NO. COA01-868

NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2002

F&H MORTGAGE INVESTORS, INC.,
RON FREEMAN, GLENN HARGETT,
and GARY GRANT,
Petitioners

v.

Gaston County
No. 00 CVS 3515

CITY OF BESSEMER CITY, and
its ZONING BOARD OF ADJUSTMENT,
Respondents

Appeal by respondents from an order entered 8 March 2001 by Judge Jesse B. Caldwell, III in Wake County Superior Court. Heard in the Court of Appeals 15 August 2002.

Hewson Lapinel Owens, P.A., by H.L. Owens, for petitioners-appellees.

Parker, Poe, Adams & Bernstein, L.L.P., by Anthony Fox; and Gray, Layton, Kersh, Solomon, Sigmon, Furr & Smith, P.A., by David W. Smith, III, for respondents-appellants.

WALKER, Judge.

Petitioners F&H Mortgage Investors, Inc. (F&H), Ron Freeman and Glenn Hargett own F&H Community Mobile Home Park, and Gary Grant owns J&J Mobile Home Park, both located in Bessemer City. On 13 April 1999, F&H applied to Bessemer City (City) for a zoning permit to replace and exchange a single-wide mobile home in its mobile home park with a new single-wide mobile home. The City's Zoning Enforcement Officer, Chris Bartleson, notified both Freeman

and Hargett that the replacement of the single-wide mobile homes at the F&H Community Mobile Home Park did not comply with the City's zoning ordinance and that she would not issue any additional permits for such action.

Following Bartleson's decision, Freeman, Hargett and Grant each requested a permit to locate new single-wide homes in their respective mobile home parks. Each of these zoning permit applications was denied by Bartleson.

On 25 February 2000, petitioners appealed Bartleson's denial of their permit applications to the Zoning Board of Adjustment (Board). The Board denied the appeals on 17 July 2000, citing incomplete applications and lack of proper conditional use permits as the basis for the denial.

On 8 August 2000, the superior court granted a petition for writ of certiorari made jointly by F&H, Freeman, Hargett and Grant to review the Board's decision. At the trial, respondents moved to dismiss this action on the grounds that the petitioners' amendment of the writ of certiorari to join the Board as a necessary party was barred by the statute of limitations, which was denied. The trial court further denied petitioners' motion to strike portions of the record and denied in part petitioners' motion to amend, admitting only two affidavits not included in the original hearing record.

Upon finding the record of the Board's proceedings incomplete, the trial court then remanded the matter to the Board for a new hearing with a complete verbatim record to be agreed upon by the

parties. Respondents assign as error the trial court's denial of the motion to dismiss, the admission of petitioners' additional affidavits and the remand to the Board for a new hearing pursuant to a finding that the record of the Board's proceedings was incomplete.

Before reaching the respondents' assignments of error, we must first determine if the appeal is properly before this Court. The right to appeal from a superior court ruling exists for a final judgment that "disposes of the cause as to all the parties, leaving nothing to be judicially determined between them in the trial court." *Veazey v. City of Durham*, 231 N.C. 357, 361-62, 57 S.E.2d 377, 381, *reh'g denied*, 232 N.C. 744, 59 S.E.2d 429 (1950) (citations omitted); N.C. Gen. Stat. § 7A-27 (2001). If the order or judgement is "one made during the pendancy of an action, which does not dispose of the case, but leaves it for further action," it is interlocutory and, generally, not immediately appealable. *Veazey*, 231 N.C. at 362, 57 S.E.2d at 381; *see also Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 379, 444 S.E.2d 252, 253 (1994). However, an interlocutory order may be immediately appealed in two circumstances: (1)"when 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," *Jeffreys*, 115 N.C. App. at 379, 444 S.E.2d at 253 (citations omitted), N.C. Gen. Stat. § 1A-1, Rule 54(b) (2001); or (2) "when 'the order deprives the appellant of a substantial right which would be jeopardized absent

a review prior to a final determination on the merits.'" *Jeffreys*, 115 N.C. App. at 379, 444 S.E.2d at 253 (citations omitted), N.C. Gen. Stat. §§ 1-277, 7A-27(d)(1) (2001).

Where an interlocutory appeal rests on the substantial right exception, the appellant has the burden of showing that a substantial right would be lost without immediate review. *Mills Pointe Homeowner's Ass'n v. Whitmire*, 146 N.C. App. 297, 299, 551 S.E.2d 924, 926 (2001); *Abe v. Westview Capital,* 130 N.C. App. 332, 334, 502 S.E.2d 879, 881 (1998); *Jeffreys*, 115 N.C. App. at 379-80, 444 S.E.2d at 253-54. If the appellant fails to demonstrate the appropriate grounds for immediate appeal, this Court will not "construct arguments for or find support for" the interlocutory appeal. *Jeffreys*, 115 N.C. App. at 380, 444 S.E.2d at 254.

In this case, the trial court's order is interlocutory because it remanded the matter for further action by the Board, rather than disposing of all issues in the case through a final judgment. Furthermore, the trial court did not certify the case for immediate appeal under Rule 54(b). Although respondents argued in their response to petitioners' motion to dismiss that the trial court's order affects a substantial right, we find that no substantial right has been affected and dismiss this appeal as interlocutory.

Dismissed.

Chief Judge EAGLES and Judge BIGGS concur.

Report per Rule 30(e).