

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-257

Filed: 20 December 2016

Buncombe County, No. 12 CV 05629

WENDAE L. SNELSON, Plaintiff

v.

MICHAEL D. SNELSON, Defendant

Appeal by defendant from order entered 4 May 2015 by Judge Ward D. Scott in Buncombe County District Court. Heard in the Court of Appeals 15 November 2016.

Bidwell & Walters, P.A., by Paul Louis Bidwell, for plaintiff-appellee.

Hylar & Lopez, P.A., by George B. Hylar, Jr., for defendant-appellant.

CALABRIA, Judge.

An appeal from an order modifying post-separation support is interlocutory, does not affect a substantial right, and is not appealable. We dismiss defendant's appeal as interlocutory.

I. Factual and Procedural Background

Wendae L. Snelson ("plaintiff") and Michael D. Snelson ("defendant") were married on 7 July 2007, and resided together until their separation in July 2012. No children were born to the marriage. On 27 November 2012, plaintiff filed the

complaint in the instant case, seeking equitable distribution, alimony, and post-separation support. On 24 January 2013, defendant filed an answer. After numerous orders on multiple motions, on 17 February 2014, the trial court entered an order on post-separation support. In this order, the trial court found plaintiff to be a dependent spouse and defendant to be a supporting spouse, and ordered defendant to pay \$282 in monthly post-separation support. On 23 May 2014, the trial court further ordered defendant to pay retroactive post-separation support for the months of November 2012 through January 2014, in a total amount of \$3,948.

On 26 September 2014, plaintiff moved for a modification of post-separation support, alleging that there had been a change in circumstances. Specifically, plaintiff's motion alleged that "[d]efendant has provided over-due discovery that was not made available as of the hearing[,]" and that this discovery demonstrated "an ongoing, bad-faith effort by Defendant to misrepresent, withhold and conceal pertinent and relevant information as to his resources and/or income to and from Plaintiff and the Court." On 4 November 2014, plaintiff filed an amended motion to modify post-separation support, containing substantially the same allegations. On 3 March 2015, defendant moved to terminate or abate post-separation support, alleging that he suffered a workplace injury, which prevented him from working and limited his income.

On 4 May 2015, the trial court entered its order on, *inter alia*, plaintiff's motion for post-separation support.¹ In its order, the trial court found that defendant "has engaged and continues to engage in a pattern of conduct to willfully obstruct and unreasonably delay discovery proceedings," and "that his tardy and dilatory responses, as well as his persistence in his wrongful conduct, have resulted in the Court's entry of its Post-Separation Support Order on February 17, 2014, and Order on Retroactive Post-Separation Support on May 23, 2014, prior to disclosure of data, information and records pertinent and relevant to those respective orders." The trial court further found, with respect to defendant's allegations of injury, that defendant

appeared in Court . . . wearing a "walking boot" and demonstrated an ability to access the courthouse and the courtroom during court proceedings and recesses; although he stated he is unable to drive in his condition, he stated at the hearing . . . that he "could not remember" whether or not he has driven since his injury; and he produced no evidence that he was unable to obtain other work or alternative drivers: he merely stopped working while this matter was pending.

The trial court further found that plaintiff's reasonable needs "remain unchanged substantially since November 27, 2012," that defendant "has a reasonable ability to pay post-separation support to Plaintiff in the amount of \$885.00 per month retroactive to November 27, 2012," and that this \$885 amount "is less than Plaintiff's reasonable needs." The trial court therefore concluded that "there has been a

¹ This order also addressed sanctions, which are not challenged on appeal.

substantial change of circumstances in relation to Defendant's ability to pay post-separation support and attorney fees[.]" and ordered defendant to pay \$885 in monthly post-separation support prospectively, plus \$885 per month retroactively, minus a credit for payments made.

Defendant appeals.

II. Interlocutory Appeal

An order is interlocutory if it is made during the pendency of an action and does not dispose of the case but leaves further matters to be judicially determined between the parties at the trial court level. *Veazey v. City of Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381, *reh'g denied*, 232 N.C. 744, 59 S.E.2d 429 (1950). However, an interlocutory order may be appealed by one of two avenues. First, an appeal is permitted if there is an order or judgment which is final as to some but not all of the claims or parties and the trial court certifies the case for appeal pursuant to N.C.Gen.Stat. § 1A-1, Rule 54(b). *N.C. Dept. of Transportation v. Page*, 119 N.C.App. 730, 734, 460 S.E.2d 332, 334 (1995). Second, an appeal is permitted if it affects a substantial right that will be lost if not reviewed immediately. *Id.*

Rowe v. Rowe, 131 N.C. App. 409, 410, 507 S.E.2d 317, 318 (1998).

This Court has repeatedly held that an order concerning post-separation support is interlocutory and does not affect a substantial right. *See Rowe*, 131 N.C. App. at 411, 507 S.E.2d at 319 (holding that "since a postseparation support order is a temporary measure, it is interlocutory, it does not affect a substantial right, and it is not appealable"); *see also Stephenson v. Stephenson*, 55 N.C. App. 250, 252, 285

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S.E.2d 281, 282 (1981) (holding that “orders and awards pendente lite are interlocutory decrees which necessarily do not affect a substantial right from which lies an immediate appeal”); *Wells v. Wells*, 132 N.C. App. 401, 405, 512 S.E.2d 468, 470-71 (1999) (relying on *Rowe* and *Stephenson*); *Thompson v. Thompson*, 223 N.C. App. 515, 517, 735 S.E.2d 214, 216 (2012) (relying on *Rowe*).

Given this abundance of precedent, by which we are bound, we hold that defendant’s appeal from the trial court’s order modifying post-separation support is interlocutory, does not affect a substantial right, and is not appealable. We therefore dismiss defendant’s appeal as interlocutory.

DISMISSED.

Judges INMAN and ZACHARY concur.

Report per Rule 30(e).