

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA02-835

NORTH CAROLINA COURT OF APPEALS

Filed: 31 December 2002

JOHN A. RICHARDS and his
spouse, JOAN M. RICHARDS,
Plaintiffs,

v.

Guilford County
No. 01 CVS 7733

LAWRENCE E. VANSTORY and
WIGGINS-NORTH STATE
MONUMENT CO., INC.,
Defendants.

Appeal by plaintiffs from order filed 19 April 2002 by Judge W. Douglas Albright in Guilford County Superior Court. Heard in the Court of Appeals 30 December 2002.

Wells Jenkins Lucas & Jenkins, PLLC, by Ellis B. Drew, III and Mitra Sanai, for plaintiff appellants.

Frazier & Frazier, L.L.P., by Torin L. Fury, for defendant-appellee Wiggins-North State Monument Co., Inc.

GREENE, Judge.

John A. Richards and Joan M. Richards (Plaintiffs) appeal from an order filed 19 April 2002 dismissing their claims for negligent entrustment and punitive damages.

On 4 June 2001, Plaintiffs filed this action against Lawrence E. Vanstory and Wiggins-North State Monument Co., Inc. (Wiggins-North State) alleging claims of negligence, negligent entrustment,

loss of consortium and seeking compensatory and punitive damages for personal injuries and lost wages arising out of a 12 June 1998 automobile accident. Wiggins-North State filed an answer on 5 March 2002 denying Plaintiffs' allegations. Additionally, Wiggins-North State moved to dismiss Plaintiffs' claim for punitive damages pursuant to Rule 12(b)(6) and moved for judgment on the pleadings as to Plaintiffs' claims of negligent entrustment and punitive damages. On 19 April 2002, the trial court allowed both motions and dismissed Plaintiffs' claims for negligent entrustment and punitive damages. The trial court, however, did not certify this order for immediate appeal.

The dispositive issue is whether Plaintiffs' appeal is interlocutory and therefore 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 Transp. 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 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); see also N.C.G.S. §§ 1-277(a), 7A-27(d) (1) (2001)).

In this case, Plaintiffs appeal from an order dismissing two of their four claims for relief. The order is clearly interlocutory and was not certified for immediate appeal by the trial court. Furthermore, Plaintiffs fail to show how the order affects a substantial right, citing no harm that could not be corrected upon appeal or any right that would be clearly lost absent immediate review. See *Jarrell v. Coastal Emergency Servs.*, 121 N.C. App. 198, 200, 464 S.E.2d 720, 722 (1995) (no possibility of inconsistent verdicts in action based solely on *respondeat superior* because second trial would involve only the issue of a master/servant relationship between the defendants); *Moose v. Nissan of Statesville*, 115 N.C. App. 423, 444 S.E.2d 694 (1994) (order dismissing claim for punitive damages does not affect a substantial right). "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 Plaintiffs fail to include a statement in their brief stating the grounds for interlocutory review. Appellate Rule 28(b)(4) requires the brief contain a statement of the grounds for appellate review containing "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 neither a final judgment in this case nor any substantial right of the parties affected, this appeal is premature and we therefore dismiss it as interlocutory.

Dismissed.

Judges TIMMONS-GOODSON and TYSON concur.

Report per Rule 30(e).