

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-959

NORTH CAROLINA COURT OF APPEALS

Filed: 1 May 2007

SCHNEIDER NATIONAL CARRIERS,
INC.,

Plaintiff, and leinholder
under N.C. Gen. Stat. § 97-10.2
concerning workers'
compensation benefits paid
to GRAHAM LARSON, JR., by
LIBERTY MUTUAL FIRE
INSURANCE COMPANY,

Guilford County
No. 05 CVS 8016

v.

STREULI SALES, INC. and WALTER
H. STREULI, individually and/or
as agent of STREULI SALES, INC.
and J.C. HUNT, as an agent,
employee, and/or servant of
STREULI SALES, INC., and WALTER H.
STREULI in any and all capacities

Appeal by defendant from judgment entered 26 May 2006 by Judge
Vance Bradford Long in Guilford County Superior Court. Heard in
the Court of Appeals 22 February 2007.

*Cranfill, Sumner & Hartzog, L.L.P., by Roy G. Pettigrew and
Meredith L. Taylor, for plaintiff-appellee.*

*Gregory C. York and Morris York Williams Surles & Barringer,
LLP, by Dean P. Loven, for defendant-appellant.*

CALABRIA, Judge.

Defendant Streuli Sales, Inc. ("Streuli Sales") appeals from an order of the trial court denying its motion for summary judgment on the issue of whether the claim by Schneider National Carriers, Inc. ("SNC") was barred by the statute of limitations. We dismiss the appeal as interlocutory.

On 17 September 2002, Graham Larson, Jr. ("Larson") was injured while driving a truck within the course and scope of his employment with SNC. Larson's injury was the result of a collision that occurred at an intersection in Elsmere, Delaware when defendant J.C. Hunt ("Hunt") drove a truck into the rear of Larson's truck. Hunt was driving the truck in the course and scope of his employment with Streuli Sales. At the time of the collision, Larson was a resident and citizen of Georgia. Defendant Hunt is a citizen and resident of North Carolina. Streuli Sales is a corporation organized and existing under the laws of the State of North Carolina with its principal place of business in High Point, North Carolina. SNC is a corporation authorized to do business in the State of North Carolina and has a principal place of business in Charlotte, North Carolina. SNC complied with the mandatory provisions of the North Carolina Workers' Compensation Act and Larson was insured by a workers' compensation policy underwritten by Liberty Mutual Fire Insurance Company.

Larson filed a workers' compensation claim with the North Carolina Industrial Commission. SNC compensated Larson and paid him an amount in excess of \$400,000.00 for his injuries and disability. On 15 July 2005, SNC filed an action against Streuli

Sales pursuant to N.C. Gen. Stat. § 97-10.2 to recover benefits paid to or on behalf of Larson. On 19 September 2005, Larson filed a separate action against Streuli Sales alleging negligence of defendants Hunt and Streuli Sales. On 11 January 2006, Streuli Sales filed a motion for summary judgment alleging that SNC's claim was barred by the statute of limitations and that SNC had failed to join Larson as a necessary and proper party. Streuli Sales also filed a motion for summary judgment alleging Larson's claims were barred by the statute of limitations.

On 26 May 2006, in Guilford County Superior Court, Judge Vance Bradford Long ("Judge Long") granted Streuli Sales' motion for summary judgment of Larson's claims and dismissed Larson's action with prejudice. Judge Long denied Streuli Sales' motion for summary judgment of SNC's claims and certified the judgment for immediate appeal pursuant to N.C. Gen. Stat. § 1A-1, Rule 54(b). Streuli Sales appeals from the judgment denying its motion for summary judgment of SNC's claims.

As an initial matter, we must determine whether Streuli Sales' appeal is interlocutory. "It is well-settled that an order denying a motion for summary judgment is interlocutory, and not generally immediately appealable." *Anderson v. Atlantic Casualty Ins. Co.*, 134 N.C. App. 724, 725, 518 S.E.2d 786, 787 (1999). However, immediate appeal may be permitted in two instances: (1) it is final as to some but not all of the claims and the trial court certifies there is no just reason to delay the appeal pursuant to N.C.R. Civ. P. 54(b); or (2) it deprives the appellant of a substantial right

which would be lost absent immediate review. *Bartlett v. Jacobs*, 124 N.C. App. 521, 524, 477 S.E.2d 693, 695 (1996).

This matter was certified by the trial court as being immediately appealable pursuant to Rule 54(b). "However, Rule 54(b) does not authorize the appeal of claims that have not been finally adjudicated." *Anderson*, 134 N.C. App. at 725, 518 S.E.2d at 788 (internal quotations omitted). Although we give great deference to the trial court's determination that there is no just reason for delay of an appeal, "it does not bind our appellate courts because ruling on the interlocutory nature of appeals is properly a matter for the appellate division, not the trial court." *Giles v. First Virginia Credit Servs., Inc.*, 149 N.C. App. 89, 95, 560 S.E.2d 557, 561 (2002) (internal quotations omitted). "Further, application of the substantial right analysis is [a] prerequisite to the trial court's determination [that] there existed no just reason to delay the appeal." *Anderson*, 134 N.C. App. at 726, 518 S.E.2d at 788 (internal quotations omitted).

Streuli Sales argues a substantial right would be affected because there is a possibility of two inconsistent verdicts in that SNC's claim was not dismissed but Larson's claim was dismissed as barred by the Delaware Statute of Limitations incorporated via the borrowing provisions of N.C. Gen. Stat. § 1-21. "Ordinarily the possibility of undergoing a second trial affects a substantial right only when the same issues are present in both trials, creating the possibility that a party will be prejudiced by different juries in separate trials rendering inconsistent verdicts

on the same factual issue." *Green v. Duke Power Co.*, 305 N.C. 603, 608, 290 S.E.2d 593, 596 (1982). "Our courts have generally taken a restrictive view of the substantial right exception [and] [t]he burden is on the appealing party to establish that a substantial right will be affected." *Turner v. Norfolk S. Corp.*, 137 N.C. App. 138, 142, 526 S.E.2d 666, 670 (2000).

"[O]ur Supreme Court has previously determined that a motion to dismiss based on a statute of limitations does not affect a substantial right and is therefore not appealable." *Lee v. Baxter*, 147 N.C. App. 517, 520, 556 S.E.2d 36, 38 (2001) (internal quotations omitted). In the case before us, Streuli Sales has not met its burden to establish that a substantial right would be affected. "Avoidance of trial is not a substantial right entitling a party to immediate appellate review." *Anderson*, 134 N.C. App. at 727, 518 S.E.2d at 789.

Dismissed.

Judges McGEE and STEPHENS concur.

Report per Rule 30(e).