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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-854

Filed: 17 July 2018

Rowan County, No. 11 CVD 2698

ALESSANDRA L. McKENZIE Plaintiff,

v.

STEVEN M. McKENZIE, Defendant.

Appeal by defendant from order entered 24 May 2017 by Judge Jane Harper in District Court, Rowan County. Heard in the Court of Appeals 25 January 2018.

*Ferguson, Hayes, Hawkins, & DeMay, PLLC, by James R. DeMay, for plaintiff-appellee.*

*Steven M. McKenzie, pro se.*

STROUD, Judge.

Defendant-husband filed notice of appeal from two contempt orders but raises only arguments regarding the trial court's dismissal of his prior appeal of the underlying equitable distribution judgment. We dismiss this appeal.

On 29 July 2016, the trial court entered an equitable distribution judgment which "resolve[d] all claims related to the parties' respective claims for equitable distribution[.]" On 24 August 2016, Husband filed a notice of appeal from the

equitable distribution judgment.<sup>1</sup> The equitable distribution judgment ordered Husband to “immediately” transfer a particular Merrill Lynch account to plaintiff-wife and to pay a distributive award to her by 15 October 2016. On 16 November 2016 Wife filed a motion for contempt for Husband’s failure to comply with the equitable distribution judgment.

On 28 December 2016, Wife moved to dismiss Husband’s appeal of the equitable distribution judgment for failure “to serve” the proposed record on appeal within the time provided by the North Carolina Rules of Appellate Procedure. On 27 February 2017, Wife filed another motion to dismiss Husband’s appeal of the equitable distribution judgment due to his failure “to file his Record on Appeal” in compliance with the applicable rules. Following a hearing in the 10 April 2017 session, the trial court dismissed Husband’s appeal in open court and on 28 April 2017, the trial court entered a written order dismissing Husband’s appeal of the equitable distribution judgment “for failure to perfect the appeal as required by the North Carolina Rules of Appellate Procedure[.]”

In May of 2017, Wife filed two motions for contempt for Husband’s failure to comply with the equitable distribution judgment. On 24 May 2017, the trial court entered two written orders determining Husband was in contempt for his failure to

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<sup>1</sup> The notice of appeal is not in our record but one of the trial court’s orders which is the subject of this appeal included a finding of fact that a notice was filed on this date, although we do not know the substance of the alleged notice of appeal.

comply with the equitable distribution judgment. On 26 and 30 May 2017, Husband filed two notices of appeal, both stating that the order being appealed was “filed on May 24, 2017, by the Honorable Judge Harper[.]” Neither notice of appeal mentions Husband’s attempted appeal of the equitable distribution judgment or the order dismissing that appeal. In Husband’s brief he raises four issues on appeal; *all* are regarding the trial court’s jurisdiction to dismiss his appeal of the equitable distribution judgment. In summary, Husband seeks to appeal the trial court’s order dismissing his appeal because if there had been a pending appeal, the trial court would have lost jurisdiction to consider Wife’s motions for contempt while the appeal was pending before this Court.

But as Husband acknowledges in his reply brief, he “was decidedly not entitled by law to appeal from the trial court’s 28 April 2017 appeal dismissal order.” *See State v. Evans*, 46 N.C. App. 327, 327, 264 S.E.2d 766, 767 (1980) (“No appeal lies from an order of the trial court dismissing an appeal for failure to perfect it within apt time, the proper remedy to obtain review in such case being by petition for writ of certiorari.”). Husband then requests we consider his “appeal” as a petition for certiorari and that we review the trial court’s order on Wife’s motion to dismiss his appeal of the equitable distribution judgment.

We decline to exercise our discretion to grant review by certiorari. *See generally State v. Biddix*, 244 N.C. App. 482, 486, 780 S.E.2d 863, 866 (2015)

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(“Whether to allow a petition and issue the writ of certiorari is not a matter of right and rests within the discretion of this Court. N.C. R. App. P. 21(a)(1).”) Husband’s appeal is riddled with violations of the Rules of Appellate Procedure ranging from the relatively minor to the egregious. Husband also has unreasonably delayed in requesting review by certiorari; he waited until his *reply* brief to acknowledge he had no right to appeal the trial court’s dismissal of his appeal and never filed a petition for certiorari.

We also note that Husband’s arguments regarding dismissal of his appeal of the equitable distribution judgment are without merit. Husband’s arguments all seem to assume that he did actually perfect his appeal of the equitable distribution judgment, but he did not. “We take judicial notice of the records of this Court, and note that” Husband never perfected his appeal of the equitable distribution judgment. *State v. Benfield*, 76 N.C. App. 453, 459 n.1, 333 S.E.2d 753, 757 n.1 (1985) (citation omitted). We decline to exercise our discretion to grant certiorari to review Husband’s arguments regarding the trial court’s jurisdiction to dismiss his appeal and ultimately determine he was in contempt. Because Husband raises no substantive argument about the two contempt orders on appeal, there is nothing for this Court to review. We therefore dismiss Husband’s appeal.

DISMISSED.

Judges DILLON and INMAN concur.

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Report per Rule 30(e).