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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-604

Filed: 21 March 2017

Pitt County, No. 12CVD641

WILLIAM S. CREWS, JR., Plaintiff,

v.

NYSA MARINDA PAYSOUR, Defendant.

Appeal by plaintiff from order entered 7 December 2015 by Judge G. Galen Braddy in Pitt County District Court. Heard in the Court of Appeals 30 November 2016.

Tash & Kurtz, PLLC, by Jon B. Kurtz, for plaintiff-appellant.

J. Kirk Lambert for defendant-appellee.

DIETZ, Judge.

Plaintiff William S. Crews, Jr. appeals from the trial court's permanent child support order. He contends that the trial court's earlier, temporary order converted to a permanent order. Thus, Crews contends, the trial court lacked subject matter jurisdiction to alter the support arrangement because a permanent child support

order cannot be altered without a motion to modify and a showing of substantial change in circumstances.

As explained below, we reject this argument because it conflates a court's subject matter jurisdiction with its statutory authority to act. The trial court had subject matter jurisdiction over the proceeding, even if the court lacked the statutory authority to modify the support award in the way that it did.

Crews also challenges a series of fact findings in the trial court's order. Crews asserts—and Defendant Nysa Marinda Paysour concedes—that the trial court incorrectly stated the key legal standard it applied in setting the amount of child support. Our precedent requires us to vacate and remand an order when the trial court makes fact findings based on a misapprehension of the applicable law. Accordingly, we vacate the court's order and remand for the court to make findings under the appropriate legal standard. On remand, the trial court is free to decide, in its discretion, whether additional evidence or a hearing is necessary, or whether the case may be decided based on the existing record.

Facts and Procedural History

Plaintiff William S. Crews, Jr. and Defendant Nysa Marinda Paysour are the parents of a minor child, but were never married. On 7 March 2012, Crews filed a complaint for child custody and child support. On 13 August 2012, the trial court entered an order for child support titled "Temporary IV-D Order" which stated "[t]his

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order is a temporary order for support by consent of parties” and that “both parties shall return to court upon motion filed by either party.”

Applying the North Carolina Child Support Guidelines, the court ordered Crews to pay \$898.00 per month in child support. This figure was based on Crews’s gross monthly income of \$4,331.67.

On 5 May 2014, Paysour filed a notice of hearing for permanent child support and permanent custody. The trial court held that hearing on 30 September 2014 and heard evidence on the parties’ incomes, expenses and other information relevant to the award of child support. After the hearing, the trial court sent a letter dated 4 December 2014 to the parties’ counsel with a “Rendition of Judgment” from the child support hearing but not a written order awarding permanent child support.

Ultimately, the parties scheduled a conference with the court on 22 October 2015 regarding the entry of a written child support order. At the conference, the parties discussed the 4 December 2014 letter from the court and their draft proposed orders. The parties later submitted additional proposed orders and objections.

On 7 December 2015, the trial court entered a permanent child support order. In the order, the trial court made findings regarding both parties’ incomes and expenses. The trial court ordered Crews to pay \$3,037.00 per month in child support prospectively, and \$23,529.00 in child support arrears for the period from December

2014 through October 2015, to be paid in monthly installments of \$750.00. Crews timely appealed.

Analysis

I. Subject matter jurisdiction to modify child support award

Crews first argues that the trial court lacked subject matter jurisdiction over the issue of child support modification and therefore the trial court's order should be vacated. As explained below, this argument does not implicate the trial court's subject matter jurisdiction, and thus we must reject it.

To be sure, as Crews notes, a trial court does not have authority to modify a permanent child support order on its own initiative. Modification of a permanent child support order, by statute, requires a motion filed by an interested party and a showing of changed circumstances. N.C. Gen. Stat. § 50-13.7(a); *Kennedy v. Kennedy*, 107 N.C. App. 695, 703, 421 S.E.2d 795, 799 (1992). Thus, if Crews were correct that the trial court's temporary order converted to a permanent order, the trial court would not have the authority to modify that permanent order absent a motion to modify and the necessary showing of changed circumstances.

But Crews confuses a trial court's lack of *authority* to act with a lack of *subject matter jurisdiction* over the proceeding in which that act is taken. These are distinct legal concepts that cannot be conflated.

“[A] court’s authority to act pursuant to a statute, although related, is different from its subject matter jurisdiction. Subject matter jurisdiction involves the authority of a court to adjudicate the type of controversy presented by the action before it.” *Haker-Volkening v. Haker*, 143 N.C. App. 688, 693, 547 S.E.2d 127, 130 (2001). Simply put, jurisdiction is “[t]he power of a court to hear and determine,” which is separate from “the way in which that power may be exercised in order to comply with the terms of a statute.” *Id.* Here, although the trial court might have lacked authority to act, it unquestionably possessed subject matter jurisdiction over the proceeding. *See* N.C. Gen. Stat. §§ 7A-244, 50-13.5(c)(1).

Notably, Crews does not argue that the court committed ordinary reversible error by modifying the child support award, perhaps because that argument was not advanced below and thus might be waived, whereas arguments concerning subject matter jurisdiction cannot be waived and may be raised at any time. Whatever the reason, Crews’s sole argument on appeal is that the trial court lacked jurisdiction to act. For the reasons discussed above, that argument is meritless and we must reject it.

II. Calculation of non-guideline child support

Crews next makes a series of arguments concerning the trial court’s findings and resulting calculations concerning his child support obligations. As explained below, because the trial court’s order expressly indicates that the court was operating

under a misapprehension of the law—a fact conceded by Paysour on appeal—we vacate the trial court’s order and remand for further proceedings consistent with this opinion.

Among a number of other arguments, Crews contends that the trial court erred in Finding of Fact 14 when the court stated that “[i]n *Loosvelt v. Brown*, 760 S.E. 2d 351 (2014) [*sic*], the North Carolina Court of Appeals held that in high income cases the amount of child support to be awarded cannot be lower than the maximum basic child support obligation which in this particular case, would be \$2,059.00 per month.” Paysour concedes that “the trial court was admittedly mistaken in Finding of Fact number 14 wherein the court cited *Loosvelt v. Brown* . . . as standing for the proposition that the amount of child support awarded could not be in an amount lower than the maximum basic child support obligations.” The parties acknowledge that the trial court’s statement of the law *used* to be accurate, but the law has since changed.

Our State’s appellate courts have long held that when the trial court’s order indicates that it labored under a misapprehension of the law, the order should be vacated and remanded for the trial court to address the matter under the appropriate legal standard. *Stanback v. Stanback*, 270 N.C. 497, 507, 155 S.E.2d 221, 229 (1967). This is particularly appropriate here because the trial court’s mistaken belief that the child support award could not be lower than the maximum basic support

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obligation under the guidelines might have led the court to omit findings that it might otherwise have believed were relevant. When “facts are found . . . under a misapprehension of law,” the case must be remanded “so that the evidence may be considered in its true legal light.” *Cauble v. Macke Co.*, 78 N.C. App. 793, 795, 338 S.E.2d 320, 322 (1986).

Because we vacate the child support order based on the trial court’s misapprehension of law, and remand for the trial court to make findings under the applicable legal standard, we need not address Crews’s remaining arguments. The trial court’s analysis of those issues may be different when applying the proper legal standard for a child support award in a high-income case such as this one. On remand, the trial court is free to decide, in its discretion, whether additional evidence or a hearing is necessary, or whether the case may be decided based on the existing record. *See Hendricks v. Sanks*, 143 N.C. App. 544, 549, 545 S.E.2d 779, 782 (2001).

Conclusion

For the reasons discussed above, we vacate the trial court’s order and remand for further proceedings consistent with this opinion.

VACATED AND REMANDED.

Chief Judge McGEE and Judge ELMORE concur.

Report per Rule 30(e).