An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-670

No. COA21-142

Filed 7 December 2021

Mecklenburg County, No. 10-CVD-4758

EMILIE D. HARRINGTON, Plaintiff,

v.

SCOTT DWAYNE HARRINGTON, Defendant.

Appeal by Defendant-Appellant from order entered 20 May 2020 by Judge Paulina N. Havelka in Mecklenburg County District Court. Heard in the Court of Appeals 8 September 2021.

No brief filed for Plaintiff-Appellee.

Hunt Law, PLLC, by Gregory Hunt, for Defendant-Appellant.

INMAN, Judge.

¶ 1 Defendant-Appellant Scott Dwayne Harrington ("Father") appeals from an order awarding attorney's fees to Emilie D. Van Poucke (formerly Harrington) ("Mother") as part of a decade-long child custody dispute. Father argues the trial court abused its discretion in awarding Mother attorney's fees because (1) Mother failed to allege that she was seeking reimbursement of attorney's fees based on

Father's frivolous motions; (2) the uncontradicted evidence established Mother had sufficient means to defray the costs of the attorney's fees that she incurred defending Father's motions; and (3) Mother failed to demonstrate she was acting in good faith. After careful review, we vacate the award of attorney's fees and remand to the trial court for additional required findings.

I. FACTS & PROCEDURAL HISTORY

¶ 2 Mother and Father are parents to one child. They divorced in 2011. A year later, the trial court awarded Mother primary legal and physical custody of their child and Father visitation. Since then, Father has filed 16 separate motions seeking relief including disqualification of Mother's counsel, sanctions, judicial assistance, contempt of court, and modification of child custody, many of which were denied or dismissed by the trial court, sometimes with prejudice. Mother incurred more than $91,000 in legal fees related to these filings.

¶ 3 In response to Father's motions, Mother filed several motions for attorney's fees, which came on for hearing on 3 March 2020.[1] Mother's initial counsel testified about his services provided and the associated fees charged to Mother. Mother testified about her employment status, annual salary, assets, and expenses. On 20

[1] Mother filed motions for attorney's fees on 1 March 2010, 17 February 2017, 2 March 2017, and 21 December 2018. The trial court considered them collectively.

May 2020, the trial court entered an order awarding Mother $43,953 for attorney's fees she incurred between 4 June 2014 and 3 March 2020.[2] Father appeals.

II. ANALYSIS

A. Mother's Allegations Comply with Attorney's Fees Statute

¶ 4 Father contends that Mother's allegations were insufficient to support an award of attorney's fees under N.C. Gen. Stat § 50-13.6.[3] We disagree.

¶ 5 Whether the statutory requirements for an award of attorney's fees in a custody or support action have been met is a question of law which we review *de novo*. *Hudson v. Hudson*, 299 N.C. 465, 472, 263 S.E.2d 719, 724 (1980) (citation omitted). "When the statutory requirements have been met, the amount of attorney's fees to be awarded rests within the sound discretion of the trial judge and is reviewable on appeal only for abuse of discretion." *Id.* (citations omitted).

¶ 6 Our General Statutes provide:

> In an action or proceeding for the custody or support, or both, of a minor child, including a motion in the cause for the modification or revocation of an existing order for custody or support, or both, the court may in its discretion order payment of reasonable attorney's fees to an

---

[2] The trial court deferred ruling on Mother's motions for attorney's fees incurred earlier in the litigation and associated with the permanent custody order. Those motions will be considered by a different judge.

[3] Father purports to challenge the trial court's findings of fact numbers 1 through 85, conclusions of law numbers 1 through 5, and decretals numbers 1 through 3 as unsupported by the evidence or as an abuse of discretion. We only address Father's arguments presented in his appellate brief. *See* N.C. R. App. P. 28(a) (2021) ("[Our] scope of review on appeal is limited to issues so presented in the several briefs.").

> interested party acting in good faith who has insufficient means to defray the expense of the suit. Before ordering payment of a fee in a support action, the court must find as a fact that the party ordered to furnish support has refused to provide support which is adequate under the circumstances existing at the time of the institution of the action or proceeding; provided however, should the court find as a fact that the supporting party has initiated a frivolous action or proceeding the court may order payment of reasonable attorney's fees to an interested party as deemed appropriate under the circumstances.

N.C. Gen. Stat. § 50-13.6 (2019). Our Supreme Court has clarified that a party seeking an award of attorney's fees under Section 50-13.6 must allege he or she is "(1) acting in good faith and (2) has insufficient means to defray the expense of the suit[.]" *Hudson*, 299 N.C. at 472, 263 S.E.2d at 724.

¶ 7 This appeal concerns the trial court's award of attorney's fees sought in two of Mother's motions. On 17 February 2017, Mother filed a motion for Rule 11 sanctions against Father, alleging in pertinent part:

> 144. Mother is acting in all respects in good faith in defending [F]ather's egregious personal and false attacks on herself and her attorney.
>
> 145. Father's accusations are without basis in law or in fact.
>
> 146. Mother should not be required to pay for the attorney's fees incurred in defending [F]ather's false, willful, and wanton accusations[.]
>
> 147. Mother is entitled to an award of attorney's fees, if not otherwise, pursuant to [N.C. Gen. Stat.] § 1A-1, Rule 11.

Then, on 2 March 2017, in a response to another of Father's motions, Mother sought from the trial court reimbursement for attorney's fees, alleging in relevant part:

> 118. Mother is acting in all respects in good faith in defending [F]ather's incessant, verbose, and often groundless motions.
>
> 119. Mother is unable to pay the cost incurred in defending [F]ather's motions, many of which, if not all are frivolous.
>
> 120. Mother is entitled to an award of attorney's fees as provided by law.

Neither of Mother's motions cite Section 50-13.6, but they allege facts sufficient to recover fees authorized by that statute. Mother's 2 March 2017 motion, in particular, alleges Father's motions were "groundless," "incessant," and "frivolous;" it alleges Mother is "acting in all respects in good faith;" and it also alleges Mother is unable to fund a defense to Father's motions. *See Hudson*, 299 N.C. at 472, 263 S.E.2d at 724. Because Mother sufficiently pled her requests for recovery of attorney's fees, Father's argument in this regard fails.

B. Mother's Ability to Defray Costs of Litigation

¶ 8 Father next argues the trial court's finding that Mother lacked the means to defray the cost of litigation was unsupported by the evidence. We agree that the findings are insufficient and vacate for this reason.

¶ 9 The trial court made the following findings about Mother's financial means:

> 45. Mother is without sufficient means to defray the expenses of this suit.

> 46. Throughout the course of the litigation, Mother has had to liquidate the majority of her IRA account in order to pay her attorney fees and expenses.
>
> 47. Mother has borrowed money from her Accenture 401(k) account to pay legal fees.
>
> 48. In September of 2016, Mother had approximately $90,000 to $100,000 in her IRA. Today she has approximately $30,000 in that same IRA due to the withdrawals to pay legal fees necessitated by Father's frivolous filings.
>
> 49. Mother has incurred penalties, and has had to pay taxes, every time she has had to make a withdrawal from her retirement accounts to pay the fees occasioned by Father's frivolous filings.
>
> 50. Mother has borrowed money from her mother to pay the initial retainer of $20,000 to Arnold & Smith, PLLC.

The trial court made extensive findings regarding Father's ability to reimburse Mother's fees based on his gross annual income, credit, equity in real property, and "limited expense," and concluded "Mother has insufficient funds to defray the expense of defending against Father's frivolous [m]otions to [m]odify." But none of the trial court's findings described Mother's income or expenses.

¶ 10 Though Mother provided evidence of her income and expenses through her own testimony and exhibits introduced at the hearing, the trial court failed to make specific findings based on that evidence. *See Dixon v. Gordon*, 223 N.C. App. 365, 373, 734 S.E.2d 299, 305 (2012) ("Although information regarding father's gross income and employment was present in the record in father's testimony, there are no

findings in the trial court's order which detail this information. We believe that because the findings in this case contain little more than the bare statutory language, the order is insufficient to support an award of attorney's fees.").

¶ 11 Because the trial court's order before us, like the order in *Dixon*, "contain[s] little more than the bare statutory language," *id.*, it is insufficient to support an award of attorney's fees. Therefore, we vacate the award and remand for the trial court to make additional required findings of fact regarding Mother's means to defray the cost of litigation. *See id.* (remanding to the trial court for additional findings of fact regarding the father's means to employ counsel); *see also Cameron v. Cameron*, 94 N.C. App. 168, 172, 380 S.E.2d 121, 124 (1989) ("The trial court must make specific findings of fact relevant to: (1) The movant's ability to defray the cost of the suit, specifically that the movant is unable to employ counsel so that he may proceed to meet the other litigant in the suit . . . .").

C. Competent Evidence Mother Acted in Good Faith

¶ 12 Finally, Father asserts Mother "failed to show that she acted in good faith." Specifically, Father challenges the sufficiency of the trial court's findings on this point as a "mere recitation" of the statutory language. We disagree.

¶ 13 Finding 84 of the trial court's order states: "Mother has acted in good faith in pursuing her defense of Father's frivolous Motions to Modify Custody." First, the record demonstrates there is no question Mother and Father had a genuine dispute

over custody of their child in this case. *See Setzler v. Setzler*, 244 N.C. App. 465, 467, 781 S.E.2d 64, 66 (2015) ("Because the element of good faith is seldom in issue a party satisfies it by demonstrating that he or she seeks custody in a genuine dispute with the other party.") (cleaned up)). Second, Father has not made us aware of any evidence controverting the trial court's determination that Mother acted in good faith and he has failed to direct us to any caselaw requiring additional findings on this point. In fact, Father's counsel conceded at the hearing that neither party had presented evidence "to suggest that [Mother] wasn't acting in good faith." Finally, the transcript reflects that the trial court evaluated Mother's actions and her testimony in making its determination. *See Conklin v. Conklin*, 264 N.C. App. 142, 149, 825 S.E.2d 678, 683 (2019) ("The trial court was in the best position to evaluate the merits and sincerity of the claims of both parties and to determine whether Mother was acting in good faith.") (citation omitted)).

III. CONCLUSION

¶ 14 For the foregoing reasons, we vacate the award of attorney's fees and remand to the trial court to make additional required findings of fact related to Mother's ability to defray the cost of litigation.

VACATED AND REMANDED.

Judges DIETZ and GRIFFIN concur.

Report per Rule 30(e).