

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

NOS. COA11-212, 11-213
NORTH CAROLINA COURT OF APPEALS

Filed: 18 October 2011

DEBRA C. WILLIAMS,
ADMINISTRATRIX OF THE ESTATE OF
DARRIEL WILLIAMS,
Plaintiff,

v.

Lincoln County
Nos. 08 CVS 1612, 10 CVS 352

LINCOLN COUNTY EMERGENCY
MEDICAL SERVICES LINCOLN COUNTY,
DEFENDANT, A GOVERNMENTAL
ENTITY C/O GEORGE WOOD, COUNTY
MANAGER, LINCOLN COUNTY, A
GOVERNMENTAL ENTITY, D/B/A
LINCOLN COUNTY EMERGENCY
MEDICAL SERVICES C/O RONALD D.
ROMBS, DIRECTOR,
Defendants.

Appeal by Plaintiff from orders entered 7 October 2010 by
Judge F. Lane Williamson in Lincoln County Superior Court.
Heard in the Court of Appeals 28 September 2011.

Pamela A. Hunter for Plaintiff.

*Womble Carlyle Sandridge & Rice, by Sean Perrin and Brian
Koontz, for Defendants.*

STEPHENS, Judge.

On 14 September 2008, following the death of her son, Plaintiff Debra C. Williams ("Williams") filed a complaint in Lincoln County Superior Court asserting claims for medical malpractice and wrongful death against Defendant Lincoln County Emergency Medical Services ("Lincoln County EMS"). Williams later amended her complaint to identify herself "as administratrix of Estate of Darriel Theracon Williams" and to name the following defendants: "Lincoln County Emergency Medical Services Lincoln County, Defendant, a governmental entity c/o George Wood, County Manager, Lincoln County, a governmental entity d/b/a Lincoln County Emergency Medical Services c/o Ronald D. Rombs, Director[,] Defendant" (collectively, "Defendants"). In her amended complaint, Williams alleged that her son's death was caused by Lincoln County EMS' failure to provide medical treatment and that that failure should be imputed to the remaining defendant(s).

Defendants filed their answer to Williams' amended complaint on 15 December 2008. Along with their answer, Defendants served Williams with a request for admissions, requesting, *inter alia*, that Williams admit that Williams' son was already dead when Lincoln County EMS arrived to provide medical treatment. Although Williams was granted a 30-day

extension to respond, she never responded. Based on Williams' failure to respond, and pursuant to North Carolina Rule of Civil Procedure 36 - which provides that a matter of which an admission is requested is deemed admitted if a party fails to respond to the request, N.C. Gen. Stat. § 1A-1, Rule 36(a) (2009) - Defendants moved for summary judgment on Williams' claims. On 6 March 2009, shortly before the hearing on Defendants' motion, Williams gave notice of voluntary dismissal of her claims.

Thereafter, based on the asserted frivolity of Williams' claims, Defendants moved for sanctions and an award of attorneys' fees. In a 7 July 2009 order, Judge Timothy S. Kincaid granted Defendants' motion and ordered Williams and her attorney Pamela Hunter to pay to Defendants \$8,249.50 for violation of N.C. Gen. Stat. §§ 6-21.5 and 1A-1, Rule 11. Williams did not appeal Judge Kincaid's order. Rather, on 17 July 2009, Williams filed a "Motion for new trial, and Motion to set aside judgment," asserting that Judge Kincaid's 7 July 2009 order was "contrary to law and [] in error." A hearing on these motions has yet to take place, and the motions are still pending before the trial court.

On 5 March 2010, Williams filed a second action in Lincoln County Superior Court (the "2010 action"), asserting the same claims as were asserted in Williams' first, voluntarily-dismissed action (the "2008 action"). In response, Defendants filed a motion requesting that Williams pay the costs of the 2008 action before continuing the 2010 action. Defendants' motion was granted by Judge F. Lane Williamson in a 19 July 2010 order that stated the 2010 action would be dismissed if Williams does not pay to Defendants \$8,249.50 within 30 days.

Williams failed to pay as ordered, and, on 7 October 2010, Judge Williamson granted Defendants' 1 September 2010 motion to dismiss. On 15 November 2010, Williams filed in the 2010 action a notice of appeal of Judge Williamson's order dismissing Williams' action.

Meanwhile, in the 2008 action, Williams filed an 18 August 2010 notice of appeal regarding Judge Williamson's 19 July 2010 order entered in the 2010 action. On 26 August 2010, Defendants moved the trial court to dismiss Williams' 18 August 2010 appeal. Judge Williamson entered a 7 October 2010 order granting Defendants' motion and dismissing Williams' 18 August 2010 appeal. On 15 November 2010, Williams filed in the 2008

action a notice of appeal of Judge Williamson's 7 October 2010 order dismissing the 18 August 2010 appeal.

Williams' two appeals - the appeal of Judge Williamson's order dismissing Williams' 18 August 2010 appeal (filed in the 2008 action) and the appeal of Judge Williamson's order dismissing the 2010 action (filed in the 2010 action), numbered on appeal 11-213 and 11-212, respectively - were consolidated for the purposes of appeal by order of this Court entered 20 May 2011. Each appeal is discussed separately below.

Appeal of the dismissal of the 18 August 2010 appeal

In her 18 August 2010 notice of appeal, Williams attempted to appeal Judge Williamson's 19 July 2010 order on Defendants' motion requesting costs from the previously dismissed action. Judge Williamson's 19 July 2010 order provided as follows: (1) Williams shall "pay the costs of the previously dismissed action[,] \$8,249.50, within 30 days"; (2) "[t]his action [the 2010 action] will be dismissed if [Williams] has not paid the costs within 30 days of the filing of this Order"; (3) "[a]ll proceedings in this action are stayed pending [Williams'] payments of cost or dismissal." Unquestionably, this order is interlocutory as it clearly directs further proceedings in the action. *Blackwelder v. Dept. of Human Res.*, 60 N.C. App. 331,

333, 299 S.E.2d 777, 779 (1983) ("A ruling is interlocutory in nature if it does not determine the issues but directs some further proceeding preliminary to final decree."). Further, Williams does not argue on appeal that the 19 July 2010 order affected a substantial right. N.C. R. App. P. 28(b)(4) ("An appellant's brief shall contain . . . [a] statement of the grounds for appellate review."; "When an appeal is interlocutory, the statement must contain sufficient facts and argument to support appellate review on the ground that the challenged order affects a substantial right." (emphasis omitted)); see also *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 380, 444 S.E.2d 252, 254 (1994) ("It 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."). Therefore, and regardless of the fact that Williams attempted to appeal an order entered in the 2010 action by filing the 18 August 2010 notice of appeal in the 2008 action, Williams had no right to appeal the 19 July 2010 order. Thus, despite the fact that the trial court lacked

the authority to dismiss Williams' appeal as interlocutory, *Estrada v. Jacques*, 70 N.C. App. 627, 639, 321 S.E.2d 240, 248 (1984) (holding that a trial judge "acted beyond his authority in dismissing the appeal . . . as interlocutory"), Williams' appeal from the 19 July 2010 order was taken from an unappealable interlocutory order and should be dismissed.

Appeal of the dismissal of the 2010 action

The majority of Williams' arguments on appeal address the propriety of Judge Kincaid's 7 July 2009 order awarding Defendants attorneys' fees. However, Williams gave notice of appeal only "from the Order, entered on October 7, 2010 in the Superior Court, Lincoln County, North Carolina which granted the Defendants' Motion To Dismiss the Plaintiff's case pursuant [to] Rule 41(d) of the North Carolina Rules of Civil Procedure, the Honorable F. Lane Williamson, Superior Court Judge, presiding." Because Williams appealed only Judge Williamson's 7 October 2010 order and did not appeal Judge Kincaid's 7 July 2009 order, we address the propriety of Judge Williamson's order and will not address any of Williams' arguments regarding Judge Kincaid's order. See *Harrington v. Wall*, ___ N.C. App. ___, ___, 710 S.E.2d 364, 366-67 (2011) (holding that this Court has "jurisdiction only to consider the orders from which [an appellant] has

provided proper notice of appeal") (citing *Von Ramm v. Von Ramm*, 99 N.C. App. 153, 157, 392 S.E.2d 422, 425 (1990)).

Williams' only argument regarding Judge Williamson's 7 October 2010 order is as follows:

There was no valid reason for the [c]ourt to [d]ismiss [the 2010 action] while there was still pending a Motion for Reconsideration of the Order of Awarding Sanctions and Attorney Fees in the [2008 action]. As of the date of this appeal, there has [sic] still has not been a hearing on [Williams'] Motion for Reconsideration of the Order of Awarding Sanctions and Attorney Fees in the [2008 action].

Therefore this matter must be remanded back to the Superior Court.

Williams cites no authority, however, to support her contention that the matter must be remanded because there was "no valid reason" to support a dismissal of the 2010 action while there is still a pending motion in the 2008 action. Accordingly, this argument is deemed abandoned. N.C. R. App. P. 28(b)(6) ("Issues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned."; "The body of the argument . . . shall contain citations of the authorities upon which the appellant relies."); see also *Hope - a Women's Cancer Ctr., P.A. v. State*, ___ N.C. App. ___, ___, 693 S.E.2d 673, 680 (2010) (declining to consider appellant's contention where no legal authority or argument provided).

As Williams has not presented any valid arguments on appeal to support reversal of Judge Williamson's 7 October 2010 order dismissing Williams' 2010 action, that order is affirmed.

DISMISSED and AFFIRMED.

Judges ERVIN and BEASLEY concur.

Report per Rule 30(e)