IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-47

No. COA21-84

Filed 18 January 2022

Wake County, No. 14 CVD 7863

LORRIE MAYNARD ROTH, Plaintiff,

v.

KARL WALTER ROTH, Defendant.

Appeal by defendant from order entered 28 January 2020 by Judge David K. Baker, Sr., in Wake County District Court. Heard in the Court of Appeals 3 November 2021.

Jonathan McGirt for plaintiff-appellee.

Scott Allen for defendant-appellant.

ZACHARY, Judge.

¶ 1 Defendant Karl Walter Roth appeals from the trial court's order modifying his child support obligation. After careful review, we affirm.

I. Background

¶ 2 Plaintiff Lorrie Maynard Roth and Defendant were married in January 2003 and separated in November 2014. Plaintiff works in healthcare; Defendant is an attorney licensed in Illinois and North Carolina and the sole proprietor of a law firm.

The parties have two children, born in 2008 and 2010.

¶ 3 Following a temporary custody and child support order entered on 23 February 2015, the trial court entered a consent order on 1 June 2015 ("the 2015 Order") regarding the parties' claims for custody, child support, and attorney's fees.

¶ 4 On 19 July 2016, Defendant filed a motion to modify custody and child support, which came on for hearing in Wake County District Court on 27–28 September and 11–12 October 2016, along with Plaintiff's motion for attorney's fees. On 29 November 2016, the trial court entered a temporary custody and child support order ("the 2016 Temporary Order") directing, *inter alia*, that a parenting coordinator be appointed and the parties complete co-parenting counseling. On 6 June 2017, the trial court entered a permanent custody and child support order ("the 2017 Order") providing, *inter alia*, (1) that the parties share physical custody of the minor children on a "6/8" schedule, and (2) that Defendant pay Plaintiff $907.17 per month in child support in accordance with Worksheet B of the North Carolina Child Support Guidelines.

¶ 5 On 29 April 2019, the trial court entered a consent order ("the 2019 Temporary Consent Order") that, *inter alia*, modified the custody arrangement from a "6/8" physical custody schedule to an equal "7/7" shared physical custody schedule pending a full custody hearing. On 12 August 2019, Defendant filed a "Motion to Modify Child Custody and Support" seeking to reduce his child support obligation and citing the amended custody schedule as a substantial change in circumstances warranting a

modification of his existing support obligation. Defendant's motion to modify came on for hearing on 6 November 2019 before the Honorable David K. Baker, Sr., in Wake County District Court. On 28 January 2020, the trial court entered an order modifying child support ("the 2020 Order") that, *inter alia*, increased Defendant's child support obligation to $1,513.22 per month. Defendant timely filed notice of appeal.

II. Discussion

¶ 6 Defendant argues that the trial court erred by (1) miscalculating his gross personal income, (2) modifying a provision of the 2019 Temporary Consent Order concerning work-related child care expenses, and (3) failing to rule on his request, in his motion to modify, that the parties alternate years claiming the children as dependents on the parties' income tax returns. We disagree.

A. Standard of Review

¶ 7 "When determining a child support award, a trial judge has a high level of discretion, not only in setting the amount of the award, but also in establishing an appropriate remedy." *Moore v. Onafowora*, 208 N.C. App. 674, 676, 703 S.E.2d 744, 746 (2010) (citation omitted).

> 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. Under this standard of review, the trial court's ruling will be upset only upon a showing that it was

> so arbitrary that it could not have been the result of a reasoned decision.

Jonna v. Yaramada, 273 N.C. App. 93, 100, 848 S.E.2d 33, 41 (2020) (citations and internal quotation marks omitted).

¶ 8 "Where a party asserts an error of law occurred, we apply a de novo standard of review." *Id.* (citation omitted). However, our review of a trial court's findings of fact in a child support order "is limited to a consideration of whether there is sufficient competent evidence to support the findings of fact, and whether, based on these findings, the Court properly computed the child support obligations." *Sergeef v. Sergeef*, 250 N.C. App. 404, 406, 792 S.E.2d 192, 194 (2016) (citation omitted). "[U]nchallenged findings of fact are binding on appeal." *Kleoudis v. Kleoudis*, 271 N.C. App. 35, 39, 843 S.E.2d 277, 281 (2020) (citation omitted). "Furthermore, evidentiary issues concerning credibility, contradictions, and discrepancies are for the trial court—as the fact-finder—to resolve and, therefore, the trial court's findings of fact are conclusive on appeal if there is competent evidence to support them despite the existence of evidence that might support a contrary finding." *Sergeef*, 250 N.C. App. at 406–07, 792 S.E.2d at 194 (citation and internal quotation marks omitted).

B. Defendant's Gross Income

¶ 9 Defendant argues that "[t]he trial court used a flawed methodology in determining [his] gross personal income." After careful review of the transcript and

the record on appeal, we disagree.

¶ 10 "The calculation of child support is governed by North Carolina Child Support Guidelines established by the Conference of Chief District Court Judges." *Craven Cty. v. Hageb*, 2021-NCCOA-231, ¶ 12 (citation omitted). The Guidelines define "income" as "a parent's actual gross income from any source, including but not limited to income from employment or self-employment . . . [or] ownership or operation of a business, partnership, or corporation[.]" N.C. Child Support Guidelines, at 3 (2019). The Guidelines further define "gross income from self-employment" as "gross receipts minus ordinary and necessary expenses required for self-employment or business operation." *Id.*

¶ 11 In the present case, Defendant asserts that the trial court should have calculated his gross income "based on the gross receipts of the business less ordinary and necessary business expenses plus his year-to-date personal gross payroll" because his "sole source of income was from the operation of his law firm." Defendant argues that the trial court erred by failing to consider certain evidence of his business expenses that was admitted at the hearing, including his "detailed accounting . . . and banking records[.]" However, the record on appeal belies Defendant's argument.

¶ 12 Rather than misapplying the Guidelines or failing to consider Defendant's evidence, the trial court's detailed findings of fact in the 2020 Order instead reflect the court's thorough consideration of both the Guidelines and Defendant's evidence:

13. Based on the North Carolina Child Support Guidelines: Gross income from self-employment or operation of a business is defined as gross receipts minus ordinary and necessary expenses required for self-employment or business operation. Ordinary and necessary business expenses do not include amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by the court to be inappropriate for determining gross income. Income and expenses from self-employment or operation of a business were carefully reviewed to determine an appropriate level of gross income available to [Defendant] to satisfy a child support obligation. Expense reimbursements or in-kind payments received by Defendant in the course of employment, self-employment, or operation of a business were counted as income because they are significant and reduce personal living expenses.

14. In 2017, Defendant's law firm grossed $239,583.00 per Schedule C of his U.S. Individual Income Tax Return. In 2018, Defendant's law firm grossed $394,688.00 per Schedule C of his U.S. Individual Income Tax Return.

15. In 2018, Defendant claimed $1,927 in car and truck expenses for his trips when he drove from North Carolina to Chicago, Illinois, $42,043 in insurance for health insurance for him and his employee, $12,499 on interest for a business credit card that he no longer has, $25,647 for rent per Schedule C of Defendant's U.S. Individual Income Tax Return. Defendant testified that he assumes the expenses detailed above relate to the specified items however that he did not know what those expenses are on his 2018 taxes other than those assumptions. In the [2016 Temporary Order], the Honorable C. Christopher Bean made a finding that Defendant testified that he was unaware of the details of the "expenses" listed on the Roth Law Group, LLC Profit and Loss Statement from January 2015 through December 2015.

16. Defendant could not explain his business expenses in any detail to the Court at this hearing that would allow the Court to find that an expense was an appropriate business expense.

Defendant's law firm has one employee who is a salaried attorney and that employee's salary is included in the "Wage Expenses" of the Roth Law Group Profit and Loss [Statement] which was admitted into evidence at the hearing. Defendant produced a Profit and Loss Statement for Roth Law Group LLC for January[-]October 2019 which was admitted into evidence. Per the Profit and Loss Statement, Defendant's law firm has grossed $223,846.26 through October 31, 2019 which averages $22,384.63 per month over 10 months. The Profit and Loss [Statement] lists expenses of $194,863.25 during this same period, resulting in a Net Income of $28,983.17. Defendant testified that the amount listed as "Net Income" represents draws made by Defendant in addition to the wages he received as reflected in his payroll report of $39,230.76. Defendant testified that Net income plus the amount listed in his Payroll Report total $68,213.93.

17. Defendant produced The Roth [Law] Group, LLC Chase Business Classic Checking statements . . . from March 30, 2019 to October 31, 2019. The bank statements show a total of $170,972.38 deposited into this account during that timeframe (7 months) which averages to $24,424.63 per month for 7 months. Defendant testified that he had loaned the law firm $18,000.00 during this period from his savings.

18. Additionally, Defendant produced his personal Chase Checking account . . . statements from February 16, 2019 to October 16, 2019 (8 months). Per Defendant's statements, he deposited $91,728.31 and had debits of $93,371.29, which averaged to $11,466.04 and $11,671.41 per month respectively.

19. Defendant produced his notarized Financial Affidavit

summarizing his income and his monthly expenses. Pursuant to Defendant's Financial Affidavit, Defendant affirmed under oath that his monthly gross income is $7,083.33 or a yearly gross income of $85,000 per year. Defendant testified that money from savings does not represent income.

20. Defendant inherited large sums of money since entry of the 2017 Order. These inheritances have allowed him to pay off his mortgage in the amount of $290,000.00 leaving Defendant with no mortgage or lease payments for his primary residence. After payment of his mortgage, Defendant had a balance of $259,329.44 as of October 31, 2019 in his investment account from his inheritances.

21. Defendant has no car payment. When Defendant travels from North Carolina to Illinois for work, he considers the gas, plane tickets and mileage as business expenses for which he receives a personal benefit.

22. Pursuant to Defendant's Financial Affidavit, in regular recurring monthly expenses Defendant spends $1,752, individual monthly expenses of $1,426, and debts of $875 per month.

23. The Court finds that Defendant's testimony regarding his income is not credible and finds that Plaintiff's argument that Defendant earns a yearly gross income of two hundred thousand dollars ($200,000) per year or sixteen thousand, six hundred and sixty-six dollars and sixty-seven cents ($16,666.67) per month persuasive in light of his monthly deposits into his personal checking account, actual debits to his personal checking account, gross income earned by his business, and Schedule C of his 2018 tax return.

¶ 13 Of these findings of fact, Defendant only specifically challenges finding of fact #23. The remaining, unchallenged findings of fact quoted above are thus binding on

appeal. *Kleoudis*, 271 N.C. App. at 39, 843 S.E.2d at 281.

¶ 14 As regards finding of fact #23, Defendant particularly challenges the trial court's finding that Plaintiff's argument that Defendant's annual gross income was $200,000 was persuasive "in light of his monthly deposits into his personal checking account, actual debits to his personal checking account, gross income earned by his business and Schedule C of his 2018 tax return." Defendant argues that, although the trial court's finding "suggests that there was an actual calculation made[,]" it in fact "reveals a methodology of income calculation that is fundamentally flawed and contradicted by the record and documents in evidence."

¶ 15 In a footnote, Defendant supports this claim by asserting that he "testified how he received payroll unless there were no funds to do so. Then he would take equity draws once funds became available." This footnote illustrates a general shortcoming consistent throughout Defendant's assertions on appeal. As Plaintiff notes, Defendant's entire argument "relies upon [his] interpretation of the evidence as being unquestionably valid" and fails to account for the trial court's finding that his "testimony regarding his income [wa]s not credible[.]" In addition, the trial court addressed Defendant's testimony regarding his payroll and equity draws in its unchallenged finding of fact #16, which is binding on appeal. *Id.* In that same unchallenged finding, the trial court also noted that "Defendant could not explain his business expenses in any detail to the Court at this hearing that would allow the

Court to find that an expense was an appropriate business expense." We are also bound by the trial court's determination that Defendant's testimony lacked credibility, despite his contrary assertions on appeal. *Id.*; *Sergeef*, 250 N.C. App. at 406–07, 792 S.E.2d at 194. Accordingly, in light of the "high level of discretion" afforded to the trial court in such matters, *Moore*, 208 N.C. App. at 676, 703 S.E.2d at 746, and after careful review of the record, Defendant's argument is overruled.

C. Further Findings of Fact

¶ 16 In addition to finding of fact #23, which we have addressed, Defendant also challenges the trial court's findings of fact #31 and #32, which state:

> 31. The expenses that Defendant deducts from his monthly child support payment is [sic] applied to the outstanding attorney's fees that are due to Plaintiff.
>
> 32. Defendant will not reimburse Plaintiff expenses through Our Family Wizard because the program will not allow Defendant to deduct legal fees from his expense report.

¶ 17 Defendant argues that these findings "were directly contradicted by Defendant at the hearing." However, as previously stated, this Court may not make its own determination of Defendant's credibility or reweigh the evidence before the trial court. "If the record discloses sufficient evidence to support the [trial court's] findings, it is not this Court's task to determine de novo the weight and credibility to be given the evidence contained in the record on appeal." *Plott v. Plott*, 313 N.C. 63, 69, 326 S.E.2d 863, 867 (1985) (italics omitted). Although Defendant thoroughly explains his

interpretation of the evidence, our task on appeal is merely to determine whether "there is substantial evidence in the record to support the trial court's findings of fact, . . . even if record evidence might sustain findings to the contrary." *Sergeef*, 250 N.C. App. at 407, 792 S.E.2d at 194 (citation omitted). Our careful review of the record, including the relevant documents in evidence before the trial court, establishes that there was substantial evidence to support the trial court's findings, even if the record might also sustain Defendant's interpretation. Thus, these challenges must also be overruled.

¶ 18 Finally, Defendant challenges the trial court's finding of fact #7 in the 2020 Order. This finding of fact merely restates several findings of fact related to the parties' finances and employment that the trial court made in the 2016 Temporary Order, of which the trial court took judicial notice and incorporated by reference into the 2017 Order. Defendant argues that "the inclusion of these findings of fact . . . [is] not relevant, nor do the[findings] support the trial court's ultimate conclusions of law." However, Defendant makes no argument that he has been prejudiced by the inclusion of these findings of fact, and we fail to discern any such prejudice. Moreover, it is well established that a trial court "may take judicial notice of findings of fact made in prior orders, even when those findings are based on a lower evidentiary standard because where a judge sits without a jury, the trial court is presumed to have disregarded any incompetent evidence and relied upon the competent evidence."

In re T.N.H., 372 N.C. 403, 410, 831 S.E.2d 54, 60 (2019). Defendant's challenge to the trial court's finding of fact #7 is without merit.

D. Work-Related Child Care Expenses

¶ 19 Next, Defendant argues that "[t]he trial court overturned a negotiated provision of the [2019 Temporary Consent Order] by awarding Plaintiff child support for work-related [child care expenses]." We disagree.

¶ 20 To begin, the 2017 Order required that Defendant pay $901.17 per month in child support, determined in accordance with Worksheet B of the North Carolina Child Support Guidelines, on which Plaintiff received credit for her payment of $558 per month in work-related child care costs for the minor children. The 2019 Temporary Consent Order, which "modifie[d] and replace[d] the custody provisions only" of the 2017 Order, provided with regard to child care that:

> [t]he custodial parent shall be responsible for all child care, transportation, and any other similar needs of the minor children on his/her own time. The non-custodial parent shall have a right of first refusal if the custodial parent will not be available to have custody of the minor children during his or her time for more than two consecutive (2) overnights.

¶ 21 Finally, the 2020 Order included these pertinent findings of fact:

> 26. Plaintiff pays approximately five hundred and sixty-five dollars and forty-six cents ($545.46) [sic] in monthly [child care] expenses for the children during her custodial time.
>
> . . . .

> 33. It is appropriate to apply Worksheet B of the North Carolina Child Support Guidelines to calculate child support (attached and incorporated by reference as Exhibit A).
>
> 34. Defendant opened the door to his income being recalculated and the consideration of [child care] expenses when he filed the motion to modify child support.
>
> 35. Defendant opened the door to calculation of work-related child care expenses when he filed his motion to modify child support after the [2019 Temporary Consent Order] was entered.

¶ 22 Defendant now objects to the trial court's inclusion of Plaintiff's work-related child care expenses in its calculation of his child support obligation. Defendant argues that the trial court implicitly "overturned" the provision of the 2019 Temporary Consent Order addressing the parties' respective responsibility for child care. This assertion is meritless.

¶ 23 As Plaintiff notes, Defendant misconstrues the 2019 Temporary Consent Order's phrase "the custodial parent shall be responsible for all child care" to mean that the custodial parent shall be responsible for "all child care ***expenses***." Moreover, the 2019 Temporary Consent Order specifically provides that its terms only "modif[y] and replace[ ] the *custody provisions*" of the 2017 Order. (Emphasis added). Accordingly, nothing in the 2019 Temporary Consent Order bore on the inclusion of work-related child care expenses in the calculation of Defendant's child support obligation, and the trial court did not overturn any provision of the 2019 Temporary

Consent Order by including those expenses on Worksheet B.

¶ 24 Additionally, after the parties agreed to share equal physical custody of their minor children in the 2019 Temporary Consent Order, Defendant moved the trial court to modify his child support obligation "consistent with the worksheet relied upon each and every time since these proceedings first began in 2014" and attached to his motion a Worksheet B prepared by the trial court in 2017. This motion clearly "opened the door to his income being recalculated" and "to calculation of work-related child care expenses[,]" as the trial court noted. The North Carolina Child Support Guidelines provide that "[r]easonable child care costs that are . . . paid by a parent due to employment . . . are added to the basic child support obligation and prorated between the parents based on their respective incomes." N.C. Child Support Guidelines, at 4. Thus, the trial court did not err by including the work-related child care expenses in the calculation of Defendant's child support obligation as directed by the North Carolina Child Support Guidelines.

¶ 25 Accordingly, Defendant's argument is overruled.

E. Dependency Exception

¶ 26 Defendant's final argument consists solely of the following assertion: "As concerns the issue of alternating claiming the children on tax returns, that issue was included in Defendant's motion, however, it was never raised at the hearing following the trial court's refusal to allow further testimony or argument from Defendant."

¶ 27 Defendant has abandoned this argument on appeal, in that he has failed to cite any legal authority for this proposition or to "set forth any argument as to why this constitutes an abuse of the trial court's discretion." *Jonna*, 273 N.C. App. at 103–04, 848 S.E.2d at 43. "It is not the role of the appellate courts to create an appeal for an appellant. It is likewise not the duty of the appellate courts to supplement an appellant's brief with legal authority or arguments not contained therein." *Kabasan v. Kabasan*, 257 N.C. App. 436, 443, 810 S.E.2d 691, 697 (2018) (citations and internal quotation marks omitted). "Issues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned." N.C.R. App. P. 28(b)(6).

¶ 28 Furthermore, this issue is not yet ripe for appellate review because Defendant failed to obtain a ruling from the trial court. "In order to preserve an issue for appellate review," it is "necessary for the complaining party to obtain a ruling upon the party's request, objection, or motion." N.C.R. App. P. 10(a)(1). "If a party desires for this Court to review a decision by a trial court, it is the responsibility of that party to obtain a ruling from the trial court for this [C]ourt to review." *Childs v. Johnson*, 155 N.C. App. 381, 390, 573 S.E.2d 662, 668 (2002). By his own admission, Defendant did not obtain a ruling from the trial court on this issue. For all of these reasons, Defendant's final issue is not appropriately before this Court.

III. Conclusion

¶ 29 Defendant has not shown that the trial court abused its discretion in modifying his child support obligation. The trial court's order is affirmed.

AFFIRMED.

Judges TYSON and ARROWOOD concur.

Report per Rule 30(e).