IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-43

No. COA21-52

Filed 18 January 2022

Orange County, No. 12 CVD 142

MIMI MISUNG KIM, Plaintiff,

v.

MICHAEL ORAN CALLOWAY, Defendant.

Appeal by defendant from order entered 29 July 2020 by Judge Joseph M. Buckner in Orange County District Court. Heard in the Court of Appeals 20 October 2021.

Leigh Peek, Attorney at Law, PC, by M. Noah Oswald, for plaintiff-appellee.

Edward Eldred for defendant-appellant.

DIETZ, Judge.

¶ 1 Mimi Kim and Michael Calloway are parties to an ongoing family law proceeding governed largely by a consent order entered in 2012.

¶ 2 In 2020, the trial court held Calloway in contempt for failure to pay his share of certain "extraordinary" child care expenses described in the consent order. The court also denied Calloway's motion to modify the parties' child support obligations.

¶ 3 As explained below, the trial court's findings are insufficient to support the

court's contempt order and we therefore vacate the challenged order and remand for further proceedings. Because the trial court's findings concerning the denial of the child support modification request are interspersed in this same order, we decline to address that issue, which may be mooted by the trial court's new order. On remand, the trial court may enter a new order on the existing record or conduct any further proceedings the court deems necessary in the interests of justice.

Facts and Procedural History

¶ 4 Mimi Kim and Michael Calloway married in 2003. Ten years later they separated and divorced. Kim and Calloway had two children during the marriage.

¶ 5 In 2012, the trial court entered a consent order that resolved the parties' disputes concerning child custody and child support. That order contained a section on "extraordinary expenses" that outlined the steps that should be taken by each party for the qualifying expenses that fall within the provision. It stated:

> Section 2.7. . . .
>
> D. Extraordinary Expenses: The parties agree that the following fall into the category of extraordinary expenses: Non-covered medical, dental, orthodontic, mental health and vision services; summer camps; fees and expenses of the Parenting Coordinator; and sports and extracurricular activity expenses. Husband and Wife shall discuss all extraordinary expenses in excess of ONE HUNDRED ($100.00) before undertaking the expense on behalf of one or both of the children. Once agreed, the parents will share the cost of the service equally. . . . If the parties fail to agree upon undertaking an activity or expense, the Parenting

> Coordinator shall be vested with the authority to make the decision. Husband and Wife agree that each will pay to the other upon receipt of statements his/her share of the agreed-upon extraordinary expenses incurred for the children. The parties have agreed to make such exchanges at least on a (quarterly) basis.

¶ 6 Over the years, the parties engaged in repeated motions practice in this family law proceeding. Ultimately, in November 2019, Kim moved to hold Calloway in contempt on the ground that he "willfully failed" to reimburse Kim for "extraordinary expenses" covered by the consent order. Several months later, Calloway moved to modify child support on the ground that there was a substantial change in circumstances based on changes in income since the initial support order was entered.

¶ 7 Following a hearing, the trial court found Calloway in contempt for "failure to reimburse the Plaintiff for 50% of the out-of-pocket medical and extracurricular expenses submitted by the Plaintiff." The order stated that "Defendant owes the Plaintiff $25,944.81 for those expenses entered as evidence in this hearing" and that "Defendant shall purge his contempt by making a payment of $250.00 directly to the Plaintiff on the 1st and each month beginning September 1, 2020 until the $25,944.81 is paid in full. If Defendant fails to purge his contempt in this way, Defendant shall be incarcerated subject to judicial review as set forth in N.C.G.S. § 5A-21 until the payment is made." The court also denied Calloway's motion to modify child support. Calloway timely appealed.

Analysis

I. Challenge to the civil contempt order

¶ 8 Calloway first argues that the trial court failed to make adequate findings to support its contempt order. Specifically, Calloway argues that the court failed to make any findings that his noncompliance was willful, particularly where he disputed receiving notice of the extraordinary expenses at issue.

¶ 9 "When reviewing a contempt order, our inquiry is limited to determining whether there is competent evidence to support the findings of fact and whether the findings support the conclusions of law." *Williams v. Chaney*, 250 N.C. App. 476, 478, 792 S.E.2d 207, 209 (2016). "In contempt proceedings the judge's findings of fact are conclusive on appeal when supported by any competent evidence and are reviewable only for the purpose of passing on their sufficiency to warrant the judgment." *Id.*

¶ 10 To hold Calloway in civil contempt, the trial court was required to find that Calloway's violation of the court's order was "willful." *Id.* at 480, 792 S.E.2d at 210; N.C. Gen. Stat. § 5A-21(a). A party's noncompliance is willful under this statutory provision if there is both "knowledge and a stubborn resistance of a trial court directive." *Williams*, 250 N.C. App. at 480, 792 S.E.2d at 210.

¶ 11 Here, the trial court did not make an express finding that Calloway's noncompliance was willful. Moreover, the court's other, relevant findings are insufficient to establish willfulness:

> 12. The child-related expenses submitted by the Plaintiff total $51,889.62.
>
> 13. Plaintiff stated that she had conveyed some, but not all of these expenses to the Defendant, including submitting some of the issues to the Parenting Coordinator.
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> 14. Defendant testified that he has never received request[s] for any of these payments.
>
> 15. Defendant admitted his willingness to pay his appropriate portion of these and all expenses for the minor children.
>
> . . .
>
> 19. The Defendant admitted that he knew the children's current health insurance was not covering the full cost of the children's medical care and that he had once paid the additional balance directly to the doctor's office for the children.
>
> 20. The Defendant admitted knowledge of the children's orthodontic and therapeutic treatments.

¶ 12 None of these findings demonstrate "knowledge and a stubborn resistance" to compliance with the terms of the extraordinary expenses provision of the consent order. *Id.* The order states that each party "will pay to the other *upon receipt of statements* his/her share of the agreed-upon extraordinary expenses incurred for the children. The parties have agreed to make such exchanges at least on a (quarterly) basis." (Emphasis added).

¶ 13 The court's findings do not demonstrate that Calloway received statements

from Kim but failed to pay his share. The findings acknowledge that Kim "stated" that she sent Calloway "some, but not all" of the statements. But the order also acknowledges that "Calloway testified that he has never received request[s] for any of these payments." The trial court did not resolve this factual dispute. Likewise, there are no other findings by the trial court to indicate that Calloway had notice of these expenses, triggering the payment provision of the consent order.

¶ 14 When a trial court's contempt order is not supported by adequate findings, the appropriate remedy is to vacate the contempt order. *Graham v. Graham*, 77 N.C. App. 422, 425, 335 S.E.2d 210, 212 (1985). Accordingly, we vacate the trial court's contempt order and remand for further proceedings. On remand, the trial court may enter a new order on the existing record or conduct any further proceedings necessary in the interests of justice.

II. Denial of motion to modify child support

¶ 15 Calloway next challenges the trial court's denial of his motion to modify child support. The trial court's ruling on this issue is part of the same order holding Calloway in civil contempt, and the court's findings addressing the motion to modify are interspersed among related findings concerning contempt. Because we vacate the contempt order and remand for the trial court to conduct further proceedings, we decline to address this argument now, as it could be mooted by new or additional fact findings by the trial court.

Conclusion

¶ 16 For the reasons explained above, we vacate and remand for further findings.

VACATED AND REMANDED.

Judges DILLON and HAMPSON concur.

Report per Rule 30(e).