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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1049

Filed 15 October 2024

Mecklenburg County, No. 16 CVD 19293

ROBIN ADAMS, Plaintiff,

v.

JEFFERY ADAMS, Defendant.

Appeal by defendant from order entered 14 February 2023 by Judge Elizabeth T. Trosch in Mecklenburg County District Court. Heard in the Court of Appeals 13 August 2024.

Amy Elizabeth Simpson and Caitlin H. Hickman for plaintiff-appellee.

James, McElroy & Diehl, P.A., by Preston O. Odom, III, Haley E. White, and Kristin J. Rempe, for defendant-appellant.

ZACHARY, Judge.

This appeal arises from an alimony order entered by a substitute judge following the retirement of the district court judge who presided over the alimony hearing. Defendant Jeffery Adams appeals from the trial court's alimony order, which Plaintiff Robin Adams acknowledges must be vacated and remanded. After careful review, we agree. Thus, we vacate and remand for a new trial.

On 17 March and 30 November 2022, the alimony matter in the present case came on for hearing before the Honorable Tracy Hewett in Mecklenburg County District Court. Following the hearing, on 20 December 2022, Judge Hewett sent an email to the parties' respective counsel, in which she included "a non-exclusive list" of written findings of fact. Judge Hewett directed counsel to work together to draft additional findings and to prepare a completed order for her to enter, specifically noting that "there are missing pieces to this that I am asking to be filled in based on the evidence provided."

However, the parties were not able to agree upon a proposed order before Judge Hewett retired on 31 December 2022. Pursuant to Rule 63 of the North Carolina Rules of Civil Procedure, the chief judge of a district may perform the duties of another district court judge in a pending matter upon the original district court judge's retirement: "If by reason of . . . retirement, . . . a judge before whom an action has been tried or a hearing has been held is unable to perform the duties to be performed by the court . . . after a . . . hearing is otherwise concluded, then those duties, including entry of judgment, may be performed" by the chief judge of the district. N.C. Gen. Stat. § 1A-1, Rule 63 (2023). Accordingly, this task fell to the Honorable Elizabeth T. Trosch, as Chief Judge of the Mecklenburg County District Court.

Our Supreme Court recently explained that "a substitute judge who did not preside over the matter lacks the power to find facts or state conclusions of law." *In*

re K.N., 381 N.C. 823, 829, 874 S.E.2d 594, 599 (2022). However, under Rule 63, a substitute judge may nevertheless “sign[] and enter[] an order where the findings of fact and conclusions were made by the retired judge” because, in that situation, a substitute judge “act[s] ministerially, merely signing an order, for which findings of fact and conclusions had been made by the unavailable judge.” *Id.* at 829–30, 874 S.E.2d at 599. Alternatively, a substitute judge “could choose to grant a new trial or hearing for the parties.” *Lange v. Lange*, 357 N.C. 645, 648, 588 S.E.2d 877, 879 (2003).

Cognizant of these limitations, Chief Judge Trosch emailed the parties on 23 January 2023 and informed them: “If you have agreed to the form and substance of the order as accurately reflecting the settled facts, conclusions and decree already given by Judge Hewett, then I can sign the order.” The parties agreed to and submitted a proposed alimony order which contained only those findings of fact and conclusions of law made by Judge Hewett in her email, which Chief Judge Trosch then signed. The order was entered on 14 February 2023. Defendant filed timely notice of appeal.

Before this Court, Defendant argues—and Plaintiff concedes—that the order from which Defendant appeals contains insufficient findings of fact and conclusions of law to support the alimony award as determined by Judge Hewett before her retirement. Alimony comprises “two separate inquiries[:] whether a spouse is entitled to alimony and if so, the amount.” *Klein v. Klein*, 290 N.C. App. 570, 599, 892 S.E.2d

894, 916 (2023) (cleaned up). “The court shall award alimony to the dependent spouse upon a finding that one spouse is a dependent spouse, that the other spouse is a supporting spouse, and that an award of alimony is equitable after considering all relevant factors,” including the 16 factors set out in subsection (b). N.C. Gen. Stat. § 50-16.3A(a).

When entering an award of alimony, “the trial court’s findings must be sufficiently specific to allow the reviewing court to determine if they are supported by competent evidence and support the trial court’s award.” *Myers v. Myers*, 269 N.C. App. 237, 256, 837 S.E.2d 443, 457 (2020) (citation omitted). In this case, it is undisputed that the findings of fact and conclusions of law made by Judge Hewett were insufficient, as reflected in her acknowledgment that “there are missing pieces to this that I am asking to be filled in based on the evidence provided.” However, Chief Judge Trosch lacked the authority to make additional findings and conclusions without conducting a new hearing. *See Lange*, 357 N.C. at 648, 588 S.E.2d at 879.

Given that the findings of fact and conclusions of law in the order from which Defendant appeals are insufficient to support the award of alimony, and as the trial court would be without authority to make additional findings of fact and conclusions of law without conducting a new hearing, we must vacate and remand for further proceedings and the entry of a new alimony order.

VACATED AND REMANDED.

Judges CARPENTER and WOOD concur.

ADAMS V. ADAMS

Opinion of the Court

Report per Rule 30(e).