

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1055

Filed 5 November 2024

Wake County, No. 19-CVD-4399

JODIE ROORDA, Plaintiff,

v.

BRENDAN HUKILL, Defendant.

Appeal by Plaintiff from order entered 4 April 2023 by Judge J. Brian Ratledge in Wake County District Court. Heard in the Court of Appeals 14 August 2024.

New Direction Family Law, by Attorney Christopher R. Hicks, for the plaintiff-appellant.

Brendan Hukill, pro se defendant-appellee, no brief filed.

STADING, Judge.

Jodie Roorda (“Mother”) appeals the trial court’s order granting temporary child custody and an order for civil contempt dated 4 April 2024. After a comprehensive review, we affirm the trial court’s contempt order.

I. Background

Mother and Brendan Hukill (“Father”) married on 23 August 2001, separated on 12 October 2014, and divorced on 26 February 2016. During their marriage, Mother and Father had two children. One child reached the age of majority, while the other has not. The present appeal concerns the latter child (“Daughter”).

In January 2015, Mother and Father executed a “Memorandum of Mediated Settlement Agreement,” which addressed child custody. The agreement, neither incorporated into their divorce decree nor any other court order, granted the parties joint legal custody and equal physical custody of the minor children. It also included provisions for shared holidays, child exchanges, and allowed modifications to the schedule upon mutual agreement.

On 4 April 2019, Mother filed a “Complaint for Temporary and Permanent Child Custody, Motion for Emergency Child Custody, and Attorney Fees.” In her complaint, Mother alleged incidents of verbal, emotional, and physical abuse by Father against the minor children between January 2015 and the date of filing. After hearing Mother’s claim, the trial court found her allegations were “insufficient” and denied the request for an *ex parte* emergency custody order.

The trial court entered a “Consent Order for Temporary Child Custody” on 4 November 2019. The order noted that a “Child and Family Evaluation” was completed and found that compliance with its recommendations was in the best interests of the minor children. The trial court granted Mother primary physical

custody of Daughter, and Father was allowed visitation under certain conditions or as mutually agreed upon in writing by the parties. The case was reviewed on 2 March 2020, resulting in a “Memorandum of Judgment/Order” that outlined terms regarding supervised visits and identified appropriate professionals to oversee Father’s interactions with Daughter.

On 28 July 2020, the trial court entered another “Consent Order for Child Custody,” wherein the parties agreed that it was in Daughter’s best interest to commence formal reunification therapy with Father. Daughter remained in Mother’s primary physical custody. The parties were ordered to begin reunification therapy immediately with a named therapist and to follow her recommendations.

Father moved to modify the custody order on 11 March 2021, alleging that the named reunification therapist was not taking new patients and “[Mother] has engaged in a course of conduct aimed at deepening the divide between [Father] and [Daughter][]” Father requested the appointment of another therapist in place of the unavailable therapist. After a hearing, an order was entered on 31 August 2021 finding Father in contempt for failing to pay court-ordered child support. The order further appointed Father’s requested therapist as the new reunification therapist under the same conditions as the initially named therapist. Two weeks later, the trial court entered another order, this time concluding that “[Father] has satisfied all purge conditions set forth in the . . . Order Finding [Father] in Civil Contempt[.]”

Pursuant to the trial court's order, Father and Daughter engaged in reunification therapy with the recommended therapist. Father and Daughter "made significant progress until November 14, 2022, when Daughter left that visit abruptly and in tears" following a discussion about her school attendance. After the incident, "largely the result of [Mother's] actions," Father has not seen his child "despite the clear recommendations by [the therapist]" and order of the trial court. Father subsequently filed his "Motion for Order to Show Cause and Motion for Contempt." In his pleading, Father alleged that Mother had failed to comply with the 31 August 2021 Order when the minor child did not attend visits on 18 November 2022 and 1 December 2022.

On 12 August 2022, the therapist recommended that Father's custodial time increase to two to three hours per visit, with more flexible locations and transportation arrangements. On 15 October 2022, the therapist recommended increasing weekend visits to at least four hours and adding weekly dinner visits. The parties and Daughter operated under these recommendations.

At a hearing on 6 February 2023, the trial court modified the underlying custody order and found Mother in civil contempt for withholding Daughter from all visits with Father between 18 November 2022 and 6 February 2023. The court also found Mother in civil contempt for failing to follow the therapist's recommendations. A formal order to that effect was entered on 4 April 2023. In its order, the trial court provided the following two grounds in support of finding Mother in civil contempt:

[Mother] is in CIVIL CONTEMPT for withholding [Daughter] from all visits with [Father] during the period November 18, 2022 through February 6, 2023. This includes all visits pursuant to the schedule set forth within the Temporary Custody Order in addition[] to the additional visits as recommended by [the therapist] pursuant to her letters of August 12, 2022[] and October 15, 2022. [Mother] is also in CIVIL CONTEMPT for her failure to follow the recommendations of [the therapist].

The trial court also found that Mother’s “conduct with regards to her failure to comply with the custodial provisions of the Temporary Custody Order constitutes CIVIL CONTEMPT of Court.”

In its conclusions of law, the trial court noted that Mother understood the contents of the “Temporary Custody Order” and had “full knowledge and understanding of the requirements of the Order, and her failure to comply was willful.” Further, the trial court concluded that Mother had “at all times pertinent to this matter . . . the means and ability to comply with the Temporary Custody Order. . . .” Thus, the trial court held that Mother’s “conduct in regard to her failure to comply with the terms of the Temporary Custody Order constitutes CIVIL CONTEMPT of Court” and she had “the ability to comply with this Order.”

With respect to the civil contempt portion of its ruling, the trial court held:

5. CIVIL CONTEMPT. [Mother] is in willful violation of the August 31, 2021 Order for Temporary Custody for failure to comply with the custodial terms and also not following [the therapist’s] recommendations. [Mother] had the ability to comply with the Order for Temporary Custody and also follow [the therapist’s] recommendations but failed to do so.

A. [Mother]/Contemnor is hereby found to be in Civil Contempt of court for the willful violations as set forth above and she shall be taken into custody immediately by the Sheriff of Wake County.

B. [Mother]/Contemnor's immediate custody is hereby stayed, and [Mother]/Contemnor may purge her contempt by fully and successfully completing the following:

1) within ten (10) days of entry of this Order, [Mother]/Contemnor shall file an Affidavit with this Court showing she has read and fully understands all of the terms of this Order and all of the rights, duties and responsibilities required of her in this Order; and

2) within thirty (30) days of the entry of this Order, [Mother]/Contemnor shall enroll with a new counselor or therapist to specifically address:

i. why she needs, and/or believes she needs, to continually defer to the minor child's wishes regarding the issues set forth herein, and

ii. also to address her unwillingness for the minor child to have a meaningful relationship with [Father].

C. [Mother]/Contemnor shall report to the Wake County Courthouse Courtroom 2D at 9:00AM on April 14, 2023, for a review before the Court to determine whether she has met these purge conditions set forth in Paragraph 5B above. If [Mother]/Contemnor has failed to fully complete either or both of the purge conditions as set forth, she shall be taken into custody there until she purges herself of contempt.

D. Should [Mother]/Contemnor fail to appear for the court hearing set forth above, and/or she has not met the purge conditions in full, an order for arrest shall be issued. No further notice of this hearing will be provided. If, prior to the April 14, 2023 court date, [Mother]/Contemnor has complied with the purge conditions ordered herein, attorney for [Mother]/Contemnor may provide advance written notice to the Family Court Office (also copying [Father's] counsel on said correspondence) confirming [Mother] has satisfied the purge conditions in full.

Should such notice of confirmation be received by the Family Court Office and be provided to the Court, [Mother] need not appear in Court on the above date and time.

Mother appealed promptly from the contempt order.

II. Jurisdiction

This Court has jurisdiction to consider an appeal concerning a civil contempt order because it is a final judgment. N.C. Gen. Stat. § 7A-27(b)(2) (2023); *see id.* at § 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. Analysis

Mother raises several issues on appeal. First, Mother asserts that the trial court abused its discretion in finding her in civil contempt. Mother maintains the trial court did not make findings of any deliberate or purposeful actions by her that prevented or interfered with Father’s visitation. Mother next argues that even if her conduct was willful, she could not be held in civil contempt for past conduct. Lastly, Mother asserts that the trial court abused its discretion in mandating requirements that differed from the court’s underlying order. Mother further argues that the trial court erred in modifying the temporary custody order without sufficient evidence of a substantial change in circumstances that affected the minor child’s welfare.

A. Standard of Review

In weighing civil contempt proceedings, we apply the following standard:

The standard of review for contempt proceedings is limited to determining whether there is competent evidence to support the findings of fact and whether the findings support the conclusions of law. When the trial court fails to make sufficient findings of fact and conclusions of law in its contempt order, reversal is proper.

Thompson v. Thompson, 223 N.C. App. 515, 518, 735 S.E.2d 214, 216 (2012) (cleaned up). In a civil contempt order, the trial court must make the findings of fact required by N.C. Gen. Stat. §§ 5A-21 and 5A-23. *See id.* at 518-19, 735 S.E.2d at 217.

“The purpose of civil contempt is not to punish but to coerce [a] [party] to comply with a court order.” *Spears v. Spears*, 245 N.C. App. 260, 274, 784 S.E.2d 485, 494 (2016) (cleaned up); *See Hardy v. Hardy*, 270 N.C. App. 687, 690, 842 S.E.2d 148, 151 (2020) (holding that the general purpose of civil contempt is not to punish but to “preserve the rights of private parties and to compel obedience to orders and decrees made for the benefit of such parties.”). The purpose of civil contempt is to “provide a remedy for an injured suitor and to coerce compliance with an order[.]” *Hardy*, 270 N.C. App. at 690, 842 S.E.2d at 151 (citations omitted). Civil contempt differs from criminal contempt because the latter is designed to “preserve the court’s authority and to punish disobedience of its orders[.]” *Id.* (citations omitted).

N.C. Gen. Stat. §§ 5A-21 and 5A-23 address the required findings of fact to hold a person in civil contempt. Section 5A-21 provides as follows:

(a) Failure to comply with an order of a court is a continuing civil contempt as long as:

(1) The order remains in force;

(2) The purpose of the order may still be served by compliance with the order;

(2a) The noncompliance by the person to whom the order is directed is willful; and

(3) The person to whom the order is directed is able to comply with the order or is able to take reasonable measures that would enable the person to comply with the order.

N.C. Gen. Stat. § 5A-21 (2023).

To hold a party in civil contempt, the trial court must “enter a finding for or against the alleged contemnor on each of the elements set out in [Section 5A-21(a)].” *Id.* at § 5A-23(e) (2023). A contempt order must specify how the contemnor may purge the contempt and include findings demonstrating the contemnor has the present ability to comply with the contempt order. *Spears*, 245 N.C. App. at 286, 784 S.E.2d at 502 (citations omitted). “For civil contempt to be applicable, [a] [party] . . . must have the present ability to comply, or the present ability to take reasonable measures that would enable him to comply, with the order.” *Id.* at 274, 784 S.E.2d at 494 (cleaned up). These purge conditions “cannot be impermissibly vague[] but must ‘clearly specify what the defendant can and cannot do . . . in order to purge herself of the civil contempt.’” *Wilson v. Guinyard*, 254 N.C. App. 229, 238, 801 S.E.2d 700, 706 (2017) (quoting *Cox v. Cox*, 133 N.C. App. 221, 226, 515 S.E.2d 61, 65 (1999)).

Mother does not contest whether the order was still in force or if its intended purposes could still be achieved through compliance; those matters are undisputed.

See Tucker v. Tucker, 197 N.C. App. 592, 594, 679 S.E.2d 141, 142-43 (2009) (“[F]indings of fact to which no error is assigned are presumed to be supported by competent evidence and are binding on appeal.”) (cleaned up). However, Mother contests the trial court’s determination finding her in civil contempt for withholding Daughter from visits with Father between November 2022 and February 2023. Mother further contests the trial court’s determination finding that she had failed to follow the reunification therapist’s recommendations for visits to occur.

B. Willfulness

Mother posits that the trial court erred because she could not willfully be in contempt since it was Daughter who had refused to visit Father. Specifically, Mother points to corroborated and uncontroverted evidence by Father, who testified that Daughter had refused to visit with him after events on 14 November 2022.

“In contempt proceedings, the judge’s findings of fact are conclusive on appeal when supported by any competent evidence and are reviewable only for the purpose of passing on their sufficiency to warrant the judgment.” *Hancock v. Hancock*, 122 N.C. App. 518, 523, 471 S.E.2d 415, 418 (1996) (quoting *Clark v. Clark*, 294 N.C. 554, 571, 243 S.E.2d 129, 139 (1978)) (alteration in original). While our civil contempt statute does not expressly require that the conduct be willful, our courts have interpreted the statute to require an element of willfulness. *Smith v. Smith*, 121 N.C. App. 334, 336, 465 S.E.2d 52, 53-54 (1996) (citation omitted).

“Willfulness in a contempt action requires either a positive action (a ‘purposeful and deliberate act’) in violation of a court order or a stubborn refusal to obey a court order (acting ‘with knowledge and stubborn resistance’).” *Hancock*, 122 N.C. App. at 525, 471 S.E.2d at 419 (quoting *Matter of Dinsmore*, 36 N.C. App. 720, 726, 245 S.E.2d 386, 389 (1978)). Willfulness “involves more than a deliberation or conscious choice; it also imports a bad faith disregard for authority and the law.” *Forte v. Forte*, 65 N.C. App. 615, 616, 309 S.E.2d 729, 730 (1983). Courts hold that “willfulness” constitutes two factors: “(1) an ability to comply with the court order; and (2) a deliberate and intentional failure to do so.” *Sowers v. Toliver*, 150 N.C. App. 114, 118, 562 S.E.2d 593, 596 (2002) (citation omitted).

In applying the “willfulness” standard in *Hancock*, this Court reversed a trial court's holding that plaintiff-mother “acted purposefully and deliberately or with knowledge and stubborn resistance to prevent defendant[-father]’s visitation with the child.” 122 N.C. App. at 525, 471 S.E.2d at 419. In that case, the father alleged the mother had violated their mutual custody agreement when she informed him on multiple occasions their son did not want to visit him. *Id.* at 521, 471 S.E.2d at 417. The trial court held the mother in civil contempt, finding 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. Upon reversing the trial court, a key component of our ruling was because the record lacked any evidence the mother 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.

Despite Mother’s urging, the holding in *Hancock* and its progeny do not parallel this case. In its findings of fact, the trial court noted Mother’s argument asserting she cannot force Daughter to visit with Father. But the trial court also found that:

[Mother] continues to defer to [Daughter’s] wishes primarily due to her ([Mother’s]) own self-interest. [Mother] does not want [Father] to have a relationship with [Daughter], thus anytime [Daughter] resists visiting with [Father] . . . it dovetails into [Mother’s] existing sentiment and provides her a convenient excuse not to facilitate or encourage [Daughter] to spend time with [Father].

The trial court further found that “[Mother] has actively disregarded and not followed through with [the therapist’s] recommendations due to her own wishes.” The trial court also pointed to Mother’s testimony regarding physical safety concerns for rejecting the reunification process; yet, the trial court discerned “no credible evidence . . . to support this concern. . . . [as it] appear[ed] to be an invented allegation. . . .”

Although Mother argues she cannot “force” Daughter to visit with Father, competent evidence supports the trial court’s findings and demonstrates an element of willfulness. For example, testimony was presented that Mother did not respond to requests for visitation in accordance with the trial court’s order. Additionally, there was evidence that Mother previously displayed a lack of response to selecting a new

reunification therapist earlier in the history of the case. There was also testimony that Mother canceled an appointment with the reunification therapist, claiming Daughter was “sick.” Yet Daughter was neither absent from school nor taken to a doctor. That canceled appointment was not rescheduled by Mother for nearly two months. Mother then testified she was worried about Daughter’s physical safety on account of the conversation on 14 November 2022, when Daughter left the visitation upset. However, the testimony of the therapist contradicted this claim. Furthermore, Mother admitted that she was “not going along with” the recommendations of the reunification therapist in place as of 15 October 2022. The therapist also testified that Mother “has expressed some concerns based on her experience with” Father and “has consistently expressed that she will follow the lead of her child,” who was fifteen years old at the time.

Based on competent evidence, the trial court found Mother’s longstanding hindrance of Father’s visitation and noncompliance with its prior order instead of Mother’s stated inability to get Daughter to visit with Father—a finding we will not disturb on appeal. *See Grissom v. Cohen*, 261 N.C. App. 576, 587, 821 S.E.2d 454, 461 (2018) (“The trial court has the discretion to determine the credibility and weight of all the evidence, whether it was a written document or live testimony, and this Court cannot re-weigh the evidence.”). Considering Mother’s own admission, the record demonstrates Mother’s failure to implement the therapist’s recommendations.

Accordingly, competent evidence supports the trial court's finding and conclusion that Mother willfully disobeyed the trial court's order to warrant imposing civil contempt.

C. Purge Conditions

Mother next faults the trial court for holding her in contempt when she could not comply with retroactive mandates. Mother notes that "[a]dherence to the order in the future does not cure a past violation in circumstances of custody visitation." Mother also argues that the trial court made no substantive findings of fact about how she could comply with the terms she had violated. She instead faults the trial court for putting the onus on her to motivate the minor child to visit with Father.

But Mother confuses a directive within a finding of fact as the trial court's purge conditions. "The order of the court holding a person in civil contempt must specify how the person may purge himself of the contempt." *Watson v. Watson*, 187 N.C. App. 55, 65, 652 S.E.2d 310, 317 (2007). And "the findings of fact must reflect the trial court's determination that the obligor has the present ability to comply with the purge conditions." *Toussaint v. King*, 272 N.C. App. 578, 844 S.E.2d 630 (2020) (citing *Cnty. of Durham by & through Durham DSS v. Burnette*, 262 N.C. App. 17, 37, 821 S.E.2d 840, 855 (2018)). "This finding must also be supported by competent evidence in the record." *Cumberland Cnty. ex rel. Mitchell v. Manning*, 262 N.C. App. 383, 390, 822 S.E.2d 305, 309 (2018) (citing *Lee v. Lee*, 78 N.C. App. 632, 633-34, 337 S.E.2d 690, 691 (1985)).

In this case, the trial court imposed three purge conditions on Mother: (1) file an affidavit with the Court within ten days of entry showing she understood the terms, duties, and responsibilities required of her under the order; (2) enroll with a counselor or therapist to address her deferment to Daughter's wishes and Mother's unwillingness for the child to have a meaningful relationship with Father; and (3) report before the trial court on April 14, 2023 to determine whether she had met the purge conditions.

Again, we review orders imposing civil contempt to determine whether “competent evidence supports the findings of fact and whether those findings support the conclusions of law.” *Blanchard v. Blanchard*, 279 N.C. App. 280, 284, 856 S.E.2d 693, 697 (2021). We are “bound by the trial court’s findings where there is competent evidence to support them.” *Monds v. Monds*, 446 N.C. App. 301, 302, 264 S.E.2d 750, 751 (1980). Considering this case—including Daughter’s reluctance to visit with Father, Mother’s deference to Daughter’s wishes, and Mother’s inability to follow the therapist’s recommendations to further the reunification process—competent evidence supports the trial court’s findings and conditions that Mother report to a counselor or therapist to address Mother’s underlying sentiments and deferment to the minor child’s wishes in not visiting Father. And the trial court provided concrete steps that Mother could follow to purge the contempt. *Scott v. Scott*, 157 N.C. App. 382, 394, 579 S.E.2d 431, 439 (2003) (holding that requirements to purge civil contempt may not be “impermissibly vague”); *Cox*, 133 N.C. App. at 226, 515 S.E.2d

at 65 (holding that a contempt order must “clearly specify what the defendant can and cannot do”). Mother’s argument on this basis is meritless.

D. The Underlying Order

Mother raises a third issue on appeal: the above-referenced purge conditions do not enforce any portion of the underlying Temporary Order. However, Mother never made this argument to the trial court, and she may not raise it for the first time on appeal. *E.g., Anderson v. Assimios*, 356 N.C. 415, 416, 572 S.E.2d 101, 102 (2002) (cleaned up) (“plaintiff cannot now assert a contradictory position or swap horses between courts in order to get a better mount.”).

Even if she had made this argument to the trial court, we consider this argument abandoned given that Mother cited no authority for the proposition. “Issues not presented in a party’s brief, or in support of which no reason or argument is stated, will be taken as abandoned.” N.C.R. App. P. 28(b)(6). “An appellant avoids abandonment when it complies with the rule’s mandate that ‘[t]he body of the argument . . . shall contain citations of the authorities upon which the appellant relies.’” *K2HN Constr. NC, LLC v. Five D Contr’rs, Inc.*, 267 N.C. App. 207, 213, 832 S.E.2d 559, 564 (2019) (alterations in original) (quoting N.C.R. App. P. 28(b)(6)). “This Court has routinely held an argument to be abandoned where an appellant presents argument without such authority and in contravention of the rule.” *K2HN Constr. N.C., LLC*, 267 N.C. App. at 213, 832 S.E.2d at 564. We overrule Mother’s third assignment of error and dismiss this argument.

E. Substantial Change of Circumstances

Last, Mother contends that the trial court abused its discretion by modifying the underlying order without sufficient evidence of a substantial change of circumstances affecting the welfare of the minor child. Mother lists the issue in a heading but states that she has “no further argument for this issue” in the body of her contention. This argument is abandoned. N.C.R. App. P. 28(b)(6).

IV. Conclusion

For the above reasons, we hold that the trial court did not abuse its discretion by holding Mother in civil contempt. The judgment appealed from is affirmed.

AFFIRMED.

Judges TYSON and THOMPSON concur.

Report per Rule 30(e).