

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA02-1622

NORTH CAROLINA COURT OF APPEALS

Filed: 16 December 2003

ANTHONY KING, Administrator
of the Estate of Andrew King,
Deceased,

Plaintiff,

v.

Guilford County
No. 02 CVS 984

SHANNON HOLBROOK f.k.a.
SHANNON READ, CORNELIA A.
GRAINGER, DONALD W.
GRAINGER, ALLGOOD
CONSTRUCTION CO., INC.,
GUILFORD COUNTY, JOHN
SHORE, Director of Guilford County
Department of Social Services,
GUILFORD COUNTY
DEPARTMENT OF SOCIAL
SERVICES, SUZANNE BROGDON
and REBEKAH SAUL,

Defendants.

Appeal by plaintiff from order entered 4 September 2002 by Judge Catherine C. Eagles in Guilford County Superior Court. Heard in the Court of Appeals 10 September 2003.

BIESECKER, TRIPP, SINK & FRITTS, L.L.P., by Joe E. Biesecker, for plaintiff appellant.

County Attorney Jonathan V. Maxwell, and Assistant County Attorney Kevin W. Whiteheart, for defendant appellees.

TIMMONS-GOODSON, Judge.

Anthony King ("plaintiff") appeals an order by the Guilford

County Superior Court dismissing his claims of negligence against Guilford County ("County"), Guilford County Department of Social Services ("DSS"), John Shore as Director of the Department of Social Services ("Shore"), Rebekah Saul ("Saul") and Suzanne Brogdon ("Brogdon"), (collectively "defendants"), for the death of his son, Andrew Montana King ("Andrew"). For the reasons stated herein, we dismiss the appeal.

The evidence presented tended to show that Andrew tragically drowned while being supervised by his mother, Shannon Holbrook ("Holbrook"). Prior to Andrew's death, plaintiff filed a report with DSS alleging that Holbrook neglected Andrew. Brogdon, a DSS agent, was assigned to investigate the report. Brogdon and her supervisor, Saul, notified plaintiff that there was insufficient evidence to substantiate a report of child neglect. Andrew drowned six days later in an outdoor pool located behind Holbrook's home.

Plaintiff brought suit against Holbrook; Cornelia A. Grainger and Donald W. Grainger, the owners of Holbrook's home; Allgood Construction Co., Inc., the builder of the pool; DSS; Shore as Director of DSS; and Brogdon and Saul in their official and individual capacities. Defendants filed a Motion to Dismiss alleging sovereign immunity, lack of subject matter and personal jurisdiction and failure to state a claim upon which relief can be granted. In support of their motion, defendants filed the affidavit of Everette Arnold ("Arnold"), an insurance advisor for Guilford County. Plaintiff objected to the admissibility of Arnold's affidavit. The trial court denied plaintiff's objection

to Arnold's affidavit and granted defendants' motion to dismiss the claims against them, but did not dismiss plaintiff's claims against Holbrook, Cornelia A. Grainger and Donald W. Grainger, and Allgood Construction Co., Inc.

Plaintiff argues on appeal that the trial court erred by: (1) denying plaintiff's objection to Arnold's affidavit; (2) dismissing the claims against County, DSS, Shore, Brogdon and Saul based upon subject matter and personal jurisdiction; and, (3) dismissing the claims against Brogdon and Saul in their individual capacities.

Although this action was originally brought against numerous entities, this appeal concerns only the allegations against County, DSS, Shore, Brogdon and Saul. "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). The general prohibition on interlocutory appeals seeks "to prevent fragmentary, premature and unnecessary appeals by permitting the trial court to bring the case to final judgment before it is presented to the appellate courts.'" *Lee v. Baxter*, 147 N.C. App. 517, 519, 556 S.E.2d 36, 37 (2001) (quoting *Fraser v. Di Santi*, 75 N.C. App. 654, 655, 331 S.E.2d 217, 218, *disc. review denied*, 315 N.C. 183, 337 S.E.2d 856 (1985)).

Interlocutory orders may be appealed when the denial of an appeal would affect a substantial right of an appellant. N.C. Gen. Stat. § 1-277(a) (2003); *Blackwelder v. Dept. of Human Resources*,

60 N.C. App. 331, 335, 299 S.E.2d 777, 780-81 (1983). "Whether or not an appeal affects a substantial right must be decided on a 'case by case basis.'" *Ussery v. Taylor*, 156 N.C. App. 684, 685, 577 S.E.2d 159, 160 (2003) (quoting *Hoots v. Pryor*, 106 N.C. App. 397, 401, 417 S.E.2d 269, 272, *disc. review denied*, 332 N.C. 345, 421 S.E.2d 148 (1992)). Our Supreme Court has held that an appeal may affect a substantial right if it forces a party to undergo two trials "where the same issues are present in both trials, thereby creating the possibility that a party will be prejudiced by different juries in separate trials rendering inconsistent verdicts on the same factual issues." *Ussery*, 156 N.C. App. at 685, 577 S.E.2d at 160.

In the instant case, plaintiff's claims against the various defendants rest upon different factual allegations. Plaintiff argues that County, DSS, Shore, Brogdon and Saul were negligent in their supervision and investigation of child neglect complaints. Plaintiff's complaint against Holbrook, the Graingers, and Allgood Construction Co., Inc., alleges negligent supervision of a child and negligent building and protection of a pool. As such, the same issues are not present in all claims against all defendants and thus, there is no concern that different juries in separate trials will render inconsistent verdicts on the same factual issues. See *Ussery*, 156 N.C. App. at 685, 577 S.E.2d at 160. We dismiss this appeal as interlocutory.

Dismissed.

Judges HUDSON and ELMORE concur.

Report per Rule 30(e).