

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA14-990

Filed: 21 April 2015

Forsyth County, No. 02 CVD 6163

THE STATE OF NORTH CAROLINA and FORSYTH COUNTY by and through its
CHILD SUPPORT ENFORCEMENT UNIT, on behalf of CHERRI L. JORDAN,
Plaintiff,

v.

BRYANT OAKES, SR., Defendant.

Appeal by defendant from order entered 5 March 2014 by Judge Denise
Hartsfield in Forsyth County District Court. Heard in the Court of Appeals 21
January 2015.

*Forsyth County Attorney Office, by Assistant County Attorney Twanda M.
Staley, for plaintiff-appellee.*

Mary McCullers Reece for defendant-appellant.

DIETZ, Judge.

Defendant Bryant Oakes appeals from the trial court's denial of his motion to dismiss an order to show cause. Oakes contends that the trial court entered the show cause order, which stems from unpaid child support, without first receiving an appropriate motion from Forsyth County. Oakes concedes that his appeal is interlocutory because there is more to be done in the trial court. But he contends that the trial court's order, which could expose him to civil contempt and possible incarceration, affects a substantial right and thus is immediately appealable.

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Importantly, Oakes concedes on appeal (and Forsyth County agrees) that circumstances have changed, the show cause order was dismissed, and Oakes no longer faces any threat of contempt or incarceration. This Court cannot exercise appellate jurisdiction under the substantial rights doctrine if, at the time the Court hears the case, the parties concede that the challenged order no longer affects a substantial right. Accordingly, we dismiss this appeal for lack of appellate jurisdiction.

Facts and Procedural History

On 25 September 2002, the Forsyth County Child Support Enforcement Unit filed a civil summons and complaint against Defendant Bryant Oakes to establish paternity and child support for two minor children. Oakes admitted paternity of the minor children, and on 14 November 2002, the trial court entered an order directing Oakes to pay \$410 a month in child support and \$25 a month in arrearages.

On 29 August 2011, the County filed a motion for order to show cause alleging that Oakes failed to make a child support payment since 25 May 2010. That same day, the trial court issued an order to appear and show cause. The Forsyth County Sheriff's Office was unable to serve Oakes with notice of the hearing, and on 22 December 2011, the trial court dismissed the show cause order.

The trial court entered another order to show cause on 7 November 2012, ordering Oakes to appear in court and show why he should not be found in civil

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contempt. Oakes failed to appear at the hearing held 16 January 2013, and the court issued an order for arrest. The court set Oakes's purge payment—the amount he must pay to avoid being sent to jail for contempt—at \$20,000.

Oakes was arrested on 6 February 2013 and sent to jail. On 12 February 2013, the trial court found that he was in arrears of his child support payments by \$59,531.98. The court also found that Oakes was unable to pay his existing \$20,000 purge payment and reduced the amount to \$700. Oakes remained in jail.

On 13 March 2013, Oakes again went before the trial court. The court found that he was unable to purge his child support arrearage by paying \$700 and reduced the amount to \$500. Oakes was unable to pay at that time and returned to jail. On 3 April 2013, the court again reduced the purge amount from \$500 to \$100. Shortly after, Oakes paid \$100 and was released from jail.

On 31 July 2013, the court again reduced Oakes's purge payment from \$100 to \$50 and Oakes paid the \$50 at the hearing. The trial court ordered Oakes “to purge \$50.00 today and the temporary amount of \$100.00 on August 13, 2013 September 13, 2013 and October 13, 2013 to be applied to the arrears in this matter.” The Court also ordered Oakes to appear at a hearing on 30 October 2013.

At the 30 October 2013 hearing, Oakes, through counsel, moved to dismiss the 7 November 2012 order to show cause on the grounds that no supporting motion for the order was found in the court file. After a hearing, the trial court denied Oakes's

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motion to dismiss and found that he “failed to make the ordered purge payments of \$100.00 on August 13, 2013, September 13, 2013 and October 13, 2013.” The court made the following conclusions of law:

4. The court takes judicial notice of the process used by the county attorney office and department of social services and that procedurally each order to show cause presented to a Judge for signature has a motion with it.

5. As long as an arrearage exists, the show cause will continue until dismissed by the county attorney or judge.

The court then ordered Oakes “to purge \$40.00 today and \$60.00 on November 1, 2013, \$100 on November 8, 2013, November 15, 2013 and November 22, 2013.” The court did not enter its order until 5 March 2014, and Oakes timely appealed on 18 March 2014. On 5 August 2014, after Oakes filed his notice of appeal but before the appeal was docketed in this Court, the trial court entered an order granting the county attorney’s request to dismiss the show cause order because Oakes was in substantial compliance.

Analysis

Ordinarily, this Court hears appeals only after entry of a final judgment that leaves nothing further to be done in the trial court. *See Steele v. Moore-Flesher Hauling Co.*, 260 N.C. 486, 491, 133 S.E.2d 197, 201 (1963). Oakes concedes that the trial court’s 5 March 2014 order is not a final order and that there is more to be done in the trial court. However, Oakes argues that his appeal is permissible under the

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substantial rights doctrine. *See* N.C. Gen. Stat. § 7A-27(b)(3)(a) (2013). Specifically, Oakes argues that the denial of his motion to dismiss the order to show cause affects a substantial right because failure to comply with the show cause order could expose Oakes to the possibility of civil contempt and incarceration. This Court previously has held that the threat of imprisonment or similar deprivations of liberty as a result of a contempt finding affects a substantial right and is immediately appealable. *See Hamilton v. Johnson*, ___ N.C. App. ___, ___, 747 S.E.2d 158, 162 (2013); *Guerrier v. Guerrier*, 155 N.C. App. 154, 157-58, 574 S.E.2d 69, 71 (2002).

The flaw in this argument is that Oakes no longer faces the threat of incarceration or other deprivation of liberty. After Oakes filed his appeal, but before the record was docketed in this Court, Forsyth County asked the court to dismiss the show cause order on the ground that Oakes was now in substantial compliance with his child support payment obligations. In response, the trial court dismissed the show cause order. Oakes concedes all of these facts in his reply brief.

This Court's analysis under the substantial rights test permits review of otherwise unappealable orders to prevent the injustice that would result from the inability to seek immediate appellate review. *See, e.g., Little v. Stogner*, 140 N.C. App. 380, 382-83, 536 S.E.2d 334, 336 (2000); *Turner v. Norfolk S. Corp.*, 137 N.C. App. 138, 142, 526 S.E.2d 666, 670 (2000); *Blackwelder v. State Dep't of Human Res.*, 60 N.C. App. 331, 335, 299 S.E.2d 777, 780-81 (1983). This Court cannot exercise

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appellate jurisdiction under the substantial rights doctrine if, at the time the Court hears the case, the parties concede that the challenged order does not affect a substantial right. In the rare case where this occurs, the proper course for the appellant is to petition for a writ of certiorari. This Court can then determine whether the issue is sufficiently important to warrant review although no right of appeal from the interlocutory order exists. *See* N.C. R. App. P. 21 (2013).

Because the parties concede that the order appealed from here does not affect a substantial right, and there is no pending petition for a writ of certiorari, we dismiss this appeal.

Conclusion

The order from which Defendant Bryant Oakes appealed does not affect a substantial right. Accordingly, we dismiss the appeal.

DISMISSED.

Judges STEELMAN and INMAN concur.