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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-734

Filed: 6 February 2018

Union County, No. 12 CVD 2587

ROBERT THOMSON, Plaintiff

v.

JOHANNA (THOMSON) HOLLING, Defendant

Appeal by defendant from order entered 14 February 2017 by Judge Hunt Gwyn in Union County District Court. Heard in the Court of Appeals 24 January 2018.

No brief filed for plaintiff-appellee.

Collins Family Law Group, by Rebecca K. Watts, for defendant-appellant.

CALABRIA, Judge.

Where the trial court's order failed to offer a basis for its reasoning in calculating plaintiff's monthly income, the order is vacated with respect to that calculation and the award of child support based thereupon, and this matter is remanded.

I. Factual and Procedural Background

Robert Thomson ("plaintiff") and Johanna Holling ("defendant") were married on 22 April 2000, and separated on 8 June 2011. Two children were born of the marriage. On 29 March 2012, plaintiff filed a complaint for custody of the children. On 30 May 2012, defendant filed an answer, and counterclaims for child custody and child support.

On 25 August 2015, the trial court entered a consent order, which granted primary physical and legal custody of the minor children to defendant, granted plaintiff visitation, and ordered plaintiff to pay temporary child support of $1,000 per month, pending a further child support hearing.

On 14 February 2017, the trial court entered its child support order. The trial court found that defendant had a monthly income of $997, and that plaintiff had a monthly income of $1,500. The trial court concluded that plaintiff was to pay child support to defendant in the amount of $281 per month, per Worksheet A of the North Carolina Child Support Guidelines.

Defendant appeals.

II. Determination of Monthly Income

In her sole argument on appeal, defendant contends that the trial court erred in its finding of plaintiff's monthly income, and by extension in its order of child support. We agree.

A. Standard of Review

"Child support orders entered by a trial court are accorded substantial deference by appellate courts and our review is limited to a determination of whether there was a clear abuse of discretion." *Leary v. Leary*, 152 N.C. App. 438, 441, 567 S.E.2d 834, 837 (2002).

B. Analysis

As a preliminary matter, we note defendant's inclusion of various purported pieces of evidence as addendums to her brief on appeal. It is a longstanding rule of this Court that "[w]e do not consider . . . matters not supported by . . . the *record on appeal*. A brief is not a part of the *record on appeal*." *Sanders v. Walker*, 39 N.C. App. 355, 359, 250 S.E.2d 84, 86 (1979) (quoting *Civil Service Bd. v. Page*, 2 N.C. App. 34, 40, 162 S.E.2d 644, 647-48 (1968)). Accordingly, we shall disregard those of defendant's arguments reliant upon the exhibits in defendant's brief.

Defendant contends that plaintiff did not present sufficient evidence of his income. Defendant concedes that plaintiff "filed a financial affidavit on which he listed his gross monthly income from self-employment as $1,500.00[,]" and that he testified to that effect at trial. She contends, however, that plaintiff "created a sort of financial shell game wherein no one can determine under which nut to look to find evidence of actual income[,]" that plaintiff was shuffling funds around to avoid creditors and the IRS, and that "[t]here was no evidence presented as to [plaintiff]'s business income or his reasonable business expenses[.]" She argues, therefore, that

because plaintiff "failed to produce any of the documentation necessary for a calculation of self-employment income[,]" the trial court erred in finding that his monthly income was $1,500.

Pursuant to the North Carolina Child Support Guidelines:

> Income statements of the parents should be verified through documentation of both current and past income. Suitable documentation of current earnings (at least one full month) includes pay stubs, employer statements, or business receipts and expenses, if self-employed. Documentation of current income must be supplemented with copies of the most recent tax return to provide verification of earnings over a longer period.

N.C. Child Support Guidelines 2015 Ann. R. 52. Upon our review of the record, it appears that the only evidence presented to support plaintiff's valuation of his monthly income was his own testimony and the worksheet that was submitted to the trial court. There was no evidence in the record regarding business receipts or expense statements.

However, there was other evidence introduced into the record at trial. Defendant, on examination of plaintiff, raised evidence that plaintiff deposited funds into multiple accounts. Plaintiff admitted that he maintained multiple accounts. In some cases, his name was the sole name on these accounts, and some of these accounts were used for personal expenses, such as expenses for his children.

Obviously, the existence of these accounts should have been of some concern to the trial court. We have held that "[a]ny judgment rendered against defendant

setting an amount of child support would be dependent in significant part upon the amount of his income and the nature of his *estate*—whether exclusively owned or controlled by defendant, or jointly with others." *Shaw v. Cameron*, 125 N.C. App. 522, 528, 481 S.E.2d 365, 369 (1997). However, the trial court's order is devoid of any reference to these accounts, instead summarily finding that plaintiff's gross monthly income is $1,500. This lack of specificity confounds our ability to review the order.

> It is not enough that there may be evidence in the record sufficient to support findings which *could have been made*. The trial court must itself determine what pertinent facts are actually established by the evidence before it, and it is not for an appellate court to determine *de novo* the weight and credibility to be given to evidence disclosed by the record on appeal. *Knutton v. Cofield*, 273 N.C. 355, 160 S.E.2d 29 (1968); *Davis v. Davis*, 11 N.C. App. 115, 180 S.E.2d 374 (1971).

Coble v. Coble, 300 N.C. 708, 712-13, 268 S.E.2d 185, 189 (1980). In order for this Court to conduct meaningful review of the trial court's reasoning, the findings must show the steps that the trial court used to reach its conclusions.

We have previously held that where evidence is raised which might show income or loss from an additional source, the trial court's failure to make findings with respect to the income or loss from that source was grounds for remand. *Cauble v. Cauble*, 133 N.C. App. 390, 515 S.E.2d 708 (1999). In *Cauble*, the defendant owned a Subchapter-S corporation called Fun Park, which reported losses. The trial court's order failed to include any findings or conclusions regarding the defendant's income

or loss from Fun Park. On appeal, this Court noted that the trial court's order "fails to reflect its treatment of the Fun Park figures." *Id.* at 400, 515 S.E.2d at 714. We therefore held that the trial court's findings were "not sufficiently specific to indicate to this Court whether the trial court properly applied the Guidelines in computing [defendant's] gross income." *Id.* (quoting *Lawrence v. Tise*, 107 N.C. App. 140, 148, 419 S.E.2d 176, 181 (1992)). We therefore reversed the portions of the trial court's order purporting to compute the defendant's gross income and award child support, and remanded the matter for additional findings regarding income or loss, if any, from Fun Park, as well as a re-computation of gross income and a new child support award. *Id.*

In the instant case, plaintiff maintained multiple accounts. Further, plaintiff testified, on questioning by his own attorney, that he deposited and withdrew funds in various accounts in order to avoid his creditors. It is therefore clear that these accounts were financially significant and merited some examination, even if only to eliminate the possibility of the mingling of funds. Instead, the trial court's sole finding was a summary statement of plaintiff's monthly income as $1,500, absent any explanation or justification.

The trial court's order does not offer a basis for evaluation of its finding of plaintiff's income. Accordingly, review of that order is not possible. As we did in *Cauble*, we therefore vacate the portion of the trial court's order concerning a

determination of plaintiff's income and the award of child support. We remand this case to the trial court to make further findings, and to award child support based upon those findings. "On remand, the trial court shall rely upon the existing record, but may in its sole discretion receive such further evidence and further argument from the parties as it deems necessary and appropriate to comply with the instant opinion." *Heath v. Heath*, 132 N.C. App. 36, 38, 509 S.E.2d 804, 805 (1999).

VACATED AND REMANDED.

Judges ZACHARY and ARROWOOD concur.

Report per Rule 30(e).