An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA17-948

Filed: 17 April 2018

Northampton County, No. 10 E 124

IN THE MATTER OF THE ESTATE OF BRETT SEWELL COOKE

Appeal by appellant from order entered 11 April 2017 by Judge Cy A. Grant, Sr., in Northampton County Superior Court. Heard in the Court of Appeals 12 April 2018.

Michael S. Cooke, pro se.

Jones & Carter, P.A., by Cecelia D. M. Jones and W. Hugh Jones, Jr., for appellee.

ZACHARY, Judge.

Michael S. Cooke ("appellant") appeals from an order dismissing his appeal from the superior court's order affirming the Northampton County Clerk of Superior Court's order for the award of commissions related to the administration of the Estate of Brett Sewell Cooke. We dismiss the appeal.

Appellant and Manning P. Cooke, Jr. ("appellee") were co-executors of the Estate of Brett Sewell Cooke. On 6 September 2016, the superior court entered an

"Order Affirming the Clerk's Order for the Award of Commissions." On 6 October 2016, appellant filed notice of appeal from the superior court's order. On 13 December 2016, appellant faxed a request for an extension of time to serve the record on appeal along with a proposed order granting the request, to a judicial assistant. Appellant did not serve these documents upon the appellee or file them with the Clerk of Superior Court. On 29 December 2016, the superior court entered an order allowing the request for extension of time.

Appellee's counsel did not see a copy of the request for an extension of time until 24 February 2017. At that time, counsel noticed that the request was untimely under the Appellate Rules. As a result, appellee moved to dismiss the appeal at a subsequent hearing on 10 March 2017, which had been calendared for settling the record on appeal. At the conclusion of the hearing, the court orally allowed the motion.

On 11 April 2017, the superior court entered its written order dismissing appellant's appeal for failure to take timely action pursuant to N.C.R. App. P. 25. Appellant filed notice of appeal from the dismissal order.

As an initial matter, we must determine if this appeal is properly before us. Appellant's instant appeal is from an order dismissing his prior appeal. As this Court has recently reiterated, "no appeal lies in this Court from [an] appeal dismissal order." *E. Brooks Wilkins Family Med. v. WakeMed*, ___ N.C. App. ___, ___,784 S.E.2d

178, 185 (2016), *disc. review denied*, 369 N.C. 524, 797 S.E.2d 18 (2017). Moreover, appellant has not filed a petition for writ of certiorari seeking review of the dismissal order. *See* N.C.R. App. P. 21; *State v. Evans*, 46 N.C. App. 327, 327, 264 S.E.2d 766, 767 (1980) (citation omitted) (holding that the proper remedy to obtain review of an order dismissing an appeal is "by petition for writ of certiorari"). Thus, this Court lacks jurisdiction to review the superior court's order, and this appeal must be dismissed.

DISMISSED.

Judges ELMORE and TYSON concur.

Report per Rule 30(e).