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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-170

Filed 20 February 2024

Mecklenburg County, No. 22CVD601209

C.P., Plaintiff,

v.

DANIEL PARKER, Defendant.

Appeal by defendant from order entered 14 July 2022 by Judge Paulina Havelka in Mecklenburg County District Court. Heard in the Court of Appeals 29 November 2023.

Sodoma Law, PLLC, by Amy Simpson, for plaintiff-appellee.

Rech Law, P.C., by Kate A. Rech and Alaina T. Prevatte, for defendant-appellant.

DILLON, Chief Judge.

This case arises from a domestic violence incident between parent and child.

I. Background

Sixteen-year-old C.P. (“Daughter”) brought a Motion for Domestic Violence Protection Order (“DVPO”) against her father Daniel Parker (“Father”). She also filed a Juvenile Petition for Emancipation from Father and her mother (“Mother”).

The evidence at the hearing tended to show the following. On 1 March 2022, Daughter, Father, and Mother had dinner to celebrate Mardi Gras at a local restaurant, where Father consumed five alcoholic drinks. Daughter drove the family home from dinner. There was a physical altercation as Daughter was parking the car at home, resulting in Daughter crashing the car into the garage. Daughter testified that Father hit and strangled her as she was attempting to park the car at home. Father testified that Daughter attacked him first and he only hit Daughter to protect himself. The police were called to the home but did not arrest anyone.

On 26 May 2022, Daughter filed for a DVPO against Father. A temporary *ex parte* DVPO was allowed. At the conclusion of a hearing on the matter held on 1 July 2022, the trial court indicated that it would continue the temporary DVPO while it considered the matter, but it signed the wrong AOC form. The trial court entered its order on an AOC form, used for a final DVPO, without making any written findings or conclusions *rather than* on the AOC form used for the continuance of a prior temporary DVPO. Two weeks later, on 14 July 2022, the trial court entered another DVPO Order with written findings and conclusions. Father appeals.

Additionally, eight months later, on 28 March 2023, the trial court granted Daughter's Juvenile Petition for Emancipation.

During this appeal, counsel on both sides of this dispute have filed motions for sanctions. In our discretion, we deny those motions.

II. Analysis

Father presents multiple arguments on appeal, which we address in turn.

A. Subject Matter Jurisdiction for 14 July 2022 DVPO

Father argues the trial court erred in entering the DVPO because the court lacked jurisdiction at that time. Specifically, he argues that since the trial court “entered” a final DVPO on 1 July 2022 at the conclusion of the hearing that day, the 14 July 2022 DVPO must be considered a modification of the 1 July 2022 DVPO...and since Father was not provided adequate notice about a possible modification, the trial court lacked jurisdiction on 14 July 2022 to modify its prior 1 July 2022 order.

The existence of jurisdiction is a question of law that can be raised on appeal and is reviewed *de novo*. *Wing v. Goldman Sachs Tr. Co., N.A.*, 382 N.C. 288, 297, 876 S.E.2d 390, 398 (2022).

Jurisdiction is the legal power and authority of a court to make a decision that binds the parties to any matter properly brought before it. The court must have personal jurisdiction and, relevant here, subject matter jurisdiction or “jurisdiction over the nature of the case and the type of relief sought” in order to decide a case. The legislature, within constitutional limitations, can fix and circumscribe the jurisdiction of the court of this State. Where jurisdiction is statutory and the Legislature requires the Court to exercise its jurisdiction in a certain manner, to follow a certain procedure, or otherwise subjects the Court to certain limitations, an act of the Court beyond these limits is in excess of its jurisdiction.

Catawba Cnty. ex rel. Rackley v. Loggins, 370 N.C. 83, 88, 804 S.E.2d 474, 478 (2017) (cleaned up). In our General Statutes, the legislature limits jurisdiction over DVPOs, stating that “[u]pon the written request of either party at a hearing after notice or

service of process, the court may modify any protective order entered pursuant to [Chapter 50B] after a finding of good cause.” N.C. Gen. Stat. § 50B-3(b2) (2022).

Here, the trial court modified its 1 July Order when it entered its 14 July Order. At the close of the DVPO hearing on 1 July 2022, the trial court orally indicated that it intended to take the matter under advisement and merely continue the status quo under the prior temporary DVPO, stating as follows:

[T]here’s a lot more findings of fact in this case than I wish to prepare in a format of a domestic violence protective order. So I’m going to continue the ex parte, [on] your form [AOC-CV-306], with a draft of the order.

...

This order is going to be in place for one year, unless all parties participate in third-party therapy and reunification is what all three request. ... But minimum six [months], maximum one [year]. And that’s only if everybody participates in therapy voluntarily to reunify the family.

...

Clearly, it appears the trial court intended to enter a continuance of the *ex parte* DVPO. However, the court used the form AOC-CV-306 (titled “Domestic Violence Order of Protection Consent Order”), whereas continuance orders are usually completed on the form AOC-CV-316 (titled “Order Continuing Domestic Violence Hearing and Ex Parte Order”).¹ A trial court’s written order typically controls over its oral rendition from the bench. *See In re R.S.M.*, 257 N.C. App. 21, 23, 809 S.E.2d

¹ The 1 July DVPO hearing had already been continued once before (on 7 June 2022), and the correct continuance form (AOC-CV-316) was used at that time.

134, 135 (2017) (“Any conflict between the announcement of judgment in open court and the written order is resolved in favor of the written order.”)

On 14 July 2022, the trial court entered another order using form AOC-CV-306 (the DVPO Consent Order form) again. That order included extensive findings of fact, as the trial court intended to do with the extra time to prepare the form following the 1 July hearing. In any event, because the earlier 1 July 2022 DVPO lacked any findings, most notably that Father had committed an act of domestic violence, that DVPO could not act as a final DVPO. *See Kenton v. Kenton*, 218 N.C. App. 603, 606, 724 S.E.2d 79, 82 (2012) (holding that a final DVPO without any finding that the defendant committed an act of domestic violence is void *ab initio*).

It is clear from the Record that the trial court inadvertently used the wrong AOC form at the conclusion of the 1 July 2022 hearing when it intended to continue the terms of the temporary DVPO while it took the matter under advisement. We, therefore, conclude the trial court had jurisdiction to enter the 14 July 2022 DVPO.

B. Daughter’s Living Arrangements in DVPO

Father argues the trial court erred by ordering that Daughter not be required to live with her parents, including a parent not subject to the DVPO.

Whenever, during the course of litigation it develops that the relief sought has been granted or that the questions originally in controversy between the parties are no longer at issue, the case should be dismissed, for courts will not entertain or proceed with a cause merely to determine abstract propositions of law.

In re Peoples, 296 N.C. 109, 147, 250 S.E.2d 890, 912 (1978). However, because Daughter was legally emancipated in March 2023, her living arrangements with or without her parents are no longer relevant. Thus, we conclude this issue is moot, and we will not proceed with an analysis of either party's legal arguments on this issue.

C. Guardian Ad Litem Appointment

Father argues the trial court erred in finding Daughter's guardian ad litem ("GAL") was properly appointed, thus rendering the 14 July DVPO void. We disagree.

Daughter's GAL is her adult half-sister Emily Meeker. There was a clerical error with the initial GAL appointment, where Ms. Meeker was accidentally appointed as Father's GAL instead of Daughter's GAL.² The error was noted before the 1 July 2022 DVPO hearing.

Our Rules of Civil Procedure state that

[c]lerical mistakes in judgments, orders or other parts of the record and errors therein arising from the oversight or omission may be corrected by the judge at any time on his own initiative or on the motion of any party and after such notice, if any, as the judge orders.

N.C. R. Civ. Pro. 60(a). A trial court's order correcting a clerical error is reviewed for abuse of discretion. *In re Estate of Meetze*, 272 N.C. App. 475, 479, 847 S.E.2d 220, 224 (2020).

Here, the parties clearly knew which party the GAL intended to represent

² As a competent adult, Father did not require a GAL. See N.C. R. Civ. Pro. 17(b).

despite the clerical error. Thus, we cannot say it was an abuse of discretion to allow for correction of the clerical mistake appointing the GAL to the wrong party.

D. Failure to Disqualify Daughter's Counsel

Father contends the trial court erred in failing to disqualify Daughter's counsel. We disagree.

"Decisions regarding whether to disqualify counsel are within the discretion of the trial judge and, absent abuse of discretion, a trial judge's ruling on a motion to disqualify will not be disturbed on appeal." *Travco Hotels, Inc. v. Piedmont Nat. Gas Co., Inc.*, 332 N.C. 288, 295, 420 S.E.2d 426, 430 (1992).

Father cites the North Carolina Rules of Professional Conduct in his argument, specifically Rules 1.7 (Conflict of Interest: Current Clients), 1.9 (Duties to Former Clients), 1.10 (Imputation of Conflicts of Interest), and 3.7 (Lawyer as Witness).

Rule 1.7 regulates conflicts of interest between current clients, stating:

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
 - (1) the representation of one client will be directly adverse to another client; or
 - (2) the representation of one or more clients may be materially limited by the lawyer's responsibilities to another client, a former client, or a third person, or by a personal interest of the lawyer.

N.C. R. Pro. Conduct 1.7(a) (2022).

Rule 1.9 governs lawyers' duties to former clients, stating the following:

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information is contained in the public record, was disclosed at a public hearing, or was otherwise publicly disseminated ...

N.C. R. Pro. Conduct 1.9(c)(1) (2022).

Rule 1.10 provides when one's conflict is imputed to other attorneys in her firm:

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer ...

N.C. R. Pro. Conduct 1.10(a) (2022).

Rule 3.7 governs when a lawyer can also serve as a witness:

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

N.C. R. Pro. Conduct 3.7(a)–(b) (2022).

In the case at bar, Daughter is represented by Sodoma Law. At the outset of the case, Daughter was represented by Virginia Conley of Sodoma Law. Attorney Conley filed Daughter’s first lawsuit against Father. But Ms. Conley served as both Daughter’s attorney and her GAL (which is not allowed), so the first lawsuit was dismissed. Attorney Amy Simpson, also of Sodoma Law, became Daughter’s new attorney in her action against Father. Multiple attorneys at Sodoma Law who worked on Daughter’s case alongside Ms. Conley continued to work on the case after Ms. Simpson took over. Ms. Simpson told the trial court she and Ms. Conley were “Chinese walled off” from each other, and Ms. Simpson did not have access to any of Ms. Conley’s work, notes, impressions, or work products, nor had she seen Ms. Conley physically since the case began.

Father’s concerns regarding Ms. Conley’s dual role as advocate and GAL were rendered moot when Ms. Conley withdrew as counsel and Daughter’s lawsuit was re-filed. Father’s remaining concerns are without merit in this case. Thus, we cannot say the trial court abused its discretion in failing to disqualify Ms. Simpson and Sodoma Law as Daughter’s counsel.

AFFIRMED.

Judges MURPHY and GORE concur.

Report per Rule 30(e).