

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA09-1683

NORTH CAROLINA COURT OF APPEALS

Filed: 6 July 2010

MARK A. WARD,
Plaintiff,

v.

Forsyth County
No. 09 CVS 1829

BUCKEYE HOMEOWNER'S ASSOCIATION,
Defendant.

Appeal by plaintiff from order entered 28 September 2009 by Judge Richard W. Stone in Forsyth County Superior Court. Heard in the Court of Appeals 14 June 2010.

Mark A. Ward, pro se plaintiff.

Davis & Hamrick, L.L.P., by Jonathan G. Kreider, for defendant-appellant.

STEELMAN, Judge.

Mark A. Ward (plaintiff) appeals from an order dismissing his "Motion to Compel Discovery and for Sanctions." We dismiss this appeal as interlocutory.

This case arises out of events which occurred during plaintiff's tenancy at a townhome in the Buckeye neighborhood of Forsyth County. A representative of the Buckeye Homeowner's Association (defendant) wrote a letter to plaintiff's landlord requesting that he cease harassing other homeowners and tenants. On 4 March 2009, plaintiff filed a complaint in Forsyth County

Superior Court alleging that defendant published false and defamatory statements to a third person, that plaintiff's reputation had been injured, and that plaintiff's tenancy was terminated due to the false and defamatory statements.

On 15 May 2009, defendant filed a response to plaintiff's complaint. On 21 May 2009, plaintiff served "Plaintiff's Requests for Admission to Defendant." Defendant's response to plaintiff's requests for admission contained objections to several of plaintiff's requests. Subsequently, on 10 September 2009, plaintiff filed a "Motion to Compel Discovery and for Sanctions."

The motion was heard on 28 September 2009. After reviewing the pleadings and hearing arguments, the trial court "determine[d] that the Plaintiff failed to certify that he conferred in good faith with the Defendant in an effort to secure the information or material without court action." The trial court then entered an order dismissing plaintiff's motion. Plaintiff filed Notice of Appeal on 5 October 2009.

On appeal, plaintiff raises the following issue: whether the trial court's interlocutory order dismissing plaintiff's "Motion to Compel Discovery and for Sanctions" affects a substantial right, rendering the order immediately appealable.

"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." *Veazey v. Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950) (citation omitted). "Interlocutory orders

are ordinarily not directly appealable[.]” *First Atl. Mgmt., Corp. v. Dunlea Realty, Co.*, 131 N.C. App. 242, 246, 507 S.E.2d 56, 60 (1998) (citation omitted). “[D]iscovery orders are interlocutory and therefore not immediately appealable unless they affect a substantial right.” *Roadway Express, Inc. v. Hayes*, 178 N.C. App. 165, 168, 631 S.E.2d 41, 44 (2006) (citation omitted).

“It is well settled that an interlocutory order affects a substantial right if the order ‘deprives the appealing party of a substantial right which will be lost if the order is not reviewed before a final judgment is entered.’” *Sharpe v. Worland*, 351 N.C. 159, 162, 522 S.E.2d 577, 579 (1999) (quotation and alteration omitted). “Essentially a two-part test has developed – the right itself must be substantial and the deprivation of that substantial right must potentially work injury to plaintiff if not corrected before appeal from final judgment.” *Goldston v. American Motors Corp.*, 326 N.C. 723, 726, 392 S.E.2d 735, 736 (1990) (citation omitted).

Plaintiff contends the information he seeks will show defendant’s motives for engaging in defamatory conduct. He further contends that the trial court’s order deprives him of the right to offer evidence, and thus affects a substantial right.

In this case, plaintiff is not precluded from proving a fact at trial simply because he did not get an admission of a fact from defendant. Moreover, plaintiff will not lose his right to present evidence regarding the subject of his request if the order is not reviewed before a final judgment. Plaintiff has failed to

demonstrate that a substantial right will be irreparably harmed if immediate appeal is not allowed. Accordingly, plaintiff's appeal is dismissed.

DISMISSED.

Judges HUNTER, Robert C. and BRYANT concur.

Report per Rule 30(e).