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NO. COA01-441

NORTH CAROLINA COURT OF APPEALS

Filed: 21 May 2002

KIMBERLY SOLZSMON

v.

Guilford County
No. 99 CVD 6743

TIMOTHY SOLZSMON

Appeal by defendant from judgment entered 2 January 2001 by Judge Thomas G. Foster, Jr. in Guilford County District Court. Heard in the Court of Appeals 12 February 2002.

Tracey G. Tankersley for plaintiff-appellee.

John W. Lunsford for defendant-appellant.

THOMAS, Judge.

Defendant, Timothy Solzsmon, appeals the trial court's order holding him in contempt for failure to pay alimony to plaintiff, Kimberly Solzsmon.

Pursuant to an earlier order, entered 12 October 2000, defendant was required to pay \$1,000.00 per month in current alimony plus \$200.00 per month in retroactive alimony for five years. Defendant appealed that order to this Court.

On 17 October 2000, plaintiff filed a motion for contempt and an order to show cause. On 2 January 2001, the trial court found defendant to be in civil contempt. He was allowed to purge himself by paying his November bonus to plaintiff, and if the bonus totaled

less than the \$2,400.00 due, defendant was to make up the difference from his other funds. The trial court also ordered defendant to pay plaintiff \$384.00 for past due child support, and \$250.00 in attorneys' fees. Defendant appeals.

By two assignments of error, defendant contends the trial court erred: (1) in holding defendant in civil contempt because the evidence showed he did not have the present ability to comply; and (2) in finding that defendant could make payments on arrears without evidence to support the finding, since the amount of defendant's bonus was unknown.

This Court has concluded that defendant's first appeal has merit. Since the original order requiring defendant to pay alimony to plaintiff was reversed and the case remanded, we vacate the order finding defendant in contempt.

VACATED.

Judges GREENE and MCGEE concur.

Report per Rule 30(e).