

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA01-687

NORTH CAROLINA COURT OF APPEALS

Filed: 16 April 2002

THERESE KUIPER, ADMIN. OF
ESTATE OF HENRY TIMOTHY KUIPER,
Plaintiff

v.

Iredell County
No. 97-CVS-02054

AMERICAN HISTORIC RACING
MOTORCYCLE ASSOCIATION, LTD.,
Defendant

Appeal by plaintiff from an order entered 8 December 2000 by Judge Michael E. Beale in Iredell County Superior Court. Heard in the Court of Appeals 26 March 2002.

Massey & Cannon, P.L.L.C., by E. Bedford Cannon, for plaintiff-appellant.

Hedrick, Eatman, Gardner & Kincheloe, L.L.P., by Edward L. Eatman, Jr. and John D. Kocher, for defendant-appellee.

HUNTER, Judge.

Therese Kuiper ("plaintiff") purports to appeal an order granting partial summary judgment in favor of American Historic Racing Motorcycle Association, Ltd. ("defendant"). Neither party has argued the threshold question of whether this appeal is interlocutory. "It is well established in this jurisdiction that if an appealing party has no right of appeal, an appellate court on its own motion should dismiss the appeal even though the question

of appealability has not been raised by the parties themselves." *Bailey v. Gooding*, 301 N.C. 205, 208, 270 S.E.2d 431, 433 (1980).

"An order is interlocutory if it does not determine the entire controversy between all of the parties." *Abe v. Westview Capital*, 130 N.C. App. 332, 334, 502 S.E.2d 879, 881 (1998). Here, the trial court granted summary judgment in favor of defendant on plaintiff's negligence claim, but denied summary judgment on plaintiff's gross negligence claim. "A grant of partial summary judgment, because it does not completely dispose of the case, is an interlocutory order from which there is ordinarily no right of appeal." *Liggett Group v. Sunas*, 113 N.C. App. 19, 23, 437 S.E.2d 674, 677 (1993).

"There are two instances, however, where a party may appeal an interlocutory order." *Abe*, 130 N.C. App. at 334, 502 S.E.2d at 881. Pursuant to N.C. Gen. Stat. § 1A-1, Rule 54(b) (1999) ("Rule 54(b)"), a party may appeal if the trial court enters a final judgment as to one or more but fewer than all of the claims or parties, and the trial court certifies in the judgment that there is no just reason to delay the appeal. *Id.* "A party may also appeal if delaying the appeal will prejudice a substantial right." *Abe*, 130 N.C. App. at 334, 502 S.E.2d at 881; N.C. Gen. Stat. § 1-277 (1999). "In either of these situations, it is the appellant's burden to present argument in his brief to this Court to support acceptance of the appeal." *Abe*, 130 N.C. App. at 334, 502 S.E.2d at 881.

Here, although the case has been finally adjudicated as to one of plaintiff's two claims, there has been no Rule 54(b) certification by the trial court. In addition, plaintiff has presented no argument that a substantial right will be affected if this appeal is not accepted at this time. Indeed, we do not believe that dismissal of this appeal could affect a substantial right by resulting in two trials containing the same issues with a possibility of inconsistent verdicts. See *Moose v. Nissan of Statesville*, 115 N.C. App. 423, 426, 444 S.E.2d 694, 697 (1994). Accordingly, we dismiss this appeal as interlocutory.

Dismissed.

Judges GREENE and TIMMONS-GOODSON concur.

Report per Rule 30(e).