

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-893

NORTH CAROLINA COURT OF APPEALS

Filed: 6 February 2007

BRISTOW DEVELOPMENT COMPANY, INC.,  
Plaintiff-Appellant.

v.

Davidson County  
No. 06 CVS 62

CRAVER ESTATES, INC.,  
Defendant-Appellee.

Appeal by plaintiff from order entered 16 May 2006 by Judge Christopher M. Collier in Davidson County Superior Court. Heard in the Court of Appeals 22 January 2007.

*Biesecker, Tripp, Sink & Fritts, L.L.P., by Christopher Alan Raines and Joe E. Biesecker, for plaintiff-appellant.*

*Wilson & Coffey, L.L.P., by G. Gray Wilson, for defendant-appellee.*

MARTIN, Chief Judge.

Plaintiff Bristow Development Company, Inc. ("plaintiff") contracted with defendant Craver Estates, Inc. ("defendant") to provide grading services on real property owned by defendant in Forsyth County. Plaintiff invoiced defendant for the sum of \$49,955.00 on 6 July 2005. Defendant failed to pay the amount owed and on or about 19 July 2005, plaintiff filed a Claim of Lien with the Clerk of Superior Court of Forsyth County against defendant's real property in the amount of \$49,955.00. Defendant subsequently

deposited \$49,961.25 with the clerk pursuant to N.C. Gen. Stat. § 44A-16 to release the lien.

On 9 January 2006, plaintiff filed this action alleging nonpayment of \$49,955.00 under the grading contract. Plaintiff sought monetary damages based on claims of breach of contract, action on account, request for delivery of funds deposited by defendant and unjust enrichment. Defendant answered and alleged, among other things, that the funds it deposited with the clerk be released to defendant because plaintiff filed its action beyond the 180-day deadline for perfecting its lien. Defendant's motion to release funds on deposit was heard on 17 April 2006. By order filed 16 May 2006, the trial court found that the 180-day deadline for perfecting plaintiff's lien expired on 3 January 2006; however, plaintiff filed its action on 9 January 2006 and, therefore, defendant was entitled to the release of all funds deposited with the clerk. Plaintiff appeals.

The initial matter to be determined is whether plaintiff's appeal from the order releasing the funds is immediately appealable. "An order or judgment is interlocutory if it is made during the pendency of an action and does not dispose of the case but requires further action by the trial court in order to finally determine the entire controversy." *N.C. Dept. of Transportation v. Page*, 119 N.C. App. 730, 733, 460 S.E.2d 332, 334 (1995). The rule against interlocutory appeals seeks to prevent fragmentary, premature and unnecessary appeals by allowing the trial court to bring a case to final judgment before its presentation to the

appellate courts. *Waters v. Personnel, Inc.*, 294 N.C. 200, 207, 240 S.E.2d 338, 342 (1978). In the present case, plaintiff filed a complaint seeking money damages. The trial court merely ruled on defendant's motion to release the deposited funds and did not enter a final judgment in plaintiff's action. Without such a judgment, there has been no final adjudication of the rights of the parties. As such, the trial court's order does not dispose of the cause as to all the parties, but instead requires further judicial action in order to settle and determine the entire controversy. See *State ex rel. Comr. of Insurance v. N.C. Rate Bureau*, 102 N.C. App. 809, 812, 403 S.E.2d 597, 599 (1991) (finding the appeal from commissioner's order that denied the bureau's motion for the release of funds held in escrow pending judicial review of the commissioner's prior disapproval order to be premature).

Generally there is no right to appeal from an interlocutory order. See, e.g., *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 379, 444 S.E.2d 252, 253 (1994); however, a party may appeal an interlocutory order in two instances. First, pursuant to N.C. Gen. Stat. § 1-277 and N.C. Gen. Stat. § 7A-27(d), an interlocutory order is appealable "where delaying the appeal will irreparably impair a substantial right of the party." *Hudson-Cole Dev. Corp. v. Beemer*, 132 N.C. App. 341, 344, 511 S.E.2d 309, 311 (1999) (citation omitted). Second, pursuant to N.C. Gen. Stat. 1A-1, Rule 54(b), an interlocutory order is appealable "where the order represents 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.* (internal quotation marks and citation omitted).

Here, the trial court did not certify that there is no just reason to delay the appeal. Thus, an immediate appeal from the interlocutory order here is proper if delay would irreparably impair a substantial right of plaintiff. Plaintiff argues that the issue of whether the trial court properly released the funds should be decided before the trial court determines plaintiff's action because a substantial right is affected. Plaintiff specifically asserts that it "will not have access to the deposited funds, but will be at the risk of defendant depleting its funds and assets should plaintiff obtain a judgment against defendant." We are unpersuaded by plaintiff's argument that a substantial right is affected as the trial court's order does not deprive plaintiff of its right to pursue its breach of contract and other related claims for the \$49,955.00 owed. See *In re Woodie*, 85 N.C. App. 533, 534, 355 S.E.2d 163, 163 (1987) (finding the appeal from an order denying homeowner's motion to release funds deposited with the clerk to be "unauthorized because it [was] from an interlocutory order that affects no substantial right in need of immediate protection.") . The issue which plaintiff seeks to raise in this appeal may be raised after a final judgment is entered in this case, and plaintiff will not be deprived of a substantial right absent immediate appeal. For these reasons, plaintiff's appeal must be dismissed.

Dismissed.

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Judges MCGEE and HUNTER concur.

Report per Rule 30(e).