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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-439

Filed 31 December 2024

Randolph County, Nos. 23CRS000212–213

STATE OF NORTH CAROLINA

v.

JAMES L. BRYANT, JR., and SHARON R. BRYANT, Defendants.

Appeal by defendants from orders entered 5 September 2024 by Judge Keith Gregory in Randolph County Superior Court. Heard in the Court of Appeals 6 November 2024.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Kunal J. Choksi, for the State-appellee.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Brandon Mayes, for defendant-appellant James L. Bryant, Jr.*

*Blass Law, PLLC, by Danielle Blass, for defendant-appellant Sharon R. Bryant.*

GORE, Judge.

Defendants James L. Bryant, Jr., and Sharon R. Bryant appeal from orders of indirect criminal contempt. Upon review, we affirm the contempt orders and dismiss defendants’ ineffective assistance of counsel (“IAC”) claims.

## **I. Background**

These criminal contempt cases were the result of defendants' failure to comply with trial court orders in a civil case between Eastwood Construction LLC ("Eastwood") against defendants. For purposes of this appeal, it is sufficient to know that Eastwood initiated the underlying civil case by filing a complaint on 27 April 2024 alleging, *inter alia*, that defendants engaged in a malicious and unlawful smear campaign against Eastwood, the builder and seller of homes in defendants' residential community, that constituted defamation and harassment and interfered with Eastwood's business. On 27 April 2023, the trial court entered a temporary restraining order ("TRO") that prohibited defendants from directly or indirectly defaming or harassing Eastwood, its employees, and its customers, and that specifically forbade defendants from "[d]istributing or placing fliers, signs, or any other written material defaming Eastwood[.]" The TRO was extended by the trial court until a preliminary injunction hearing on 1 June 2023 and was further extended until the trial court entered a preliminary injunction with the same terms as the TRO on 27 June 2023.

On 7 June 2023, while the TRO remained in place pending entry of the preliminary injunction, Eastwood filed a motion to show cause alleging that three signs were erected in defendants' yard on 2 June 2023 in violation of the TRO, one of which was the same as a sign previously removed pursuant to the TRO. The motion requested issuance of an order to show cause why defendants should not be held in

contempt of the TRO.

Eastwood's motion to show cause came on for an initial hearing in the trial court before Judge Gregory on 5 July 2023, along with a motion by Eastwood for an injunction pending defendants' appeal of the preliminary injunction in the civil case. Relevant to the motion to show cause, Judge Gregory found in the order that defendants engaged, and continued to engage, in conduct that Eastwood claimed violated the TRO, and defendants expressed their intent to continue their conduct. However, Judge Gregory did not consider the merits of the motion and instead appointed counsel to represent defendants in the contempt proceedings and set the matter for further hearing on 31 July 2023, when defendants had the benefit of counsel.

Upon agreement of the parties, Eastwood's motion for show cause was rescheduled and came back on for hearing in the trial court before Judge Gregory on 5 September 2023, when defendants were represented by counsel. After opening statements and discussions on the nature of the contempt since defendants had removed the offending signs by the time of the hearing, the trial court took a break to allow the parties to confer before proceeding with evidence. Upon return from the break, defendants informed the court that they had reached an agreement on contempt and stipulated to facts sufficient for indirect criminal contempt in exchange for a suspended 30-day sentence, one year of unsupervised probation, and continued compliance with orders in place. Judge Gregory accepted the agreement, directed the

clerk to get criminal case numbers and prepare orders. On 5 September 2023, Judge Gregory entered orders in accordance with the agreement, holding defendants in indirect criminal contempt and imposing a 30-day suspended sentence with 12 months of unsupervised probation for each defendant.

Defendants appealed the orders of indirect criminal contempt on 6 September 2024. Judge Gregory completed appellate entries, and defendants were appointed appellate counsel.

## **II. Analysis**

Defendants appeal separately but raise similar arguments that the trial court lacked jurisdiction because there was no show cause order, that the court erred in relying on defendants' stipulations of fact, that there was insufficient evidence and findings in support of the conclusions that defendants were in contempt, and that defendants could not be in contempt of the TRO because the TRO violated their First Amendment rights. We hold defendants have waived appellate review of the issues.

Generally,

[i]n 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. It is also necessary for the complaining party to obtain a ruling upon the party's request, objection, or motion.

N.C.R. App. P. 10(a)(3) (2024). Furthermore, "a defendant who invites error has waived his right to all appellate review concerning the invited error, including plain

error review.” *State v. Miller*, 289 N.C. App. 429, 433 (2023) (quoting *State v. Crane*, 269 N.C. App. 341, 343 (2020)). That is because “[a] defendant is not prejudiced by the granting of relief which he has sought or by error resulting from his own conduct.” N.C.G.S. § 15A-1443(c) (2023). “Our courts have consistently applied the invited error doctrine when a defendant’s affirmative actions directly precipitate error.” *Miller*, 289 N.C. App. at 433.

In this case, the trial court conducted a hearing for defendants’ initial appearance for contempt and entered an order that appointed counsel for defendants and rescheduled a contempt hearing when defendants had the benefit of counsel. Although defendants’ counsel initially noted several of the issues now argued on appeal at the 5 September 2023 contempt hearing, including the lack of show cause order and the constitutionality of the TRO, no rulings were obtained on those arguments, and the arguments were abandoned when defendants stipulated to facts sufficient to support indirect criminal contempt of the TRO and requested the punishment that they received—a suspended 30-day sentence with 12 months of unsupervised probation.

Because defendants stipulated to facts sufficient for indirect criminal contempt and were granted the remedy they presented and actively sought from the trial court, defendants cannot establish prejudice from errors precipitated by their actions. Accordingly, we hold defendants have waived appellate review of the challenges to the contempt proceedings now asserted on appeal. *See State v. Moore*, 132 N.C. App.

197, 200–01 (1999) (holding a defendant waived appellate review of arguments challenging the sufficiency of the charge for contempt of a preliminary injunction and the evidence against him); *see also State v. Wilkins*, 287 N.C. App. 343, 349 (2022) (quotation omitted) (“[c]onstitutional issues not raised and passed upon at trial will not be considered for the first time on appeal”).

The only remaining arguments by defendants on appeal are claims that they received IAC in the contempt proceedings because counsel failed to argue the above issues. “IAC claims brought on direct review will be decided on the merits when the cold record reveals that no further investigation is required, i.e., claims that may be developed and argued without such ancillary procedures as the appointment of investigators or an evidentiary hearing.” *State v. Fair*, 354 N.C. 131, 166 (2001). However, “because of the nature of IAC claims, defendants likely will not be in a position to adequately develop many IAC claims on direct appeal.” *Id.* at 167. “[S]hould the reviewing court determine that IAC claims have been prematurely asserted on direct appeal, it shall dismiss those claims without prejudice to the defendant’s right to reassert them during a subsequent MAR proceeding.” *Id.*

The record in the instant case is insufficient to review the merits of defendants’ IAC claims on direct appeal. The record tends to show that counsel was aware of the issues but did not pursue the issues because defendants admitted to contempt and sought a specific remedy, which the trial court accepted and imposed. There is no evidence in the record of defendants’ discussions with counsel, nor any explanation of

counsel's deliberations or strategy in not pursuing challenges to the contempt proceedings. The record instead indicates that counsel acted in accordance with defendants' wishes in presenting the defendants' agreement to the trial court. Because the record on appeal is insufficient to review the merits of defendants' IAC arguments, we dismiss the arguments without prejudice to raise an IAC claim in a motion for appropriate relief in the trial court, if defendants so desire. *See id.*; *see also State v. Hurst*, 304 N.C. 709, 712 (1982) (dismissing an IAC claim raised in a motion for appropriate relief filed in the appellate courts because the record was insufficient to decide the issue and permitting defendant to raise the claim in the trial court).

### **III. Conclusion**

Because the alleged errors in the contempt proceedings raised on appeal were invited by defendants, defendants have waived appellate review of the issues, and we affirm the contempt orders. To the extent defendants argue IAC during the contempt proceedings, the record before this Court is insufficient to decide the issue. We therefore dismiss the IAC claims without prejudice to defendants' rights to raise the claims by motion for appropriate relief in the trial court.

AFFIRMED.

Judges FLOOD and THOMPSON concur.

Report per Rule 30(e).