

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA14-735
NORTH CAROLINA COURT OF APPEALS

Filed: 17 February 2015

SUDESH H. KEDAR,
Plaintiff,

v.

Mecklenburg County
No. 06 CVS 14915

HEMANT PATEL,
Defendant.

Appeal by defendant from order entered 19 February 2014 by Judge Jesse B. Caldwell, III, in Mecklenburg County Superior Court. Heard in the Court of Appeals 7 January 2015.

THE HONNOLD LAW FIRM, P.A., by Bradley B. Honnold, for plaintiff.

Wesley S. White for defendant.

ELMORE, Judge.

Hemant Patel (defendant) appeals from Judge Jesse B. Caldwell's order compelling discovery entered on 19 February 2014. We dismiss this appeal as moot.

I. Background

The record on appeal shows that: Dr. Sudesh H. Kedar (plaintiff) filed a complaint against defendant on 23 May 2013 alleging causes of action for alienation of affections, criminal

conversation, and punitive damages. The allegations stemmed from an adulterous affair between defendant and plaintiff's former wife, Kiran Kedar. Shortly after serving defendant with the summons and complaint, plaintiff delivered to defendant his First Request to Produce Documents Directed to Defendant. Asserting his Fifth Amendment privilege against self-incrimination, defendant refused to respond to certain interrogatories and document requests. For example, plaintiff's interrogatory posed the following question: "State whether you have ever had sexual intercourse with Kiran Kedar. If so, provide the exact date(s) that you contend that you and Kiran Kedar began an intimate relationship, including but not limited to sexual intercourse." Defendant responded, "[d]efendant invokes his privilege against self-incrimination under the [Fifth] Amendment."

On 26 November 2013, plaintiff filed a motion to compel responses to the interrogatories and document requests. At the 8 January 2014 hearing on the motion, the trial court found that defendant previously had been granted immunity from criminal prosecution for the crime of adultery under N.C. Gen. Stat. § 14-184. The trial court ordered defendant to produce all requested documents and to fully and completely respond to the

request for production of documents served by plaintiff within twenty-one days. Subsequently, defendant appeared for a deposition on 28 January 2014. However, defendant again refused to answer certain questions, asserting his Fifth Amendment privilege.

On 5 February 2014, a second hearing was held on plaintiff's motion to compel. Defendant argued that a grant of immunity such as the one he had received only protected him from prosecution within the boundaries of Mecklenburg County, where the order was entered, and he claimed that he feared being prosecuted in surrounding counties. The trial court rejected defendant's argument. On 19 February 2014, the trial court entered an order in which it held that the grant of immunity served to protect defendant from prosecution throughout North Carolina. Accordingly, the trial court ordered defendant to resume his deposition and answer questions regarding the alleged affair.

Defendant resumed the deposition on 24 February 2014. Present at defendant's deposition were counsel for defendant, plaintiff, plaintiff's counsel, and the court reporter. During the deposition, defendant answered all questions presented to him regarding his alleged adulterous conduct. Specifically,

defendant admitted that he and Ms. Kedar had engaged in a sexual affair prior to the date that the grant of immunity was entered.

Although defendant fully complied with the trial court's 19 February 2014 motion to compel five days after its entry, defendant nevertheless appealed the entry of the 19 February order on 27 February 2014.

I. Analysis

Defendant recognizes that this appeal is interlocutory. However, he argues that the merits of the appeal are ripe for our review because the order to compel affected his substantial right against self-incrimination. More specifically, defendant argues that the trial court erred in ruling that the grant of immunity protected him from prosecution in all judicial districts in North Carolina (as well as other states). This Court is precluded from addressing both the interlocutory nature of the appeal and the merits of defendant's argument because the issue presented is moot.

"Whenever, during the course of litigation, it develops that the relief sought has been granted or that the questions originally in controversy between the parties are no longer at issue, the case should be dismissed, for courts will not entertain or proceed with a cause merely to determine abstract

propositions of law." *Carolina Marina & Yacht Club, LLC v. New Hanover Cnty. Bd. of Comm'rs*, 207 N.C. App. 250, 252, 699 S.E.2d 646, 647-48 (2010) (quoting *In re Peoples*, 296 N.C. 109, 147, 250 S.E.2d 890, 912 (1978)). "Unlike the question of jurisdiction, the issue of mootness is not determined solely by examining facts in existence at the commencement of the action." *Id.* at 252, 699 S.E.2d 648. (citation and quotation omitted). "If the issues before a court or administrative body become moot at any time during the course of the proceedings, the usual response should be to dismiss the action." *Id.* (citation and quotation omitted) (alteration in original).

In the instant case, defendant was ordered on 19 February 2014 to comply with plaintiff's discovery requests, which he did on 24 February 2014. Three days after the deposition, defendant appealed the 19 February order. Thus, procedurally speaking, defendant complied with the trial court's order to compel prior to appealing the entry of that same order. There is evidence in the record that during the deposition, defendant admitted in front of several witnesses, including plaintiff, that he engaged in a romantic and sexual relationship with Ms. Kedar knowing that she was married to plaintiff. In addition, defendant

answered questions regarding the affair that he had initially refused to disclose.

As such, multiple persons witnessed defendant make certain statements that he now claims are privileged, and those witnesses are now competent to testify regarding defendant's admissions. Accordingly, defendant's argument that the trial court erred in compelling him to testify when he was entitled to invoke his privilege against self-incrimination under the Fifth Amendment is moot because defendant did, in fact, disclose the alleged privileged information. It would prove futile for this Court to rule on whether defendant was obligated to comply with the trial court's order when he, in fact, has already done so. To have preserved this issue for our review, defendant would have had to file a notice of appeal *before* complying with the order.

Such filing would have operated to stay all pending litigation, including the deposition, until this Court reviewed the merits of the appeal. However, on these facts, defendant is afforded no choice but to suffer the consequences of his own actions. The issue presented for review by defendant on appeal is moot. Accordingly, we dismiss this appeal.

Dismissed.

-7-

Judges DAVIS and TYSON concur.

Report per Rule 30(e).