An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA17-949

Filed: 17 April 2018

Hertford County, No. 12 SP 104

JAMES ABNER MILLER and wife, MARY S. MILLER, MANNING P. COOKE, JR., and wife, LINDA B. COOKE, Petitioners-Appellees,

v.

MICHAEL S. COOKE and wife, ANNE S. COOKE, Respondents-Appellants.

Appeal by respondent Michael S. Cooke from order entered 11 April 2017 by Judge Cy A. Grant, Sr., in Hertford County Superior Court. Heard in the Court of Appeals 12 April 2018.

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

Michael S. Cooke, pro se, respondent-appellant.

No brief filed for Anne S. Cooke.

ZACHARY, Judge.

Michael S. Cooke ("respondent") appeals from an order dismissing his appeal from the superior court's order confirming the Hertford County Clerk of Superior Court's order of confirmation. We dismiss the appeal.

On 1 September 2016, the superior court entered an "Order Confirming the Clerk's Order of Confirmation." On 29 September 2016, respondent filed notice of appeal from the superior court's order. On 13 December 2016, respondent 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. Respondent did not serve these documents upon the opposing parties, James Abner Miller, Mary S. Miller, Manning P. Cooke, Jr., and Linda B. Cooke ("petitioners"). Nor did respondent file the documents with the Clerk of Superior Court. On 21 December 2016, the superior court entered an order allowing the request for extension of time.

Petitioners' 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, petitioners 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 this appeal for failure to take timely action pursuant to N.C.R. App. P. 25. Respondent filed notice of appeal from the dismissal order.

As an initial matter, we must determine if this appeal is properly before us. Respondent's instant appeal is from an order dismissing the prior appeal. As this

Court has recently reiterated, "no appeal lies in this Court from [an] appeal dismissal order." *E. Brooks Wilkins Family Med., P.A. 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, respondent 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) (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).