

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA02-187

NORTH CAROLINA COURT OF APPEALS

Filed: 3 September 2002

JACQUELYN L. WILLIAMS,
Administratrix of the Estate
of LARRY WILLIAMS,
Plaintiff,

v.

New Hanover County
No. 98 CVS 1602

INTERNATIONAL PAPER COMPANY
and LOUIS GRISSOM,
Defendants.

Appeal by defendants from order signed 17 September 2001 by Judge Ernest B. Fullwood in Superior Court, New Hanover County. Heard in the Court of Appeals 26 August 2002.

Ellis, Hooper, Warlick & Morgan, L.L.P., by John D. Warlick, Jr., and Walker, Clark, Allen, Grice & Ammons, L.L.P., by Robert D. Walker, Jr., for plaintiff-appellee.

Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., by Kirk G. Warner and J. Mitchell Armbruster, and Yates, McLamb & Weyher, L.L.P., by Rodney E. Pettey, for defendant-appellants.

WYNN, Judge.

Plaintiff Jacquelyn L. Williams, as administratrix of the estate of her husband, Larry Williams, filed a suit against her husband's employer, International Paper Company and its plant manager Louis Grissom. Plaintiff alleged defendants "knowingly, willfully and wantonly engaged in negligent conduct knowing it was

substantially certain to cause serious injury" to Larry Williams. Defendants answered and denied the material allegations of the complaint. Defendant Grissom moved to dismiss the action pursuant to N.C.R. Civ. P. 12(b)(6) and the trial court denied the motion.

On 2 May 2001, defendants moved for summary judgment on the grounds that "Plaintiff's claim[s] are barred by exclusivity provision of the Workers' Compensation Act, N.C. Gen. Stat. § 97-10.1, and Plaintiff cannot forecast evidence sufficient to survive summary judgment under the narrow exception to exclusivity announced in *Woodson v. Rowland*, 329 N.C. 330, 407 S.E.2d 222 (1991)." In an order signed 17 September 2001, the trial court denied the motion for summary judgment. Defendants appeal.

The denial of summary judgment is not a final judgment, but rather is interlocutory in nature. We do not review interlocutory orders as a matter of course. *Veazey v. 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). However, if "the trial court's decision deprives the appellant of a substantial right which would be lost absent immediate review[,] " as defendants suggest, we may review the appeal under N.C. Gen. Stat. §§ 1-277(a) and 7A-27(d)(1). *N.C. Dept. of Transp. v. Page*, 119 N.C. App. 730, 734, 460 S.E.2d 332, 334 (1995). Defendants must show that the affected right is a substantial one, and that deprivation of that right, if not corrected before appeal from final judgment, will potentially injure them. *Goldston v. American Motors Corp.*, 326 N.C. 723, 726, 392 S.E.2d 735, 736 (1990). Whether a substantial right is

affected is determined on a case-by-case basis. *Bernick v. Jurden*, 306 N.C. 435, 439, 293 S.E.2d 405, 408 (1982).

Defendants argue the denial of their appeal "would deny Defendants' substantial right conferred under the Workers' Compensation Act to have all appropriate claims for on-the-job injuries decided by the well-established forum of the Industrial Commission." The only possible "injury" defendants will suffer if not permitted immediate appellate review is the necessity of proceeding to trial before the matter is reviewed by this Court. Avoidance of trial is not a substantial right entitling a party to immediate appellate review. *Blackwelder v. Dept. of Human Resources*, 60 N.C. App. 331, 335, 299 S.E.2d 777, 780 (1983). Based on the foregoing, defendants' appeal must be dismissed. Our decision is consistent with the purpose behind the statutes governing appellate procedure which is to "prevent fragmentary, premature and unnecessary appeals by permitting the trial divisions to have done with a case fully and finally before it is presented to the appellate division." *Waters v. Personnel, Inc.*, 294 N.C. 200, 207, 240 S.E.2d 338, 343 (1978).

Appeal dismissed.

Judges MCGEE and CAMPBELL concur.

Report per Rule 30(e).