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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-735

Filed: 18 July 2017

Columbus County, No. 10 CVD 152

COLUMBUS COUNTY DEPT. OF SOCIAL SERVICES, EX. REL.; TIFFANEE A. MOORE, Plaintiff,

v.

CALVIN T. NORTON, Defendant.

Appeal by Defendant from orders entered 24 March 2016 by Judge William Fairley in Columbus County District Court. Heard in the Court of Appeals 29 November 2016.

David S. Tedder, Assistant County Attorney for Plaintiff-Appellee.

Calvin Tyrone Norton, pro se.

INMAN, Judge.

We are compelled to dismiss an appeal where an appellant fails to provide a complete record in proper form, thereby enabling our review.

This appeal arises from an action to enforce child support obligations. Calvin Tyrone Norton (“Father”) appeals from orders denying him a court-appointed guardian ad litem and denying his motion for modification of child support. Father

Opinion of the Court

argues the trial court erred by not following the proper procedure for determining his competency and abused its discretion in ruling there was no substantial change in Father's circumstances since the entry of the last child support order. We dismiss Father's appeal for failure to provide a complete record on appeal in proper form.

Factual and Procedural History

The record on appeal tends to show the following:

Father and Tiffanee Moore ("Mother") have three children. Mother initiated this action for divorce, custody of the children, and child support in 2010.

On 6 March 2013, Father was ordered to pay his ex-wife \$750 per month for support of their three children and \$50 per month for arrears, which at that time exceeded \$23,000. The order was supplemented by the trial court on 27 April 2015.

It appears from the record that Father continued to meet his support obligations and that the Columbus County Department of Social Services ("DSS" or "Plaintiff") joined in the action to enforce the child support order.

On 7 December 2015, Father filed a *pro se* motion to modify the prior child support order. Defendant amended his motion on 6 January 2016, one week before a scheduled hearing.

At the initial hearing on 13 January 2016, Father appeared, walking unsteadily with a cane and mumbled in a manner that was difficult for the court to understand. The trial court raised a concern about Father's competency and

Opinion of the Court

postponed the hearing to allow further inquiry and assessment of the need for appointment of a guardian ad litem.

Father appeared for a second hearing on 23 February 2016, again walking unsteadily with a cane and speaking in a manner that the court had difficulty understanding. Father submitted evidence suggesting he suffered from bipolar disorder. Mother and a representative of DSS both testified, however, that Father was competent and was “putting on a show” for the trial court. The trial court viewed two videos of Father at a gospel assembly earlier that month, which showed that Father “was able to ambulate without the use of a cane and showed no signs of physical disability and was able to speak and articulate himself to the audience quite clearly and coherently.” The trial court also reviewed a *pro se* complaint recently filed by Father in federal court, as well as the motion to modify child support and other pleadings drafted by Father, and found those pleadings were the work “of a person quite capable of representing himself in a court of law” and “quite capable of conducting his business affairs” The trial court found that Father did not need a guardian ad litem.

The trial court also denied Father’s motion to modify child support, concluding “[n]o substantial change of circumstances has been shown since the entry of the last child support order in the file.” Father timely appealed.

Analysis

Opinion of the Court

Plaintiff argues Father's appeal should be dismissed for failure to provide a complete record necessary for our review. We agree.

"Elementary consideration for efficient and just administration of the legal processes involved in the adjudication of a lawsuit, criminal or civil, requires that an appellate court have in the record before it a complete account of the action by the trial court of which the appellant complains." *State v. Williams*, 274 N.C. 328, 333, 163 S.E.2d 353, 357 (1968). "It is appellant's duty to ensure that the record is complete." *Estate of Redden ex rel. Morley v. Redden*, 194 N.C. App. 806, 810, 670 S.E.2d 586, 589 (2009) (citation omitted); *see also Miller v. Miller*, 92 N.C. App. 351, 353, 374 S.E.2d 467, 468 (1988) ("It is the appellant's responsibility to make sure that the record on appeal is complete and in proper form.") (citation omitted). However, "where the appellant has done all that she can to [supply a proper record], but those efforts fail because of some error on the part of our trial courts, it would be inequitable to simply conclude that the mere absence of the recordings indicates the failure of appellant to fulfill that responsibility." *Coppley v. Coppley*, 128 N.C. App. 658, 663, 496 S.E.2d 611, 616 (1998).

Here, Father did not meet his duty to ensure the record on appeal was complete and in proper form. A review of the evidence before the trial court at the 23 February 2016 hearing is essential for this Court to make a proper determination of the issues raised by Father.

Opinion of the Court

Father failed to include in the record on appeal any evidence cited by the trial court in support of its ruling denying appointment of a guardian ad litem. The trial court noted several legal documents filed *pro se* by Father in various courts including: a copy of a complaint filed in federal court in the time between the first and second hearings, and Father's motion to modify child support and its subsequent amendment, neither of which are before us in the record. The trial court also cited two video recordings of Father made on 13 February 2016, ten days before the second hearing, in which the trial court describes Father as being "in full command of his physical and mental faculties[,]” in a church congregation, walking without a cane and using a microphone to communicate clearly with a crowd of people.

In order to determine whether the trial court erred in its ruling that Father is “under no legal, physical, or mental disability as to justify appointment of a guardian ad litem[,]” we must review the evidence cited by the trial court in its order. This we cannot do, because Father has failed to include that evidence in the record on appeal.

Father also has failed to include in the record on appeal any motion seeking appointment of a guardian ad litem; instead, he relies solely on the trial court's postponement of its determination on his motion to modify child support.

In regard to the trial court's denial of Father's motion to modify child support, Father has again failed to assemble a record on appeal that would enable a proper review. Father has not included either of the controlling child support orders—*i.e.*,

Opinion of the Court

the 12 June 2014 order or the 27 April 2015 supplemental order. These orders are required for a determination of the circumstances from which Father asserts a substantial change has occurred. Without these orders, Father cannot demonstrate the “threshold issue of substantial change in circumstances[.]” *Davis v. Risley*, 104 N.C. App. 798, 800, 411 S.E.2d 171, 173 (1991).

For the reasons we have cited, Father has not met his burden of providing a complete record on appeal in proper form, and we are therefore compelled to dismiss his appeal.

DISMISSED.

Judges CALABRIA and ZACHARY concur.

Report per Rule 30(e).