An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA19-194

Filed: 3 September 2019

Guilford County, No. 14 CVD 8065

DEBRA LONGHI DIMMETTE, Plaintiff,

v.

BOBBY J. DIMMETTE, Defendant.

Appeal by Defendant from order entered 31 July 2018 by Judge Lora C. Cubbage in Guilford County District Court. Heard in the Court of Appeals 21 August 2019.

Law Office of Lee M. Cecil, by Lee M. Cecil, for Plaintiff-Appellee.

Wyatt Early Harris Wheeler, LLP, by Arlene M. Zipp, for Defendant-Appellant.

BROOK, Judge.

Defendant appeals from an Order of Dismissal with Prejudice, which dismissed his request for an Order to Show Cause and also his request for orders finding criminal and civil contempt. Plaintiff filed a Motion to Dismiss the Appeal shortly after the appeal was made to this court. Based on our reading of the briefs, the Motion and Defendant's response to the Motion, and the relevant case law, we grant the

Motion to Dismiss this appeal. For the reasons articulated below, we hold that Defendant-Appellant has no right to appeal from the trial court's failure to hold Plaintiff-Appellee in criminal and civil contempt.

I. Background

Over the course of a year and a half, the parties appeared before a trial court in attempt to resolve issues with their child's parental visitation schedule. Defendant asked the trial court to enter orders for both criminal and civil contempt due to Plaintiff's alleged noncompliance with the custody schedule. During the course of the hearings, their child reached the age of majority, thereby rendering the Child Custody Order unenforceable. Plaintiff filed a Motion to Dismiss Defendant's Motion for Contempt and Order to Show Cause, which the trial judge granted. Defendant then appealed these dismissals to this Court, claiming the action of the trial judge to have been improper. Plaintiff timely filed a Motion to Dismiss the Appeal to which Defendant filed a Response.

II. Analysis

Because there is no right, statutory or otherwise, to appeal a trial court's refusal to hold a party in contempt under these circumstances, we grant Plaintiff's Motion to Dismiss.

First, there are no statutes that make "provision[s] for appeal whe[re] a person is not found in contempt," which is relevant here where both civil and criminal

contempt issues were dismissed by the trial judge. *Patterson v. Phillips*, 56 N.C. App. 454, 454, 289 S.E.2d 48, 49 (1982).

Second, our Court has held that individuals do not have right to appeal a trial court's failure to hold an appellee in criminal contempt. *See id.* at 456, 289 S.E.2d at 50 ("The government, the courts and the people have an interest in the prosecution of criminal contempt charges; however, the plaintiff individually has no substantial right to the relief requested.").

Third, our Court has held that there is a right to appeal the dismissal of a civil contempt charge only so long as "the order affects a substantial right claimed by the appellant." *Piedmont Equipment Co., Inc. v. Weant*, 30 N.C. App. 191, 194, 226 S.E.2d 688, 690 (1976). Defendant-Appellant asserts that his appeal implicates a substantial right as "Defendant was prevented . . . from completing his cross-examination of Plaintiff and from offering evidence when the matter was summarily dismissed in the middle of Plaintiff's case and before the beginning of Defendant's case." Motion to Dismiss Response ¶ 27. The trial court summarily dismissed the civil contempt charge because "the minor child who is the subject of this action has now reached the age of majority" and "the prior Custody Order entered by this Court may no longer be enforced by civil contempt." We have not previously recognized a substantial right to appeal a civil contempt dismissal in this or a similar context and decline to do so now. *See Weant* at 194-95, 226 S.E.2d at 690 (recognizing substantial

right where civil contempt offered means, and, in fact, only means, of enforcing appellant's rights).

III. Conclusion

For the aforementioned reasons, we grant the Motion to Dismiss the appeal.

DISMISSED.

Judges INMAN and YOUNG concur.

Report per Rule 30(e).