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NO. COA01-555

NORTH CAROLINA COURT OF APPEALS

Filed: 19 March 2002

SUZANNE HILL, FORD GOUDEY,  
MARY SUSAN SCHMIDT, DORA DEAN  
BALLOU, A.C. BLAKENSHIP,  
STEVE A. BROCK, JEAN BURROWS,  
CAROLYN B. BYRD, D.S. BYRD,  
JOSEPH CANOSA, J.L. CASTLEBERRY,  
MARGIE R. CASTLEBERRY, ALBERT  
CHAPPELL, JEAN CHAPPELL,  
LEWIS CLARKE, BRENDA DAVIS,  
J. CHRIS DAVIS, JOSEPHINE DAVIS  
JIM FRENCH, ANNE B. GILLIAM,  
JAMES GILLIAM, ANN J. GOLD,  
W.A. GOLD, EMILY GRAHAM, LUKE  
GRUBER, PRICE TAYLOR HARRISON,  
L.B. HASKINS, JAMES M. HAYWARD,  
VIRGINIA C. HAYWARD, L. JARVIS  
HERRING, SALLY HERRING, CLARA  
INSCOE, RALPH JOHNSON, CLINTON  
LEWIS, BARBARA D. MARTIN, JESSICA  
L. MARTIN, JOSEPH McCLURE, JANIL  
MILLER, JOHN MILLER, GENE W.  
MORRISON, HERBERT PARKIN, BARBARA  
PAERL, MICHELLE S. PITTMAN,  
GILBERT M. POTTER, PAT I. POTTER,  
JOAN PULLEY, W. PAUL PULLEY, JR.,  
ARTHUR RITTMASER, KEITH RITTMASER,  
CAROLYN ROGERS, ROBERT F. ROSER,  
DENISE ROSER, LENA RUDDER, HAZEL  
SIMPSON, KERRY SINCLAIR, C.W.  
STAMPER, DAWN STEWART, MACK STYRON,  
VICKY THAYER, DEBORAH BOYCE TODD,  
EDWIN LEE TODD, GWENDOLYN TOWLES,  
THELMA P. WARD, JAMES R. WHEATLEY,  
MACK WILLIS, EDITH YORK,

Plaintiffs

v.

MIKE TAYLOR,

Defendant

Carteret County  
No. 00 CVS 797

Appeal by defendant from order entered 17 February 2001 by Judge Jay D. Hockenbury in Carteret County Superior Court. Heard in the Court of Appeals 13 February 2002.

*Pulley, Watson, King & Lischer, P.A., by W. Paul Pulley, Jr., for plaintiffs-appellees.*

*Wheatly, Wheatly, Nobles & Weeks, P.A., by C.R. Wheatly, Jr. and C.R. Wheatly, III, for defendant-appellant.*

WALKER, Judge.

Plaintiffs filed this action on 2 August 2000, seeking a judgment quieting title to certain real property located in their residential subdivision and for a declaratory judgment pursuant to N.C. Gen. Stat. § 1-253 declaring the validity of their right to use this property as a landing. Defendant answered and counterclaimed for a judgment declaring that he owned the real property in fee simple, or alternatively, that he had acquired title through adverse possession. Defendant also moved the trial court to dismiss plaintiffs' action for failure to join necessary parties, to order the joinder of all lot owners within the subdivision as party plaintiffs, and for summary judgment. On 17 February 2001, the trial court denied each of defendant's motions. Within its order, the trial court noted that defendant had orally withdrawn his motion for summary judgment.

Plaintiffs have filed with this Court a motion to dismiss defendant's appeal asserting that the trial court's order is an interlocutory order from which defendant has no right to immediate appeal. We agree.

"Interlocutory orders are those made during the pendency of an action which do not dispose of the case, but instead leave it for further action by the trial court in order to settle and determine the entire controversy." *Carriker v. Carriker*, 350 N.C. 71, 73, 511 S.E.2d 2, 4 (1999) (internal citation omitted); see also *Stevenson ex rel. Long v. Joyner*, \_\_\_ N.C. App. \_\_\_, 558 S.E.2d 215 (2002). Clearly, the trial court's order denying defendant's motions is interlocutory as it is not a final judgment disposing of the case.

The right to appeal from an interlocutory order exists provided one of two circumstances is present. The order itself must either: (1) affect a substantial right or (2) be a final judgment as to some but not all the claims or parties and be certified by the trial court as having no just reason to delay the appeal. *Bartlett v. Jacobs*, 124 N.C. App. 521, 477 S.E.2d 693 (1996), *disc. rev. denied*, 345 N.C. 340, 483 S.E.2d 161 (1997); see also N.C. Gen. Stat. § 1A-1, Rule 54(b) (1999).

This Court has previously held that the denial of a motion to dismiss for failure to join necessary parties does not affect a substantial right and therefore is not immediately appealable. See *Fraser v. Di Santi*, 75 N.C. App. 654, 331 S.E.2d 217, *disc. rev. denied*, 315 N.C. 183, 337 S.E.2d 856 (1985); and *Auction Co. v. Myers*, 40 N.C. App. 570, 253 S.E.2d 362 (1979). Nevertheless, defendant maintains the trial court's failure to order the joinder of all lot owners within plaintiffs' subdivision affects a substantial right which makes his appeal on this issue appropriate.

The determination of whether an interlocutory order affects a substantial right essentially involves a two-part analysis. *Goldston v. American Motors Corp.*, 326 N.C. 723, 726, 392 S.E.2d 735, 736 (1990). First, "the right itself must be substantial," and second, "the deprivation of that substantial right must potentially work injury to [the party] if not corrected before appeal from final judgment." *Id.*

Our review of the record fails to reveal how the trial court's refusal to order the joinder of all lot owners within plaintiffs' subdivision would potentially injure defendant. Indeed, the trial court specifically stated that "if defendant wants additional parties, he should join them." Moreover, we see nothing within plaintiffs' cause of action which would require them to join all lot owners within their subdivision. See generally *Rice v. Randolph*, 96 N.C. App. 112, 384 S.E.2d 295 (1989).

We conclude the denial of defendant's request to order the joinder of necessary parties did not affect a substantial right which requires this Court's immediate attention. Furthermore, the trial court has not certified its order pursuant to Rule 54(b). Therefore, we grant plaintiffs' motion to dismiss defendant's appeal as interlocutory.

Appeal dismissed.

Judges HUNTER and BRYANT concur.

Report per Rule 30(e).