An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

NO. COA01-1239

NORTH CAROLINA COURT OF APPEALS

Filed: 17 December 2002

DONNA ROBERTSON,
Plaintiff,

v. Davie County
No. 01 CVD 398

CHARLES RONALD ROBERTSON,
Defendant.

Appeal by defendant from orders entered 11 June 2001 by Judge Jimmy L. Myers and 2 July 2001 by Judge Lynn Gullett in Davie County District Court. Heard in the Court of Appeals 14 August 2002.

*Theodore M. Molitoris and Michelle D. Reingold, for the plaintiff-appellee.*

*Elliot, Pishko, Gelbin & Morgan, P.A., by David C. Pishko, for the defendant-appellant.*

HUDSON, Judge.

Defendant, Charles Ronald Robertson, appeals from an ex parte domestic violence protective order entered 11 June 2001, and a domestic violence protective order entered 2 July 2001, in favor of his wife, plaintiff Donna Robertson.

Plaintiff and defendant were married on 3 June 1995, and subsequently had two children together. On 11 June 2001, plaintiff filed a Complaint and Motion for Domestic Violence Protective Order

with the district court in Davie County. She alleged that defendant had committed certain acts against her that had placed her in actual fear of imminent serious bodily injury, and she requested that the court give her emergency relief in the form of an ex parte order. The court granted the order. After a hearing, the court on 2 July 2001 also granted plaintiff a Domestic Violence Protective Order, effective for one year from the date of issuance. Defendant appeals both the ex parte and domestic violence protective orders.

On appeal, defendant contends that the conduct alleged in plaintiff's complaint and motion for a domestic violence protective order was insufficient to support the entry of an ex parte domestic violence protective order pursuant to N.C. Gen. Stat. § 50B-2 (2001). He also contends that the ex parte order was invalid because it lasted longer than the ten days mandated by N.C. Gen. Stat. § 50B-2(c). In *Smart v. Smart*, 59 N.C. App. 533, 535, 297 S.E.2d 135, 137 (1982), this Court held that ex parte orders may not be appealed because they are interlocutory. "Interlocutory orders are those made during the pendency of an action which do not dispose of the case, but instead leave it for further action by the trial court in order to settle and determine the entire controversy." *Carriker v. Carriker*, 350 N.C. 71, 73, 511 S.E.2d 2, 4, *reh'g denied*, 350 N.C. 385, 536 S.E.2d 70 (1999). The *Smart* Court noted that "no appeal will lie to an appellate court from an interlocutory order or ruling of a trial court unless such order or ruling deprives the appellant of a *substantial* right which he will

lose if the order or ruling is not reviewed before final judgment." 59 N.C. App. at 534-35, 297 S.E.2d at 137 (describing the juxtaposition of N.C. Gen. Stat. § 1-277 and N.C. Gen. Stat. § 7A-27). "A *right* is substantial only where appellant would lose it if the ruling or order is not reviewed before final judgment." *Smart*, 59 N.C. App. at 535, 297 S.E.2d at 137. The *Smart* Court held that "the immediate temporary emergency relief granted by the [ex parte] order does not affect any substantial right of the defendant which cannot be protected by timely appeal from the trial court's ultimate disposition of the entire controversy on the merits." *Id.* at 536, 297 S.E.2d at 137-38. Thus, defendant's appeal of the ex parte order is dismissed as interlocutory.

Defendant also contends that the trial court erred in entering the domestic violence protective order. The trial court entered the order on 2 July 2001 effective for one year. Without any further documentation[1] from the parties, we must presume that the order ended on 2 July 2002 and was not renewed pursuant to N.C. Gen. Stat. § 50B-3(b) (2001). As this order is no longer in place and there is no continuing controversy, normally we would find that defendant's appeal should be dismissed as moot. *See Benvenue Parent-Teacher Assoc. v. Nash County Bd. of Educ.*, 275 N.C. 675, 679, 170 S.E.2d 473, 476 (1969) (holding that this Court properly refuses to entertain moot appeals, because any determinations would be based on abstract propositions of law). "However, even when

[1] Pursuant to Rule 9(b)(5) of the North Carolina Rules of Appellate Procedure (2001), either party may move to amend the record after it has been filed with this Court.

the terms of the judgment . . . have been fully carried out, if collateral legal consequences of an adverse nature can reasonably be expected to result therefrom, then the issue is not moot and the appeal has continued legal significance." *In re Hatley*, 291 N.C. 693, 694, 231 S.E.2d 633, 634 (1977); *see also Sibron v. New York*, 392 U.S. 40, 20 L. Ed. 2d 917 (1968). *In Smith ex rel. Smith v. Smith*, 145 N.C. App. 434, 436, 549 S.E.2d 912, 914 (2001), this Court held that even though a domestic violence protective order effective for six months was no longer in place at the time of the appeal, "[d]efendant may suffer collateral legal consequences as a result of the entry of the order. Such collateral legal consequences may include consideration of the order by the trial court in any custody action involving Defendant." Moreover, the Court held that numerous non-legal collateral consequences also required that an appellate court review a protective order after it has expired, including matters in which "a stigma . . . is likely to attach to a person judicially determined to have committed [domestic] abuse." *Id.* at 437, 549 S.E.2d at 914. Even though defendant has not argued that he has suffered or in the future might suffer from collateral consequences of the domestic violence protective order, the parties do have minor children, and we elect to address his appeal on its merits.

Defendant argues that the trial court's findings of fact do not support the conclusion of law that defendant committed acts of domestic violence against the plaintiff. Thus, the trial court erred by entering a domestic violence protective order in favor of

the plaintiff. We disagree.

In his brief on appeal, defendant contends that substantial evidence did not support the finding that "the defendant placed in actual fear of imminent serious bodily injury the plaintiff by . . . throwing coffee grounds at her, on 6-9-01 in a[n] angry stance told her he would see to it she got what she deserved. On or about March 29, 2001 he physically restrained her by holding her arms while she was trying to get away." We first note that because defendant did not assign error to the trial court's findings of fact, we are bound by these findings, which we presume to be correct. *See Inspirational Network, Inc. v. Combs*, 131 N.C. App. 231, 235-36, 506 S.E.2d 754, 758 (1998); *see also Saxon v. Smith*, 125 N.C. App. 163, 169, 479 S.E.2d 788, 792 (1997).

Defendant also contends that the findings do not support the conclusion that "[t]here is danger of serious and immediate injury to the plaintiff." Pursuant to N.C. Gen. Stat. § 50B-3, "[t]he court . . . may grant any protective order or approve any consent agreement to bring about a cessation of acts of domestic violence." Domestic violence is defined, in pertinent part, as "[p]lacing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily injury." N.C. Gen. Stat. § 50B-1 (a)(2). "The test for whether the aggrieved party has been placed 'in fear of imminent serious bodily injury' is subjective; thus, the trial court must find as fact the aggrieved party 'actually feared' imminent serious bodily injury." *Smith*, 145 N.C. App. at 437, 549 S.E.2d at 914.

The trial court found as fact that the defendant put plaintiff "in actual fear of imminent serious bodily injury" by throwing coffee grounds at her, telling her that he would "see to it she got what she deserved," and physically restraining her when she tried to leave. The plaintiff testified as follows:

> A. On June 9th my husband, in a harsh aggressive tone told me he was going to-- "I will make sure you get what you deserve and I can't wait." His--
>
> Q. What did he appear to look like physically? Where was he standing with regard to you and what was his demeanor?
>
> A. He was probably--he was three to four feet away, red-faced, hulking.
>
> Q. What do you mean by that?
>
> A. Arms up, fists--
>
> Q. Fists clenched?
>
> A. Clenched, yes, sir.
>
> Q. What did his arms look like?
>
> A. His arms were out.
>
> Q. Are you demonstrating for the Court what his arms looked like?
>
> A. Out, with his fists clenched, a very intimidating stance.
>
> Q. How many feet from you was he?
>
> A. Three or four feet.
>
> Q. What did you feel right at that moment?
>
> A. I was scared and I was intimidated and I went inside and dialed 911.

"[W]here the trial court finds that a plaintiff is actually subjectively in fear of imminent serious bodily injury, an act of

domestic violence has occurred pursuant to [N.C. Gen. Stat. §] 50B-1(a)(2)." *Brandon v. Brandon*, 132 N.C. App. 647, 654-55, 513 S.E.2d 589, 595 (1999). Thus, the trial court's finding of fact that plaintiff was "actually subjectively in fear of imminent serious bodily injury" based on this evidence supports the trial court's conclusions that

> 3. The defendant has committed acts of domestic violence against the plaintiff.
> . . . .
> 5. There is danger of serious and immediate injury to the plaintiff.
> . . . .
> 7. This domestic violence protective order is necessary to bring about a cessation of acts of domestic violence.

We affirm the trial court's issuance of the 2 July 2001 domestic violence protective order in favor of plaintiff.

Affirmed.

Judges WYNN and CAMPBELL concur.

Report per Rule 30(e).