

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA14-652  
NORTH CAROLINA COURT OF APPEALS

Filed: 2 December 2014

MARC COX,

Husband,

v.

Mecklenburg County  
No. 12 CVD 10198 (CB)

REBECCA SMITH-COX,

Wife.

Appeal by plaintiff from order entered 20 November 2013 by Judge Charlotte Brown in Mecklenburg County District Court. Heard in the Court of Appeals 5 November 2014.

*Hunt Law, PLLC, by Gregory Hunt, for plaintiff-appellant husband.*

*Krusch & Sellers, P.A., by Rebecca K. Watts, for defendant-appellee wife.*

ELMORE, Judge.

Plaintiff appeals from an order holding him in civil contempt for violating a consent order and an order for temporary child support and post-separation support. After

careful consideration, we dismiss plaintiff's appeal as interlocutory.

### **I. Facts**

Marc Cox (plaintiff) and Rebecca Smith-Cox (defendant) married each other on 27 April 1996 and separated on 15 May 2012. Two children were born of the marriage (the minor children) on 2 May 1997 and 14 October 1999.

Plaintiff filed a complaint on 23 May 2012 seeking joint custody (temporary and permanent) of the minor children, child support, equitable distribution, and a temporary parenting arrangement. Plaintiff subsequently filed an amended complaint additionally requesting post-separation support, alimony, and attorney's fees. On 28 August 2012, the parties entered into a consent order for the purpose of "injunctive relief as [to] resolve temporary [child] custody." Moreover, the trial court later heard evidence and entered an order resolving the issues of temporary child support and post-separation support (the temporary child support order).

Defendant filed a motion for contempt on 21 August 2013 alleging that plaintiff had violated numerous provisions of the consent order and the temporary child support order. After a hearing conducted on 24 September 2013, the trial court entered

an order holding plaintiff in civil contempt, ruling that plaintiff "willfully violated paragraphs 3, 4, 5, 7, and 8 of the decretal portion of the Consent Order" and that he also violated the temporary child support order. In part, the trial court ordered that:

Plaintiff . . . be confined in the custody of the Mecklenburg County Jail for a period of thirty (30) days. This sentence is suspended upon the purge payment of \$6,308.27 and full compliance with the Consent Order for Injunctive Relief and Temporary Custody, including no further stalking, harassing, following, listening in on phone calls, texting, conducting surveillance, using phone trackers, threatening or in any other fashion violating this Court's Orders. Said sentence is further stayed upon [plaintiff's] compliance with the [temporary child support order]. Should this Order not be complied with, [defendant] may request an Order for arrest.

## **II. Analysis**

Before we reach the merits of plaintiff's arguments, we must address defendant's motion to dismiss the appeal as interlocutory.

"Generally, there is no right of immediate appeal from interlocutory orders and judgments." *Goldston v. Am. Motors Corp.*, 326 N.C. 723, 725, 392 S.E.2d 735, 736 (1990). An order is interlocutory if it "does not dispose of the case, but leaves

it for further action by the trial court in order to settle and determine the entire controversy." *Veazey v. City of Durham*, 231 N.C. 354, 362, 57 S.E.2d 377, 381 (1950) (citation omitted). Immediate appeal of an interlocutory order is available, in relevant part, when the order "affects a substantial right." *Sharpe v. Worland*, 351 N.C. 159, 162, 522 S.E.2d 577, 579 (1999) (citations and internal quotation marks omitted). This Court has previously held that "[t]he appeal of any contempt order . . . affects a substantial right and is therefore immediately appealable." *Guerrier v. Guerrier*, 155 N.C. App. 154, 158, 574 S.E.2d 69, 71 (2002) (citation omitted).

However, "[i]t is not the duty of this Court to construct arguments for or find support for appellant's right to appeal from an interlocutory order" since "the appellant has the burden of showing this Court that 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, 380, 444 S.E.2d 252, 254 (1994). Accordingly, "when an appeal is interlocutory, the appellant must include in its statement of grounds for appellate review 'sufficient facts and argument to support appellate review on the ground that the challenged order affects

a substantial right.'" *Johnson v. Lucas*, 168 N.C. App. 515, 518, 608 S.E.2d 336, 338 (quoting N.C.R. App. P. 28(b)(4)), *aff'd per curiam*, 360 N.C. 53, 619 S.E.2d 502 (2005). "Where the appellant fails to carry the burden of making such a showing to the court, the appeal will be dismissed." *Hoke Cnty. Bd. of Educ. v. State*, 198 N.C. App. 274, 278, 679 S.E.2d 512, 516 (2009) (citations and internal quotation marks omitted).

The contempt order is clearly interlocutory since it does not resolve plaintiff's other pending claims. Although the contempt order would appear to affect a substantial right pursuant to *Guerrier*, plaintiff failed to make any assertion in his brief that the order was interlocutory or that it affected a substantial right. In his "Statement of the Grounds for Appellate Review[,]" plaintiff merely states, "[t]his appeal commences from a contempt judgment entered by a district court in Mecklenburg County, North Carolina in a civil action; thus, appeal lies as of right directly to this Court."

Accordingly, plaintiff failed to meet his burden of establishing that the order deprives him of a substantial right. Thus, we dismiss defendant's appeal. See *id.* at 277-78, 679 S.E.2d at 516 (requiring appellants to "present more than a bare assertion that the order affects a substantial right"); see also

*Johnson*, 168 N.C. App. at 518, 608 S.E.2d at 338 (acknowledging that this Court may dismiss an interlocutory appeal due to an appellant's failure to "address what substantial right might be lost if this appeal does not lie").

**III. Conclusion**

In sum, we dismiss plaintiff's appeal as interlocutory because he failed to meet his burden of establishing that the order deprives him of a substantial right.

Dismissed.

Judges ERVIN and DAVIS concur.

Report per Rule 30(e).