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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-1075

Filed: 7 July 2020

Wake County, No. 14 CVD 10295

JOHN TYLER ROUTTEN, Plaintiff,

v.

KELLY GEORGENE ROUTTEN, Defendant.

Appeal by Defendant from an order entered 3 June 2019 by Judge Michael J. Denning in Wake County District Court. Heard in the Court of Appeals 27 May 2020.

*No brief filed by Plaintiff-Appellee.*

*Defendant-Appellant Kelly Georgene Routten, Pro Se.*

INMAN, Judge.

Defendant-Appellant Kelly Georgene Routten appeals *pro se* from an order compelling the sale of the marital home in the event she failed to refinance and remove Plaintiff-Appellee John Tyler Routten from the mortgage as required by a consent equitable distribution order entered into by the parties. After careful review, we dismiss this appeal as moot.

**I. FACTUAL AND PROCEDURAL HISTORY**

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This appeal arises out of a protracted child custody and equitable distribution action. An overview of the facts and procedural history pertinent to the custody issue at the heart of the dispute may be found in *Routten v. Routten*, \_\_\_ N.C. \_\_\_, \_\_\_ S.E.2d \_\_\_, (Jun. 5, 2020) (No. 455A18), in which our Supreme Court held that the trial court did not err in awarding sole physical custody to Mr. Routten. The order at issue in this appeal was entered after the custody order in *Routten* and involves an ancillary issue arising out the equitable distribution of marital assets. Additional factual and procedural background pertinent to this appeal is summarized here.

On 4 August 2014, Mr. Routten filed a complaint for equitable distribution, child custody, and a motion for psychiatric evaluation and psychological testing against Ms. Routten. *Id.* at \_\_\_, \_\_\_ S.E.2d at \_\_\_, slip op. at 2. The parties resolved the equitable distribution claim by a consent order entered 29 April 2015 (the “ED Order”). Under the terms of the ED Order, Ms. Routten received the marital home but was required to either: (1) pay-off or refinance the mortgage, removing Mr. Routten from liability; or (2) list the home for sale. Ms. Routten had until 1 May 2016 to pursue and satisfy either option.

Nearly four years later, in early 2019, Ms. Routten had not complied with the above provisions of the ED Order. On 5 March 2019, Mr. Routten filed a motion for contempt, attorney’s fees, and relief pursuant to Rule 70 of the North Carolina Rules of Civil Procedure. Ms. Routten filed a combined response, motion to recuse Judge

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Michael J. Denning, motion for contempt, and motion for a show cause order. Mr. Routten's motions were heard by Judge Denning on 15 May 2019.<sup>1</sup> Ms. Routten testified at the hearing that the home would be refinanced by 3 June 2019.

The trial court announced at the conclusion of the hearing that it would enter a Rule 70 order while taking the contempt motion under advisement. On 3 June 2019, it entered an order (the "Rule 70 Order") conditionally granting Mr. Routten's motion for relief under Rule 70 but denying his motion for contempt. The Rule 70 Order provided that if Ms. Routten failed to refinance or sell the home in a manner to remove Mr. Routten from the mortgage before 1 July 2019, then as of that date, the Court authorized Mr. Routten to sell the house by means and on terms decided by Mr. Routten. The trial court denied Mr. Routten's contempt motion after finding that he had failed to demonstrate that Ms. Routten's non-compliance with the ED Order was willful.

Ms. Routten refinanced the mortgage on 3 June 2019, obviating the force and effect of the Rule 70 Order. She nonetheless appealed the Rule 70 Order.

**II. ANALYSIS**

Ms. Routten acknowledges in her brief that her appeal is moot, as the Rule 70 Order is not enforceable due to her timely refinancing the mortgage. She nonetheless contends that this appeal is still ripe based on alleged adverse legal consequences

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<sup>1</sup> At the hearing, Ms. Routten voluntarily withdrew her motions for contempt and show cause; on appeal, she acknowledges that she did not obtain a ruling on her motion to recuse Judge Denning.

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arising from the entry of the Rule 70 Order. *See, e.g., In re A.K.*, 360 N.C. 449, 453, 628 S.E.2d 753, 756 (2006) (“A civil appeal is not moot when the challenged judgment may cause collateral legal consequences for the appellant.” (citation omitted)). Ms. Routten offers only the conclusory argument that Mr. Routten may use the Rule 70 Order “as a negative factor against [her] in future custody and other proceedings[.]” potentially impacting her constitutional rights as a parent.

Ms. Routten offers no substantive argument demonstrating that the Rule 70 Order has any bearing on whether, in the event of changed circumstances,<sup>2</sup> it is in the best interests of her children that she have some form of custody. Instead, her appellate brief discusses matters before the trial court that are not the subject of this appeal, namely: (1) the tone and tenor of the trial court’s statements in previous hearings; (2) allegations about her conduct in Mr. Routten’s motion for contempt, attorney’s fees, and Rule 70 relief; and (3) perceived “rendition[s] of negativity” by the trial court in other interlocutory orders that are not challenged as part of this appeal.

Ms. Routten has failed to demonstrate how the Rule 70 Order—which also denied Mr. Routten’s motion for contempt for failure to show a willful violation of the ED Order—would be relevant to any eventual determination of child custody.

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<sup>2</sup> *See, e.g., Shipman v. Shipman*, 357 N.C. 471, 473, 586 S.E.2d 250, 253 (2003) (“It is well established in this jurisdiction that a trial court may order modification of an existing child custody order between two natural parents if the party moving for modification shows that a substantial change of circumstances affecting the welfare of the child warrants a change in custody.” (citations and quotation marks omitted)).

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“Appellants have the burden of showing that an appeal is proper[,]” *Odom v. Clark*, 192 N.C. App. 190, 197, 668 S.E.2d 33, 37 (2008) (citation omitted), and Ms. Routten has not met that burden here. As a result, we dismiss her appeal as moot.

**III. CONCLUSION**

For the foregoing reasons, the appeal is dismissed as moot.

APPEAL DISMISSED.

Judges MURPHY and ARROWOOD concur.

Report per Rule 30(e).