

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA23-1068

Filed 5 November 2024

Buncombe County, No. 16 CVD 1087

ERDAVIANA SAHANA f/k/a/ HEIDI FISCUS, Plaintiff,

v.

JAMES ALLEN FISCUS, Defendant.

Appeal by Plaintiff from Order entered 7 July 2023 by Judge Andrea F. Dray in Buncombe County District Court. Heard in the Court of Appeals 27 August 2024.

Erdaviana Sahana, pro se plaintiff-appellant.

Siemens Family Law Group, by Jim Siemens, for defendant-appellee.

HAMPSON, Judge.

Factual and Procedural Background

Erdaviana Sahana (Plaintiff) appeals from an Order requiring Plaintiff to pay James Allen Fiscus (Defendant) child support, child support arrearage, and certain expenses. The Record before us tends to reflect the following:

The parties in this case were married on 5 September 2010, separated on 6 March 2016, and divorced on 13 March 2017. During the marriage, the parties had

two children. Plaintiff commenced this action by filing a Complaint in Buncombe County District Court seeking custody of the minor children and child support on 11 March 2016. Plaintiff requested and was granted an expedited hearing on child custody, which was heard on 29 March 2016.

On 11 May 2016, the trial court entered a Temporary Child Custody Order, which gave temporary primary physical custody to Defendant and joint legal custody to both parents. Under this Order, Defendant was awarded unsupervised custody of the minor children for four days per week while Plaintiff was awarded supervised visitation for three days per week. On 23 January 2017, the trial court entered a Temporary Child Support Order. The Temporary Child Support Order required Defendant to pay Plaintiff \$1,250.00 per month in child support beginning 1 February 2017. A subsequent Temporary Child Custody Order entered 23 August 2017 awarded Defendant temporary legal and primary physical custody of the minor children. On 26 September 2017, Defendant filed a Motion to modify the Temporary Child Support Order in light of the Order granting him primary legal and physical custody of the minor children. Plaintiff then filed a Motion to Dismiss Defendant's Motion to Modify pursuant to North Carolina Rule of Civil Procedure 12(b)(6) on 5 January 2022. On 15 September 2022, the trial court entered a Child Custody Order granting continuing primary physical custody and sole legal custody of the minor children to Defendant. Plaintiff filed a Supplemental Motion to Dismiss on 28 March 2023.

The child support matter came on for hearing on 28 and 30 March 2023. Plaintiff filed a Conditional Motion to Continue on 28 March 2023, which the trial court denied during the hearing. Defendant submitted exhibits as evidence and testified. Plaintiff also testified; however, she did not submit any exhibits or other documentation to the trial court. The trial court also heard arguments on Plaintiff's Motion to Dismiss, which it took under advisement but did not rule on.

On 7 July 2023, the trial court entered a Child Support Order. In the Child Support Order, the trial court made Findings of Fact regarding each party's income and expenses from 2017 through 2023. The trial court found Plaintiff owed Defendant \$88,121.72 in child support arrearage for child support beginning September 2017—when Defendant gained primary physical custody of the minor children—until July 2023. This amount included uninsured medical expenses for the minor children Defendant had incurred during those years. The trial court also ordered Plaintiff to pay Defendant child support in the amount of \$775.00 per month beginning 1 August 2023, the month following entry of the Child Support Order. On 7 August 2023, Plaintiff timely filed Notice of Appeal from the Child Support Order.

Issues

The issues on appeal are whether: (I) the trial court had subject matter jurisdiction over this matter; (II) the trial court properly made certain Findings of Fact; (III) the trial court erred by denying Plaintiff's Motion to Dismiss and Motion to Continue; and (IV) the issue of the trial court's alleged bias is preserved for

appellate review.

Analysis

I. Subject Matter Jurisdiction

Plaintiff contends the trial court lost subject matter jurisdiction “by violating the Plaintiff’s Due Process rights.” We disagree. At the outset, we note Plaintiff appealed only from the Child Support Order. Thus, to the extent her argument regarding subject matter jurisdiction attempts to challenge aspects of the trial court’s Order denying modification of the Custody Order, we do not have jurisdiction to review the merits of that Order on appeal. *See Daniels v. Montgomery Mut. Ins. Co.*, 320 N.C. 669, 676, 360 S.E.2d 772, 777 (1987) (“An erroneous order may be remedied by appeal; it may not be attacked collaterally.” (citation omitted)); *Worthington v. Wooten*, 242 N.C. 88, 92, 86 S.E.2d 767, 770 (1955) (a judgment, “even if irregular or even erroneous” is “binding on the parties, unless set aside or reversed on appeal[.]” (citations omitted)).

“Subject matter jurisdiction refers to the power of the court to deal with the kind of action in question” and “is conferred upon the courts by either the North Carolina Constitution or by statute.” *Harris v. Pembaur*, 84 N.C. App. 666, 667, 353 S.E.2d 673, 675 (1987). “A court’s lack of subject matter jurisdiction is not waivable and can be raised at any time, including on appeal.” *Banks v. Hunter*, 251 N.C. App. 528, 531, 796 S.E.2d 361, 365 (2017) (citation omitted). “Whether a trial court has subject-matter jurisdiction is a question of law, reviewed de novo on appeal.” *McKoy*

v. McKoy, 202 N.C. App. 509, 511, 689 S.E.2d 590, 592 (2010) (citation omitted).

Plaintiff points to no caselaw or statute to support her assertion that the trial court's entry of its Custody Order divested it of subject matter jurisdiction. Moreover, it is uncontested that Buncombe County District Court had jurisdiction to make a child support determination, consistent with our statutes and Plaintiff's decision to file her claim for child support in Buncombe County. *See* N.C. Gen. Stat. § 7A-244 (2023) ("The district court division is the proper division without regard to the amount in controversy, for the trial of civil actions and proceedings for annulment, divorce, equitable distribution of property, alimony, child support, child custody . . ."). We, therefore, conclude the trial court had subject matter jurisdiction over this matter.

II. Findings of Fact

A. *Venue*

Plaintiff challenges the trial court's Finding of Fact 1, which states: "The Plaintiff is a citizen and resident of Buncombe County, North Carolina and has been such for more than six months next preceding the filing of this action." Plaintiff contends this Finding is unsupported by the evidence. In reviewing this issue, we note that although Plaintiff refers to her Motion to Change Venue, Plaintiff did not proceed on her Motion to Change Venue before the trial court and obtained no ruling. As such, the issue of whether the trial court should have changed venue, itself, is not properly preserved for appellate review. *See* N.C.R. App. P. 10(a)(1) (2023). Moreover, there was in fact evidence in the Record supporting the trial court's

Finding. Although Plaintiff testified that she lived in Charlotte at the time of the hearing, she also testified that she maintains a home in Asheville, North Carolina, which is within Buncombe County. Further, she testified she continues to operate a business located in Asheville, North Carolina. When asked whether she intended to maintain homes both in Asheville and in Charlotte, Plaintiff responded: “I’m not exactly sure what to do or what I will be doing with either home. I only purchased the home for the boys in Charlotte so that I would have a home there, based on the Court order that was recently produced. So I do not know.”

Even if Finding 1 were erroneous, however, Plaintiff has not established how this Finding is prejudicial to her. Our Courts have repeatedly affirmed “the appellant ‘must not only show error, but also that the error is material and prejudicial, amounting to a denial of a substantial right and that a different result would have likely ensued.’” *Crenshaw v. Williams*, 211 N.C. App. 136, 144, 710 S.E.2d 227, 233 (2011) (quoting *Cook v. S. Bonded, Inc.*, 82 N.C. App. 277, 281, 346 S.E.2d 168, 171 (1986)). Plaintiff makes no argument in her briefing to this Court that Finding 1 prejudiced her in any way as it relates to the actual child support determination, particularly where—on the Record before us—Plaintiff did not proceed on her Motion to Change Venue. Thus, Plaintiff’s argument fails on appeal.

B. *Parties’ Incomes*

Plaintiff argues several of the trial court’s Findings of Fact regarding the parties’ incomes and certain expenses related to the minor children were “based on

fraud on the court, miscalculations, and material misrepresentations.” Specifically, Plaintiff challenges Findings of Fact 22, 24, 26-30(a), 30(c), 31(b)-(c), and 32. We address Findings 26-30(a), 30(c), 31(b)-(c), and 32 here, and we address Findings 22 and 24 separately.

“Child support orders entered by a trial court are accorded substantial deference by appellate courts and our review is limited to a determination of whether there was a clear abuse of discretion.” *Leary v. Leary*, 152 N.C. App. 438, 441, 567 S.E.2d 834, 837 (2002) (citation omitted). “In a child custody case, the trial court’s findings of fact are conclusive on appeal if supported by substantial evidence, even if there is sufficient evidence to support contrary findings. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Carpenter v. Carpenter*, 225 N.C. App. 269, 270, 737 S.E.2d 783, 785 (2013) (quoting *Peters v. Pennington*, 210 N.C. App. 1, 12-13, 707 S.E.2d 724, 733 (2011)). An abuse of discretion occurs where a court’s action is “so arbitrary that it could not have been the result of a reasoned decision.” *Spicer v. Spicer*, 168 N.C. App. 283, 287, 607 S.E.2d 678, 682 (2005) (citation omitted).

i. Child Support Arrearage

We first address Plaintiff’s complaints regarding the trial court’s Findings of her income for 2017-2022, which it used to determine the extent of child support arrearage she owed to Defendant. In her briefing to this Court, Plaintiff herself acknowledges there was evidence to support each of the trial court’s Findings of Fact.

Indeed, Plaintiff's arguments on this issue "amount to an attempt to reargue the evidence adduced at the hearing in the hope that this Court will substitute itself for the trial court and accept [P]laintiff's version of the evidence. This we cannot do." *Byrd v. Byrd*, 62 N.C. App. 438, 441, 303 S.E.2d 205, 208 (1983) (citation omitted). "The trial court must itself determine what pertinent facts are actually established by the evidence before it, and it is not for an appellate court to determine de novo the weight and credibility to be given to evidence disclosed by the record on appeal." *Coble v. Coble*, 300 N.C. 708, 712-13, 268 S.E.2d 185, 189 (1980) (citing *Knutton v. Cofield*, 273 N.C. 355, 359, 160 S.E.2d 29, 33 (1968) and *Davis v. Davis*, 11 N.C. App. 115, 117, 180 S.E.2d 374, 375 (1971)).

Further, upon review of the Record, we conclude the trial court's Findings were supported by competent evidence. In support of its Findings, the trial court had before it Defendant's 2017 Child Support Worksheet A, Plaintiff's 2017-2021 Income Tax 1040 Forms, and Plaintiff's 2022 application for state and federal income tax extensions. Additionally, the trial court had Defendant's 2017-2023 Income Tax 1040 Forms, financial affidavits, and documentation and testimony regarding health insurance premiums and expenses for the minor children.

Plaintiff also argues the trial court erred in failing to consider her ability to pay or "contributions to the minor children[.]" although it is unclear from her briefing whether this is in reference to the child support arrearage, ongoing child support award, or both. She points to no caselaw, statute, or other authority in support of her

contention, asserting only that “[i]t is the duty of the trial court to find both parties['] contributing factors.” For the years 2017-2020, the trial court applied the Child Support Guidelines, while it deviated from the Guidelines to calculate the 2021 and 2022 arrearage amounts. We consider these issues in turn.

Our Child Support Guidelines provide: “The Schedule of Basic Child Support Obligations is based upon net income converted to gross annual income by incorporating the federal tax rates, North Carolina tax rates and FICA.” *N.C. Child Support Guidelines*, Annotated Rules of North Carolina 1043 (2024). The Guidelines do not consider regular expenses in determining a parent’s support obligation. Rather, “[t]he trial court is vested with discretion to make adjustments to the guideline amounts for *extraordinary* expenses, and the determination of what constitutes such an expense is likewise within its sound discretion.” *Mendez v. Mendez*, 281 N.C. App. 36, 42-43, 868 S.E.2d 612, 617 (2021) (quoting *Doan v. Doan*, 156 N.C. App. 570, 574, 577 S.E.2d 146, 149 (2003)) (emphasis added). The Child Support Guidelines exclusively refer to child care costs, health insurance and health care costs, and “[o]ther extraordinary child-related expenses[.]” *N.C. Child Support Guidelines*, Annotated Rules of North Carolina 1045-46 (2024).

Nor do our Child Support Guidelines include a separate consideration of ability to pay. “If the trial court imposes the presumptive amount of child support under the Guidelines, it is not . . . required to take any evidence, make any findings of fact, or enter any conclusions of law relating to the reasonable needs of the child for support

and the relative ability of each parent to pay or provide support.” *Biggs v. Greer*, 136 N.C. App. 294, 297, 524 S.E.2d 577, 581 (2000) (quoting *Browne v. Browne*, 101 N.C. App. 617, 624, 400 S.E.2d 736, 740 (1991) (citation and quotation marks omitted)). Indeed, the trial court need only consider a party’s ability to pay where it deviates from the Guidelines, either upon a party’s request or its own initiative. Here, the trial court applied the Guidelines for 2017-2020. Thus, it was not required to take evidence or to make findings of fact or conclusions of law regarding the parties’ ability to pay or contributions to the minor children. We, therefore, conclude the trial court did not err in calculating Plaintiff’s child support obligation for 2017-2020.

For 2021 and 2022, the trial court deviated from the Guidelines because the parties’ combined income exceeded the Guidelines maximum. In its Findings regarding both 2021 and 2022, the trial court expressly noted that because it was deviating from the Guidelines,

[t]he Court is therefore called upon to determine the reasonable needs of the children in [2021/2022] for health, education, and maintenance, having due regard to the estates, earnings, conditions, and accustomed standard of living of the children and the parties. In high income cases, support should be set on a case-by-case basis, considering the needs of the children and the relative ability of each parent to provide support.

Further, while Defendant filed a financial affidavit reporting his ability to provide support for the minor children and the children’s reasonable needs in his care, “[t]he Plaintiff presented no evidence or affidavit with respect to the children’s reasonable needs in her care.” Plaintiff also presented no documentation regarding her finances

and the trial court expressly found her testimony regarding her income at the time of the hearing “unreliable”. See *State ex rel. Midgett v. Midgett*, 199 N.C. App. 202, 207, 680 S.E.2d 876, 879 (2009) (“It is well established that child support obligations are ordinarily determined by a party’s actual income at the time the order is made or modified.” (quoting *Ellis v. Ellis*, 126 N.C. App. 362, 364, 485 S.E.2d 82, 83 (1997))).

Additionally, the trial court expressly considered Plaintiff’s ability to pay:

The Court finds that the Plaintiff is capable of paying this arrearage as ordered below, considering the fact that she has two homes with equity that she can access. The Plaintiff also has the ability to rent one of her two homes to generate additional income. The Plaintiff is self-employed with the ability to exercise control of her income by increasing or decreasing based upon her management decisions and degree of personal effort.

In support of this Finding, the trial court had before it records showing Plaintiff’s income from her business from 2017 through 2022, Plaintiff’s 2023 tax extension request with an estimate of her tax liability, testimony from Plaintiff that she had previously rented out one of her homes and made \$2,000.00 in two weeks but was no longer doing so, and the deed of trust from Plaintiff’s home in Charlotte showing a purchase price of \$415,000.00. We, therefore, conclude the trial court did not err in determining Plaintiff’s child support arrearage for 2021 and 2022.

ii. Ongoing Child Support

We next consider the trial court’s Findings used in the calculation of ongoing child support due to Defendant. We again consider Plaintiff’s assertion that the trial court failed to consider her ability to pay, or her contributions made to the minor

children in its child support determination. As above, she points to no caselaw, statute, or other authority in support of her assertion.

Again, “[i]t is well established that child support obligations are ordinarily determined by a party’s actual income at the time the order is made or modified.” *Midgett*, 199 N.C. App. at 207, 680 S.E.2d at 879 (quoting *Ellis*, 126 N.C. App. at 364, 485 S.E.2d at 83). As to Plaintiff’s income at the time of the child support hearing, the only evidence Plaintiff put forward was her own testimony, which the trial court expressly found unreliable. Further, the trial court’s calculation of her income was consistent with our Child Support Guidelines, as the trial court considered the variability of Plaintiff’s income from her business and determined to take an average of her annual income from 2020 through 2022 to forecast her income for 2023. *See N.C. Child Support Guidelines*, Annotated Rules of North Carolina 1043 (2024) (“When income is received on an irregular, non-recurring, or one-time basis, the court may average or prorate the income over a specified period of time[.]”). Although Plaintiff argues the trial court did not consider her expenses related to her mortgages and child support arrearage payments in determining her ability to pay, the trial court made the Finding reiterated above specifically addressing Plaintiff’s ability to pay.

Moreover, this case is governed by our Child Support Guidelines, which do not consider expenses in determining a parent’s support obligation, subject to certain exceptions not applicable in this case. The Guidelines provide: “The Schedule of Basic

Child Support Obligations is based upon net income converted to gross annual income by incorporating the federal tax rates, North Carolina tax rates and FICA.” *N.C. Child Support Guidelines*, Annotated Rules of North Carolina 1043 (2024). “The trial court is vested with discretion to make adjustments to the guideline amounts for *extraordinary* expenses, and the determination of what constitutes such an expense is likewise within its sound discretion.” *Mendez*, 281 N.C. App. at 42-43, 868 S.E.2d at 617 (quoting *Doan*, 156 N.C. App. at 574, 577 S.E.2d at 149) (emphasis added). The Child Support Guidelines exclusively refer to child care costs, health insurance and health care costs, and “[o]ther extraordinary child-related expenses[.]” *N.C. Child Support Guidelines*, Annotated Rules of North Carolina 1045-46 (2024).

Just as with the calculation of child support owed for 2017-2020, the trial court was not required to make findings regarding Plaintiff’s ability to pay because it applied the Guidelines. “If the trial court imposes the presumptive amount of child support under the Guidelines, it is not . . . required to take any evidence, make any findings of fact, or enter any conclusions of law relating to the reasonable needs of the child for support and the relative ability of each parent to pay or provide support.” *Biggs*, 136 N.C. App. at 297, 524 S.E.2d at 581 (quoting *Browne*, 101 N.C. App. at 624, 400 S.E.2d at 740 (citation and quotation marks omitted)). Thus, we conclude the trial court did not err in determining Plaintiff’s ongoing child support obligation.

C. *Imputation of Income*

Plaintiff additionally challenges Findings 22 and 24 regarding the trial court’s

determination of her 2017 income and Defendant's 2018 income. Although we agree the trial court's Findings were erroneous, we conclude Plaintiff was not prejudiced by them.

"Child support calculations under the guidelines are based on the parents' current incomes at the time the order is entered." *N.C. Child Support Guidelines*, Annotated Rules of North Carolina 1044 (2024). "While the Child Support Guidelines provide that documentation of current income must be supplemented with copies of the most recent tax return to provide verification of earnings over a longer period, this Court has established that child support obligations are ordinarily determined by a party's actual income at the time the order is made or modified." *Holland v. Holland*, 169 N.C. App. 564, 567-68, 610 S.E.2d 231, 234 (2005) (citations and quotation marks omitted).

However, "[t]he trial court may deviate from this rule and consider 'a party's capacity to earn income . . . if it is found that the party deliberately depressed his income or otherwise acted in deliberate disregard of the obligation to provide reasonable support for his child and that the party's actions which reduced his income were not taken in good faith.'" *Id.* at 568, 610 S.E.2d at 234 (quoting *Ellis*, 126 N.C. App. at 364, 485 S.E.2d at 83 (citation and quotation marks omitted)); *see also N.C. Child Support Guidelines*, Annotated Rules of North Carolina 1044 (2024) ("If the court finds that the parent's voluntary unemployment or underemployment is the result of the parent's bad faith or deliberate suppression of income to avoid or

minimize his or her child support obligation, child support may be calculated based on the parent's potential, rather than actual, income."). Further, "[i]f the parent has no recent work history or vocational training, potential income should not be less than the minimum hourly wage for a 35-hour work week." *Id.* Even where a trial court finds a decrease in a party's income is substantial and involuntary, "without a showing of deliberate depression of income or other bad faith, the trial court is without power to impute income[.]" *Works v. Works*, 217 N.C. App. 345, 349, 719 S.E.2d 218, 220 (2011) (quoting *Ellis*, 126 N.C. App. at 365, 485 S.E.2d at 83).

Here, the trial court imputed minimum wage to Plaintiff for September through December 2017, and to Defendant for 2018 in separate Findings. Finding 22 states, in pertinent part:

With respect to support payable from the Plaintiff to the Defendant on 1 September 2017 and thereafter in 2017, the Court finds that in 2017, the Plaintiff's Form 1040 shows a loss of ([extract_itex]25,105). The Court imputes minimum wage to the Plaintiff in 2017, or[/extract_itex]1,256.00 per month, in that the Plaintiff was failing to exercise her earning capacity in bad faith, and in that the Plaintiff had earning potential of at least minimum wage.

Similarly, with respect to Defendant, Finding 24 provides: "In 2018, the Defendant's Form 1040 shows total income of \$297.00. The Court imputes minimum wage to the Defendant in 2018, or \$1,256.00 per month, in that the Defendant was failing to exercise his earning capacity in bad faith and in that the Defendant had earning potential of at least minimum wage."

In both instances, the trial court did not have evidence upon which it could

have reasonably found either Plaintiff or Defendant suppressed their income in bad faith to reduce a child support obligation. As to Plaintiff, the trial court had her Income Tax 1040 Form and her testimony. Her 1040 Form showed a business loss of \$25,105.00. Plaintiff's only testimony regarding her finances in 2017 was that she "had just opened [her business] at the end of 2017." Counsel asked her whether her 1040 showed a loss from her business in 2017 and she replied, "It appears so." Bad faith or deliberate depression of income cannot be inferred from this evidence.

However, Plaintiff has failed to show how she was prejudiced by this Finding. As our Courts have repeatedly affirmed, "[t]o obtain relief on appeal, an appellant must not only show error, but that appellant must also show that the error was material and prejudicial, amounting to denial of a substantial right that will likely affect the outcome of an action." *Respass v. Respass*, 232 N.C. App. 611, 633, 754 S.E.2d 691, 705 (2014) (quoting *Starco, Inc. v. AMG Bonding & Ins. Servs., Inc.*, 124 N.C. App. 332, 335, 477 S.E.2d 211, 214 (1996)).

As we noted above, Plaintiff put on no evidence of her actual 2017 income. Instead, the only evidence was the first pages of her 2017 tax return reflecting a business loss of \$25,105.00. However, the Record does not contain the schedule used to calculate that loss. As the Guidelines acknowledge: in calculating income from the proprietorship of a business, income and expenses should be carefully reviewed—as the calculation of gross income for child support purposes will differ from a determination of business income for tax purposes. *N.C. Child Support Guidelines*,

Annotated Rules of North Carolina 1044 (2024).

Plaintiff asserts she had been the primary caregiver for the minor children prior to September 2017—and, thus, had no income during those months prior to starting her business. Plaintiff points to no other evidence which might show her actual gross income from the operation of her business and nothing that would show she earned an amount less than minimum wage—the lowest income the trial court could have imputed for her. *N.C. Child Support Guidelines*, Annotated Rules of North Carolina 1044 (2024) (“If the parent has no recent work history or vocational training, potential income should not be less than the minimum hourly wage for a 35-hour work week.”). The trial court imputed minimum wage—\$1,256.00 per month—to Plaintiff for September through December 2017. Under the 2015 Child Support Guidelines, which were in effect in 2017, a monthly income of \$1,256.00 falls within the self-support reserve. Thus, Plaintiff’s child support obligation was calculated using only her income rather than the parties’ combined income, as the Guidelines otherwise require. *N.C. Child Support Guidelines*, Annotated Rules of North Carolina 1042 (2015) (“If the obligor’s adjusted gross income falls within the shaded area of the Schedule and Worksheet A is used, the basic child support obligation and the obligor’s total child support obligation are computed using only the obligor’s income.”). Under the self-support reserve, a person earning \$1,250.00 per month with two children would have a child support obligation of \$107.00 per month. Although Plaintiff’s imputed income was slightly higher—\$1,256.00—the trial court actually

assessed her \$106.20 per month—slightly below the Guidelines amount. Plaintiff offers no argument or evidence that this amount of child support would have been lower had her actual gross income been applied. Thus, Plaintiff has not demonstrated she was prejudiced by the trial court’s calculation of her child support obligation for 2017.

As to Defendant, again the trial court had before it only his Income Tax 1040 Form and his testimony at the hearing. Defendant’s 1040 Form for 2018 showed an income of \$297.00. At the hearing, Defendant testified this was correct. When questioned about why his income fell so substantially in 2018, Defendant testified:

A few different reasons. Having gained temporary custody of [the minor children] in – in the fall of 2017, I thought it was – my main priority was getting them fully established in Charlotte in school, in the community. I also spent a lot of time in 2018 here [Buncombe County] in two different tranches for the custody trial, and I was also not able to fully procure real estate to develop. The [P]laintiff didn’t sign a pre-trader for the longest time, and I wasn’t able to – to buy property free and clear for development.

Again, this evidence is insufficient to establish bad faith by Defendant. Although Defendant acknowledged the decrease in his income was voluntary, his testimony reflects no bad faith or intent to reduce his child support obligation.

Nevertheless, Plaintiff has again not shown this erroneous Finding prejudiced her. Plaintiff has not challenged the calculation of her income for 2018; therefore, the trial court’s Finding in that respect is binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). The trial court determined Plaintiff’s

income for 2018 was \$1,284.50, which again falls within the Guidelines' self-support reserve. Accordingly, her child support obligation was calculated using only her income—and not Defendant's income. *See N.C. Child Support Guidelines*, Annotated Rules of North Carolina 1042 (2015). Thus, any error in calculating Defendant's income for 2018 did not impact Plaintiff's child support obligation. The trial court determined Plaintiff's child support obligation for 2018 was \$126.15 per month, which is consistent with the 2015 Guidelines calculation based on her income with two minor children. We, therefore, conclude the errors in the trial court's Findings of Fact 22 and 24 were harmless.

Plaintiff also contends the trial court erred by not considering Defendant's withdrawals from his company to pay personal expenses in 2018 as income. Even if this were error, however, Plaintiff cannot establish this error prejudiced her for the same reasons as above. Again, for 2018, Plaintiff's child support obligation was calculated using only her income because she fell within the Guidelines' self-support reserve. Thus, regardless of what the trial court determined Defendant's income to be, Plaintiff's child support obligation would be unchanged. Consequently, we conclude any error as to the trial court's treatment of Defendant's 2018 withdrawals from his company was harmless.

D. *Plaintiff's IRA Withdrawals*

Plaintiff asserts the trial court erred by not considering Defendant's capital contributions he withdrew from his company in 2018 and a loan from his family in

2018 as gross income while it considered her 2021 and 2022 IRA withdrawals as income for her. Because we have addressed Defendant's 2018 income above, we solely consider whether the trial court erred by considering Plaintiff's IRA withdrawals income.

The trial court considered as income Plaintiff's withdrawal of \$410,000.00 from her IRA in 2021 and \$200,000.00 in 2022. Our Child Support Guidelines expressly contemplate such retirement withdrawals as income. *See N.C. Child Support Guidelines*, Annotated Rules of North Carolina 1043 (2024) (" 'Income' means a parent's actual gross income from any source, including but not limited to . . . retirement or pensions[.]"). Still, Plaintiff contends our precedent in *McKyer v. McKyer*, 179 N.C. App. 132, 632 S.E.2d 828 (2006), applies and operates to exclude her withdrawals from her gross income for child support purposes. The present case is readily distinguishable.

In *McKyer*, the parties' marital residence was distributed pursuant to equitable distribution proceedings to the appellee with an order that it be sold. *Id.* at 143, 632 S.E.2d at 834. This Court concluded the appellant "failed to demonstrate that these sales proceeds constituted non-recurring income" for the appellee. *Id.* Thus, the Court concluded, "the mere fact that a non-recurring payment has occurred, in the absence of evidence that the payment was 'income' at all, is alone insufficient to establish that the payment was necessarily non-recurring income." *Id.* at 144, 632 S.E.2d at 835 (citation omitted). Here, unlike the appellant in *McKyer*, Plaintiff has

repeatedly argued these withdrawals constitute income under our Child Support Guidelines. *Id.* (“[Appellant] makes no argument as to why receipt of the \$249,179.77 constitutes ‘income.’ ”). Further, Plaintiff in this case elected to withdraw from her IRA of her own volition, while the appellee in *McKyer* was required by court order to sell the marital residence. *Id.* at 136, 632 S.E.2d at 831. In light of these significant differences, we conclude the trial court did not abuse its discretion in finding Plaintiff’s withdrawals from her IRA constituted income.

III. Plaintiff’s Motion to Dismiss and Motion to Continue

Plaintiff contends the trial court erred in denying her Motion to Dismiss and Motion to Continue. Plaintiff filed a Motion to Dismiss Defendant’s Motion to Modify Child Support under North Carolina Rule of Civil Procedure 12(b)(6) on 5 January 2022, and she filed a Supplemental Motion to Dismiss on the same ground on 28 March 2023. Plaintiff also filed a Conditional Motion to Continue on 28 March 2023. The trial court heard arguments on both Motions on 28 March 2023 and orally denied Plaintiff’s Motion to Continue. The trial court reserved judgment on Plaintiff’s Motion to Dismiss.

A Rule 12(b)(6) motion to dismiss tests the legal sufficiency of a complaint. *Sutton v. Duke*, 277 N.C. 94, 98, 176 S.E.2d 161, 163 (1970) (citation omitted). “The test on a motion to dismiss for failure to state a claim upon which relief can be granted is whether the pleading is legally sufficient.” *Shoffner Indus., Inc. v. W.B. Lloyd Constr. Co.*, 42 N.C. App. 259, 263-64, 257 S.E.2d 50, 54 (1979). Our review of the

Record reveals no ruling was made on Plaintiff's Motion to Dismiss. In the absence of a ruling by the trial court, this issue is not preserved for appellate review. *See* N.C.R. App. P. 10(a)(1) (2023) ("In order to preserve an issue for appellate review, . . . [i]t is also necessary for the complaining party to obtain a ruling upon the party's request, objection, or motion.").

As to Plaintiff's Motion to Continue, "[a] trial court's decision regarding a motion to continue is discretionary and will not be disturbed on appeal absent a showing of abuse of discretion. Continuances are generally disfavored, and the burden of demonstrating sufficient grounds for continuation is placed upon the party seeking the continuation." *In re J.B.*, 172 N.C. App. 1, 10, 616 S.E.2d 264, 270 (2005) (citations and quotation marks omitted). "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *In re C.J.H.*, 240 N.C. App. 489, 492-93, 772 S.E.2d 82, 86 (2015) (quoting *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988)).

Here, Plaintiff contends the trial court abused its discretion by denying her Motion to Continue. Plaintiff alleged Defendant violated statutory and local rules by failing to submit certain documentation in advance of the hearing on child support. Although Defendant filed a Motion to modify the Temporary Child Support Order in August 2021, the underlying claim for child support was filed by Plaintiff in March 2016. Defendant timely filed a financial affidavit on 28 June 2016. In advance of the

28 and 30 March 2023 hearings, Defendant provided an additional 2023 financial affidavit to opposing counsel on 24 March 2023, as well as other exhibits he intended to submit as evidence. There is no evidence in the Record suggesting Defendant's actions were in violation of local or statutory rules. Thus, we cannot conclude the trial court's decision not to grant Plaintiff's Motion to Continue was manifestly unsupported by reason. Therefore, we conclude the trial court did not err in denying Plaintiff's Motion to Continue.

IV. Trial Court's Alleged Bias

Plaintiff also contends the trial court exhibited bias toward Defendant, in effect arguing the trial court's decisions to deny her Motion to Continue, make certain Findings of Fact, and deny her Motion to Dismiss demonstrate partiality. Plaintiff, however, did not file any motion to recuse, there is no indication her Motion to Change Venue was based in any part on alleged bias by the trial court, and the transcript of the hearing reflects no argument before the trial court alleging bias had impacted its rulings. Although our statutes provide mechanisms to address instances where a trial court appears biased in some way, we see no indication Plaintiff availed herself of any of these prior to the instant appeal.

Our Rules of Appellate Procedure provide: "In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context." N.C.R.

App. P. 10(a)(1) (2023). Further, the objecting party must “obtain a ruling upon the party’s request, objection, or motion.” *Id.* “When a party does not move for a judge’s recusal at trial, the issue is not preserved for our review.” *In re D.R.F.*, 204 N.C. App. 138, 144, 693 S.E.2d 235, 240 (2010) (citing *In re Key*, 182 N.C. App. 714, 719, 643 S.E.2d 452, 456 (2007)); *see also Guerra v. Harbor Freight Tools*, 287 N.C. App. 634, 637-38, 884 S.E.2d 74, 77 (2023) (“The requirement expressed in Rule 10(a) that litigants raise an issue in the trial court before presenting it on appeal goes to the heart of the common law tradition and our adversary system.” (citation and quotation marks omitted)). “Rule 10(a)(1) ‘is not simply a technical rule of procedure but shelters the trial judge from an undue if not impossible burden.’ ” *Id.* at 638, 884 S.E.2d at 77 (quoting *Don’t Do It Empire, LLC v. TennTex*, 246 N.C. App. 46, 54, 782 S.E.2d 903, 908 (2016)).

Moreover, Plaintiff points only to the trial court’s decisions that were not in her favor. “This Court has held that the fact that a trial judge has repeatedly ruled against a party is not grounds for disqualification of that judge absent substantial evidence to support allegations of interest or prejudice.” *Love v. Pressley*, 34 N.C. App. 503, 506, 239 S.E.2d 574, 577 (1977) (citing *In re Custody of Cox*, 24 N.C. App. 99, 101, 210 S.E.2d 223, 224 (1974), *disc. review denied*, 286 N.C. 414, 211 S.E.2d 793 (1975)). Plaintiff has not pointed to such evidence in her briefing to this Court. Thus, we dismiss Plaintiff’s argument as without merit.

Conclusion

SAHANA V. FISCUS

Opinion of the Court

Accordingly, for the foregoing reasons, we affirm the trial court's Order.

AFFIRMED.

Judges CARPENTER and GRIFFIN concur.

Report per Rule 30(e).