An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA17-1243

Filed: 5 June 2018

Carteret County, No. 16 CVD 508

WILLIAM S. COFFEY, Plaintiff,

v.

KATHRYN P. COFFEY, Defendant.

Appeal by Defendant from order entered 21 June 2017 by Judge Karen Alexander in Carteret County District Court. Heard in the Court of Appeals 5 April 2018.

No brief filed by Plaintiff-Appellee.

Wyrick Robbins Yates & Ponton LLP, by Tobias S. Hampson, for Defendant-Appellant.

INMAN, Judge.

Kathryn P. Coffey ("Defendant") appeals from an order holding her in civil contempt for violation of a consent order prohibiting her children from direct or indirect contact with her boyfriend. After review, we reverse the contempt order because the trial court failed to specify how Defendant could purge herself of contempt and the record does not disclose a violation of the consent order.

I. FACTUAL AND PROCEDURAL HISTORY

Defendant and William S. Coffey ("Plaintiff") were married in 2006. Defendant entered into the marriage with one biological son, and the parties had a second child together in June of 2007. On 31 May 2016, Plaintiff filed for divorce, seeking custody of the children, child support, alimony, and attorney's fees from Defendant. Defendant filed her answer and counterclaim on 1 August 2016, seeking child custody, child support, equitable distribution, and attorney's fees.

After Plaintiff filed a reply to Defendant's counterclaims, on 29 November 2016 the parties entered into a consent order (the "Consent Order"). Per its terms, the minor children were to "have no contact with Eric Scott Rowe. This no contact provision shall include direct or indirect contact. The Defendant shall ensure that Eric Scott Rowe is not present at the children's schools or extracurricular activities." Eric Scott Rowe ("Mr. Rowe") is Defendant's boyfriend.

On 4 February 2017, Plaintiff drove the parties' children to a Boy Scout event. The drop-off location for the event was at a Wells Fargo Bank branch in Morehead City, North Carolina; as Plaintiff was waiting to turn left into the Wells Fargo parking lot, he noticed that the truck directly in front of them was being driven by Mr. Rowe, with Defendant seated in the passenger seat. Defendant, it turned out, was also attending the Boy Scout event as a "den" leader for a group of younger Cub Scouts, and was being dropped off at the Wells Fargo by Mr. Rowe. After Defendant

turned left ahead of Plaintiff, she and Mr. Rowe noticed that Plaintiff and her children were in the car behind them. Defendant and Mr. Rowe decided to drive down a different road and wait five to ten minutes before returning to the bank. Plaintiff watched Mr. Rowe return to the bank, drop Defendant off on the street next to the bank, and depart.

Plaintiff filed a motion to show cause on 14 February 2017, requesting Defendant appear and show cause why she should not be held in contempt for violating the Consent Order. The trial court entered an order to show cause that same day and scheduled a contempt hearing for a later date.

Prior to the show cause hearing, Defendant e-mailed Plaintiff about a local footrace where one of the their children was planning to volunteer while in Defendant's custody. Defendant informed Plaintiff that she expected Mr. Rowe to also be present at the race, "[a]lthough [she did] not foresee them having substantial direct contact," and asked if Plaintiff would consent to the child attending the event. Plaintiff responded that the Consent Order prohibited any contact with Mr. Rowe whatsoever and told her that "if Mr. Rowe is going to be present the children should not go." Defendant replied, stating that she could not control Mr. Rowe, that she would allow him to make his own decision as to whether to attend the race, and that she would not prohibit her child from attending the race regardless of Mr. Rowe's choice. Defendant took her child to the race, where Mr. Rowe competed.

The trial court held a show cause hearing on 2 June 2017 and held Defendant in civil contempt of the Consent Order. In holding Defendant in contempt, the Court entered the following order:

> 2. The Defendant is to be incarcerated for a period not to exceed 30 days. The commitment of the Defendant is hereby stayed upon compliance with the following terms and conditions:
>
> a. The Defendant shall reimburse the Plaintiff for reasonable attorney's fees expended in this matter . . . .
>
> b. The Defendant shall fully comply with the November 29, 2016, Consent Order. Any further violations by the Defendant shall constitute a violation of this Order and the Defendant shall be immediately arrested and held for a period of 30 days in the Carteret County Confinement Facility.
>
> 3. In the event that the Defendant fails to make the attorney's fees payment . . . , the Defendant shall be immediately arrested and held for a period of 30 days in the Carteret Confinement Facility.

The trial court entered its contempt order on 21 June 2017 (the "Contempt Order"), and Defendant filed timely notice of appeal.

II. ANALYSIS

a. Appellate Jurisdiction and Standard of Review

Defendant appeals from an interlocutory order holding her in contempt. "The appeal of any contempt order . . . affects a substantial right and is therefore immediately appealable." *Guerrier v. Guerrier*, 155 N.C. App. 154, 158, 574 S.E.2d

69, 71 (2002). This Court thus has jurisdiction over the present appeal pursuant to N.C. Gen. Stat. § 7A-27(b)(3)a (2017).

In reviewing a contempt order, we are "limited to determining whether there is competent evidence to support the [trial court's] findings of fact and whether the findings support the conclusions of law." *Middleton v. Middleton*, 159 N.C. App. 224, 226, 583 S.E.2d 48, 49 (2003) (quotation marks omitted). We review the conclusions of law reached by the trial court *de novo*, freely substituting our judgment for that of the trial court. *Tucker v. Tucker*, 197 N.C. App. 592, 594, 679 S.E.2d 141, 143 (2009).

b. The Trial Court Erred In Entering the Contempt Order

The penalty of civil contempt is governed by N.C. Gen. Stat. §§ 5A-21, *et seq.* (2017). Consistent with the purpose of civil contempt, which is "not to punish but to coerce the defendant to comply with a court order[,]" *Cox v. Cox*, 133 N.C. App. 221, 226, 515 S.E.2d 61, 65 (1999) (citation omitted), a contemnor may be subject to imprisonment but "must be released when his civil contempt no longer continues." N.C. Gen. Stat. § 5A-22(a). Thus, "[t]he order of the court holding a person in civil contempt must specify how the person may purge himself of the contempt." N.C. Gen. Stat. § 5A-22(a). In compliance with this statutory requirement, the trial court's order must "clearly specify what the defendant can and cannot do[,]" *Cox* at 226, 515 S.E.2d at 65, and the purge conditions cannot be "impermissibly vague." *Scott v. Scott*, 157 N.C. App. 382, 394, 579 S.E.2d 431, 439 (2003).

Defendant argues that the Contempt Order fails to comply with the requirements of N.C. Gen. Stat. § 55A-22, citing this Court's decision in *Wellons v. White*, 229 N.C. App. 164, 748 S.E.2d 709 (2013). We agree that *Wellons* is controlling. There, the trial court held the defendant in civil contempt and ordered his arrest, but allowed him to suspend his imprisonment and " 'purge his contempt by fully complying with the terms of [various prior orders] and this Order.' " *Id.* at 182, 748 S.E.2d at 722. However, the contempt order failed to establish a date at which the defendant's contempt would be purged and provided no other means for purging the contempt. *Id.* at 182, 748 S.E.2d at 722. This Court reversed the trial court's contempt order, explaining that "[a]lthough the district court referenced previous orders containing specific provisions, it did not: (i) establish when [the defendant's] compliance purged his contempt; or (ii) provide any other method for [the defendant] to purge his contempt. We will not allow the district court to hold [the defendant] indefinitely in contempt." *Id.* at 183, 748 S.E.2d at 722.

Here, the trial court's order presents the same failings as the contempt order in *Wellons*. Although it allows Defendant's imprisonment to be "stayed[,]" it provides no means by which Defendant can purge herself of the contempt, nor does it provide a date by which the stay would mature into a purge. Further, the term of imprisonment is stayed only so long as Defendant complies with the Consent Order, which is itself of indeterminate length. Once again, "[w]e will not allow the district

court to hold [Defendant] indefinitely in contempt[,]" *Id.* at 183, 748 S.E.2d at 722, and we therefore reverse the Contempt Order. *See also Scott*, 157 N.C. App. at 394, 579 S.E.2d at 439 (reversing a trial court's contempt order where the purge condition imposed was insufficiently definite); *Cox*, 133 N.C. App. at 226, 515 S.E.2d at 65 (reversing a civil contempt order where a "vague condition made it impossible for [the contemnor] to purge herself of contempt").

Even assuming *arguendo* that a proper purge provision had been included, the record below does not disclose any contempt on Defendant's part. While it is true that Mr. Rowe dropped Defendant off for the scouting event near her children and attended a race where one child was present, there was absolutely no evidence presented that he had any contact with the children on those occasions. There was no evidence showing direct contact, such as speaking with the children, or indirect contact, such as conveying a message through Defendant or another intermediary. Unsurprisingly, the Contempt Order is, on its face, bereft of any factual findings demonstrating direct or indirect contact. Absent any evidence or findings of fact showing a violation by Defendant of the Consent Order, the trial court erred in holding Defendant in contempt. *See, e.g., Ponder v. Davis*, 233 N.C. 699, 707, 65 S.E.2d 356, 361 (1951) ("In contempt proceedings it is essential that the facts upon which the contempt is based should be found and filed in the proceedings, especially

the facts concerning the purpose and object of the contemner, and the judgment should be based on the facts so found.”).

IV. CONCLUSION

The Contempt Order fails to set forth the means by which Defendant may purge herself of contempt, as required by N.C. Gen. Stat. § 5A-22, and neither the record evidence nor the trial court’s findings support holding Defendant in contempt. The order must therefore be reversed. As a result, we do not reach Defendant’s remaining arguments.

REVERSED.

Judges DAVIS and MURPHY concur.

Report per Rule 30(e).