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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-179

Filed: 7 November 2017

Mecklenburg County, No. 10 CVD 12874

ASHLEY COMSTOCK, Plaintiff,

v.

CHRISTOPHER M. COMSTOCK, Defendant.

Appeal by defendant from order entered 27 October 2016 by Judge Matt Osman in Mecklenburg County District Court. Heard in the Court of Appeals 23 August 2017.

*Collins Family Law Group, by Rebecca K. Watts, for plaintiff-appellee.*

*Christopher Comstock, pro se, for defendant-appellant.*

ZACHARY, Judge.

Defendant Christopher Comstock (Christopher) appeals from an order granting plaintiff Ashley Comstock's (Ashley's) motion to renew a domestic violence protective order against him. On appeal, Christopher argues that the trial court lacked personal jurisdiction over him, that the prior renewal orders as well as the current one lacked "statutory continuity," and that the trial court abused its

## COMSTOCK V. COMSTOCK

### *Opinion of the Court*

discretion in failing to declare North Carolina an “inconvenient forum” for the domestic violence protective order renewal action. As explained below, to the extent that these issues have been preserved for appellate review, we conclude that Christopher’s arguments lack merit. Accordingly, we affirm the order of the trial court.

### **Background**

Ashley and Christopher were married on 6 May 2001 and were separated on 10 June 2010. The parties have two minor children together. Ashley filed a motion pursuant to Chapter 50B of the North Carolina General Statutes for a domestic violence protective order against Christopher in Mecklenburg County District Court on 3 September 2010. Six days later, the trial court entered a domestic violence protective order containing conclusions that Christopher had “committed [an] act[ ] of domestic violence against” Ashley, and that there was a “danger of serious and immediate harm to [her].” As a result, the protective order, *inter alia*, ordered Christopher to stay away from Ashley’s residence and workplace, and prohibited Christopher from possessing or purchasing a firearm. Christopher thereafter engaged in a consistent pattern of harassing and threatening behavior, however, that prompted Ashley to seek four renewals of the protective order.

On 2 August 2011, Ashley filed her first motion to renew the domestic violence protective order, which was set to expire on 8 September 2011. By consent order

COMSTOCK V. COMSTOCK

*Opinion of the Court*

entered on 6 September 2011, the domestic violence protective order was renewed and remained in effect until 5 September 2012. Ashley and the minor children moved to Dallas, Texas sometime in the spring of 2012. [*Comstock I*] On 20 August 2012, Ashley filed her second motion to renew the domestic violence protective order. For reasons not apparent from the record, a hearing on Ashley’s motion was not held until 22 March 2013. That same day, the trial court entered an order renewing the domestic violence protective order until 5 September 2014.

Ashley sought a third renewal of the domestic violence protective order on 4 September 2014, alleging, *inter alia*, that Christopher had shown their son “a gun he had in his closet and made statements indicating that he was going to kill [her].” The trial court entered an order on 14 October 2014 that renewed the domestic violence protective order against Christopher until 14 October 2016. Christopher appealed the 14 October 2014 renewal order to this Court, arguing that it was improper to renew the domestic violence protective order pursuant to N.C. Gen. Stat. § 50B-3(b) when Ashley was no longer a resident of North Carolina. *Comstock v. Comstock*, \_\_ N.C. App. \_\_, \_\_, 780 S.E.2d 183, 185 (2015) (*Comstock I*). This Court rejected that argument and affirmed the renewal order, holding that “the moving party’s continued residency within the State of North Carolina is not a jurisdictional prerequisite for obtaining the renewal of an existing [domestic violence protective order].” *Id.* at \_\_, 780 S.E.2d at 186.

COMSTOCK V. COMSTOCK

*Opinion of the Court*

According to Christopher, he moved to Dallas, Texas in March 2016 and established residence there. On 9 June 2016, Christopher filed a petition in Dallas County District Court seeking modification of child custody and support orders that had been entered in North Carolina. After she discovered evidence that Christopher had been observing her home in Texas, Ashley filed a fourth motion to renew the domestic violence protective order in Mecklenburg County District Court on 10 October 2016. Two weeks later, Christopher, proceeding *pro se*, filed a motion to dismiss Ashley's fourth renewal motion. Christopher's motion, which was made "pursuant to the United States Code, the North Carolina General Statutes, the North Carolina Rules of Civil Procedure, and Federal Rules of Civil Procedure[,]" sought "dismissal of [Ashley's renewal] motion based on the following factors":

- a. Plaintiff is no longer a resident of North Carolina since March 2012.
- b. Defendant is no longer a resident of North Carolina since March 2016.
- c. This entire case has moved to the jurisdiction of Texas since June 9th, 2016 when Defendant filed there and served legal process upon the Plaintiff, Ashley Comstock, by a personal process server.
- d. Plaintiff's attorney sent notice to a property address that Defendant no longer owns.
- e. Complaint allegations are completely fabricated, and Plaintiff has absolutely no general or specific evidence or documentation to offer the Court about her claim.

On 27 October 2016, the trial court conducted a hearing on Ashley’s motion and entered an order renewing the domestic violence protective order (the renewal order) until 14 October 2018. Ashley was represented by counsel at the renewal hearing, but Christopher did not participate in any way, either through counsel or by making a personal appearance. Nor did Christopher request a hearing or obtain a ruling on his motion to dismiss. Christopher now appeals from the trial court’s renewal order.

### **Discussion**

#### **I. Motion to Dismiss**

The majority of Christopher’s appellate brief is devoted to arguing that the trial court erred by not granting his motion to dismiss. Although Christopher makes a series of arguments as to why his motion should have been granted, all of these contentions are based on one legal theory: that the trial court had no basis upon which to assert personal jurisdiction over him in connection with Ashley’s fourth motion to renew the domestic violence protective order. For the reasons that follow, Christopher’s arguments based on lack of personal jurisdiction are not properly before this Court.

To begin, “[i]n order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific

COMSTOCK V. COMSTOCK

*Opinion of the Court*

grounds were not apparent from the context.” N.C. R. App. P. 10(a)(1) (2015). Indeed, it is well established “that where a theory argued on appeal was not raised before the trial court, ‘the law does not permit parties to swap horses between courts in order to get a better mount’ ” in the appellate courts. *State v. Sharpe*, 344 N.C. 190, 194, 473 S.E.2d 3, 5 (1996) (quoting *Weil v. Herring*, 207 N.C. 6, 10, 175 S.E. 836, 838 (1934)).

After careful review, we conclude that Christopher failed to specifically raise a lack of personal jurisdiction argument in his motion to dismiss. While Christopher broadly asserted that his motion was made, in part, pursuant to “the North Carolina Rules of Civil Procedure,” there is no mention of Rule 12(b)(2), which allows a claim to be dismissed based on lack of personal jurisdiction. *See* N.C. Gen. Stat. § 1A-1, Rule 12(b)(2) (2015). Nor is it “apparent from the context[,]” N.C. R. App. P. 10(a)(1), that Christopher intended to move the court for relief under Rule 12(b)(2). Paragraph (b) of the motion does indicate that Christopher was “no longer a resident of North Carolina since March 2016,” but this allegation of non-residence, standing alone, does not necessarily imply a specific personal jurisdiction argument. Our Supreme Court has recognized that North Carolina courts must perform a two-pronged analysis in order to determine whether personal jurisdiction may be exercised over a *non-resident defendant*: “First, the transaction must fall within the language of the State’s ‘long-arm’ statute. Second, the exercise of jurisdiction must not violate the due process clause of the fourteenth amendment to the United States Constitution.” *Tom*

## COMSTOCK V. COMSTOCK

### *Opinion of the Court*

*Togs, Inc. v. Ben Elias Indus. Corp.*, 318 N.C. 361, 364, 348 S.E.2d 782, 785 (1986) (citation omitted). Christopher's motion is devoid of any allegation that he no longer had any contact with this State, or that issuance of the renewal order would offend his right to due process of law. Beyond that, a review of paragraphs (c) and (e) reveal that the gravamen of Christopher's motion was that, in his view, *all* of the parties' domestic matters had been moved to Texas, and that the factual allegations contained in Ashley's fourth renewal motion were false.

Even assuming that Christopher had properly raised the issue of personal jurisdiction by way of his motion to dismiss, he still had the responsibility to obtain a ruling on the issue. *Murray v. Univ. of N. Carolina at Chapel Hill*, \_\_ N.C. App. \_\_, \_\_, 782 S.E.2d 531, 537 (2016) (recognizing that a "party not only must have raised the issue below, but '[i]t is also necessary for the complaining party to obtain a ruling upon the party's request, objection, or motion' ") (quoting N.C. R. App. P. 10(a)(1)), *review on additional issues allowed*, 368 N.C. 918, 787 S.E.2d 22 (2016), *and aff'd*, \_\_ N.C. \_\_, 799 S.E.2d 612 (2017). Yet Christopher never argued the merits of his motion before the trial court. In addition, even if the issue were somehow raised at the fourth domestic violence protective order renewal hearing and the trial court announced an oral ruling on the motion—and there is no indication that it did—"an order rendered in open court is not enforceable until it is 'entered,' *i.e.*, until it is reduced to writing, signed by the judge, and filed with the clerk of court." *West v. Marko*, 130 N.C. App.

COMSTOCK V. COMSTOCK

*Opinion of the Court*

751, 756, 504 S.E.2d 571, 574 (1998); N.C. Gen. Stat. § 1A-1, Rule 58 (2015) (“[A] judgment is entered when it is reduced to writing, signed by the judge, and filed with the clerk of court.”); *see also Onslow Cnty. v. Moore*, 129 N.C. App. 376, 388, 499 S.E.2d 780, 788 (1998) (explaining that “Rule 58 applies to judgments and orders, and therefore, an order is entered when the requirements of . . . Rule 58 are satisfied”) (emphasis omitted). Here, Christopher has appealed only from the renewal order, which neither mentioned the motion to dismiss nor rendered a ruling on it. Because a written order was never “entered” on Christopher’s motion to dismiss, no appeal could be taken from it. *Mastin v. Griffith*, 133 N.C. App. 345, 346, 515 S.E.2d 494, 494-95 (1999) (“Entry of judgment by the trial court is the event which vests jurisdiction in this Court. Thus, an order may not properly be appealed until it is entered.”) (internal citation and quotations marks omitted).

In summary, Christopher failed to specifically assert that lack of personal jurisdiction was the ground for his motion to dismiss, and even if he had, the trial court never ruled on the motion. Accordingly, we conclude that any issues regarding the trial court’s alleged lack of personal jurisdiction over Christopher, all of which are inextricably linked to the motion to dismiss, have been waived and are not properly before this Court.

II. “Statutory Continuity”

COMSTOCK V. COMSTOCK

*Opinion of the Court*

Christopher next argues that “the trial court was not diligent in determining the statutory continuity of the domestic violence protective order renewal history[,]” and he makes general reference to the “good cause” standard used in determining whether a domestic violence protective order should be renewed. *See* N.C. Gen. Stat. § 50B-3(b) (providing, in part, that “[t]he court may renew a protective order for good cause”). In all candor, we do not understand the specifics of what is being argued here, but the conclusion in the section of Christopher’s brief in which these issues are raised provides some clues:

While it is not this Court’s role to formulate statutes that have solid constitutional and statutory continuity outlines, it would be worthwhile to address any applicability of standards involving this case as presented. While I do not believe this case offers much in the form of determining a standard of definition for “good cause” to renew a protective order, it could provide some basis of opinion on how to interpret the enforceability and continuity of renewals[.]”

From this language, it is apparent that Christopher is asking us to issue an advisory opinion, something we are unwilling and unauthorized to give. *In re Wright*, 137 N.C. App. 104, 111-12, 527 S.E.2d 70, 75 (2000) (“ ‘[T]he courts have no jurisdiction to determine matters purely speculative, enter anticipatory judgments, . . . deal with theoretical problems, give advisory opinions, . . . provide for contingencies which may hereafter arise, or give abstract opinions.’ ”) (omission in original) (quoting *Little v. Wachovia Bank & Trust Co.*, 252 N.C. 229, 243, 113 S.E.2d 689, 700 (1960)). In addition, because Christopher failed to raise the “statutory continuity” or good

cause arguments before the trial court, he failed to preserve those issues for appellate review. N.C. R. App. P. 10(a)(1). Accordingly, Christopher's arguments are without merit.

### III. Inconvenient Forum

The legal basis for Christopher's final argument is a particular statute found in North Carolina's Uniform Child Custody Jurisdiction Act (UCCJA), which has been codified at Chapter 50A of our General Statutes. Citing N.C. Gen. Stat. § 50A-207, Christopher contends that the trial court abused its discretion in failing to determine that the State of North Carolina was an inconvenient forum in which to adjudicate Ashley's fourth renewal motion.

It is apparent that Christopher did not make an inconvenient forum argument before the trial court and thus failed to preserve the issue for appellate review. Even assuming the issue had been properly preserved, we cannot see how the UCCJA would apply in the instant case. Section 50A-207 provides that a court having jurisdiction to make a *child custody determination* "may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances, and that a court of another state is a more appropriate forum." N.C. Gen. Stat. § 50A-207(a) (2015). No provision of the UCCJA allows a trial court to declare that North Carolina is an inconvenient forum for a domestic violence protective order renewal action brought pursuant to N.C. Gen. Stat. § 50B-3(b). Thus,

COMSTOCK V. COMSTOCK

*Opinion of the Court*

while section 50A-207 may have some relevance to the child custody action pending between Ashley and Christopher in Texas, the statute has no bearing on the instant case, a domestic violence action governed by Chapter 50B of our General Statutes. Consequently, Christopher's argument is without merit.

**Conclusion**

For the reasons stated above, we affirm the trial court's order renewing the domestic violence protective order.

AFFIRMED.

Judges CALABRIA and MURPHY concur.

Report per Rule 30(e).