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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-506

No. COA21-508

Filed 19 July 2022

Orange County, No. 17 CVD 758

CHRISTOPHER D. KUBICA, Plaintiff,

v.

WENDY M. MORGAN, Defendant.

Appeal by Plaintiff from orders entered 15 March 2021 and 19 April 2021 by Judge Hathaway Pendergrass in Orange County District Court. Heard in the Court of Appeals 9 February 2022.

Gailor Hunt Davis Taylor & Gibbs, PLLC, by Jonathan S. Melton, for Plaintiff-Appellant.

Jackson Family Law, by Jill Schnabel Jackson, for Defendant-Appellee.

COLLINS, Judge.

¶ 1 Plaintiff appeals the trial court's denial of his motion to dismiss Defendant's motion in the cause for a modification of child support and the parties' consent order for permanent child support. Plaintiff argues that the trial court lacked subject matter jurisdiction over the child support issue because our General Statutes do not permit Defendant to bring a motion in the cause for child support within a claim for

child custody. We affirm the trial court's order.

I. Factual and Procedural Background

¶ 2 Plaintiff Christopher Kubica and Defendant Wendy Morgan were married in July 2000. Two children were born of the marriage, and the parties separated in January 2010. The parties duly executed an Agreement on 27 February 2011 resolving, among other things, child custody and child support. The parties were formally divorced on 27 May 2011.

¶ 3 About six years later, Plaintiff filed a complaint for child custody and a motion for a custody evaluation. Defendant filed an answer and counterclaims, and a motion for a psychological evaluation of Plaintiff. A consent order for permanent child custody was entered on 26 February 2019 wherein Defendant was awarded primary physical custody. On 20 May 2019, Defendant filed a Motion in the Cause to Modify Child Support in the child custody action, seeking to modify the child support provisions in the Agreement ("Motion to Modify").

¶ 4 Plaintiff moved to dismiss Defendant's Motion to Modify under Rules of Civil Procedure 12(b)(1) and 12(b)(6). The trial court heard Plaintiff's motion to dismiss and denied it by written order entered 15 March 2021. The parties entered into a Consent Order for permanent child support on 19 April 2021, resolving Defendant's Motion to Modify.

¶ 5 Plaintiff filed notice of appeal from the denial of his motion to dismiss and the

Consent Order on 30 April 2021.

II. Discussion

¶ 6 Plaintiff's sole argument on appeal is that the trial court erred by denying his motion to dismiss Defendant's Motion to Modify because the trial court lacked subject matter jurisdiction over the child support issue. Plaintiff specifically argues that our General Statutes do not permit Defendant to bring a motion in the cause for child support in a child custody action.

A. Standard of Review

¶ 7 This Court reviews a trial court's ruling on a motion to dismiss for lack of subject matter jurisdiction de novo and freely substitutes its own judgment for that of the trial court. *Doe v. Diocese of Raleigh*, 242 N.C. App. 42, 49, 776 S.E.2d 29, 36 (2015). Questions of statutory interpretation are questions of law and are reviewed de novo. *Brown v. Flowe*, 349 N.C. 520, 523, 507 S.E.2d 894, 896 (1998).

B. Analysis

¶ 8 North Carolina General Statute § 50-13.5 provides that generally "[t]he procedure in actions for custody and support of minor children shall be as in civil actions" and "the words 'custody and support' [in this section] shall be deemed to include custody or support, or both." N.C. Gen. Stat. § 50-13.5(a) (2021). Pursuant to subsection (b),

> An action brought under the provisions of this section may be maintained as follows:

> (1) As a civil action.
>
> (2) [Repealed]
>
> (3) Joined with an action for annulment, or an action for divorce, either absolute or from bed and board, or an action for alimony without divorce.
>
> (4) As a cross action in an action for annulment, or an action for divorce, either absolute or from bed and board, or an action for alimony without divorce.
>
> (5) By motion in the cause in an action for annulment, or an action for divorce, either absolute or from bed and board, or an action for alimony without divorce.
>
> (6) Upon the court's own motion in an action for annulment, or an action for divorce, either absolute or from bed and board, or an action for alimony without divorce.

N.C. Gen. Stat. § 50-13.5(b) (2021).

¶ 9 "In matters of statutory construction, our primary task is to ensure that the purpose of the legislature, the legislative intent, is accomplished." *Elec. Supply Co. v. Swain Elec. Co.*, 328 N.C. 651, 656, 403 S.E.2d 291, 294 (1991) (citation omitted). The General Assembly's intent "is first ascertained from the plain words of the statute." *Id.* (citation omitted).

¶ 10 The language of section 50-13.5(b) contains no indicia that the General Assembly intended subsection (b) to be an exhaustive list of procedural methods by which to maintain an action for child custody and/or child support. The plain language of section 13.5(b) states that "[a]n action brought under the provisions of

this section *may* be maintained" by the methods enumerated in the list. Our Supreme Court has repeatedly interpreted the legislature's use of the word "may" as having a permissive, as opposed to a mandatory, effect. *See, e.g., Campbell v. First Baptist Church of City of Durham*, 298 N.C. 476, 483, 259 S.E.2d 558, 563 (1979) ("We recognize that . . . the use of 'may' generally connotes permissive or discretionary action and does not mandate or compel a particular act." (citation omitted)); *Rector v. Rector*, 186 N.C. 618, 620, 120 S.E. 195, 196 (1923) ("The word 'may' as used in statutes in its ordinary sense is permissive and not mandatory." (citations omitted)). Moreover, the statute does not modify the word "may" with words or phrases like "exclusively," "solely," or "only" to limit the way in which an action for child custody and/or child support may be maintained. Furthermore, the brevity of the list indicates that the legislature did not intend for the list to be exclusive. *See Evans v. Diaz*, 333 N.C. 774, 779, 430 S.E.2d 244, 246-47 (1993) (determining that a "long and specific list" was "obviously intended to be" exhaustive).

¶ 11 The plain language of the statute indicates the legislature's intent to allow actions for child custody and/or child support to be maintained by one of the procedural methods listed, but that an action brought under the provisions of section 50-13.5 "may be maintained" in other ways, including allowing claims for child custody and child support of the same children to be litigated together. *See generally* §§ 50-13.1 through 50-13.7; *see also* § 50-13.5(a) ("the words 'custody and support' shall

be deemed to include custody or support, or both").

¶ 12 Nonetheless, even if section 50-13.5(b) included an exhaustive list of procedural methods by which a child custody and/or child support action must be maintained, the statute does not indicate that a party's failure to file an action by one of the means listed in subsection (b) divests the court of jurisdiction. *See Catawba Cnty. ex rel Rackley v. Loggins*, 370 N.C. 83, 91, 804 S.E.2d 474, 480 (2017) (concluding that the statute clearly and unambiguously imposed no jurisdictional prerequisites where the statute "did not contain jurisdictional requirements" and did "not indicate that a party's failure to file a motion divests the court of jurisdiction[and t]here is no language in either law establishing jurisdictional consequences for failure to follow the statutory provisions"). Accordingly, a failure to use one of the designated procedural methods in subsection (b) is not jurisdictional.

¶ 13 Although the last line of Plaintiff's brief states that "Defendant's motion in the cause failed to state a claim upon which relief could be granted," Plaintiff makes no argument and cites no authority in support of this assertion. Plaintiff has abandoned this issue. *See* N.C. R. App. P. 28(a), (b)(6).

III. Conclusion

¶ 14 The trial court did not err by denying Plaintiff's motion to dismiss Defendant's Motion to Modify for lack of subject matter jurisdiction.

AFFIRMED.

Judges ZACHARY and CARPENTER concur.

Report per Rule 30(e).