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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-337

Filed 2 April 2025

Durham County, No. 07 CVD 583

SHERYL GOLDEN (Formerly Argila), Plaintiff,

v.

JAIME ARGILA, Defendant.

Appeal by defendant from order entered 29 March 2023 and amended order entered 25 April 2023 by Judge O. David Hall in Durham County District Court. Heard in the Court of Appeals 11 February 2025.

Payne Family Law & Mediation, by Barri H. Payne, for plaintiff-appellee.

Defendant-appellant Jaime Argila, pro se.

ZACHARY, Judge.

Defendant Jaime Argila appeals from the trial court's order finding him in willful civil contempt for his failure to comply with the terms of the parties' separation agreement, which was incorporated into the parties' divorce judgment. After careful review, we affirm.

I. Background

Plaintiff Sheryl Golden and Defendant were married in 2000 and had two children together, in 2001 and 2005. The parties separated in 2006 and have been divorced since 2007. On 10 April 2006, the parties entered into a separation agreement (the “Agreement”), which provided, *inter alia*, that each party shall pay one-half of their children’s college expenses and that “any unreimbursed medical and dental expenses [of the minor children] shall be shared between the parties on a pro rata basis.” The Agreement was later incorporated into their divorce judgment (the “2007 Judgment”).

Over the following years, the trial court entered several orders concerning custody and child support. In 2016, the trial court entered an order (the “2016 Order”) modifying several aspects of this matter, including custody and visitation, in which the court stated: “In an effort to consolidate the previous orders, this [c]ourt orders that this Order controls the actions of the parties and supersedes all other orders.” The 2016 Order did not address the children’s college expenses.

On 7 May 2021, Plaintiff filed a motion for order to show cause/motion for contempt,¹ alleging that Defendant had not paid any of their older child’s college expenses for the first four semesters. Plaintiff also alleged that Defendant had not paid certain medical bills that the children incurred between 2015 and 2017. On 10 May 2021, the trial court entered an order granting Plaintiff’s motion for order to

¹ On 11 March 2022, Plaintiff filed an amended motion for order to show cause/motion for contempt in order to correct a typographical error.

show cause/motion for contempt and ordering Defendant to appear and show cause as to why the court should not hold him in contempt.

The matter came on for hearing in Durham County District Court on 8 June 2022. On 12 July 2022, the trial court rendered an oral ruling in open court finding Defendant in contempt. On 29 March 2023, the court entered an order finding Defendant in willful civil contempt and providing for purge conditions.

Concerning Defendant's ability to pay, the court made the following findings of fact:

20. Defendant is an emergency room physician serving two (2) different medical facilities in the Virginia Beach, VA area.
21. Plaintiff presented discovery responses completed by Defendant in November 2021 as Plaintiff's Exhibit #13, in which Defendant listed his annual income for the prior three years. Defendant indicated that he worked for Riverside Medical Group in Newport News, VA and Family First Medicine in Virginia Beach, VA. . . . Defendant's income that he listed for each employer for each of the prior three years is as follows[:]
 - a. 2019: Riverside Medical \$131,528.65; Family First \$178,250.88
 - b. 2020: Riverside Medical \$334,773.75; Family First \$157,890.88
 - c. 2021: Riverside Medical \$410,701.25; Family First \$60,110
22. Plaintiff also presented Defendant's 2019 federal tax return as Exhibit #14. The tax return indicated for tax year 2019 that Defendant's adjusted gross

income was \$532,905, and his taxable income was \$486,592.

23. Plaintiff's Exhibit #15 was a copy of Defendant's 2020 federal tax return provided by Defendant in discovery which indicated that his adjustable gross income for 2020 was \$553,903 and his taxable income was \$512,386.

. . . .

44. Defendant has the ability to pay 50% of the college expenses for his children and a pro rata (or agreed upon equal) share of the children's healthcare expenses. His failure to do so is in direct violation of the [Agreement] which is now an Order, as well as in violation of the 2010 order and is therefore in willful contempt of the court's orders.

Based on these and other findings, the court concluded:

1. . . . Defendant is in willful civil contempt for his failure to pay his half (1/2) of the college expenses as agreed to by the parties in [the Agreement] and as ordered by the court upon the [A]greement's incorporation into the [2007 Judgment].
2. Defendant is in willful civil contempt for his failure to pay his pro rata share of the children's uninsured healthcare expenses pursuant to [the Agreement] and as ordered by the court upon the [A]greement's incorporation into the [2007 Judgment] as well as pursuant to the 2010 Court Order.
3. . . . Defendant is hereby sentenced to thirty (30) days active jail time in the Durham County jail.
4. . . . Defendant may purge his contempt by making the following payments:
 - a. Payments to . . . Plaintiff to reimburse his half of the [older child]'s college expenses (50% of which

is [\$]37,740.86.) on the following payment schedule:

- i. Equal monthly installments over the next nine (9) months of \$4,193.43 beginning December 1, 2022 and continuing to be paid by no later than the 1st of each month thereafter, until nine payments have been made or the amount due has been paid in full.
- b. Payment to Plaintiff in the amount of \$292.16, which is 50% of the past due uninsured healthcare expenses Defendant owed Plaintiff (\$584.33), by no later than May 31, 2023. While the pro rata shares may be different than 50-50 in the years these expenses were incurred, because Defendant was already working as a physician at that time, Plaintiff has offered to settle these expenses with Defendant simply reimbursing her 50% of the total and the [c]ourt finds this to be a reasonable purge payment.

5. The sentence is stayed for so long as Defendant makes the payments set forth herein on time and in full. . . .

On the same day that the trial court entered the contempt order, Defendant sent an email to the court and Plaintiff's counsel requesting a new date on which to begin the ordered monthly payments, as "he had already missed the December 1, 2022 due date at the time" that the written order was entered. Defendant then timely filed notice of appeal on 24 April 2023. One day later, the trial court entered an amended order changing the beginning date of Defendant's ordered monthly installments from 1 December 2022 to 1 May 2023.

II. Discussion

Defendant raises four issues on appeal. He first argues that the trial court erred by failing to make sufficient findings of fact regarding his ability to pay. Defendant also challenges two of the court's findings of fact. Lastly, Defendant contends that the court erred by allowing Plaintiff's counsel to file a memorandum of law after the 8 June 2022 hearing "without providing [him] the opportunity to submit a competing memorandum."

However, Defendant has abandoned several of these issues by neglecting to provide authority in support of his arguments. "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). "The body of the argument . . . shall contain citations of the authorities upon which the appellant relies." *Id.* "This Court has routinely held an argument to be abandoned where an appellant presents argument without such authority and in contravention of the rule." *Groseclose v. Groseclose*, 291 N.C. App. 409, 430, 896 S.E.2d 155, 169 (2023) (citation omitted).

In the case before us, Defendant cites no legal authority in support of his challenges to the trial court's findings of fact #37 and #45. Accordingly, these issues are "taken as abandoned." N.C.R. App. P. 28(b)(6); *see, e.g., Groseclose*, 291 N.C. App. at 430, 896 S.E.2d at 169.

Defendant similarly provides no citation to authority in support of his argument concerning the trial court's alleged failure to provide him with the same opportunity as Plaintiff's counsel to submit a memorandum of law, although he does

make a glancing reference to the alleged infringement upon his “Sixth Amendment right” and violation of procedural fairness. To the extent that Defendant raises a constitutional argument on appeal, it is not properly before us because Defendant failed to raise any such argument before the trial court. *See Stanley v. Stanley*, 51 N.C. App. 172, 178, 275 S.E.2d 546, 550 (“As a general rule, this Court will not pass upon a constitutional question not raised and considered in the court from which the appeal is taken.”), *appeal dismissed and disc. review denied*, 303 N.C. 182, 280 S.E.2d 454, *cert. denied*, 454 U.S. 959, 70 L. Ed. 2d 374 (1981). “The record does not reflect that this constitutional argument, if, indeed, it is a constitutional question, was presented to or considered by the trial court.” *Id.* We will not consider this issue for the first time on appeal.

We thus proceed to review the only issue properly before us: whether the trial court failed to make sufficient findings of fact regarding Defendant’s ability to pay.

A. Standard of Review

“Appellate review of contempt proceedings is limited to whether there is competent evidence to support the findings of fact and whether the findings support the conclusions of law.” *Groseclose*, 291 N.C. App. at 427, 896 S.E.2d at 167 (cleaned up). “Findings of fact made by the judge in contempt proceedings are conclusive on appeal when supported by any competent evidence and are reviewable only for the purpose of passing upon their sufficiency to warrant the judgment.” *Id.* at 427, 896 S.E.2d at 167–68 (citation omitted).

B. Analysis

Defendant argues that the trial court failed to make sufficient findings of fact regarding his ability to pay. We disagree.

“Before holding an obligor in civil contempt, the trial court must find as fact the obligor’s failure to comply with the child support order was willful and the obligor has the present ability to pay.” *Cumberland Cty. ex rel. Mitchell v. Manning*, 262 N.C. App. 383, 389, 822 S.E.2d 305, 309 (2018). “Although specific findings as to the contemnor’s present means are preferable, this Court has held that a general finding of present ability to comply is sufficient basis for the conclusion of wil[l]fulness necessary to support a judgment of civil contempt.” *Id.* (citation omitted). “For these findings, there are several points of argument for an appealing contemnor—the lack of a finding on these issues, the *wording* of the finding, and *whether the finding is supported by competent evidence.*” *Id.*

In the present appeal, Defendant does not assert that the trial court failed to make a finding as to his ability to pay, nor does he challenge the wording of the court’s finding. Instead, Defendant contends that “Plaintiff failed to produce comprehensive financial evidence” to support the court’s finding of his ability to pay, in that “[t]here was no financial affidavit submitted nor any evidence presented to account for any of [his] liabilities or expenses.” He further alleges that “Plaintiff failed to present any evidence whatsoever regarding either income or expenses for any time period after 2021, leaving an incomplete and misleading picture of Defendant’s financial

situation.”

We first note that by alleging deficiencies in Plaintiff’s evidence, Defendant misplaces the burden of proof at this stage of the proceedings. In its order to appear and show cause, with which Defendant was served, the trial court found that there was “probable cause to believe that [Defendant was] in civil . . . contempt for failing to comply with the [c]ourt’s order.” *See Bossian v. Bossian*, 284 N.C. App. 208, 223, 875 S.E.2d 570, 582 (2022) (“[B]ecause a judicial official found probable cause existed to issue a show cause order to Defendant, Defendant bore the burden to demonstrate why he should not have been held in willful contempt.”), *disc. review denied*, 385 N.C. 618, 894 S.E.2d 751 (2023).

Significantly, at the hearing below, Defendant did not argue that he was unable to pay one-half of his child’s college expenses. Instead, Defendant insisted that he did not pay because (1) it would be “good for [his child] . . . to be invested in [his] own education,” and (2) the 2016 Order—which did not address college expenses, unlike the incorporated Agreement—superseded the 2007 Judgment and therefore controlled on the issue of college expenses, which he was thus under no obligation to pay. Moreover, although Plaintiff introduced evidence concerning Defendant’s ability to pay, including her testimony, Defendant’s income tax returns, and his responses to interrogatories documenting his income from 2019 to 2021, “Defendant did not dispute Plaintiff’s [evidence] about his ability to pay.” *Id.* at 224, 875 S.E.2d at 582–83.

Instead, Defendant cites *Gorrell v. Gorrell*, in which our Supreme Court explained that a trial court “must find what are [the contemnor’s] assets and liabilities and his ability to pay and work—an inventory of his financial condition” before determining whether a failure to pay amounts to willful disobedience of a court order. 264 N.C. 403, 404, 141 S.E.2d 794, 795 (1965) (cleaned up). However, more recent case law illustrates that a contemnor can obviate the need for the trial court to make such comprehensive financial findings by demonstrating both an ability to pay and willful disobedience at a show-cause hearing.

In *Barker v. Barker*, the defendant entered into a consent order as part of his divorce in which he agreed to pay 90% of his children’s college expenses “as long as they diligently applied themselves to the pursuit of education.” 228 N.C. App. 362, 363, 745 S.E.2d 910, 912 (2013). After his daughter’s academic performance suffered for a semester following the unexpected death of a friend, the defendant “decided he would not pay [his daughter]’s tuition for the 2011-2012 school year until he saw a transcript of her grades.” *Id.* At the hearing on the plaintiff’s motion to show cause, in which she sought “the issuance of an order requiring [the] defendant to show cause as to why he should not be held in contempt,” *id.*, the “defendant testified that he withheld payment in order to ‘leverage’ [his daughter] to improve her grades,” *id.* at 368, 745 S.E.2d at 915. “This purpose motivated his deliberate disobedience of the order,” and we held that his testimony supported the trial court’s finding of willful disobedience. *Id.*

As for the court's determination of his ability to pay, the defendant contended that "there was no evidence to support this finding and that the court relied on his status as a physician to make its determination." *Id.* We disagreed, again relying on the defendant's own testimony "that he was willing to pay from this point forward based on the agreement that we have with *no problems whatsoever.*" *Id.* (cleaned up). This Court concluded that it was "reasonable to infer that if [the] defendant made payments for the 2010-2011 academic year and [wa]s willing and able to make payments going forward, that he was capable of making payments for the 2011-2012 academic year." *Id.* at 368–69, 745 S.E.2d at 915. We further noted that the "defendant testified that he did not make payments because of [his daughter]'s performance, not because of any inability to pay on his part." *Id.* at 369, 745 S.E.2d at 915.

As in *Barker*, Defendant here testified to his ability to pay his agreed-upon share of his child's college expenses at the show-cause hearing. Indeed, when Plaintiff's counsel provided him with the opportunity to argue that he lacked the ability to pay his share, Defendant declined to do so, instead asserting other motivations:

Q. Okay. So it's not your testimony that you don't have the ability to pay; it's that you just believe that there is not a valid requirement that you do so?

A. *I believe that it is good for [the parties' older child] and kids, in general, to be invested in their own education. . . .*

Q. Okay. And so I'm assuming that means you have no intention of paying towards your [younger child]'s . . . college education, either?

A. I think everything is different, but *I certainly don't believe that I'm obligated to, no.*

(Emphases added).

Indeed, Defendant admitted that he could, if he wished, “pay towards those” college expenses:

Q. Okay. And has [Plaintiff] sent you statements of the tuition bills each semester so that you know what they are and what your 50 percent responsibility would be?

A. She has sent me bills periodically regarding the payments, or Liberty [University] tuition, and such.

Q. Okay. And despite receiving those and despite . . . what I just understood you said, you don't have an obligation, but *you could voluntarily, I assume, pay towards those*, but you have not paid anything towards tuition, just to -- just to be clear on that?

A. *Correct.* As I said previously, I have not paid towards his tuition.

(Emphases added).

Defendant's confirmation at the show-cause hearing that he “could voluntarily . . . pay towards” his child's tuition constitutes the requisite “any competent evidence” in support of the trial court's finding that he had the ability to pay, and therefore this finding is “conclusive on appeal.” *Groseclose*, 291 N.C. App. at 427, 896 S.E.2d at 167–68 (citation omitted). Moreover, Defendant testified that he did not make payments because of his beliefs (1) that he was not legally obligated to do so, and (2) that it

would be “good for [the parties’ older child] and kids, in general, to be invested in their own education.” Like the contemnor in *Barker*, Defendant did not testify, argue before the trial court, or argue before this Court that his failure to pay was “because of any inability to pay on his part.” 228 N.C. App. at 369, 745 S.E.2d at 915.

In this case, as in *Barker*, Defendant manifested both an ability to pay and willful disobedience at the show-cause hearing, relieving the trial court of the need to make additional findings concerning his financial condition. Defendant’s own testimony provided sufficient, competent evidence to support the findings of fact, “and these findings support the trial court’s conclusion that [D]efendant had the ability to pay but willfully refused to do so. Therefore, it was not error to hold [D]efendant in civil contempt.” *Id.*

III. Conclusion

For the foregoing reasons, the trial court’s order is affirmed.

AFFIRMED.

Judges CARPENTER and MURRY concur.

Report per Rule 30(e).