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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-178

Filed: 19 September 2017

Buncombe County, No. 16 CVS 253

ROY ALLEN FOWLER and wife DIANE E. FOWLER, Plaintiffs,

v.

ROY ALLEN FOWLER, JR. and wife SARAH COURTNEY FOWLER, Defendants.

Appeal by defendant from judgment entered 26 August 2016 by Judge Marvin P. Pope, Jr. in Buncombe County Superior Court. Heard in the Court of Appeals 21 August 2017.

*Roberts & Stevens, P.A., by John David Noor and Ann-Patton Hornthal, for plaintiffs-appellees.*

*Frank G. Queen, PLLC, by Frank G. Queen, and David A. Wijewickrama for defendant-appellant.*

DIETZ, Judge.

Defendant Sarah Fowler appeals the trial court's order on cross-motions for summary judgment concerning the parties' claims to quiet title. As explained below, the challenged order is interlocutory because many other claims remain pending in the trial court. Because Defendant has not shown that this interlocutory order is

immediately appealable, we must dismiss the appeal without reaching the merits of the parties' arguments.

### **Facts and Procedural History**

In January 2016, Plaintiffs sued Defendants asserting claims for quiet title, slander of title, false notice of claim to property, conspiracy to slander title, and trespass to land. These claims stemmed from the purported conveyance of a condominium. The following month, Defendant Sarah Fowler answered the complaint and asserted various counterclaims and crossclaims including claims for quiet title, false notice of claim to property, cloud of title, abuse of process, and civil conspiracy.

The parties came before the trial court on cross-motions for summary judgment concerning the quiet title claims. The trial court declared Plaintiffs the sole owners of the disputed property. The trial court's summary judgment order on the quiet title issue did not address the parties' remaining claims, including various claims and counterclaims seeking money damages for trespass, slander of title, and abuse of process.

### **Analysis**

Before we can reach the merits of this appeal we must address whether the Court has appellate jurisdiction. "Ordinarily, this Court hears appeals only after entry of a final judgment that leaves nothing further to be done in the trial court."

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*State v. Oakes*, 240 N.C. App. 580, 582, 771 S.E.2d 832, 834 (2015). A non-final order—often referred to as an interlocutory order—is permissible only in limited circumstances, such as appeals from orders certified under Rule 54(b) of the Rules of Civil Procedure, or appeals from orders affecting a substantial right. *Larsen v. Black Diamond French Truffles, Inc.*, 241 N.C. App. 74, 76–77, 772 S.E.2d 93, 95 (2015).

The appellant has the burden to explain why an interlocutory order is immediately appealable. *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 379, 444 S.E.2d 252, 253 (1994). “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.” *Id.* at 380, 444 S.E.2d at 254. As a result, if the appellant’s opening brief fails to explain why this Court has appellate jurisdiction, we must dismiss the appeal. *Larsen*, 241 N.C. App. at 76, 772 S.E.2d at 95.

In her brief, Defendant contends that the trial court’s “order granting summary judgment for the plaintiffs was a final order and therefore appeal lies to the Court of Appeals pursuant to N.C. Gen. Stat. § 7A-27(b).” Plaintiffs respond that there are “numerous claims” still pending in the trial court and thus “this appeal must be dismissed.”

We agree with Plaintiffs. The record before this Court indicates that many of the parties’ claims remain unresolved and there is more to be done in the trial court. The order on appeal was not certified for immediate review under Rule 54(b) and

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Defendant's opening brief does not identify any reason why the challenged order affects a substantial right. Accordingly, we must dismiss this appeal for lack of appellate jurisdiction. *Larsen*, 241 N.C. App. at 76, 772 S.E.2d at 95.

DISMISSED.

Chief Judge McGEE and Judge BERGER concur.

Report per Rule 30(e).