

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA05-422

NORTH CAROLINA COURT OF APPEALS

Filed: 20 December 2005

LINDA BOX (DAVIDSON),
Plaintiff,

v.

Wake County
No. 03 CVD 15756

CHARLES F. BOX, SR., and
HIDDEN ROCK, LLC,
Defendants.

Appeal by defendants from an order entered 15 December 2004 by Judge Craig Croom in Wake County District Court. Heard in the Court of Appeals 28 November 2005.

Wyrick Robbins Yates & Ponton LLP, by K. Edward Greene, for defendant-appellants.

No brief for plaintiff-appellee.

JACKSON, Judge.

On 11 August 2004, plaintiff Linda Box (Davidson) and defendant Charles F. Box, Sr. entered into a consent judgment for equitable distribution, waiver of alimony, and waiver of attorney fees. On 15 December 2004, a motion and order to show cause was filed requiring defendant to appear in court and show cause why he should not be held in contempt for failure to comply with the consent judgment. Specifically, defendant was "required to [] take out an insurance policy and get proper documents to plaintiff

within 60 days of the order" and "get together [and] sign off for 2 deeds of trust for plaintiff." Defendant appeals.

The threshold issue to consider in this case is whether defendant's appeal is premature, and therefore, not properly before the Court. Defendant appeals from an order to show cause. In *Wolfe v. Wolfe*, 67 N.C. App. 752, 314 S.E.2d 132 (1984), this Court explained that "[a]n 'order to show cause is one that is made *ex parte*,' meaning that it is granted at the instance and for the benefit of one party only and without notice to the adversely affected party." *Id.* at 753, 314 S.E.2d at 134 (quoting 56 Am. Jur. 2d, *Motions, Rules, and Orders* §§ 33-34 (1971)). The court further explained that "since an *ex parte* is not a final order, it is interlocutory and is not directly appealable." *Id.* at 753, 314 S.E.2d at 134 (citations omitted); *see also*, *Huguelet v. Huguelet*, 113 N.C. App. 533, 537, 439 S.E.2d 208, 210 (1994) (show cause order is interlocutory and not immediately appealable).

As in *Wolfe*, defendant here appeals from an *ex parte* order to show cause. The record fails to disclose whether the show cause hearing took place, or whether the defendant was later found in contempt for violating the consent order. Defendant acknowledges that his appeal may likely be found to be interlocutory, however he contends that the order to show cause does affect a substantial right, and therefore is appealable. We do not agree. Accordingly, because there was no final judgment in this case, nor were there any substantial rights of the parties affected, we hold that this appeal is premature, and therefore, dismiss it as interlocutory.

Appeal dismissed.

Judges WYNN and CALABRIA concur.

Report per Rule 30(e).