

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-1370

NORTH CAROLINA COURT OF APPEALS

Filed: 17 July 2007

JERRY D. PARKER, JR.,
Plaintiff,

v.

Johnston County
No. 06 CVS 1696

TOWN OF FOUR OAKS; FOUR
OAKS PLANNING BOARD;
COMMISSIONERS KARL S. LEE,
PAUL S. LEE, WALTER R.
HOLT, KIM C. ROBERTSON,
VIC MEDLIN; DEVELOPMENT
COMMITTEE MEMBERS, KATHY
ADAMS, LISA BLACKMAN,
CARVESTER COLE, BETHANY
DAUGHTRY, TIM GRADY,
BARBARA KEEN, NEAL KEENE,
MYRTLE LASSITER, MARGARET
PEACE, TOM SANTORS, RON
SLOAN, CHRIS STANLEY,
SHERWOOD WILLIAMS;
DESIGN REVIEW COMMITTEE,
DORIS WILLIAMS, RACHEL
WHEELER, STEVE WESTBROOK,
AMY DUNN MCLAMB; DAVID
MILLS; DAN LEE; BRIAN
LEONARD; MAYOR, LINWOOD
PARKER;
Defendants.

Court of Appeals

Slip Opinion

Appeal by Plaintiff from order entered 2 August 2006 by Judge Knox V. Jenkins, Jr. in Johnston County Superior Court. Heard in the Court of Appeals 23 April 2007.

*The Law Offices of Jerry D. Parker, Jr., by Robert A. Frey,
for Plaintiff-Appellant.*

*David F. Mills, P.A., by David F. Mills, for
Defendants-Appellees.*

STEPHENS, Judge.

Plaintiff appeals from an order dismissing all Defendants except Defendant Town of Four Oaks ("Town") from Plaintiff's challenge to a zoning ordinance. We dismiss the appeal as interlocutory.

On or about 18 April 2006, Plaintiff received a letter from the Town notifying him that his property was proposed for re-zoning as part of the Town's plan to create a downtown historic district. After a hearing on 2 May 2006, at which Plaintiff objected to the inclusion of his property in the proposed historic district, the Town, acting through its Board of Commissioners, adopted the zoning ordinance.

On 1 June 2006, Plaintiff filed a complaint asking the Superior Court, *inter alia*, to overrule the Town's decision to include Plaintiff's property in the downtown historic district. Plaintiff named as Defendants the Town, the Town's planning board, individual members of the Town's Board of Commissioners, the mayor, the Town clerk, and volunteers who assisted in the preparation of the Historic Downtown Development Plan. On 21 June 2006, all Defendants filed a Motion to Dismiss. By order filed 2 August 2006, Judge Knox V. Jenkins, Jr. denied the Motion to Dismiss as to the Town, but granted the Motion as to all other Defendants. From the order dismissing the planning board and the individual Defendants, Plaintiff appeals.

Plaintiff's appeal to this Court is interlocutory. See *Veazey v. City of 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) ("An interlocutory order is one made during the pendency of an action, which does not dispose of the case, but leaves it for further action by the trial court in order to settle and determine the entire controversy."). "There is no more effective way to procrastinate the administration of justice than that of bringing cases to an appellate court piecemeal through the medium of successive appeals from intermediate orders." *Id.* at 363, 57 S.E.2d at 382. However, an interlocutory order is immediately appealable if (1) the trial court certifies the case for appeal pursuant to N.C. Gen. Stat. § 1A-1, Rule 54(b), or (2) the trial court's decision deprives the appellant of a substantial right which would be lost absent immediate review. *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 444 S.E.2d 252 (1994).

A substantial right is "a legal right affecting or involving a matter of substance as distinguished from matters of form: a right materially affecting those interests which a [party] is entitled to have preserved and protected by law: a material right." *Oestreicher v. American Nat'l Stores, Inc.*, 290 N.C. 118, 130, 225 S.E.2d 797, 805 (1976) (quotations and citation omitted). To determine whether a trial court's decision affects such a right, "[i]t is usually necessary to resolve the question in each case by considering the particular facts of that case and the procedural context in which the order from which appeal is sought was entered." *Waters v. Qualified Personnel, Inc.*, 294 N.C. 200, 208, 240 S.E.2d 338, 343 (1978). "[I]t is the appellant's burden to

present appropriate grounds for this Court's acceptance of an interlocutory appeal[.]” *Jeffreys*, 115 N.C. App. at 379, 444 S.E.2d at 253.

The trial court did not certify this case for appeal pursuant to Rule 54(b). Without presenting any facts or argument, Plaintiff merely contends “the trial court’s orders granting Defendants-Appellees['] Motion to Dismiss are immediately appealable because the plaintiff has a substantial right to have all of his claims tried at the same time and before the same judge and jury.” See N.C. R. App. P. 28(b)(4) (“When an appeal is interlocutory, the statement [of the grounds for appellate review in a party’s brief] must contain sufficient facts and argument to support appellate review on the ground that the challenged order affects a substantial right.”). Plaintiff has not presented appropriate grounds for immediate appellate review. See *J & B Slurry Seal Co. v. Mid-South Aviation, Inc.*, 88 N.C. App. 1, 7, 362 S.E.2d 812, 816 (1987) (“[S]imply having all claims determined in one proceeding is not a substantial right.”). At best, we discover his contentions, interwoven in his brief’s arguments, that without the inclusion of Defendants-Appellees in his lawsuit, (1) “[c]omplete relief cannot be had” and (2) he cannot conduct effective discovery. We are unpersuaded.

Plaintiff made no claim for relief which can be ordered of Defendants-Appellees. All of the relief sought by Plaintiff can be recovered from the Town. See *McKinney v. City of High Point*, 239 N.C. 232, 237, 79 S.E.2d 730, 733 (1954) (stating “[a zoning

ordinance] is subject to amendment or repeal at the will of the governing agency which created it[.]"). Additionally, Plaintiff's ability to conduct meaningful discovery is in no way diminished by the dismissal of Defendants-Appellees as Plaintiff may still issue subpoenas and take sworn depositions as necessary. As to the Town, Plaintiff may engage in the full array of discovery procedures. Plaintiff's contention is without merit.

Plaintiff has not met his burden of showing this Court that the trial court's order deprives him of a substantial right. See, e.g., *Jeffreys*, 115 N.C. App. at 380, 444 S.E.2d. at 254 ("It is not the duty of this court to construct arguments for or find support for appellant's right to appeal from an interlocutory order[.]"). Accordingly, we dismiss this appeal as interlocutory.

DISMISSED.

Chief Judge MARTIN and Judge STEELMAN concur.

Report per Rule 30(e).