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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-881

Filed 04 April 2023

Johnston County, No. 22 CVD 2249

LOGAN K. SELPH, Plaintiff,

v.

DANIEL SELPH, Defendant.

Appeal by defendant from order entered 11 July 2022 by Judge Mary Howard Wells in Johnston County District Court. Heard in the Court of Appeals 22 March 2023.

Mobley Law Office, P.A., by Marie H. Mobley for the plaintiff-appellee.

Tharrington Smith, LLP, by Steve Mansbery for the defendant-appellant.

TYSON, Judge.

Daniel Selph (“Defendant”) appeals from the trial court’s 11 July 2022 order awarding permanent custody of a minor child to Logan K. Selph (“Plaintiff”). We dismiss Defendant’s appeal.

I. Background

Plaintiff and Defendant were married on 9 December 2017 and separated on

20 July 2021. They are the natural parents of one minor child, (“C.S.”), born on 25 June 2020, who is the subject of this custody appeal.

Plaintiff was represented by counsel and Defendant was *pro se* when the Selphs bargained for and voluntarily agreed upon a settlement on permanent custody. This agreement was reduced to writing, signed by all parties before a notary, presented to the court with affidavits, and was entered as a Consent Order in the Johnston County Clerk of Superior Court on 11 July 2022.

The Consent Order contained the following finding of fact:

The parties waive examination as set out in McIntosh v. McIntosh (sic), 74 N.C. App. 554 (1985) by their notarized signatures hereto. Specifically, they state as follows:

- a. They have entered into this agreement freely, knowingly, and voluntarily.
- b. They have neither been pressured, threatened or coerced into entering this agreement and their consent hereto is freely and voluntarily given.
- c. The parties acknowledge that they have read and understand this Order and that they agree to be bound by the same, knowing that violations of the same will subject them to all civil remedies of the Court including[,] but not limited to[,] the contempt powers of the Court.
- d. The Plaintiff was represented by counsel and is satisfied with the legal services her counsel has provided to her in this matter.

Defendant executed a notarized affidavit of consent on 6 July 2022 and Plaintiff executed a notarized affidavit of consent on 8 July 2022. The trial court’s Consent Order awarded primary custody of C.S. to Plaintiff and provided her discretion over Defendant’s visitation. Defendant appeals.

II. Jurisdiction

This Court possesses jurisdiction pursuant to N.C. Gen. Stat. § 7A-27(b) (2021).

III. Issues

Defendant argues the trial court erred by awarding Plaintiff discretionary authority for her to decide when, where, and if Defendant has visitation with C.S.

IV. Waiver

The Selphs' agreement on custody and visitation of C.S. was voluntarily agreed to, reduced to writing, presented to the court with consent representations by both parties, and was entered as a Consent Order. "A duly agreed to and entered consent order in a judicial proceeding is a final determination of the rights adjudicated therein and generally is a waiver of a consenting party's right to challenge the adjudication by appealing therefrom." *In re Foreclosure of Williams*, 88 N.C. 395, 396, 363 S.E.2d 380, 381 (1988) (citation omitted).

By agreeing to and acknowledging the terms of the Consent Order to the court, Defendant waived his right to challenge the agreement on appeal. *Id.* Defendant does not argue any basis in law or equity to relieve him from his express agreement or its terms, nor does he seek a modification thereof on the basis of a "substantial change in circumstances affecting the welfare of the child." *Pulliam v. Smith*, 348 N.C. 616, 619, 501 S.E.2d 898, 899 (1998) (citation omitted); *see* N.C. Gen. Stat. § 50-13.7(a) (2021). Defendant's argument is without merit and his appeal is dismissed.

V. Conclusion

SELPH V. SELPH

Opinion of the Court

Defendant cannot complain about terms he expressly agreed to, which were entered by the trial court by his express consent on appeal. Defendant has waived his right to challenge the order on appeal. Defendant's appeal is dismissed. *It is so ordered.*

DISMISSED.

Judges GRIFFIN and FLOOD concur.

Report per Rule 30(e).