

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA01-1373

NORTH CAROLINA COURT OF APPEALS

Filed: 6 August 2002

STEVEN B. PFAFF,
Plaintiff

v.

Forsyth County
No. 01 CVS 3617

BLUE RHINO CORPORATION and
DAVID C. SLONE,
Defendants

Appeal by plaintiff from order entered 15 August 2001 by Judge Lindsay R. Davis, Jr. in Forsyth County Superior Court. Heard in the Court of Appeals 15 July 2002.

Kennedy, Kennedy, Kennedy, and Kennedy L.L.P., by Harvey L. Kennedy and Harold L. Kennedy, III, for plaintiff-appellant.

Womble Carlyle Sandridge & Rice, PLLC, by David A. Irvin and Lisa M. Drabik, for defendant-appellees.

WALKER, Judge.

Plaintiff filed this action on 3 April 2001, alleging claims of fraud, negligent misrepresentation, and unfair and deceptive trade practices. Defendants answered on 3 May 2001, denying plaintiff's allegations. Additionally, defendants moved to dismiss plaintiff's claim for unfair and deceptive trade practices. On 15 August 2001, the trial court allowed defendants' motion to dismiss

pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted. Plaintiff appeals.

The threshold issue to consider is whether plaintiff's appeal is premature and, therefore, is not properly before this Court. "An order or judgment is interlocutory if it is made during the pendency of an action and does not dispose of the case but requires further action by the trial court in order to finally determine the entire controversy." *N.C. Dept. of Transportation v. Page*, 119 N.C. App. 730, 733, 460 S.E.2d 332, 334 (1995). This Court has stated:

There are only two means by which an interlocutory order may be appealed: (1) if the order is final as to some but not all of the claims or parties and the trial court certifies there is no just reason to delay the appeal pursuant to N.C.R. Civ. P. 54(b) or (2) "if the trial court's decision deprives the appellant of a substantial right which would be lost absent immediate review."

Turner v. Norfolk S. Corp., 137 N.C. App. 138, 141, 526 S.E.2d 666, 669 (2000) (quoting *Bartlett v. Jacobs*, 124 N.C. App. 521, 524, 477 S.E.2d 693, 695 (1996), *disc. rev. denied*, 345 N.C. 340, 483 S.E.2d 161 (1997)); see also N.C. Gen. Stat. § 1-277(a) (2001) and N.C. Gen. Stat. § 7A-27(d) (1).

Here, plaintiff appeals from an order dismissing one of his three claims for relief. The order is clearly an interlocutory order, and the order was not certified for immediate appeal by the trial court. Furthermore, plaintiff fails to show how the order affects a substantial right, citing no harm that could not be corrected upon appeal nor any right that would be clearly lost

absent immediate review. "It is not the duty of this Court to construct arguments for or find support for appellant's right to appeal from an interlocutory order." *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 380, 444 S.E.2d 252, 254 (1994).

We further note that plaintiff fails to include a statement in his brief stating the grounds for interlocutory review. Our appellate rules require that an appellant's brief must contain a statement of the grounds for review and provide "sufficient facts and argument to support appellate review on the ground that the challenged order affects a substantial right." N.C.R. App. P. 28(b)(4).

Accordingly, because there was no final judgment in this case and no substantial rights of the parties were affected, we hold that this appeal is premature and we dismiss it as interlocutory.

Appeal dismissed.

Judges THOMAS and SMITH concur.

Report per Rule 30(e).