Paul Yongo Odindo, plaintiff-appellant, pro se.

Legal Aid of North Carolina, by Celia Pistolis, Sarah E. Caraffa, Elysia Prendergast-Jones, TeAndra H. Miller, and James Battle Morgan, Jr., for defendant-appellee.

THOMPSON, Judge.

In this case involving both child custody and allegations of domestic violence, appellant Paul Yongo Odindo purports to appeal from the 1 November 2022 entry of a temporary custody order in Wake County file number 22-CVD-1947 (the child custody case), the 3 January 2023 entry of an order dismissing appellant's second

motion to show cause in Wake County file number 21-CVD-602190 (the domestic violence case), and the 19 December 2022 entry of a gatekeeper order which pertained to both Wake County case file numbers. We dismiss plaintiff's appeal for the reasons explained below.

I. Factual Background and Procedural History

Plaintiff and defendant were married on 17 April 2017 and two children, John and Jane,¹ were born of the marriage. John has been diagnosed with autism spectrum disorder and Jane has been diagnosed with FOXG1 Syndrome, a genetic neurological disorder that has left her unable to speak, walk, crawl, or eat solid foods. Jane is not expected to progress developmentally, experiences an increased risk of seizures, and will require significant care into her adult life. Both John and Jane are involved in therapy and other services as a result of their developmental disabilities.

During the relationship between plaintiff and defendant, plaintiff regularly threatened to beat and kill defendant, even during the time she was pregnant with each of the children. In November 2021, plaintiff became angry with defendant during a conversation the couple were having regarding plaintiff's employment, and plaintiff hit defendant while she was holding one of the children. The parties subsequently separated on 16 November 2021, and defendant filed a domestic violence complaint against plaintiff. The court granted defendant an ex parte order

¹ Pseudonyms have been used to protect the identities of the minor children.

of protection; however, defendant dismissed the action in hopes that plaintiff would address his anger issues.

On 29 November 2021, defendant again filed a complaint and motion for domestic violence protective order (DVPO) against plaintiff. On 30 December 2021, after finding that plaintiff had physically assaulted defendant, the court entered a one-year DVPO against plaintiff which also included an addendum granting temporary custody of the minor children to defendant. Plaintiff was allowed supervised visitation with the children for two hours weekly at Time Together or All Kids First for which plaintiff was to bear the associated expenses.

Time Together required parents to complete an orientation to use their services. Plaintiff did not complete that orientation until March 2022, missing his opportunities for visitation with the children throughout January and February 2022. On 9 February 2022, plaintiff filed a motion to set aside the DVPO which was dismissed by the court. Plaintiff does not appeal this order.

After Jane suffered a massive seizure, plaintiff's 15 April 2022 visitation was suspended as a result of plaintiff's refusal to sign a safety protocol put in place by Time Together. Defendant signed the safety protocol immediately. Thereafter, plaintiff missed a number of visitation opportunities with the children "almost exclusively" because plaintiff refused to follow the policies of Time Together, despite plaintiff's contention that defendant and Time Together had conspired to keep plaintiff from being able to see the children.

In May 2022, defendant and the children moved from a women's shelter into an apartment and defendant registered with the address confidentiality program, using a post office box in order to ensure her safety from plaintiff.

On 2 May 2022, plaintiff filed a motion to modify the DVPO and referenced a second motion to set aside the DVPO under Rule 60(b)(1-8), but no Rule 60(b) motion was included. The trial court dismissed both motions. Neither of those orders are included in the record on appeal.

Plaintiff filed a motion for order to show cause on 23 May 2022, alleging that defendant had violated the temporary custody provisions in the DVPO by not allowing plaintiff to visit the children and named Time Together as a contributing party to his inability to see his children. Defendant was ordered to appear in court on 8 June 2022 to address plaintiff's motion, but the hearing was continued to 25 July 2022, then continued again to 2 September 2022 at which time plaintiff's motion was dismissed.

On 27 May 2022, plaintiff notified Time Together by email that he would no longer be using their services to visit with the children; however, plaintiff subsequently changed his mind and resumed using Time Together for visitation with the children. On 31 July 2022, Time Together "officially cancelled all services for [p]laintiff," citing "ongoing issues with his behavior" as the basis for their action.

Plaintiff filed a second motion for order to show cause on 22 August 2022, again alleging that defendant had violated the temporary custody provisions of the DVPO.

Defendant was ordered to appear in court on 30 September 2022. On 9 January 2023, the court entered an order dismissing plaintiff's second motion to show cause, concluding that plaintiff's "allegations have previously been litigated and ruled upon; and that the Motion is subject to dismissal pursuant to Rules 8 & 11 to prevent harassment or unnecessary delay or increased cost of litigation." Plaintiff filed notice of appeal from the order on 19 January 2023. The trial court additionally entered a gatekeeper order pursuant to N.C. Gen Stat. § 1A-1, Rule 11, enjoining plaintiff from filing pleadings in the domestic violence case without approval from a licensed North Carolina attorney or from the court. Plaintiff also appealed the gatekeeper order on 19 January 2023.

II. Motion to Dismiss

On 26 September 2023, defendant filed a motion asking this Court to dismiss plaintiff's purported appeal and to impose "other appropriate sanctions pursuant to N.C. R. App. P. 25, 34, 37." Specifically, she contends first, that plaintiff has filed this appeal for improper purposes—namely, to harass defendant, delay the resolution of the litigation between the parties, and burden counsel for defendant with responding to meritless pleadings—and second, that plaintiff's gross and substantial violations of the appellate rules have misled this Court, prejudiced defendant, and frustrated the appellate process. We wholeheartedly agree.

As noted by defendant, the purported appeal here is plaintiff's third such filed in this Court since 3 January 2023, each of which (1) arises from the same custody

and domestic violence cases noted above, (2) involves multiple and sometimes overlapping appellate filings by plaintiff, and, as regards all of the filings in the past docketed matters and some of those filed in this purported appeal, (3) has resulted in plaintiff's filings being denied or dismissed.

As to the matter now before the Court in COA23-794, the result will be the same. In this appeal, plaintiff's purported appeal is taken from two cases: in 22-CVD-1497, the child custody case, defendant gave notice of appeal on 16 November 2022 from a temporary custody order entered on 2 November 2022 and gave notice of appeal on 19 January 2023 from a gatekeeper order entered 9 January 2023. In 21-CVD-602190, the domestic violence case, plaintiff gave notice of appeal on 19 January 2023 from the gatekeeper order entered 9 January 2023 and an "Order Dismissing Defendant's 2nd Motion to Show Cause," both of which were entered on 9 January 2023.

Under Rule 11 of the Rules of Appellate Procedure, titled "Settling the Record on Appeal," a record on appeal may be settled by various means. *See* N.C. R. App. P. 11(a), (b), (c). Common to each of these methods is a specific time-frame applicable in non-capital cases—whether within 45 days following the ordering of trial transcripts or after the filing of the notice of appeal by agreement of the parties (under subsection (a) and not relevant here), or within 30 days following service upon "all other parties" of the proposed record on appeal by agreement, operation of law, or court order (subsections (b) or (c))—after service upon appellee of the proposed record on appeal.

Rule 11 also provides parties with the option of requesting additional time if needed as “[t]he times provided in this rule for taking any action may be extended in accordance with the provisions of Rule 27(c).” *See* N.C. R. App. P. 11(e). Rule 27(c), in turn, permits this Court to provide extensions of time “for good cause shown” upon the request of a party. *See* N.C. R. App. P. 27(c). Finally, Rule 12(a) provides that an “appellant must file the record on appeal no later than fifteen days after it has been settled.” N.C. R. App. P 12(a).

Here, plaintiff did not file his purported “record on appeal” in this matter until 25 August 2023—potentially in reaction to the filing in the district court on 21 August 2023 of defendant’s motion to dismiss plaintiff’s appeals of these four orders for his failure to comply with the appellate rules. Thus, plaintiff waited over nine months (more than 270 days) after filing a notice of appeal from the temporary custody order entered on 16 November 2022 and at least seven months (more than 210 days) after appealing from the gatekeeper and dismissal orders entered on 19 January 2023 before filing the purported record on appeal. Plaintiff also did not seek an extension of time for settling the record on appeal as provided by Rules 11(e) and 27(c).

Moreover, while defendant’s purported record on appeal includes a certificate of service asserting that the proposed record on appeal was served on counsel for defendant by email on 25 August 2023, defendant represents that this statement is false and that plaintiff did not serve the proposed record on appeal upon counsel for defendant as directed by Rule 26(b) (requiring service “at or before the time of filing”

in this Court upon “all other parties”) and Rule 26(c) (describing, *inter alia*, proper service by mail, by hand delivery, and by email). N.C. R. App. P. 26(b), (c). Rather, on 29 August 2023, plaintiff “served” photographs of select pages from the eighty-page purported record on appeal upon counsel for defendant by email.² In sum, plaintiff did not timely or properly settle or file the record on appeal as provided in the Rules of Appellate Procedure.

The “failure of the parties to comply with the [appellate] rules, and failure of the appellate courts to demand compliance therewith, may impede the administration of justice.” *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, 362 N.C. 191, 193, 657 S.E.2d 361, 362 (2008). “Compliance with the rules, therefore, is mandatory.” *Id.* at 194, 657 S.E.2d at 362 (citation omitted). While “noncompliance with the appellate rules does not, ipso facto, mandate dismissal of an appeal,” *id.* at 194, 657 S.E.2d at 362 (citation omitted), “[i]n the event of substantial

² Defendant also notes additional violations of the Rules of Appellate Procedure by plaintiff in this matter: “[t]he purported record on appeal includes inappropriate and unnecessary commentary, lacks a proper index, fails to have the documents in chronological order, includes unnecessary documents, and omits proposed issues and identification of counsel as required by N.C. R. App. P. 9, 10. Further, [p]laintiff has not submitted a transcript or appropriate narrative for review of the proceedings. N.C. R. App. P. 7. . . . On 13 September 2023, [p]laintiff filed Rule 9 of N.C. R. App. P. Supplement to the Record on Appeal with the following attachments, Petition to Proceed as an Indigent, Civil Affidavit of Indigency, and ten color photographs. The Certificate of Service falsely states that the above pleading was electronically served on 13 September 2023. On 14 September 2023, [p]laintiff electronically served only two pages of the above document and did not include any of its attachments, Petition to Proceed as an Indigent, Civil Affidavit of Indigency, and ten color photographs. This document showed no case heading or file number. Also, counsel for [d]efendant questions whether all of the ten photographs in [p]laintiff’s ‘supplement’ were included in any court record below.” In the absence of a record on appeal which we conclude requires dismissal, we need not address these additional violations of the appellate rules.

or gross violations of the nonjurisdictional provisions of the appellate rules, . . . appropriate remedial measures,” including dismissal, may be considered. *Id.* at 199, 657 S.E.2d at 366. “In determining whether a party’s noncompliance with the appellate rules rises to the level of a substantial failure or gross violation, the court may consider, among other factors, whether and to what extent the noncompliance impairs the court’s task of review and whether and to what extent review on the merits would frustrate the adversarial process.” *Id.* at 200, 657 S.E.2d at 366–67 (citations omitted).

By not timely settling and filing the record on appeal in this matter, plaintiff has abandoned his appeals from the temporary custody order, the two gatekeeper orders, and the “Order Dismissing Defendant’s 2nd Motion to Show Cause.” Where an appellant has “not filed a properly settled record on appeal,” this Court has allowed an appellee’s motion to dismiss “[b]ecause we are unable to determine what issues might arise in a properly settled record.” *See McGinnis v. McGinnis*, 44 N.C. App. 381, 386, 261 S.E.2d 491, 494–95 (1980) (holding that an appellant had abandoned his appeal where he “properly gave notice of appeal [but over] a period of 88 days, he took no steps to perfect that appeal. Contrary to the mandate of App. R. 11(a), [the appellant] neither tendered a proposed record on appeal within 30 days, nor did he seek any extension of time to settle such a record as permitted by App. R. 27(c)”). *See also Richardson v. Bingham*, 101 N.C. App. 687, 690, 400 S.E.2d 757, 759 (1991)

(dismissing a purported appeal where the record was not filed within fifteen days of it being settled).

As an appellate court, we review decisions from lower tribunals upon the record in the matter, a circumstance of which we must be mindful and which requires that we have confidence in the record on appeal as the factual bedrock upon which parties' arguments are based and against which their contentions may be evaluated. *See, e.g., Carson v. Carson*, 177 N.C. App. 277, 279, 628 S.E.2d 439, 441 (2006) ("Appellate review is based solely upon the record on appeal; it is the duty of the appellant to see that the record is complete.") (citation, internal quotation marks, and brackets omitted). Accordingly, without a properly settled and filed record on appeal, we cannot meaningfully review the merits of any issues purported to be presented on appeal and further, given the inability of defendant-appellee to respond to a proposed record on appeal or understand the proposed issues of plaintiff-appellant, any attempt of a "review on the merits would frustrate the adversarial process." *Dogwood Dev. & Mgmt. Co.*, 362 N.C. at 193, 657 S.E.2d at 366–67 (citations omitted). For this reason, "even pro se appellants[, such as plaintiff here,] must adhere strictly to the Rules of Appellate Procedure." *Strauss v. Hunt*, 140 N.C. App. 345, 348–49, 536 S.E.2d 636, 639 (2000); *see also Bledsoe v. Cty. of Wilkes*, 135 N.C. App. 124, 125, 519 S.E.2d 316, 317 (1999) ("These rules apply to everyone—whether acting pro se or being represented by all of the five largest law firms in the state. Because plaintiff

violated many of the appellate rules, his appeal must be dismissed, notwithstanding his pro se status.”).

III. Conclusion

For the reason expressed above, this purported appeal is dismissed.

DISMISSED.

Judges COLLINS and HAMPSON concur.

Report per Rule 30(e).