

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA02-563

NORTH CAROLINA COURT OF APPEALS

Filed: 5 November 2002

SOUTHERN STATES COOPERATIVE,
INC.,

Plaintiff,

v.

Jackson County
No. 00 CVD 467

HAROLD COLE,

Defendant.

Appeal by defendant from order entered 28 January 2002 by Judge Danny E. Davis in Jackson County District Court. Heard in the Court of Appeals 21 October 2002.

Peter A. Smith, for plaintiff-appellee.

Gum & Hillier, P.A., by David R. Hillier, for defendant-appellant.

HUDSON, Judge.

Plaintiff Southern States Cooperative, Inc, (plaintiff) is a corporation which sells, among other things, commercial feed for dairy cows. Defendant Harold Cole (defendant) raises dairy cows. In July of 2000, plaintiff filed a complaint against defendant alleging that plaintiff had extended defendant a line of credit in 1991 and that, as of 15 April 2000, defendant had accumulated an account balance of \$26,604.20. Plaintiff sought to recover from defendant the account balance with interest and attorney's fees.

Defendant answered and counterclaimed for negligence, breach of implied warranty of merchantability, fraud, negligent misrepresentation, and unfair and deceptive trade practices. Defendant alleged that in March of 1997, he had purchased feed from plaintiff, that the feed delivered to him was defective, and that as a result of the defective feed, defendant's dairy cows incurred foot problems, death, and loss of milk production.

Plaintiff moved to dismiss defendant's counterclaim "on the grounds that a general release previously executed by the Defendant should preclude Defendant from seeking relief set out in his counterclaim." Plaintiff also moved for summary judgment as to its claim for relief in the initial complaint. In support of its motion to dismiss defendant's counterclaim, plaintiff submitted a copy of a "General Release Form" that stated that in consideration for \$2,000, defendant released plaintiff from all liability for damages that arose in connection with the incident that took place "on or about the 20th day of March 1977." Since all other documents in the record refer to 1997, we presume the date is stated as 1977 due to clerical or inadvertent error. After reviewing the pleadings, the affidavits in support and opposition, and hearing arguments of counsel, the trial court denied plaintiff's motion for summary judgment as to plaintiff's initial complaint and allowed plaintiff's motion for summary judgment as to defendant's counterclaim. Defendant appeals.

The trial court's order granting summary judgment on defendant's counterclaim is an interlocutory order because it

failed to resolve all issues between all parties and thus was not a final judgment. See *Liggett Group v. Sunas*, 113 N.C. App. 19, 23, 437 S.E.2d 674, 677 (1993) ("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."). An immediate appeal from an interlocutory order will only lie where (1) the order or judgment is final as to some but not all of the claims or parties, and the trial court certifies the case for appeal pursuant to N.C.G.S. § 1A-1, Rule 54(b); or (2) when the challenged order affects a substantial right that may be lost without immediate review. *Flitt v. Flitt*, 149 N.C. App. 475, 477, 561 S.E.2d 511, 513 (2002). In either instance, "it is the appellant's burden to present appropriate grounds for this Court's acceptance of an interlocutory appeal and our Court's responsibility to review those grounds." *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 379, 444 S.E.2d 252, 253 (1994).

Here, the trial court made no certification as required by N.C.R. Civ. P. Rule 54(b), thus defendant's right to appeal rests upon a showing that the interlocutory order "deprives [him] of a substantial right which he would lose if the . . . order is not reviewed before final judgment." *Blackwelder v. Dept. of Human Resources*, 60 N.C. App. 331, 333, 299 S.E.2d 777, 779 (1983). Defendant, however, has failed to show this Court that any substantial right has been impaired by the trial court's allowance of plaintiff's summary judgment. Defendant has not argued in his appellate brief that the trial court's interlocutory order "will

work an injury to him if not corrected before an appeal from the final judgment." *Veazey v. Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381, *reh'g. denied*, 232 N.C. 744, 59 S.E.2d 429 (1950). Defendant, therefore, has failed to meet his burden of showing that the appeal has been properly taken.

Dismissed.

Chief Judge EAGLES and Judge MCCULLOUGH concur.

Report per Rule 30(e).