

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA14-399  
NORTH CAROLINA COURT OF APPEALS

Filed: 4 November 2014

KIMBERLY T. SPENCE,  
Plaintiff,

v.

Harnett County  
No. 14 CVD 110

CARL J. WILLIS, II,  
Defendant.

Appeal by plaintiff from order entered 11 March 2014 by Judge Robert W. Bryant, Jr. in Harnett County District Court. Heard in the Court of Appeals 24 September 2014.

*Kimberly T. Spence, pro se-appellant.*

*Carl Willis, II, pro se-appellee.*

ELMORE, Judge.

From the record, we assume that Kimberly T. Spence (plaintiff), appearing *pro se*, wishes to appeal from the trial court's Order of Dismissal entered upon plaintiff's Motion to Reconsider Order of Dismissal of Amended Petition for Change of Custody and Motion for Summary Judgment entered in Harnett County District Court on 11 March 2014. The Harnett County trial court dismissed plaintiff's child custody action for want

of subject matter jurisdiction. This Court likewise must dismiss plaintiff's appeal, not only because the record does not contain a proper notice of appeal pursuant to N.C. R. App. P 3(a), but also because this Court lacks subject matter jurisdiction to hear plaintiff's appeal under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

We also note that plaintiff fails to advance any justiciable issue in her brief. The record contains evidence that plaintiff and Carl Willis, II (defendant), are the biological parents of the minor child Adam<sup>1</sup>. Defendant and Adam reside in the state of Georgia and plaintiff resides in North Carolina. On 14 March 2013, a Georgia court entered a Final Order in a child custody proceeding involving plaintiff, defendant and Adam, who is the subject of this lawsuit. In the Final Order, the Georgia court granted defendant primary physical custody of Adam after finding, *inter alia*, that plaintiff refused to undergo a psychological evaluation after exhibiting behavior that was consistent with the existence of a mental health problem. In a subsequent order entered 12 June 2013, the Georgia court ordered that all visitation between plaintiff and Adam be supervised. The order also provided that

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<sup>1</sup> A pseudonym has been used to protect the identity of the minor child.

plaintiff "has filed numerous meritless motions and has engaged in behavior that is harassing and abusive of court staff." The Georgia court enjoined plaintiff from filing any new lawsuits, pleadings, motions, or legal documents unless she followed the specific instructions set forth by the trial court in the 12 June 2013 order. In addition, the Georgia court enjoined plaintiff from "shopping this Court's orders around to other judges" and ordered plaintiff to "bring any and all requests for interpretation to the judge assigned to hear her case(s)."

Upon review, it is clear from the record that there exists in the state of Georgia a custody order regarding Adam, entered by the Georgia court after it was determined that Georgia had jurisdiction under the UCCJEA. The Georgia custody order remains in full force and effect.

In determining whether North Carolina can obtain subject matter jurisdiction to alter a child custody order pursuant to N.C. Gen. Stat. § 7B-1101 and the UCCJEA, we rely on N.C. Gen. Stat. §§ 50A-201 or -203. N.C. Gen. Stat. § 50A-201 provides:

(a) Except as otherwise provided in G.S. 50A-204, a court of this State has jurisdiction to make an initial child-custody determination only if:

(1) This State is the home state of the child on the date of the commencement of the proceeding, or was the home state of the

child within six months before the commencement of the proceeding, and the child is absent from this State but a parent or person acting as a parent continues to live in this State;

(2) A court of another state does not have jurisdiction under subdivision (1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under G.S. 50A-207 or G.S.50A-208, and:

a. The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this State other than mere physical presence; and

b. Substantial evidence is available in this State concerning the child's care, protection, training, and personal relationships;

(3) All courts having jurisdiction under subdivision (1) or (2) have declined to exercise jurisdiction on the ground that a court of this State is the more appropriate forum to determine the custody of the child under G.S. 50A-207 or G.S. 50A-208; or

(4) No court of any other state would have jurisdiction under the criteria specified in subdivision (1), (2), or (3).

(b) Subsection (a) is the exclusive jurisdictional basis for making a child-custody determination by a court of this State.

(c) Physical presence of, or personal

jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination.

N.C. Gen. Stat. § 50A-201 (2013). Here, N.C. Gen. Stat. § 50A-201 is inapplicable because the initial child custody determination was made by the Georgia court. See *In re N.R.M.*, 165 N.C. App. 294, 298, 598 S.E.2d 147, 150 (2004) (determining that N.C. Gen. Stat. § 50A-201 could not confer subject matter jurisdiction upon a North Carolina court because the initial custody determination had been made in Arkansas). As such, the only basis by which the North Carolina trial court could have arguably obtained subject matter jurisdiction would be through N.C. Gen. Stat. § 50A-203, which provides that a North Carolina court may not modify a child custody determination of a court of another state unless a court of this State has jurisdiction to make an initial determination under N.C. Gen. Stat. § 50A-201(a)(1) or 50A-201(a)(2) and:

(1) The court of the other state determines it no longer has exclusive, continuing jurisdiction under G.S. 50A-202 or that a court of this State would be a more convenient forum under G.S. 50A-207; or

(2) A court of this State or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

N.C. Gen. Stat. § 50A-203 (2013). Thus, for the trial court to have acquired subject matter jurisdiction in this action pursuant to N.C. Gen. Stat. § 50A-203, it would need either a determination by the Georgia court that the Georgia court no longer had exclusive, continuing jurisdiction; a determination that North Carolina would be a more convenient forum; or a determination by either a North Carolina or a Georgia court that neither Adam nor defendant reside in Georgia. *In re J.D.*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 759 S.E.2d 375, 378 (2014).

In the instant case, none of the prongs of N.C. Gen. Stat. § 50A-203 affords the North Carolina trial court subject matter jurisdiction. There is no evidence in the record that Georgia has declined or relinquished exclusive, continuing jurisdiction over the custody of the child or that North Carolina would be a more convenient forum. In fact, the evidence in the record appears to the contrary. Further, Georgia has remained the home state of both Adam and defendant. Based on the grounds stated above, we dismiss plaintiff's appeal for want of jurisdiction. Plaintiff is required to file all future litigation pertaining to this matter in Georgia according to the terms set forth in the Georgia order.

Dismissed.

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Judges BRYANT and ERVIN concur.

Report per Rule 30(e).