

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA13-8
NORTH CAROLINA COURT OF APPEALS

Filed: 20 August 2013

KYLIE LYNN COLEMAN
Plaintiff

v.

Wake County
No. 12 CVD 13147

DANIEL WAYNE ORR
Defendant

Appeal by defendant from order entered 16 October 2012 by Judge Jennifer M. Green in Wake County District Court. Heard in the Court of Appeals 21 May 2013.

No brief filed on behalf of plaintiff-appellee.

Daniel Wayne Orr, pro se, defendant-appellant.

PER CURIAM.

Daniel Wayne Orr ("Defendant") appeals from a Domestic Violence Protection Order filed 16 October 2012, the terms of which remain in effect until 16 October 2013. Defendant proceeds *pro se*, and plaintiff has declined to file an appellee brief. For the following reasons, we dismiss Defendant's appeal.

I. Background

We note that the record on appeal does not provide a complete factual or procedural background. Additionally, the transcript of the hearing held in this matter is not contained in the record. However, the record establishes the following facts. Defendant and Kylie Lynn Coleman ("Plaintiff") were engaged in a romantic relationship and living together in Henderson. Thereafter, Plaintiff moved out of the shared residence. Subsequently, both Defendant and Plaintiff filed motions seeking a domestic violence protection order ("DVPO") against each other in Vance County District Court. In an order filed 10 April 2012, Judge S. Quon Bridges dismissed both parties' motions, concluding that "the facts and circumstances [alleged by the parties] do not rise to the level of proof necessary for the issuance of domestic violence protective orders."

On 18 September 2012, Plaintiff sought a temporary ex parte order of protection against Defendant in Wake County District Court.¹ In this order, the district court found that Defendant had a day earlier "followed plaintiff and cut her off in traffic" and noted that Defendant had left notes for

¹ The order indicates that Defendant was living in Raleigh at that time.

Plaintiff on her car and at her workplace. Concluding that there appeared to be a danger to Plaintiff of domestic violence, the court ordered that Defendant remain at least 100 yards away from Plaintiff at all times until 26 September 2012. Two days later, Plaintiff filed a motion for a DVPO in Wake County District Court, complaining that "[Defendant] refuses to leave me alone after being told numerous times that I do not want any kind of association." Defendant was present at a hearing held on 16 October 2012. At the conclusion of that hearing, the district court entered a DVPO ordering that Defendant have no contact with Plaintiff for a period of one year, concluding that Defendant had "committed acts of domestic violence against" Plaintiff. Defendant filed and served timely notice of appeal from the DVPO on 15 November 2012.

Following entry of the DVPO, Defendant filed, *pro se*, a "Motion for a New Trial" on 22 October 2012. Plaintiff through counsel filed a motion to dismiss and a motion for sanctions in response. On 18 December 2012, the district court granted Plaintiff's motion to dismiss Defendant's motion. Plaintiff subsequently withdrew her motion for sanctions in open court. Defendant did not file notice of appeal from the court's 18 December 2012 order.

II. Jurisdiction & Standard of Review

As entry of the DVPO in this case constitutes a final order, Defendant has an appeal of right pursuant to N.C. Gen. Stat. § 7A-27(c) (2011).

A trial court may grant a protective order for the purpose of "restraining the defendant from further acts of domestic violence." N.C. Gen. Stat. § 50B-3(a) (2011). "Where the trial court sits as the finder of fact, 'and where different reasonable inferences can be drawn from the evidence, the determination of which reasonable inferences shall be drawn is for the trial [court].'" *Brandon v. Brandon*, 132 N.C. App. 646, 651, 513 S.E.2d 589, 593 (1999) (quoting *Electric Motor & Repair Co. v. Morris & Assocs.*, 2 N.C. App. 72, 75, 162 S.E.2d 611, 613 (1968)) (alteration in original). "Accordingly, where the trial court's findings of fact are supported by competent evidence, they are binding on appeal." *Id.* at 652, 513 S.E.2d at 593. "The trial court's findings of fact must support its conclusions of law." *Id.* at 653, 513 S.E.2d at 594.

III. Analysis

As a preliminary matter, we note that Defendant failed to file any notice of appeal from the district court's 18 December 2012 order dismissing his "Motion for a New Trial."

Accordingly, we lack jurisdiction to hear any of Defendant's arguments related to that order. See *Brooks v. Gooden*, 69 N.C. App. 701, 707, 318 S.E.2d 348, 352 (1984) ("Without proper notice of appeal, this Court acquires no jurisdiction."). However, Defendant did properly appeal the DVPO. Accordingly, we have jurisdiction to address Defendant's arguments related to that order. Nonetheless, Defendant's brief contains several deficiencies which prevent our review of the balance of Defendant's arguments.

Defendant's brief was filed in violation of our Rules of Appellate Procedure. Defendant's brief fails to include a non-argumentative statement of facts in violation of Rule 28(b)(5). Defendant's brief also violates Rule 28(b)(6) by omitting a statement of the applicable standard(s) of review. Defendant also used a proportional font smaller than 14-point and failed to include a certificate of compliance in violation of Rules 28(j)(1)(B) and (j)(2)(B). Defendant has also failed to comply with Rule 9, which requires that "the record on appeal contain so much of the evidence, either in narrative form or in the verbatim transcript of the proceedings, as is necessary for an understanding of all errors assigned." *Matter of Botsford*, 75 N.C. App. 72, 74-75, 330 S.E.2d 23, 25 (1985).

"[A] determination as to whether the trial court's findings are supported by the evidence requires a review of the evidence presented at the hearing." *Miller v. Miller*, 92 N.C. App. 351, 353, 374 S.E.2d 467, 468 (1988). "It is the duty of the appellant to ensure that the record is complete An appellate court is not required to, and should not, assume error by the trial judge when none appears on the record before the appellate court." *Hicks v. Alford*, 156 N.C. App. 384, 389-90, 576 S.E.2d 410, 414 (2003) (quotation marks and citation omitted); *see also West v. G.D. Reddick, Inc.*, 48 N.C. App. 135, 137, 268 S.E.2d 235, 236 (1980), *rev'd on other grounds*, 302 N.C. 201, 274 S.E.2d 221 (1981) ("The Court of Appeals can judicially know only what appears of record Matters discussed in a brief but not found in the record will not be considered by this Court. It is incumbent upon the appellant to see that the record is properly made up and transmitted to the appellate court." (internal citation omitted)).

Defendant's rule violations, particularly the lack of any comprehensive account of the DVPO hearing, have severely hampered our ability to understand and evaluate his arguments on appeal. Accordingly, we are obliged to dismiss Defendant's

appeal. See *Bledsoe v. Cnty. of Wilkes*, 135 N.C. App. 124, 125, 519 S.E.2d 316, 317 (1999) (stating that the Rules of Appellate Procedure are mandatory and "apply to everyone-whether acting *pro se* or being represented by all of the five largest law firms in the state").

DISMISSED.

Panel consisting of Judges MCGEE, STEPHENS, and HUNTER, JR.

Report per Rule 30(e).