

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

NO. COA01-1042

NORTH CAROLINA COURT OF APPEALS

Filed: 06 August 2002

MARCY LEDFORD

v.

Macon County
No. 00 CVS 522

SMOKEY MOUNTAIN HEALTHCARE
ASSOCIATES, P.A. and DAVID
A. FRANKS, M.D.

Appeal by plaintiff from judgments entered 24 May 2001 by Judge James L. Baker, Jr. in Macon County Superior Court. Heard in the Court of Appeals 15 May 2002.

Melrose, Seago & Lay, P.A., by Randal Seago, for plaintiff-appellant.

Coward, Hicks & Siler, P.A., by Monty C. Beck, for defendant-appellee Smokey Mountain Healthcare Associates, P.A.

Van Winkle, Buck, Wall, Starnes and Davis, P.A., by Michelle Rippon, for defendant-appellee David A. Franks.

THOMAS, Judge.

Plaintiff, Marcy Ledford, appeals the trial court's grant of summary judgment to defendants, Smokey Mountain Healthcare Associates, P.A. ("SMHC"), and Doctor David A. Franks. She sets forth four assignments of error. For the reasons herein, we find that the trial court's order is interlocutory and dismiss plaintiff's appeal.

Plaintiff began working in 1994 as a nursing assistant with

Franks, who at that time maintained a solo practice. In 1997, Franks and other doctors merged their practices into SMHC. Plaintiff continued working as a nursing assistant with SMHC. On 24 October 2000, plaintiff filed a complaint against SMHC and Franks alleging trespass, intentional infliction of emotional distress (IIED), invasion of privacy, and ratification by SMHC of Franks's conduct.

Both defendants moved for summary judgment. The trial court granted SMHC's motion for summary judgment. The court granted summary judgment in favor of Franks as to the claims of IIED and the request for punitive damages. Franks's motion was denied with respect to plaintiff's claim for invasion of privacy. The record does not indicate a ruling on that part of Franks's motion concerning plaintiff's trespass claim.

No party has addressed the threshold question of whether this appeal is interlocutory. A ruling is interlocutory if it does not determine the issues but directs some further proceeding preliminary to a final decree. *Blackwelder v. Dept. of Human Resources*, 60 N.C. App. 331, 333, 299 S.E.2d 777, 779 (1983). "A grant of partial summary judgment, because it does not completely dispose of the case, is an interlocutory order from which there is ordinarily no right of appeal." *Liggett Group v. Sunas*, 113 N.C. App. 19, 23, 437 S.E.2d 674, 677 (1993). However, an interlocutory order may be heard in appellate courts if it affects a substantial right. See N.C. Gen. Stat. § 1-277(a) (2001). A party may also appeal if the trial court enters a final judgment as to one or more

but fewer than all of the claims or parties, and the trial court certifies in the judgment that there is no just reason to delay the appeal. N.C. Gen. Stat. § 1A-1, Rule 54(b) (2001). In either circumstance, it is the appellant's burden to present arguments to this Court supporting acceptance of the appeal. *Abe v. Westview Capital*, 130 N.C. App. 332, 334, 502 S.E.2d 879, 881 (1998).

Here, there has not been final adjudication as to all of plaintiff's claims against Franks. Moreover, there has been no Rule 54(b) certification by the trial court and plaintiff has presented no argument that a substantial right will be affected if we do not proceed with our review. Indeed, we do not believe that dismissal of this appeal would affect a substantial right and result in two trials involving the same issues with a possibility of inconsistent verdicts. See *Moose v. Nissan of Statesville*, 115 N.C. App. 423, 426, 444 S.E.2d 694, 697 (1994). We also note that in *Moose*, this Court specifically excluded summary judgment of punitive damages claims as immediately appealable. *Id.* at 427, 444 S.E.2d at 697. Accordingly, this appeal is dismissed as interlocutory.

DISMISSED.

JUDGES WYNN and HUNTER concur.

Report per Rule 30(e).