

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-1453

NORTH CAROLINA COURT OF APPEALS

Filed: 1 May 2007

BETSY LYNN SLEATH,
Plaintiff,

v.

Orange County
No. 03 CVD 1510

TERRY EDWARD ADAMS,
Defendant.

Appeal by defendant from order entered 6 February 2006 by Judge Alonzo B. Coleman in Orange County District Court. Heard in the Court of Appeals 30 April 2007.

Wyrick Robbins Yates & Ponton LLP, by K. Edward Greene, for plaintiff-appellee.

Donna Ambler Davis, for defendant-appellant.

LEVINSON, Judge.

Terry Edward Adams (defendant) appeals from an order of the district court granting plaintiff's motion to dismiss his appeal from an equitable distribution order pursuant to N.C.R. App. P. 25(a). Because no right of appeal lies from the order at issue, we dismiss.

The record before this Court reflects that Betsy Lunn Sleath (plaintiff) and defendant separated on or about 14 August 2003, after fourteen years of marriage. Plaintiff filed a complaint for

child custody, child support, interim and equitable distribution, and attorney's fees on 27 August 2003. On 27 October 2003, the district court ordered an interim distribution of marital property. Plaintiff later amended her complaint to add a claim for absolute divorce; and the district court entered a judgment of divorce on 20 September 2004.

On 12 August 2005, the district court entered its equitable distribution order. Defendant filed notice of appeal from the equitable distribution order on 9 September 2005.

On 20 October 2005, plaintiff moved to dismiss defendant's appeal pursuant to N.C.R. App. P. 25(a), based on his failure to serve his proposed record on appeal in a timely manner under N.C.R. App. P. 11. In an order entered 6 February 2006, the district court found, *inter alia*, that "[d]efendant did not order the transcripts within the meaning of Rule 7 of the Rules of Appellate Procedure[,]" inasmuch as he (1) failed to file and serve a written notice of his request for the transcripts, and (2) "ordered fewer than all of the transcripts of the equitable distribution proceedings" without filing and serving a statement of the issues he intended to raise on appeal. See N.C.R. App. P. 7(a)(1). Because defendant did not order a transcript, the court further found he was required by Rule 11(a) to serve his proposed record on appeal on or before 14 October 2005, within thirty-five days of his notice of appeal. Accordingly, based on defendant's service of the proposed record on 28 October 2005, fourteen days after the

applicable deadline, the court dismissed his appeal for lack of substantial compliance with Rules 7 and 11. Defendant filed timely notice of appeal from the dismissal order.

On appeal, defendant challenges the district court's finding that he ordered fewer than all the transcripts of the equitable distribution proceedings, and its resulting conclusion that his service of the proposed record was untimely. We do not reach the merits of these arguments, however, because we hold that defendant's appeal is not properly before this Court.

"No appeal lies from an order of the trial court dismissing an appeal for failure to perfect it within apt time, the proper remedy to obtain review in such case being by petition for writ of certiorari." *State v. Evans*, 46 N.C. App. 327, 327, 264 S.E.2d 766, 767 (1980) (citations omitted). Here, defendant appeals from an order dismissing his appeal for lack of timely service of the record on appeal. He has not sought review of the equitable distribution order by writ of certiorari pursuant to N.C.R. App. P. 21(a). His appeal is hereby dismissed.

Dismissed.

Judges MCCULLOUGH and STEELMAN concur.

Report per Rule 30(e).