

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA11-628  
NORTH CAROLINA COURT OF APPEALS

Filed: 6 December 2011

TIMBER INTEGRATED INVESTMENTS,  
LLC, a North Carolina limited  
liability company, And MOUNTAIN  
WORKS ENTERPRISES, LLC A North  
Carolina Limited Liability  
Company,  
Plaintiffs,

v.

Haywood County  
No. 06 CVS 905

LARRY WELCH, JOAN MISHKIN, RONALD  
MISHKIN and THE BALSAM GROUP, LLC  
Et al,  
Defendants.

Appeal by plaintiffs from order entered 29 October 2010 by  
Judge James U. Downs in Haywood County Superior Court. Heard in  
the Court of Appeals 16 November 2011.

*Jeffrey W. Norris & Associates, PLLC by Jerad R. Davis, for  
plaintiffs-appellants.*

*No appellee brief filed.*

STROUD, Judge.

This is a complex case involving a contract to purchase  
real property; it involves multiple complaints, parties, claims,  
and motions. For purposes of this opinion, we will not recount

all of these claims and the procedural history of the case, but the order which is the subject of this appeal is a 29 October 2010 summary judgment order in which the trial court granted summary judgment in favor of defendants Larry Welch, Joan Mishkin, and Ronald Mishkin. Accordingly, plaintiffs' claims against defendant The Balsam Group, LLC have not been resolved nor has defendant Welch's counterclaim against plaintiffs.

Plaintiffs contend that their interlocutory appeal should be heard and cite law which they argue holds a substantial right is affected "when there is the possibility of inconsistent verdicts[.]" Although plaintiffs quote the law as to "inconsistent verdicts," plaintiffs fail to state how they themselves may be subject to inconsistent verdicts or how such a verdict may occur. As to their specific case, plaintiffs' entire argument is "since the order affects the substantial right of Plaintiffs/Appellants under N.C. Gen. Stat. § 1-277, it is appealable" and "the same factual issues apply to all claims against the various defendants and many elements of damages are identical. Therefore, it is Plaintiffs'/Appellants' right to have the matter tried by one jury and the appeal of the trial court's October 29, 2010 [order] is not premature." We disagree.

Our Court has recently stated,

An interlocutory order is one made during the pendency of an action, which does not dispose of the case, but leaves it for further action by the trial court in order to settle and determine the entire controversy. . . . Appeals from interlocutory orders are only available in exceptional cases. Interlocutory orders are, however, subject to appellate review: if . . . the order deprives the appellant of a substantial right that would be lost unless immediately reviewed.

*The appealing party bears the burden of demonstrating that the order from which he or she seeks to appeal is appealable despite its interlocutory nature. If a party attempts to appeal from an interlocutory order without showing that the order in question is immediately appealable, we are required to dismiss that party's appeal on jurisdictional grounds. . . .*

. . . In order to determine whether a particular interlocutory order is appealable . . . we utilize a two-part test, with the first inquiry being whether a substantial right is affected by the challenged order and the second being whether this substantial right might be lost, prejudiced, or inadequately preserved in the absence of an immediate appeal. As a result, the extent to which [a] Plaintiff is entitled to appeal the trial court's order hinges upon whether she has established that delay of the appeal will jeopardize a substantial right and cause an injury that might be averted if the appeal were allowed.

The extent to which an interlocutory order affects a substantial right must be determined on a case-by-case basis. In making this determination, we take a restrictive view of the substantial right

exception to the general rule prohibiting immediate appeals from interlocutory orders. As we previously mentioned, *the appellant must demonstrate the applicability of the substantial right exception to the particular case before the appellate court.*

*According to clearly-established North Carolina law, a party's preference for having all related claims determined during the course of a single proceeding does not rise to the level of a substantial right. .*

. . .

. . . .

The mere fact that claims arise from a single event, transaction, or occurrence does not, without more, necessitate a conclusion that inconsistent verdicts may occur unless all of the affected claims are considered in a single proceeding.

*Hamilton v. Mortgage Info. Servs.*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 711 S.E.2d 185, 188-90 (2011) (emphasis added) (citations, quotation marks, brackets, headings, and footnote omitted).

In *Hamilton*, the plaintiff argued that her interlocutory appeal should be heard because a substantial right had been adversely affected. *Id.* at \_\_\_, 711 S.E.2d at 191. This Court then went through an analysis of each of plaintiff's specific arguments and ultimately determined that a substantial right was not adversely affected. *Id.* at \_\_\_, 711 S.E.2d at 191-94.

We need not conduct an analysis as thorough as that in *Hamilton* as plaintiff herein has failed to make any specific arguments beyond noting that "the same factual issues apply to

all claims against the various defendants and many elements of damages are identical." See *id.* at \_\_\_\_, 711 S.E.2d at 191-94. As we have already stated, "a party's preference for having all related claims determined during the course of a single proceeding does not rise to the level of a substantial right." *Id.* at \_\_\_\_, 711 S.E.2d at 190 (emphasis added). Instead of explaining how a failure to hear this appeal may adversely affect plaintiffs, plaintiffs have chosen to state their "preference[;]" this will not do. *Id.* Furthermore, citing law regarding inconsistent verdicts is also not enough; plaintiffs need to actually show or at least contend that such law is applicable. We remind plaintiffs that

[i]t is not the duty of this Court to construct arguments for or find support for appellant's right to appeal from an interlocutory order; instead, the appellant has the burden of showing this Court that 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 v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 380, 444 S.E.2d 252, 254 (1994). As plaintiffs have failed to show that a substantial right would be affected by this Court's failure to hear their appeal, we dismiss.

DISMISSED.

Judges BRYANT and CALABRIA concur.

Report per Rule 30(e).