

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA11-1269
NORTH CAROLINA COURT OF APPEALS

Filed: 7 August 2012

CAROLINA BEACH, LLC,
Plaintiff-Appellee,

v.

Mecklenburg County
No. 09-CVS-16767

MARK CARPENTER, RONALD C.
MARIELLO, SCOTT W. PATTON, JOHN
MCKEEL, KATHERINE MCKEEL, and
JACQUELINE BRODERICK WINTERS,
Defendants-Appellants.

Appeal by Defendant Mark Carpenter from order entered 16 June 2011 by Judge H. William Constangy in Superior Court, Mecklenburg County. Heard in the Court of Appeals 21 February 2012.

Womble Carlyle Sandridge & Rice, LLP, by Raboteau T. Wilder and B. Chad Ewing, for Plaintiff-Appellee.

David G. Redding, Attorney at Law, P.A., by Marjorie C. Redding, for Defendant-Appellant Mark Carpenter.

McGEE, Judge.

US Acquisition LLC (US Acquisition) filed a complaint on 20 July 2009, alleging claims against Mark Carpenter (Mr. Carpenter), Ronald C. Mariello, Scott W. Patton, John McKeel,

Katherine McKeel, and Jacqueline Broderick Winters (collectively, Defendants) as the guarantors of a promissory note executed in the amount of \$1,904,500.00. US Acquisition obtained the right to the obligations secured by the promissory note by virtue of being the successor in interest to the original noteholder, Regions Bank. Defendants filed motions to compel arbitration and stay the litigation pending arbitration on 30 September 2009 and 12 October 2009.

US Acquisition filed a motion to amend its complaint on 16 October 2009, in order to substitute Carolina Beach, LLC (Plaintiff) on the grounds that US Acquisition had transferred its claims against Defendants to Plaintiff. The trial court granted US Acquisition's motion by order entered 17 November 2009. Plaintiff filed a demand for arbitration with the American Arbitration Association (the AAA) on 11 December 2009, and a "motion to stay action pending arbitration" with the trial court on 5 May 2010. The trial court granted Plaintiff's motion to stay the action pending arbitration on 10 June 2010.

The AAA notified the parties on 3 December 2010 that it was suspending the arbitration because of Defendants' failure to pay certain deposits required by the AAA. Plaintiff filed a motion with the trial court "to proceed with litigation" on 31 January 2011. The AAA notified the parties on 25 February 2011 that it

had entered an order terminating the arbitration proceedings. The trial court entered an order on 16 June 2011 "granting [Plaintiff's] motion to proceed with litigation." Mr. Carpenter was served with a copy of this order on 27 June 2011. Mr. Carpenter filed a *pro se* "notice of interlocutory appeal" on 27 July 2011.

We first address whether this appeal is properly before us. Mr. Carpenter's brief states that, though his appeal is from an interlocutory order, the trial court's "order granting motion to proceed with litigation" affects a substantial right and is, therefore, immediately appealable. In the section of Mr. Carpenter's brief titled "Statement of the Grounds for Appellate Review[,] " he contends that:

This matter is properly before the North Carolina Court of Appeals pursuant to N.C. GEN. STAT. § 7A-21(d)(1), because this is an appeal from an interlocutory order which affects a substantial right. This court has long held that [t]he right to arbitrate a claim is a substantial right which may be lost if review is delayed, and an order denying arbitration is therefore immediately appealable. *Harbour Point Homeowners' Ass'n, Inc. v. DJF Enterprises, Inc.*, 201 N.C. App. 720, 723, 688 S.E.2d 47, 50 (2010).

In the second sentence quoted above, it appears that Mr. Carpenter intended to quote *Harbour Point*. In *Harbour Point*, this Court did note that "[o]ur court has long held that

''[t]he right to arbitrate a claim is a substantial right which may be lost if review is delayed, and an order denying arbitration is therefore immediately appealable.''' *Harbour Point*, 201 N.C. App. at 723, 688 S.E.2d at 50 (quoting *Hobbs Staffing Serv., Inc. v. Lumbermens Mut. Cas. Co.*, 168 N.C. App. 223, 225, 606 S.E.2d 708, 710 (2005) (quoting *Boynton v. ESC Med. Sys., Inc.*, 152 N.C. App. 103, 106, 566 S.E.2d 730, 732 (2002))). However, we have reviewed *Harbour Point*, *Hobbs* and *Boynton*, and we note that the orders from which appeal was taken in those cases were orders denying motions to compel arbitration and to stay litigation pending arbitration. See *Harbour Point*, 201 N.C. App. at 722, 688 S.E.2d at 49; *Hobbs*, 168 N.C. App. at 225, 606 S.E.2d at 710; and *Boynton*, 152 N.C. App. at 105, 566 S.E.2d at 731.

In the present case, the order from which Mr. Carpenter appeals is not an order denying a motion to compel arbitration. Rather, it is an "order granting motion to proceed with litigation" that was entered after arbitration had been attempted. Therefore, we must determine whether the order from which Mr. Carpenter appeals was an order denying his right to arbitration.

In the present case, the commercial guaranties executed by Defendants provide that the rules of the AAA and the Federal

Arbitration Act would control the arbitration process. The panel of arbitrators entered an "Order Terminating Arbitration." This order stated that Defendants in this case were required to pay compensation to the AAA but had failed to do so. The order further stated that "[i]nasmuch as deposits were not received by said date, pursuant to R-54, this matter is hereby terminated."

Rule 54 of the Commercial Arbitration Rules and Mediation Procedures of the AAA provides that:

If arbitrator compensation or administrative charges have not been paid in full, the AAA may so inform the parties in order that one of them may advance the required payment. If such payments are not made, the arbitrator may order the suspension or termination of the proceedings. If no arbitrator has yet been appointed, the AAA may suspend the proceedings.

Thus, in the present case, the arbitration process was not denied by the trial court, as Mr. Carpenter contends. Instead, the trial court halted litigation and the matter was stayed for arbitration on motion of Plaintiff. The parties had an opportunity to engage fully in the arbitration process. The arbitrators, pursuant to the rules governing the arbitration process, terminated that process because of Mr. Carpenter's failure to pay required fees. Thus, the arbitration process was completed. The trial court's order was not an order denying arbitration. Mr. Carpenter's argument that his otherwise

interlocutory appeal is properly before us under *Harbour Point* is inapposite to the present case. Mr. Carpenter makes no argument concerning whether the trial court's order granting Plaintiff's motion to "proceed with litigation" affects a substantial right.

This Court has long held that

[i]t is not the duty of this Court to construct arguments for or find support for appellant's right to appeal from an interlocutory order; instead, the appellant has the burden of showing this Court that the order deprives the appellant of a substantial right which would be jeopardized absent a review prior to a final determination on the merits.

Jeffreys v. Raleigh Oaks Joint Venture, 115 N.C. App. 377, 380, 444 S.E.2d 252, 254 (1994). Because Mr. Carpenter makes no persuasive argument that his appeal is properly before us, we dismiss his appeal as interlocutory. "It 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[.]" *Slaughter v. Swicegood*, 162 N.C. App. 457, 463, 591 S.E.2d 577, 581 (2004) (citation omitted); see also *Cail v. Cerwin*, 185 N.C. App. 176, 185, 648 S.E.2d 510, 517 (2007) ("In the section of their brief stating the grounds for appellate review, defendants contend they are

appealing 'the entry of interlocutory orders affecting substantial rights.' Defendants, however, fail to articulate or argue any substantial right affected by the denial of defendant['s] motion for summary judgment and by the trial court's permitting the matter to proceed to the jury.").

Dismissed.

Judges GEER and McCULLOUGH concur.

Report per Rule 30(e).