

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-789

NORTH CAROLINA COURT OF APPEALS

Filed: 6 March 2007

JANICE PRICE and husband,
ANTHONY PRICE,
Plaintiffs,

v.

Jackson County
No. 04 CVD 413

CHESTNUT RIDGE PROPERTY
OWNERS ASSOCIATION
COMPANY, INC.,
Defendants.

Appeal by plaintiffs from an order entered 8 December 2005 by Judge Steven J. Bryant in Jackson County District Court. Heard in the Court of Appeals 7 February 2007.

Patrick U. Smathers and Gina L. Norwood for plaintiff-appellants.

Ridenour, Lay & Earwood, PLLC, by Eric Ridenour, for defendant-appellees.

BRYANT, Judge.

Janice Price and her husband Anthony Price (plaintiffs) appeal from an order entered 8 December 2005 granting partial summary judgment in favor of Chestnut Ridge Property Owners' Association Company, Inc., (defendant). For the reasons below, we dismiss this appeal as interlocutory.

Facts and Procedural History

On 2 July 2004, plaintiffs commenced this action by filing a complaint for damages caused by water flow across plaintiffs' property allegedly due to improper maintenance of roads and culverts by defendant. Plaintiffs also sought a declaratory judgment regarding association dues owed to defendant by plaintiffs. On 26 August 2004, defendant moved to dismiss plaintiffs' action and filed an answer and counterclaim for unpaid membership fees by plaintiffs. Defendant subsequently filed a motion for summary judgment on 11 May 2005.

On 8 December 2005 the trial court entered an order granting partial summary judgment in defendant's favor on all of plaintiffs' claims. The trial court's order also granted summary judgment in favor of defendant "for failure of Plaintiffs to pay membership fees due the Defendant in an amount to be determined at trial." Plaintiffs appeal.

The dispositive issue before this Court is whether this appeal is from an interlocutory order that does not affect a substantial right of plaintiffs. 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) (emphasis added). Here, the trial court's order, in addition to granting summary judgment on all plaintiffs' claims, held that the issue of damages pursuant to defendant's counterclaim was to be determined at a

later trial. Because the issue of damages remains to be resolved, plaintiffs' appeal from the trial court's order granting partial summary judgment is interlocutory.

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). The North Carolina Rules of Appellate Procedure also mandate that, "[w]hen an appeal is interlocutory, the statement [of the grounds for appellate review] must contain sufficient facts and argument to support appellate review on the ground that the challenged order affects a substantial right." N.C. R. App. P. 28(b)(4). Further, "[i]t is the appellant's burden to present appropriate grounds for this Court's acceptance of an interlocutory appeal, . . . and not the duty of this Court to construct arguments for or find support for appellant's right to appeal[.]" *Thompson v. Norfolk S. Ry. Co.*, 140 N.C. App. 115, 121, 535 S.E.2d 397, 401 (2000) (citations and quotation marks omitted). "Where the appellant fails to carry the burden of making such a showing to the court, the appeal will be dismissed." *Johnson v. Lucas*, 168 N.C. App. 515, 518, 608 S.E.2d 336, 338, *aff'd per curiam*, 360 N.C. 53, 619 S.E.2d 502 (2005).

As there is no Rule 54(b) certification in the record before this Court, plaintiffs 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. Plaintiffs, however, do not address any substantial right they might lose if this appeal were dismissed; plaintiffs instead assert they are appealing from a "summary judgment order resolving all of the Plaintiff's claims [which] is a final judgment[.]" 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 McCULLOUGH and LEVINSON concur.

Report per Rule 30(e).