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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-603

Filed: 21 February 2017

Durham County, No. 09 CVD 0307, 15 CRS 2245

LAURA W. HUCKABEE (formerly Roberts), Plaintiff,

v.

JOHN B. ROBERTS, Defendant,

and

STATE OF NORTH CAROLINA, Plaintiff,

v.

JOHN B. ROBERTS, Defendant.

Appeal by Defendant from order entered 21 September 2015 by Judge Donald W. Stephens in Durham County Superior Court. Heard in the Court of Appeals 17 November 2016.

*Attorney General Joshua H. Stein, by Assistant Attorney General Kristin J. Uicker, for the State.*

*Smith, James, Rowlett and Cohen, LLP, by Norman B. Smith, for the Defendant-Appellant.*

DILLON, Judge.

This appeal arises out of the divorce of Laura Roberts (“Mother”) and John B. Roberts (“Father”). This dispute has led to protracted litigation involving a number

of actions and appeals, including the present appeal, mostly instigated by Father. The current appeal is from an order of the superior court dismissing Father's appeal for a de novo hearing from certain district court orders finding Father in criminal contempt and directing Father to pay certain attorneys' fees. For the reasons stated below, we reverse and remand.

### I. Background

Father and Mother were married in 1998. In 2010, Father and Mother divorced. Since their divorce, the parties have been involved in extensive litigation relating to the custody of their minor children.

In 2010, the district court entered an order setting forth child custody and appointing a therapist for the minor children.

In July 2013, the district court found Father in contempt for attempting to interfere with the therapist's work by commencing a *separate* superior court action in Orange County (the "Orange County Action") against Mother and the therapist, alleging various torts relating to the child custody dispute. In its order finding Father in contempt, the district court set a date for a hearing to determine the amount of attorneys' fees to award Mother and the therapist which they incurred in connection with the Orange County Action.

Before a hearing was held by the district court setting the amount of attorneys' fees, Father appealed the district court's contempt order to our Court. By opinion

filed on 5 August 2014, we dismissed the appeal, concluding that the contempt order was *criminal* in nature and, therefore, could not be appealed directly to our Court. *See Roberts v. Roberts*, 235 N.C. App. 424, 763 S.E.2d 926 (2014) (unpublished). In our opinion, we cited N.C. Gen. Stat. § 5A-17, which provides that an appeal by someone found in *criminal* contempt “is by hearing de novo before a superior court judge.” N.C. Gen. Stat. § 5A-17 (2013).

On 28 May 2015, the district court entered an order, styled “Order of Contempt,” in which the district court reiterated that Father was in criminal contempt for prosecuting the Orange County Action and was liable for the attorneys’ fees incurred by Mother and the therapist in that Action. The Order also required Father to pay attorneys’ fees incurred by Mother in defense of certain motions filed by Father in the present action, which are *unrelated* to the Orange County Action.

By separate orders, one entered 28 May 2015 and one entered 30 June 2015, the district court set the *amount* of the attorneys’ fees award ordered in its 28 May 2015 Order of Contempt.

Father gave notice of appeal to superior court from the district court’s two 28 May 2015 orders and its 30 June 2015 order. The superior court, however, did not conduct a *de novo* hearing. Rather, on 5 April 2016, the superior court entered an order dismissing Father’s appeal for a *de novo* hearing “for lack of jurisdiction.” Father appealed.

II. Analysis

Father's notice of appeal is from the dismissal *by the superior court* of his request for a *de novo* hearing from the district court orders. However, Father focuses most of his argument on errors he contends were made by *the district court* in finding him in contempt. He does, however, devote one paragraph of his argument to the superior court's order dismissing his appeal for a *de novo* hearing. In that paragraph, he contends that based on our opinion in the first appeal, "any appeal from the [district] court's contempt order should have been taken from the District Court to the Superior Court rather than to this Court."

In its reply brief, the State correctly asks that we not consider any argument concerning errors made by the district court, as those arguments are not properly before us. The State further contends that the superior court otherwise did not err because Father's notices of appeal were not timely. In his reply, Father argues that his notices of appeal to the superior court were, indeed, timely.

We agree with Father that the superior court erred in concluding that it lacked jurisdiction to conduct a *de novo* hearing on the district court's criminal contempt finding and attorney fee award associated with that finding. *See Roberts v. Roberts*, No. COA13-1210, 2014 WL 3824229, at \*6 (N.C. App. Aug. 5, 2014) ("[A]ny appeal from the trial court's contempt order should have been taken from the District Court to the Superior Court[.]"). Therefore, we reverse the superior court's order and

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remand the matter to the superior court to conduct a *de novo* hearing in order to address issues which the superior court determines are within its jurisdiction to consider, which includes at least issues relating to the district court's criminal contempt finding and the award of attorneys' fees associated with that finding.<sup>1</sup>

REVERSED AND REMANDED.

Judges McCULLOUGH and TYSON concur.

Report per Rule 30(e).

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<sup>1</sup> On remand, the superior court must consider whether *all* of the attorneys' fees awarded by the district court were associated with a finding of criminal contempt. If the superior court concludes that some of the fees were awarded on some *other* basis, then it must dismiss Father's appeal related to said fees, unless it concludes it has jurisdiction on some other basis.