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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-398

Filed 4 June 2024

Chatham County, No. 19 CVD 963

TIMOTHY SHANE HOFFMAN, Plaintiff,

v.

MARISSA CURRY, Defendant.

Appeal by respondent-mother from orders entered 9 and 21 February 2022 by Judge Sherri T. Murrell in Chatham County District Court. Heard in the Court of Appeals 15 November 2023.

Bourlin & Davis, P.A., by Camilla J. Davis, for the petitioner-appellee.

Gailor Hunt Davis Taylor & Gibbs, PLLC, by Jonathan S. Melton, for the respondent-appellant.

STADING, Judge.

Respondent-mother (“Mother”) appeals from an order granting petitioner-father (“Father”) custody of the parties’ minor child and from an order holding Mother in civil contempt. For the reasons below, we lack the jurisdiction to address the custody order and affirm the contempt order.

I. Background

Mother and Father married in 2013 and had one child (“Daughter”), born in May 2016. The parties separated in December 2016. Having had no contact with Daughter since the separation, Father initiated this action for child custody in July 2017. Mother answered and counterclaimed for child custody. On 12 March 2019, the parties entered into a custody agreement giving Mother primary physical custody and Father visitation. The trial court entered additional orders regarding Father’s visitation; however, it later found that Mother generally disregarded them.

On 12 November 2021, Father filed a motion alleging Mother had systematically violated a renewed visitation order that the trial court had entered the previous month. He accused Mother of (1) disparaging Father in Daughter’s presence, (2) purposefully creating circumstances from which Daughter would not easily separate from Mother, and (3) failing to participate in regularly scheduled parent coordinator meetings. In response, the trial court held a hearing on 17 November 2021 to consider additional reports from Daughter’s therapist and the parenting coordinator. After considering the reports, the trial court then entered a new order requiring Mother to comply with its past orders and to allow Father’s visitations to move forward. This order also forbade Mother to “physically, emotionally, or mentally engage in any conduct intended to keep the minor child from exiting her vehicle and going with [Father] for visitation.”

On 7 February 2022, the trial court held a hearing to determine child custody. At the beginning of the hearing, Mother requested a continuance because she had not

retained new trial counsel. The trial court denied the continuance motion. It then heard testimony from the parent coordinator and Father. Mother, who is a licensed attorney and practices family law, was permitted to cross-examine both individuals. Subsequently, Mother took the stand and was questioned by the trial court and Father's attorney. Thereafter, the trial court verbally issued a ruling.

On 9 February 2022, the trial court entered a temporary custody order (custody order) giving sole legal and physical custody to Father, reasoning that any delay pending its consideration of the therapist's records would run contrary to the child's best interests. The custody order contained findings of facts documenting Mother's efforts to block Father's visitation and his attempts to form a relationship with Daughter. The trial court then ordered Mother to deliver Daughter to the therapist's office on 10 February 2022 for the transfer of custody to Father. The order provided that the next hearing on this matter would be held on 11 March 2022 at 9:00 AM.

On 10 February 2022, Father filed a motion for contempt after Mother failed to bring Daughter to the therapist's office. The trial court held a hearing on 21 February 2022. Mother testified she could not deliver Daughter because she hid under the bed, kicking, screaming, and crying. Mother's sister corroborated this version of events. The trial court found their testimony unpersuasive, however, and entered a commitment order for civil contempt (contempt order) on 21 February 2022 that sentenced Mother to thirty days in jail. Mother entered notice of appeal with respect to both orders.

II. Jurisdiction

As analyzed below, for this Court to have jurisdiction to review a custody order, it must either be a final judgment or affect a substantial right. *See* N.C. Gen. § Stat. 7A-27(b)(2)–(3) (2023). *See Sood v. Sood*, 222 N.C. App. 807, 808, 732 S.E.2d 603, 606 (Noting that, in general, there is no right to an immediate appeal from interlocutory orders. But exceptions exist if the order is final as to some claims or parties, and the trial court certifies pursuant to N.C. Gen. Stat. § 1A-1, Rule 54(b) that there is no just reason to delay the appeal, or the order deprives the appellant of a substantial right that would be lost unless immediately reviewed.).

With respect to a civil contempt order, this Court has jurisdiction to consider such appeal because it is a final judgment. N.C. Gen. § Stat. 7A-27(b)(2); *see id.* § 5A-24 (civil contempt appeals). “[I]n civil contempt matters, appeal is from the district court to this Court.” *Hancock v. Hancock*, 122 N.C. App. 518, 522, 471 S.E.2d 415, 418 (1996) (citation omitted).

III. Interlocutory Appeal

Mother argues for immediate appealability of the custody order. Father disagrees, arguing that it is an interlocutory order that does not affect a substantial right of Mother. The relevant provisions of N.C. Gen. Stat. § 7A-27(b) require that the custody order be either (1) a “final judgment” or (2) an “interlocutory order . . . that . . . [a]ffects a substantial right” for this Court to hear Mother’s appeal on either

basis. N.C. Gen. § Stat. 7A-27(b)(2)–(3) (2023). For the reasons below, this Court holds that it lacks jurisdiction to hear Mother’s appeal of the interlocutory custody order.

A. Judgment Finality

This Court recognizes the well-settled principle that a final judgment “disposes of the cause as to all the parties [and] leav[es] nothing to be judicially determined between them in the trial court.” *Veazey v. Durham*, 231 N.C. 357, 361–62, 57 S.E.2d 377, 381 (1950) (citations omitted). The trial court’s specific labeling of the custody order is irrelevant here; instead, this Court reviews the distinction between a temporary or permanent order as a question of law *de novo*. *File v. File*, 195 N.C. App. 562, 567, 673 S.E.2d 405, 409 (2009).

A trial court’s custody order is considered temporary if it: (1) is entered without prejudice to either parent, (2) specifies a “clear and specific reconvening time” with a “reasonably brief” period of time between the order and the reconvening hearing, or (3) does not determine all of the issues. *Senner v. Senner*, 161 N.C. App. 78, 81, 587 S.E.2d 675, 677 (2003) (citations omitted). If the custody order does not meet any of these criteria, this Court considers it a permanent order. *See Peters v. Pennington*, 210 N.C. App. 1, 14, 707 S.E.2d 724, 734 (2011); *see also, e.g., Woodring v. Woodring*, 227 N.C. App. 638, 644, 745 S.E.2d 13, 19 (2013) (abstaining from visitation issue until future hearing); *Graham v. Jones*, 270 N.C. App. 674, 678–79, 842 S.E.2d 153, 158 (2020) (holding custody order prejudicial to paternal grandparents); *Tillman v.*

Jenkins, 289 N.C. App. 452, 458–59, 889 S.E.2d 504, 510 (2023) (delineating reasonableness of “clear and specific reconvening time”).

Here, the custody order left open certain outstanding custody issues pending their ultimate determination. For example, it lacks holiday allocations, summer schedules, or any provisions explaining how or what information Mother and Father must share. Just before issuing the custody order, the trial court sought to hear from Daughter’s therapist before making a final custody decision. The custody order required Mother and Father to attend weekly reunification therapy sessions “to address issues of parental alienation and [the child’s] withholding” from one another, all while “retain[ing] jurisdiction” over the case going forward. *Cf. Marsh v. Marsh*, 259 N.C. App. 567, 571, 816 S.E.2d 529, 532 (2018) (reasoning that the trial court and parties’ collective intent to continue custody litigation abrogated legal prejudice to either parent). Although the custody order did not specify a termination date, it did specify a reconvening date as 11 March 2022. A month later falls well below any of this Court’s past fact-specific thresholds of a “reasonably brief” period of time. *See, e.g., Senner*, 161 N.C. App. at 81, 587 S.E.2d at 677 (twenty months as reasonably brief). *But see, e.g., Brewer v. Brewer*, 139 N.C. App. 222, 228, 533 S.E.2d 541, 546 (2000) (one year as “not reasonably brief”). Because the custody order left open certain permanent-custody issues, resolved to continue the parents’ custody battle, and stated a clear reconvening date within a month of its issuance, this Court

considers it a temporary order and thus interlocutory. We therefore hold that the custody order is not a “final judgment” under N.C. Gen. § Stat. 7A-27(b)(2).

B. Substantial Right

In the alternative, Mother argues that the custody order affects a substantial right because Daughter’s abrupt removal from her only home would substantially affect Daughter’s wellbeing. Generally, a temporary child custody order “does not affect any substantial right which cannot be protected by timely appeal from the trial court’s ultimate disposition on the merits.” *Brewer*, 139 N.C. App. at 227, 533 S.E.2d at 546 (citations and ellipses omitted). This Court recognizes that a child’s wellbeing affects her substantive rights. *See McConnell v. McConnell*, 151 N.C. App. 622, 625, 566 S.E.2d 801, 804 (2002).

Aside from Mother and her sister’s testimony, the record shows no evidence to support Mother’s contention. Indeed, the record shows comparably plausible evidence that Father’s physical custody of Daughter would not harm her wellbeing. Father has shown a steady pattern of required therapy compliance regarding Daughter. He has demonstrated the employment and financial means necessary to provide a reasonably comfortable lifestyle for Daughter. Moreover, Father has shown patience, consistency, and persistence in his efforts to have a positive relationship with Daughter. Thus, because Mother cannot present evidence of threats to Daughter’s wellbeing sufficient to overrule trial court’s reasonable determination otherwise, this Court declines to do so as well.

IV. Petition for Writ of Certiorari

Mother requests that this Court issue writs of certiorari to review both the temporary custody and contempt orders under N.C. R. App. P. 21(a)(1). This Court may issue discretionary writs in “appropriate circumstances” if a party has “fail[ed] to take timely action” or if the interlocutory order otherwise has “no right of appeal.” N.C. R. App. P. 21(a)(1). But an appellant “abandon[s]” any issue on appeal for which she makes “no reason or argument” in her brief or at trial. *K2HN Constr. NC, LLC v. Five D Contrs., Inc.*, 267 N.C. App. 207, 213, 832 S.E.2d 559, 564 (2019) (quoting N.C. R. App. P. 28(b)(6)). Because Mother puts forth no substantive argument or reason in her brief for why we should exercise this discretion beyond a brief request to do so, we hold that she has abandoned it as an issue on appeal.

V. Civil Contempt

We next consider whether the trial court erred by finding her in civil contempt through its contempt order. Mother argues the trial court erred in issuing the contempt order by failing to make findings of fact that her contempt conviction was in the child’s best interest. She also alleges a lack of the required “willful” intent in failing to comply with the custody order. *See Hancock*, 122 N.C. App. at 523, 471 S.E.2d at 418. Both arguments are misplaced.

A. Child’s Best Interests

First, Mother cites *Grissom v. Cohen*, 261 N.C. App. 576, 821 S.E.2d 454 (2018), to invalidate a contempt order that “fails to contain any findings that the best

interests and welfare of the child would be served by jailing the mother if the child refuses to visit with his father.” *Id.* at 592–93, 821 S.E.2d at 464 (citing *Mintz v. Mintz*, 64 N.C. App. 338, 340, 307 S.E.2d 391, 393 (1983)). But *Grissom* and *Mintz* addressed *children* who would not comply with visitation orders enforceable against their parents, not *parents* who themselves would not comply with a valid custody order. As Father notes, the contempt order did not change the provisions of the custody order giving him temporary custody—it merely sanctioned Mother for not abiding by the custody order’s terms.

Regardless, any trial court order involving “child custody and visitation, even a contempt order, must *consider* the [child’s] best interests” in its reasoning. *Id.* at 595, 821 S.E.2d at 466 (emphasis added). The contempt order referenced Mother’s willful failure to comply with the trial court’s earlier custody order despite her financial means and legal training. In reprimanding Mother for her “frustrat[ion of] and [non]compl[iance] with [its] Orders,” the trial court listed her refusals to:

- a. [P]articipate in custody mediation in a timely manner;
- b. [M]ake the minor child available for visits with [Father];
- c. [R]emove the child from her vehicle to effectuate visits with [Father]; [or]
- d. [C]ommunicate with and follow directives [of] the Parenting Coordinator.

The trial court did not need to expressly state that Mother’s civil contempt conviction was in the child’s best interest to adequately consider that interest.

Assessing the whole record, the trial court reviewed findings of fact and their supporting evidence in the custody order to determine Mother’s systematic misconduct.¹ It found that the child’s best interests included “a relationship with her father” and excluded “her mother[’s] . . . obstruct[ion] . . . [of that] relationship.” These findings show that the trial court determined the child’s interests were best served by her placement with Father in the near term. The contempt order’s findings—particularly the four listed above—illustrate Mother’s longstanding failure to comply with prior valid court orders. We therefore hold that the trial court properly

¹ The most relevant of these findings include:

61. [Mother] has systematically endeavored to keep [Father] from having a relationship with [Daughter] even before [Daughter] was conceived.

62. The record is clear that [Mother], as an attorney, shortly before their marriage presented [Father], with a prenuptial agreement that include[ed] a provision “waiving” his custodial rights to any children the parties might have.

63. The record is clear that [Mother] has repeatedly both actively and passively failed to comply with visitation provisions of custody orders, to include a consent order, in this matter. Some examples include, standing in the door way of her vehicle between [Father] and [Daughter] making it difficult for [Father] to talk to [Daughter] or remove her from [Mother]’s vehicle for a visit, failing to attend visits, canceling visits with little or no notice, failing to assist in removing [Daughter] from her car seat when she was a toddler, failing to dress [Daughter] appropriately for the weather, failing to encourage [Daughter] to engage in the visit and telling [Daughter] [Father] is a bad person, and that [Mother] does not like [Father].

64. Until this past year, [Daughter] had not been told that [Father] was her father.

65. The Parent Coordinator and [Daughter’s] therapist recommended that [Daughter] be told that [Father] was her father in a therapy session with both parties present.

66. [Mother] acted to delay the scheduling of said therapy session. When the session was finally scheduled, [Mother] told [Daughter] that [Father] was [Daughter’s] father on the way to the therapy session, rather than in a therapeutic setting as recommended and planned for by professionals involved in the case.

considered the child’s best interest and did not err by excluding specific language from the contempt order.

B. Willfulness

Next, Mother argues that Daughter personally refused to visit Father and that she could not have delivered Daughter to Father without physical force. Under N.C. Gen. Stat. § 5A-21(a), a defendant commits civil contempt if she “willful[ly]” disregards a trial court’s order. N.C. Gen. Stat. § 5A-21(a)(2a) (2023). This Court has long understood “[w]illful . . . disobedience” to entail “knowledge and . . . stubborn resistance” beyond a mere “intention to do [some]thing.” *Hancock*, 122 N.C. App. at 523, 471 S.E.2d at 418 (citation omitted). Willfulness implies a mental state of “purpose[fulness] and deliberat[ion]” that amounts to “a bad[-]faith disregard for authority and the law.” *Id.* (citation omitted). When supported by competent evidence, a trial court’s finding of fact that a defendant committed civil contempt binds this Court on appeal even if the record may show contradictory evidence. *Id.* at 527, 471 S.E.2d at 420.

In *Hancock*, this Court reversed a trial court’s holding that the plaintiff-mother at issue “acted purposefully and deliberately or with knowledge and stubborn resistance to prevent defendant[-father]’s visitation with the child.” *Id.* at 525, 471 S.E.2d at 419. The father alleged that the mother violated their mutual custody agreement when she informed him on multiple occasions that their son did not want to visit him. *Id.* at 521, 471 S.E.2d at 417. The *Hancock* Court disagreed that the

mother's passive "inaction in not requiring the minor child to visit with the [father]" amounted to active contempt. *Id.* at 523, 471 S.E.2d at 419. The Court held that absent any showing that the mother had actively "encouraged [the child's] refusal" to visit his father or physically "attempted in any way to prevent the visitation," her "improper" actions did not constitute the sort of "willfulness" contemplated by N.C. Gen. Stat. § 5A-21. *Id.* at 525–26, 471 S.E.2d at 419–20.

As evidence, Mother points to her 21 February 2022 testimony, in which she asserted she could not bring Daughter to the therapist's office because she "hid[] under the bed, kicking and screaming." Mother claimed she could not "physically get [Daughter] into the vehicle to take her because she's pretty strong, and [was] kicking and screaming" throughout. Mother also offers her sister's corroborative testimony about Daughter's behavior. The trial court nevertheless weighed more heavily Mother's longstanding hindrance of Father's visitation rights and noncompliance with its prior custodial orders. *See Grissom*, 261 N.C. App. at 587, 821 S.E.2d at 461 (declining to "re-weigh . . . evidence" that the trial court assessed in its discretion, regardless of "whether it was a written document or live testimony"). Unlike the *Hancock* plaintiff, though, this record demonstrates Mother's attempts to actively interfere with Father's visitation rights. *See Woncik v. Woncik*, 82 N.C. App. 244, 248, 346 S.E.2d 277, 279 (1986) ("[I]nterference so pervasive as to harm the child's close relationship with the noncustodial parent disregard[s] the [child's] best interests.") (ellipses omitted). Thus, competent evidence supports the trial court's

conclusion that Mother willfully disobeyed the trial court's order. It did not err by finding her in civil contempt.

VI. Conclusion

Based on the rationale discussed above, this Court declines to grant Mother's writ of certiorari to review the trial court's custody order but affirms its contempt order.

AFFIRMED.

Judge GRIFFIN concurs.

Judge MURPHY concurs in part and dissents in part to the extent that this Court denies the petitioner's petition for writ of certiorari.

Report per Rule 30(e).