

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA01-1592

NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2002

JERRY EWING,
Plaintiff-Appellee,

v.

Gaston County
No. 00 CVD 3693

RENEE EWING,
Defendant-Appellant.

Appeal by defendant from order entered 20 July 2001, *nunc pro tunc* 7 May 2001, by Judge Charles A. Horne in District Court, Gaston County. Heard in the Court of Appeals 30 September 2002.

Langson Law Firm, by Sean F. McIlveen, for plaintiff-appellee.

Arthurs & Foltz, by Nancy E. Foltz and Tara R. Sain, for defendant-appellant.

McGEE, Judge.

Plaintiff and defendant were married on 8 August 1987 and separated on or about 1 April 2000. Plaintiff filed a complaint against defendant for equitable distribution, post-separation support, alimony and attorney's fees on 18 August 2000. Defendant filed an answer and a counterclaim for divorce from bed and board, asserting rights under a post-nuptial agreement (the agreement) signed by the parties on 23 September 1997. Plaintiff filed a "Reply and Countermotion" asking the trial court, *inter alia*, to declare the agreement null and void.

Following a hearing, the trial court entered an order finding the agreement invalid due to defendant's breach of her fiduciary duty to plaintiff by failing to disclose assets and by failing to disclose the entirety of the provisions contained in the agreement. The trial court's order further provided that the agreement "shall carry no weight whatsoever in the distribution of the parties' assets." Defendant appeals the order of the trial court.

Defendant argues on appeal that the trial court erred in finding the agreement invalid. We do not reach defendant's substantive arguments, however, because we find that the trial court's order is interlocutory and is not subject to immediate appeal.

There is generally no right to immediate appeal from an interlocutory order. *Lee v. Mut. Community Sav. Bank*, 136 N.C. App. 808, 525 S.E.2d 854 (2000). However, an interlocutory order is appealable in two circumstances. First, an interlocutory order is appealable if the order affects a substantial right which will be "lost or irremediably adversely affected if the order is not reviewable before the final judgment." *Jenkins v. Maintenance, Inc.*, 76 N.C. App. 110, 112, 332 S.E.2d 90, 92 (1985) (citation omitted); see *DKH Corp. v. Rankin-Patterson Oil Co.*, 348 N.C. 583, 585, 500 S.E.2d 666, 667 (1998). Second, an interlocutory order is appealable in a case with multiple parties and claims, when "'the trial court enters a final [order] as to a party or a claim and certifies there is no just reason for delay.'" *Lee*, 136 N.C. App. at 810, 525 S.E.2d at 856 (quoting *DKH Corp.*, 348 N.C. at 585, 500

S.E.2d at 668); see N.C. Gen. Stat. § 1A-1, Rule 54(b).

As our Court determined in *Garris v. Garris*, 92 N.C. App. 467, 469-70, 374 S.E.2d 638, 640 (1988), "The court's ruling on the Agreement did not dispose of plaintiff's claims for equitable distribution and alimony but only disposed of defendant's plea in bar to those claims: the court's ruling was thus interlocutory." The trial court's order in the case before us did not adjudicate any of plaintiff's claims but only determined defendant's plea in bar of those claims. Moreover, "[n]o substantial right of defendant will be lost or prejudiced by delaying [her] appeal until the final judgment on plaintiff's equitable distribution and alimony claims." *Id.* at 470, 374 S.E.2d at 640; see N.C. Gen. Stat. §§ 1-277(a), 7A-27(d) (1999). We therefore dismiss defendant's appeal as interlocutory.

Dismissed.

Judges WYNN and CAMPBELL concur.

Report per Rule 30(e).