

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA01-679

NORTH CAROLINA COURT OF APPEALS

Filed: 21 May 2002

MARY ELAINE HART,
Plaintiff

v.

Mecklenburg County
No. 99-CvD-17597

JOSEPH M. HART,
Defendant

Appeal by defendant from judgment entered 7 November 2000 by Judge Rickye McKoy-Mitchell in Mecklenburg County District Court. Heard in the Court of Appeals 16 April 2002.

Rosenman & Colin, LLP, by Christopher A. Hicks and Stephanie L. Singleton, for plaintiff-appellee.

Richard L. McClerin for defendant-appellant.

HUNTER, Judge.

Joseph M. Hart ("defendant") and Mary Elaine Hart ("plaintiff") were married in October 1986, and separated in May 1999. On 22 November 1999, plaintiff initiated this action with the filing of a complaint stating claims for child custody and support, post-separation support, alimony, and equitable distribution. An order for post-separation support, temporary child support, and related relief was entered 15 September 2000. The order provided that post-separation support payments would continue until plaintiff's claim for alimony had been resolved by

entry of an order allowing or denying the claim. On 7 November 2000, the trial court entered a consent equitable distribution judgment based on the stipulation of the parties which awarded an unequal division of property in favor of plaintiff. On the same date, the trial court entered a "Judgment Regarding Divisible Property" which addressed the issue of classification of a bonus received by defendant. The trial court classified a portion of the bonus as divisible property. Defendant appeals from this judgment.

We need not address defendant's sole argument on appeal, as we agree with plaintiff that this appeal is interlocutory and must be dismissed. An order or judgment is interlocutory if it fails to resolve the entire controversy between all parties. *Mills Pointe Homeowner's Ass'n v. Whitmire*, 146 N.C. App. 297, 298, 551 S.E.2d 924, 925-26 (2001). Generally, a party may not appeal from an interlocutory order. *Id.* at 298, 551 S.E.2d at 926. However, an immediate appeal may be taken when (1) a trial court certifies that there is no just reason to delay an appeal pursuant to N.C. Gen. Stat. § 1A-1, Rule 54(b) (1999), or (2) the denial of an immediate appeal would affect a substantial right of the appealing party. *Id.* at 298-99, 551 S.E.2d at 926.

We are bound by our recent holding in *Embler v. Embler*, 143 N.C. App. 162, 545 S.E.2d 259 (2001) to conclude that an equitable distribution judgment or order is interlocutory in nature where there exists a related claim for alimony yet to be resolved. Plaintiff asserts, and defendant does not dispute, that the issue of alimony in this case has not been resolved. The 15 September

2000 order for post-separation support and temporary child support acknowledged that the alimony claim had yet to be resolved, and the record does not reflect any change in this regard. Under *Embler*, this appeal is therefore interlocutory, as the judgment from which defendant appeals does not resolve the entire controversy between the parties.

The judgment on appeal in this case has not been certified for immediate review pursuant to Rule 54(b), nor has defendant argued that the dismissal of this appeal would affect a substantial right. See *id.* at 166, 545 S.E.2d at 262 (appellant carries the burden of establishing that a substantial right will be affected absent immediate appeal). Therefore, in accordance with *Embler*, this appeal must be dismissed.

Appeal dismissed.

Judges GREENE and TIMMONS-GOODSON concur.

Report per Rule 30(e).