

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA16-1056

Filed: 6 June 2017

Guilford County, No. 14 CVD 45

NADIA NICOLE FAUCHER, Plaintiff,

v.

TODD THOMAS MARCUS, Defendant.

Appeal by defendant from order entered 13 July 2016 by Judge Betty J. Brown in Guilford County District Court. Heard in the Court of Appeals 22 March 2017.

Jacqueline D. Stanley for plaintiff-appellee.

Smith, James, Rowlett & Cohen, LLP, by Norman B. Smith, for defendant-appellant.

ELMORE, Judge.

Defendant appeals from an interlocutory order awarding \$3,625.00 in attorney fees to plaintiff. Because defendant has failed to show that the order affects a substantial right that would potentially work injury if not corrected before the final judgment, we dismiss his appeal.

I. Background

Nadia Nicole Faucher (plaintiff) and Todd Thomas Marcus (defendant) were married to each other on 16 December 2006. Their only child was born the following summer. The parties separated on 28 December 2012 with the intent of ending their marital relationship.

On 8 January 2013, plaintiff filed a complaint against defendant seeking equitable distribution, interim allocation, post-separation support, alimony, child custody, child support, and attorney fees. Defendant filed an answer and a motion for child custody and support. The trial court entered an order for temporary child custody arrangements, which provided for shared custody of the minor child.

On 24 November 2015, defendant calendared three motions for contempt which he had filed in 2013 and 2014. When he failed to appear at the hearing scheduled for 7 December 2015, the court continued the matter to 11 December 2015. When defendant once again failed to appear, the trial court dismissed his motions.

On 28 April 2016, defendant filed another motion for contempt against plaintiff, alleging that she violated the temporary child custody consent order by moving in with her boyfriend. The trial court held a show cause hearing on 16 May 2016. In its order, the trial court found that “the Plaintiff’s move was due to harassment by the Defendant that placed her in fear of living along with her daughter.” The court concluded that plaintiff’s violation of the consent order “was

not without lawful excuse” and denied defendant’s motion. After the hearing, the motion was dismissed.

Three days later, on 19 May 2016, defendant filed another motion for contempt. The matter was initially scheduled for 31 May 2016 but continued to 7 June 2016 to provide defendant time to retain counsel. At the hearing, defendant requested another continuance, again claiming that he needed more time to find an attorney. Over plaintiff’s objection, the court continued the matter to 28 June 2016. On the hearing date, defendant filed a notice of voluntary dismissal of his motion.

Plaintiff moved for attorney fees pursuant to N.C. Gen. Stat. § 50-13.6 for the cost of defending against the contempt motions. By order entered 13 July 2016, the court granted plaintiff’s motion and ordered defendant to pay \$3,625.00 in attorney fees. Defendant appeals from the order.

II. Discussion

Defendant appeals from an interlocutory order awarding attorney fees to plaintiff. “An interlocutory order is one made during the pendency of an action, which does not dispose of the case, but leaves it for further action by the trial court in order to settle and determine the entire controversy.” *Veazey v. City of Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950) (citation omitted). “Generally, there is no right of immediate appeal from interlocutory orders or judgments.” *Goldston v. Am. Motors Corp.*, 326 N.C. 723, 725, 392 S.E.2d 735, 736 (1990). Immediate appellate review of

an interlocutory order may nevertheless be permissible if the appellant successfully demonstrates that “the order affects a substantial right that would be jeopardized in the absence of review prior to a final determination on the merits.” *Burton v. Phoenix Fabricators & Erectors, Inc.*, 185 N.C. App. 303, 305, 648 S.E.2d 235, 237 (2007) (citing *Harris v. Matthews*, 361 N.C. 265, 269, 643 S.E.2d 566, 569 (2007)), *disc. review allowed and remanded*, 362 N.C. 352, 661 S.E.2d 242 (2008); *see also* N.C. Gen. Stat. § 7A-27(b)(3)(a) (2015) (“[A]ppeal lies of right directly to the Court of Appeals . . . [f]rom any interlocutory order or judgment of a superior court or district court in a civil action or proceeding that . . . [a]ffects a substantial right.”); *Goldston*, 326 N.C. at 726, 392 S.E.2d at 736 (“[A] two-part test has developed—the right itself must be substantial and the deprivation of that substantial right must potentially work injury . . . if not corrected before appeal from final judgment.” (citation omitted)).

Defendant has not met his burden “to present appropriate grounds for this Court’s acceptance of an interlocutory appeal.” *Johnson v. Lucas*, 168 N.C. App. 515, 518, 608 S.E.2d 336, 338 (quoting *Thompson v. Norfolk & Southern Ry.*, 140 N.C. App. 115, 121, 535 S.E.2d 397, 401 (2000)), *aff’d per curiam*, 360 N.C. 53, 619 S.E.2d 502 (2005). As this Court has previously explained, “appellants must present more than a bare assertion that the order affects a substantial right; they must demonstrate *why* the order affects a substantial right.” *Hoke Cnty. Bd. of Educ. v. State*, 198 N.C. App. 274, 277–78, 679 S.E.2d 512, 516 (2009) (citing *Johnson*, 168

N.C. App. at 518, 608 S.E.2d at 338). In defendant's appellate brief, he merely asserts: "The award of attorneys' fees against defendant affects a substantial right, so that the order granting attorneys' fees is appealable pursuant to N.C.G.S. 1-277." The citations defendant offers for support make his claim no more persuasive. On the contrary, this Court has previously held that an interlocutory "order granting attorney fees" does not "affect a substantial right which might be lost, prejudiced or be less than adequately protected by exception to entry of the interlocutory order." *Cochran v. Cochran*, 93 N.C. App. 574, 577, 378 S.E.2d 580, 582 (1989) (citations omitted); *see also Long v. Joyner*, 155 N.C. App. 129, 134, 574 S.E.2d 171, 175 (2002) ("[A]n order to pay attorney's fees as a sanction does not affect a substantial right." (citations omitted)); *Benfield v. Benfield*, 89 N.C. App. 415, 419, 366 S.E.2d 500, 503 (1988) ("[The] order granting attorney's fees is interlocutory, as it does not finally determine the action nor affect a substantial right" (citations omitted)).

III. Conclusion

Because defendant has failed to show that the order affects a substantial right to warrant immediate appellate review, we dismiss his appeal. *See Hamilton v. Mortg. Info. Servs., Inc.*, 212 N.C. App. 73, 77, 711 S.E.2d 185, 189 (2011) ("If a party attempts to appeal from an interlocutory order without showing that the order in question is immediately appealable, we are required to dismiss that party's appeal

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on jurisdictional grounds.” (citing *Pasour v. Pierce*, 46 N.C. App. 636, 639, 265 S.E.2d 652, 653 (1980))).

DISMISSED.

Judges DIETZ and TYSON concur.

Report per Rule 30(e).