

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA05-1629

NORTH CAROLINA COURT OF APPEAL

Filed: 17 October 2006

LARRY WAYNE THOMAS
Plaintiff,

v.

Guilford County
No. 04 CVS 9003

RUSSELL A. BLENDINGER and
GREENSBORO VENDING COMPANY,
INC.,

Defendants.

Appeal by defendants from an order entered 29 July 2005 by Judge Anderson Cromer in Guilford County Superior Court. Heard in the Court of Appeals 13 September 2006.

Kurt B. Aktug for plaintiff-appellee.

Patterson, Dilthey, Clay, Bryson & Anderson, L.L.P., by Phillip J. Anthony and Tobias S. Hampson, for defendant-appellants.

BRYANT, Judge.

Russell A. Blendinger and the Greensboro Vending Company, Inc. (defendants) appeal from an order entered 29 July 2005 denying their motion to enforce a settlement agreement entered by defendants with Larry Wayne Thomas (plaintiff). We dismiss this appeal because it is from an interlocutory order which does not affect a substantial right.

Facts and Procedural History

On 23 October 2003, plaintiff was injured in a motor vehicle accident caused by defendant Russell A. Blendinger while driving a vehicle owned by defendant Greensboro Vending Company, Inc. It is admitted that Blendinger was acting in the course and scope of his employment with Greensboro Vending Company and that the negligence of Blendinger is imputable to Greensboro Vending Company.

On 10 November 2003, plaintiff entered into a contract with the law firm of Egerton & Associates, P.A. to represent him in a claim arising out of the automobile accident. Lawrence Egerton, Jr., plaintiff's attorney, sent a "settlement brochure" listing plaintiff's alleged damages to the defendants' insurance company on 28 January 2004. Settlement negotiations then ensued between defendants' insurance company and plaintiff's attorney and an agreement was reached to settle plaintiff's claim for \$3,500.00.

In early March, 2004, defendants' insurance company sent plaintiff's attorney a release for plaintiff to sign and a check for \$3,500.00. On 8 March 2004, plaintiff's attorney informed defendants' insurance company that they were returning the settlement funds and an unsigned release because plaintiff had returned to treatment with a neurologist for intensive headaches.

Plaintiff filed a Complaint in this matter in Guilford County Superior Court on 30 July 2004 seeking damages for bodily injury, medical expenses, and economic losses. Defendants filed an Amended Answer on 29 September 2004, and sought enforcement of the settlement agreement. Defendants' motion to enforce the settlement agreement was heard before the Honorable Anderson Cromer on 6 July

2005. The trial court entered an order on 29 July 2005, finding there was no binding agreement to settle the case at hand, because the parties had not reached "a meeting of the minds." Defendants appeal.

The dispositive issue before this Court is whether this appeal is from an interlocutory order that does not affect a substantial right of the defendants. Interlocutory orders and judgments 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) (citation omitted). The trial court's order denied defendants' motion to enforce the settlement agreement, and does not resolve plaintiff's negligence claims. Thus, plaintiff's negligence claims against defendants are still pending and the order defendants appeal from is interlocutory.

"Generally, there is no right to immediate appeal from an interlocutory order." *Milton v. Thompson*, 170 N.C. App. 176, 178, 611 S.E.2d 474, 476 (2005) (citing N.C. Gen. Stat. § 1A-1, Rule 54(b) (2005); and *Veazey v. City of Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950)). This Court has held that an interlocutory order is immediately appealable if:

- (1) the order is final as to some claims or parties, and the trial court certifies pursuant to N.C.G.S. § 1A-1, Rule 54(b) that there is no just reason to delay the appeal,
- or (2) the order deprives the appellant of a

substantial right that would be lost unless immediately reviewed.

Currin & Currin Constr., Inc. v. Lingerfelt, 158 N.C. App. 711, 713, 582 S.E.2d 321, 323 (2003) (citations and quotations omitted). As there is no Rule 54(b) certification in the record before this Court, defendants are entitled to pursue this appeal only if the order deprived them of a substantial right that would be lost if we dismissed their appeal.

Defendants argue the trial court's order deprives them of three different substantial rights: (1) the State and Federal Constitutional property right to enter into contracts; (2) the right of a defendant not to be exposed to repetitious and unnecessary lawsuits; and (3) the well-established principle that settlements of controversies out of court are favored in North Carolina in order to "secur[e] to every man the opportunity to negotiate for the purchase of his peace without prejudice to his rights." *Penn Dixie Lines, Inc. v. Grannick*, 238 N.C. 552, 555, 78 S.E.2d 410, 413 (1953). Defendants further cite to two opinions in which both the North Carolina Supreme Court and this Court reached the merits of an appeal involving the denial of the enforcement of a settlement agreement. *Chappell v. Roth*, 353 N.C. 690, 548 S.E.2d 499 (2001); *Lee v. Wake County*, 165 N.C. App. 154, 598 S.E.2d 427, *disc. review denied*, 359 N.C. 190, 607 S.E.2d 275 (2004). However, the issue of whether an appeal from a denial of a motion to enforce a settlement agreement is interlocutory was not addressed in either of those appeals.

Defendants' arguments are similar to those rejected by this Court in *Milton*, where this Court held that an appeal from a denial to enforce a settlement agreement in a personal injury action does not affect a substantial right. *Milton*, 170 N.C. App. at 179, 611 S.E.2d at 477. "Where a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court." *In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989). Thus, we must hold that this appeal is from an interlocutory order which does not affect a substantial right; accordingly, this appeal is dismissed.

Dismissed.

Judges MCGEE and ELMORE concur.

Report per Rule 30(e).