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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-634

No. COA20-786

Filed 16 November 2021

Wake County, No. 18-CVD-11748

ZULEIKA PERALES, Plaintiff,

v.

DARRIN KING, Defendant.

Appeal by plaintiff from order entered 25 November 2019 by Judge Anna E. Worley in Wake County District Court. Heard in the Court of Appeals 22 September 2021.

Bryant Duke Paris III, PLLC, by Bryant Duke Paris III, for Plaintiff-Appellant.

Rik Lovett & Associates, by S. Thomas Currin, II, for Defendant-Appellee.

CARPENTER, Judge.

¶ 1 Zuleika Perales ("Plaintiff"), appeals from the trial court's order (the "25 November 2019 Order") vacating her Notice of Registration of Foreign Support Order for Modification and vacating her Motion to Contest Registration of Foreign Support Order and establishing child support arrearage owed to Darrin King ("Defendant"). We find no error with the trial court's denial of the Notice of Registration of Foreign Support Order for Modification and the Motion to Contest Registration of Foreign

Support Order, but we find error with the trial court's modification of the child support order because the trial court lacked subject matter jurisdiction to modify the order. The judgment is affirmed in part, vacated in part, and remanded to recalculate the child support arrearage owed to Defendant.

I. Procedural and Factual Background

¶ 2 Plaintiff and Defendant were married in Hawaii on 1 January 2000. They had one child together, ZSK, who was born on 16 August 2001 in North Carolina. Defendant and Plaintiff separated on or about 15 August 2006. Plaintiff moved to Florida in roughly 2006, and Defendant moved to Florida in roughly 2008. The parties divorced on 14 May 2012 while living in Florida.

¶ 3 At the time of divorce, the Circuit Court of the 17th Judicial Circuit in Florida entered a "Foreign Support Order of Dissolution of Marriage with Minor Child" ("Foreign Support Order") in accordance with the parties' agreed upon Marital Settlement Agreement and Parenting Plan. The Marital Settlement Agreement and Parenting Plan required Defendant and Plaintiff to split custody of ZSK with Defendant receiving fifty percent of the overnight stays and Plaintiff receiving fifty percent of the overnight stays. Additionally, Plaintiff was ordered to pay $264.65 per month in child support to Defendant starting on 14 May 2012, and "continuing until modified by court order, the youngest child turns 18, becomes emancipated, marries, dies, otherwise becomes self-supporting or, if after the age of 18, until the age of 19,

if still in high school, with a reasonable expectation of graduation." The parties continued living together on and off after the divorce was finalized. Since the divorce, it is estimated the parties lived together from August 2012 to February 2013, October 2013 to March 2014, and July 2014 to December 2016. Defendant and Plaintiff have not followed the custody schedule, and it is undisputed Plaintiff has never paid any child support as directed by the Foreign Support Order.

¶ 4 Plaintiff moved to North Carolina in April 2014. Defendant and ZSK moved to North Carolina in July 2014 after ZSK completed the school year. The parties have not lived together since January 2017, and ZSK has lived primarily with Plaintiff since approximately March 2018.

¶ 5 Plaintiff filed an initial "Notice of Registration of Foreign Child Support Order" ("Initial Petition") on 25 September 2018 for purposes of modification. Plaintiff later filed an "Amended Notice of Registration of Foreign Support Order" ("Amended Petition") on 21 December 2018 for purposes of modification along with an "Amended Complaint & Motion to Modify Foreign Support Order" ("Motion to Modify"). Defendant was served with the Amended Petition and Motion to Modify on 11 February 2019. Defendant then filed a "Motion to Contest Registration of Foreign Support Order" ("Defendant's Motion to Contest") on 1 March 2019, and a "Petition for Registration of Foreign Child Support Order" ("Defendant's Petition") on 4 March 2019 for purposes of enforcement only.

¶ 6 Plaintiff filed a motion to dismiss both Defendant's Motion to Contest and Defendant's Petition on 25 March 2019. Plaintiff asserted affirmative defenses of equitable estoppel, laches, payment, and waiver as to Defendant's Petition. Defendant likewise filed a motion to dismiss both Plaintiff's Initial and Amended Petitions on 12 April 2019 pursuant to Rules 12(b)(1) and 12(b)(6) of the North Carolina Rules of Civil Procedure. Defendant alleges improper service and failure to substantially comply with the procedures set forth in N.C. Gen. Stat. § 52C-6-602(a) for both Plaintiff's Initial Petition and Amended Petition.

¶ 7 Plaintiff filed an Affidavit Supplemental to the Amended Petition on 2 October 2019 alleging she does not owe Defendant any child support arrearage as the parties never followed the Foreign Support Order after its entry, and ZSK primarily resided with Plaintiff after the divorce in May 2012. Finally, Defendant filed a motion in limine on 2 October 2019 to exclude documents not produced by Plaintiff and to limit financial and opinion testimony regarding such documents.

¶ 8 On 5 and 7 October 2019, the trial court heard testimony on the various filings as well as on temporary modification of the Foreign Support Order. All inferences regarding missing financial documentation were taken against Plaintiff. It was undisputed that the parties agreed to the registration of the Foreign Support Order. It was also undisputed that Plaintiff has not paid any child support to Defendant. Based on the record and testimony heard, the trial court entered the 25 November

Order granting Defendant's motion in limine, granting Defendant's Motion to Contest, denying Plaintiff's Motion to Contest Registration of Foreign Support Order, establishing Plaintiff's child support arrearage, and temporarily modifying the Foreign Support Order. Plaintiff gave notice of appeal on 27 December 2019.

II. Jurisdiction

¶ 9 Defendant filed a motion to dismiss appeal pursuant to Rule 37 of the North Carolina Rules of Appellate Procedure and N.C. Gen. Stat. § 7A-27, to dismiss this appeal as interlocutory and lacking in subject-matter jurisdiction. For the following reasons, we deny this motion.

¶ 10 A final judgment is one that "disposes of the cause as to all the parties, leaving nothing to be judicially determined between them in the trial court." *Hausle v. Hausle*, 226 N.C. App. 241, 243–44, 739 S.E.2d 203, 206 (2013). "In the child support context, an order setting child support is not a final order for purposes of appeal until no further action is necessary before the trial court upon the motion or pleading then being considered." *Banner v. Hatcher*, 124 N.C. App. 439, 441, 477 S.E.2d 249, 250 (1996).

¶ 11 Although the trial court labeled the 25 November Order "temporary" and stated the "[c]ourt shall retain jurisdiction of this matter for the entry of future orders," ZSK has reached the age of majority. The issue of prospective child support is thus moot, and "no further action is necessary before the trial court" regarding this

issue. *See Banner*, 124 N.C. App. at 439, 477 S.E.2d at 250. What may have been a temporary order at the time the 25 November Order was filed is now a *de facto* permanent order because "nothing [is left] to be judicially determined between [the parties] in the trial court." *See Hausle*, 226 N.C. App. at 243–44, 739 S.E.2d at 206.

¶ 12 For the foregoing reasons, the trial court's 25 November 2019 Order is a final disposition of the issue and therefore appeal lies in this Court as a matter of right pursuant to N.C. Gen. Stat. § 7A-27(b)(1) (2019).

III. Issues

¶ 13 The issues on appeal have been consolidated as follows: (1) whether the trial court erred in vacating Plaintiff's Notice of Registrations for Modification; (2) whether the trial court erred by modifying the Foreign Support Order; (3) whether the trial court erred in finding no oral agreement between the parties and determining the amount of child support arrearage owed to Defendant; and (4) whether the trial court erred in denying Plaintiff's affirmative and equitable defenses.

IV. Analysis

A. Plaintiff's Notice of Registration for Modification

¶ 14 Plaintiff argues the trial court erred when vacating her Amended Petition because Defendant failed to set forth any of the grounds authorized in N.C. Gen. Stat. § 52C-6-607(a) (2019). Because Plaintiff's Amended Petition was never registered, and § 52C-6-607 applies only to *registered* orders, we disagree.

¶ 15 "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). However, this Court applies a *de novo* standard of review when "a party asserts an error of law occurred." *State ex. rel. Johnson v. Eason*, 198 N.C. App. 138, 140, 679 S.E.2d 151, 152 (2009) (citation omitted).

¶ 16 Plaintiff attempted to register the Foreign Support Order in North Carolina for purposes of modification. "[S]ubstantial compliance with the requirements of section 52C-6-602 will suffice to accomplish registration of the foreign order." *Twaddell v. Anderson*, 136 N.C. App. 56, 60, 523 S.E.2d 710, 714 (1999). Section 52C-6-602(a) states:

> [A] support order or income-withholding order of another state or a foreign support order may be registered in this State by sending the following records to the appropriate tribunal in this State:
>
> (1) A letter of transmittal to the tribunal requesting registration and enforcement;
>
> (2) Two copies, including one certified copy, of the order to be registered, including any modification of the order;
>
> (3) A sworn statement by the person requesting registration or a certified statement by the custodian of the records showing the amount of any arrearage;
>
> (4) The name of the obligor and, if known:
>
> a. The obligor's address and social security number;
>
> b. The name and address of the obligor's employer and any other source of income of the obligor; and

> c. A description and the location of property of the obligor in this State not exempt from execution; and
>
> (5) . . . the name and address of the obligee and, if applicable, the person to whom support payments are to be remitted.

N.C. Gen. Stat. § 52C-6-602(a) (2019).

¶ 17 The trial court found Plaintiff's Amended Petition failed to substantially comply with the procedures set forth in § 52C-6-602, and we agree. There is no letter of transmittal in the record; there was one certified copy submitted to the court without an additional copy; there was no sworn statement by Plaintiff at the time of the filing; Plaintiff's social security number, name and address of employer, and other sources of income were not listed on her filing; and there were no descriptions of property.

¶ 18 Plaintiff's argument that Defendant failed to set forth any of the grounds authorized in N.C. Gen. Stat. § 52C-6-607(a) fails because that statute applies only to valid orders that have been registered. *See id.* ("A party contesting the validity or enforcement of a *registered* support order or seeking to vacate the *registration* has the burden of proving one or more of the following defenses . . . .") (emphasis added).

¶ 19 Based on these facts, we find no error in the trial court vacating both Plaintiff's Initial Petition and Plaintiff's Amended Petition on the basis the petitions did not substantially comply with the registration statute. *See State ex. rel. Johnson*, 198 N.C. App. at 140, 679 S.E.2d at 152; *Twaddell*, 136 N.C. App. at 60, 523 S.E.2d at

714. Therefore, the Foreign Support Order never became registered. *See* N.C. Gen. Stat. § 52C-6-602(a).

B. Modification of Child Support Order

¶ 20 Defendant argues the trial court lacked subject matter jurisdiction to modify the Foreign Support Order. Because the trial court vacated both Plaintiff's Initial Petition and Amended Petition, thereby divesting itself of subject matter jurisdiction, we agree.

¶ 21 "Whether a trial court has subject-matter jurisdiction is a question of law, reviewed *de novo* on appeal." *McKoy v. McKoy*, 202 N.C. App. 509, 511, 689 S.E.2d 590, 592 (2010). "Registration of a foreign support order pursuant to N.C. Gen. Stat. § [52C-6-602] results in treatment of the order as if issued by a court of this State." *McGee v. McGee*, 118 N.C. App. 19, 26, 453 S.E.2d 531, 535 (1995). Thus, upon registration, "North Carolina courts are . . . conferred subject matter jurisdiction to modify support orders entered in another state." *Id.* at 26, 453 S.E.2d at 535 (citation omitted); *see also Pinner v. Pinner*, 33 N.C. App. 204, 205–06, 234 S.E.2d 633, 636 (1977) (While jurisdiction over the person or property of a defendant-obligor is not necessary in order to register a foreign support order, actual registration of the foreign support order is necessary to confer jurisdiction upon courts in this state to enforce and/or modify the order.).

¶ 22 In this case, as discussed above, the trial court specifically vacated the

attempted registration by Plaintiff as it related to modification because the Amended Petition failed to substantially comply with the registration requirements in N.C. Gen. Stat. § 52C-6-602(a). The trial court also denied Plaintiff's Motion to Contest Enforcement of Foreign Support Order and Motion to Contest Defendant's Registration of Support Order for purposes of enforcement. The only confirmed registration before the trial court in this case was Defendant's Petition, for purposes of *enforcement* only. Because registration of Plaintiff's Amended Petition never occurred, the trial court did not acquire jurisdiction to modify the Foreign Support Order. The trial court had jurisdiction only to enforce the Foreign Support Order, and it lacked subject matter jurisdiction to modify the Foreign Support Order. *See McGee*, 118 N.C. App. at 26, 453 S.E.2d at 535.

¶ 23 The trial court indicated Plaintiff's Motion to Modify, which was filed 21 December 2018 and subsequently served with Plaintiff's Amended Petition on 11 February 2019, operated as "an alternate pleading of the Plaintiff's motion to dismiss" to Defendant's Petition for purposes of enforcement. However, this finding is erroneous because Plaintiff's motion to modify was filed two and a half months before Defendant's Petition. Thus, there was no claim in existence, and there would not be a claim in existence for another two and a half months, for which Plaintiff's motion to modify could serve as an alternate pleading.

¶ 24 For these reasons, we vacate the portion of the 25 November Order directing

Defendant to pay Plaintiff $672.61 per month beginning 1 November 2019 because the trial court lacked subject matter jurisdiction to modify the original support order. *See McGee*, 118 N.C. App. at 26, 453 S.E.2d at 535.

C. Oral Agreement and Computation of Support Arrearage

¶ 25 Plaintiff argues the trial court erred in finding there was no enforceable oral agreement between the parties to modify child support. Plaintiff also argues the trial court erred in determining the amount of past-due child support owed to Defendant. We disagree.

¶ 26 "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*, 152 N.C. App. at 441, 567 S.E.2d at 837.

¶ 27 When a foreign child support order is registered in this state, "the law of the issuing state . . . governs . . . [t]he computation and payment of arrearages and accrual of interest on the arrearages under the support order." N.C. Gen. Stat. § 52C-6-604(a)(2) (2019). Because Florida is the issuing state of the Foreign Support Order, we turn to Florida's law to address this issue.

¶ 28 "Ordinarily, [the parent] of minor children for whom there is provided in a divorce decree periodic payment to be made by [the other parent] for the children's support acquires a vested right in past due installments." *Warrick v. Hender*, 198 So.

2d 348, 350 (Fla. Dist. Ct. App. 1967) (citations omitted). "However, the [parents] may as between themselves validly agree, expressly or impliedly, that one rather than the other shall provide or procure the proper support if the best interests of the child are served thereby." *Id.* at 351 (citations omitted); *see also Brown v. Brown*, 108 So. 2d 492 (Fla. Dist. Ct. App. 1959). "A written contract or agreement may be altered or modified by an oral agreement if the latter has been accepted and acted upon by the parties in such manner as would work a fraud on either party to refuse to enforce it." *Pro. Ins. Corp. v. Cahill*, 90 So. 2d 916, 918 (Fla. 1956).

¶ 29 In this case, Plaintiff argues there was an oral agreement between the parties not to pay child support to each other. The parties' testimony in this case reveals otherwise. When Plaintiff was asked at the 7 October 2019 hearing if she had an agreement with Defendant that neither party would pay child support, Plaintiff responded, "I mean, I want to say probably yeah," and "So yeah, I mean, pretty much." When Defendant was asked the same question, he responded, "No." This evidence tends to show that the parties lacked an agreement not to pay child support. While Plaintiff may have thought there was an agreement, Plaintiff's answers to the question of whether there was an agreement did not indicate a clear and definite oral agreement had been entered. Because the trial court did not abuse its discretion, we will not upset this finding on appeal. *See Leary*, 152 N.C. App. at 441, 567 S.E.2d at 837.

¶ 30 Finally, because there was no oral agreement between the parties, Defendant had a vested right in past due child support payments. *See Warrick*, 198 So. 2d at 350. Thus, the trial court did not err in granting Defendant past due child support payments in the amount determined by the Foreign Support Order. However, as discussed in Section IV.B., the trial court did not have jurisdiction to modify the Foreign Support Order and discontinue Defendant's child support payments before the terms of the original order expired. Therefore, we remand to the trial court for the limited purpose of recalculating Defendant's arrearage based on enforcement of the original child support order.

D. Defenses

¶ 31 In her final argument, Plaintiff maintains the trial court erred in denying her motion to dismiss Defendant's Petition based on the affirmative defenses of waiver, equitable estoppel, and laches. We disagree.

¶ 32 "Where a party asserts an error of law occurred, we apply a *de novo* standard of review." *State ex. rel. Lively v. Berry*, 187 N.C. App. 459, 462, 653 S.E.2d 192, 194 (2007) (citation omitted) (emphasis added).

¶ 33 Plaintiff raises the defenses of waiver, laches, and equitable estoppel pursuant to N.C. Gen. Stat. § 52C-6-607 and seeks to avoid Defendant's Petition for enforcement of the Foreign Support Order. Section 52C-6-607(a)(5) states "[a] party contesting the . . . enforcement of a registered support order or seeking to vacate the

registration has the burden of proving . . . there is a defense under the law of this State to the remedy sought." Thus, Plaintiff bears the burden of proving these defenses under North Carolina law. If Plaintiff fails to "establish a defense under [Section] 52C-6-607(a), the registering tribunal is required by law to confirm the order." *Welsher v. Rager*, 127 N.C. App. 521, 526, 491 S.E.2d 661, 664 (1997) (citing N.C. Gen. Stat. § 52C-6-607(c)).

¶ 34 We first consider Plaintiff's argument as to waiver. Plaintiff asserts the parties waived their child support obligations through an oral agreement between the parties not to pay. For the reasons previously discussed, we find this argument lacks merit and hold the trial court did not err in denying the defense of waiver. *See id.* at 171, 625 S.E.2d at 798.

¶ 35 Plaintiff alternatively argues that the defenses of laches and equitable estoppel prevent enforcement of the Foreign Support Order because the "parties did not follow the custody schedule set forth in the [Foreign Support Order], [Defendant] was aware of the [Foreign Support Order] in 2012, [Plaintiff] did not pay [Defendant] any child support on or after 14 May 2012, [Defendant] never demanded payment of child support of and from [Plaintiff], and [Defendant] did not file any proceeding to enforce the [Foreign Support Order's] child support provisions . . . until 4 March 2019." Plaintiff relies on the Florida District Court of Appeals case of *Brown v. Brown*, 108 So. 2d 492 (Fla. Dist. Ct. App. 1959) in support of her argument. According to

Plaintiff, *Brown* "support[s] the reversal of the trial court's erroneous [denial of her affirmative defenses]." However, Plaintiff provides no reasoning to explain how *Brown* supports the reversal of the 25 November 2019 Order. Additionally, Plaintiff fails to provide the Court with arguments as to the elements of laches and equitable estoppel and has not demonstrated how those elements have been met in the instant case. Accordingly, we consider Plaintiff's arguments as to her affirmative defenses of laches and equitable estoppel abandoned. *See K2HN Constr. NC., LLC v. Five D Contrs., Inc.*, 267 N.C. App. 207, 213–14, 832 S.E.2d 559, 564 (2019) (holding the plaintiff abandoned its arguments where the plaintiff failed to establish the elements of its claim and how the evidence demonstrates the existence of those claims); *see also* N.C. R. App. P. 28(b)(6) ("Issues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned.").

V. Conclusion

¶ 36 For the foregoing reasons, we affirm the trial court's 25 November 2019 Order granting Defendant's Motion to Contest and vacating Plaintiff's Motion to Contest Registration of Foreign Support Order; we vacate the trial court's establishment of child support arrearage and temporary modification of child support. The matter is remanded for the limited purpose of computing child support arrearage owed to Defendant pursuant to the Foreign Support Order.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.

Judges ARROWOOD and GRIFFIN concur.

Report per Rule 30(e).