

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-656

NORTH CAROLINA COURT OF APPEALS

Filed: 3 April 2007

KADI VASQUEZ-KOOL

v.

Wake County
No. 04 CVD 2515

JORGE VASQUEZ-KOOL

Appeal by defendant from order entered 12 October 2005 by Judge Alice C. Stubbs in Wake County District Court. Heard in the Court of Appeals 26 March 2007.

Rosen Law Firm, by Scott E. Allen, for defendant appellant.

No brief filed by plaintiff appellee.

McCULLOUGH, Judge.

Defendant Jorge Vasquez-Kool ("defendant") appeals from an order of the district court awarding alimony to plaintiff Kadi Vasquez-Kool ("plaintiff") and ordering defendant to pay attorney's fees and satisfy his child support arrearage. We dismiss the appeal.

FACTS

Plaintiff and defendant were married in 1989, and separated in October 2003. Their marriage produced two children, born in 1996 and 1998.

On 24 February 2004, plaintiff filed a complaint seeking, among other things, primary physical custody of the children, child support, post-separation support and alimony, equitable distribution of the marital property, and attorney's fees. In his answer to the complaint, defendant asserted counterclaims for custody and equitable distribution.

The district court entered an order on 27 May 2004, awarding plaintiff temporary primary custody, temporary child support, post-separation support and attorney's fees. On motion from defendant, the court modified the award on 20 June 2005, to reduce defendant's monthly child support obligation and suspend post-separation support.

On 31 August 2005, the district court held a hearing on plaintiff's motions for contempt, attorney's fees, and interim distribution. On defendant's motion, the court also heard plaintiff's claim for alimony. In an order entered 12 October 2005, the court ordered defendant to pay \$900 in child support arrearages, \$4,854 in attorney's fees, and monthly alimony of \$250 beginning on 1 September 2005. The order noted that final disposition of the parties' claims for equitable distribution remained pending and that the court retained jurisdiction over the cause.

Defendant appeals.

ANALYSIS

Defendant contends that the trial court abused its discretion by (1) ordering him to pay alimony in excess of his ability to pay

and (2) awarding attorney's fees without sufficient findings of fact. In addition, plaintiff moves this Court to dismiss the appeal as interlocutory. Because the order leaves unresolved the parties' respective claims for equitable distribution under N.C. Gen. Stat. § 50-20 (2006), and because plaintiff has shown no grounds for an immediate appeal from this non-final order, we dismiss the appeal.

The district court's order is interlocutory, inasmuch as it was "made during the pendency of an action and does not dispose of the case but requires further action by the trial court in order to finally determine the entire controversy." *N.C. Dept. of Transportation v. Page*, 119 N.C. App. 730, 733, 460 S.E.2d 332, 334 (1995). Specifically, the order leaves unresolved plaintiff's claim and defendant's counterclaim for equitable distribution of the marital property. As a general matter, this Court lacks jurisdiction to consider an interlocutory appeal. See, e.g., *Liggett Group v. Sunas*, 113 N.C. App. 19, 23, 437 S.E.2d 674, 677 (1993). A party who seeks immediate appeal from an interlocutory order must show that either (1) the order is final as to one or more claim or party and was certified for immediate appeal by the trial court pursuant to N.C. R. Civ. P. 54(b), or (2) "the order deprives the appellant of a substantial right which would be jeopardized absent a review prior to a final determination on the merits.'" *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 379, 444 S.E.2d 252, 253 (1994) (quoting *Southern Uniform Rentals, Inc. v. Iowa Nat'l Mut. Ins. Co.*, 90 N.C. App. 738, 740,

370 S.E.2d 76, 78 (1988)). Moreover, "it is the appellant's burden to present appropriate grounds for this Court's acceptance of an interlocutory appeal[.]" *Id.*

The district court did not certify the instant order for immediate appeal pursuant to Rule 54(b). Accordingly, it was incumbent upon defendant to identify a substantial right that would be affected in the absence of an immediate appeal. We further note that N.C. R. App. P. 28(b)(4) requires the appellant to include in his brief a statement of grounds for appellate review. Where appeal is taken from an interlocutory order, Rule 28(b)(4) requires the statement to contain "sufficient facts and argument to support appellate review on the ground that the challenged order affects a substantial right." *Id.*

Defendant has made no showing of any substantial right affected by the district court's order. His brief lacks a statement of grounds for appellate review as required by Rule 28(b)(4). "It is not the duty of this Court to construct arguments for or find support for appellant's right to appeal from an interlocutory order[.]" *Jeffreys*, 115 N.C. App. at 380, 444 S.E.2d at 254. Moreover, the Rules of Appellate Procedure "are mandatory and . . . failure to follow these rules will subject an appeal to dismissal." *Steingress v. Steingress*, 350 N.C. 64, 65, 511 S.E.2d 298, 299 (1999). Finally, we note that "[i]nterlocutory appeals that challenge only the financial repercussions of a separation or divorce generally have not been held to affect a substantial right." *Embler v. Embler*, 143 N.C. App. 162, 166, 545 S.E.2d 259,

262 (2001); *Rowe v. Rowe*, 131 N.C. App. 409, 507 S.E.2d 317 (1998); *Hunter v. Hunter*, 126 N.C. App. 705, 486 S.E.2d 244 (1997); *Dixon v. Dixon*, 62 N.C. App. 744, 303 S.E.2d 606 (1983); *Stephenson v. Stephenson*, 55 N.C. App. 250, 285 S.E.2d 281 (1981)). Therefore, we allow plaintiff's motion to dismiss the appeal. *Love v. Moore*, 305 N.C. 575, 582, 291 S.E.2d 141, 146, *reh'g denied*, 306 N.C. 393, (1982).

Motion allowed; appeal dismissed.

Judges STEELMAN and LEVINSON concur.

Report per Rule 30(e).