

NO. COA12-1092

NORTH CAROLINA COURT OF APPEALS

Filed: 2 April 2013

R. D. FURR CONSTRUCTION, INC.,  
Plaintiff,

v.

New Hanover County  
No. 11 CVS 3464

PORTERS NECK COUNTRY CLUB, INC., a North Carolina non-profit corporation; and PORTERS NECK COUNTRY CLUB TRANSITION CORP., a North Carolina non-profit corporation; and PORTERS NECK HOMEOWNERS ASSOCIATION, INC., a North Carolina non-profit corporation; and FIRST CITIZENS BANK AND TRUST COMPANY, a North Carolina corporation; and ROBERT L. NORRIS, Jr., Trustee in Deed of Trust Recorded in Book 4935 At Page 1937 of the New Hanover County Registry; and FIRST BANCORP, a North Carolina bank-holding company, trading and doing business as FIRST BANK; and TERESA NIXON, Trustee in Deed of Trust recorded in Book 1745 at Page 386 and in the Deed of Trust recorded in Book 1900 at Page 369, of the New Hanover County Registry; and CAPE FEAR PUBLIC UTILITY AUTHORITY, a body politic incorporated in the State of North Carolina; and PORTERS NECK COMPANY, INC., a North Carolina corporation,  
Defendants.

NO. COA12-1095

NORTH CAROLINA COURT OF APPEALS

Filed: 2 April 2013

RICHARD D. FURR,  
Plaintiff,

v.

New Hanover County  
No. 11 CVS 3465

PORTERS NECK COUNTRY CLUB, INC., a North Carolina non-profit corporation; and PORTERS NECK COUNTRY CLUB TRANSITION CORP., a North Carolina non-profit corporation; and PORTERS NECK HOMEOWNERS ASSOCIATION, INC., a North Carolina non-profit corporation; and FIRST CITIZENS BANK AND TRUST COMPANY, a North Carolina corporation; and ROBERT L. NORRIS, Jr., Trustee in Deed of Trust Recorded in Book 4935 At Page 1937 of the New Hanover County Registry; and CAPE FEAR PUBLIC UTILITY AUTHORITY, a body politic incorporated in the State of North Carolina; and PORTERS NECK COMPANY, INC., a North Carolina corporation,

Defendants.

Appeal by plaintiffs from orders entered 23 April 2012 *nunc pro tunc* 8 March 2012 by Judge William R. Pittman in New Hanover County Superior Court. Heard in the Court of Appeals 11 March 2013.

*Charles R. Brewer, for plaintiffs-appellants.*

*Shanklin & Nichols, LLP, by Kenneth A. Shanklin, Matthew A. Nichols, and Cynthia W. Baldwin, for defendant-appellee Porters Neck Company, Inc.*

MARTIN, Chief Judge.

These cases involve identical issues and have been joined for the purposes of appeal. Plaintiffs R. D. Furr Construction, Inc. and Richard D. Furr appeal from orders dismissing their claims against defendant Porters Neck Company, Inc. pursuant to N.C.G.S. § 1A-1, Rule 12(b)(6). We dismiss the appeals.

Plaintiffs filed complaints on 17 August 2011 against several defendants, including Porters Neck Company, Inc. ("defendant"), alleging that water from wells located on property adjacent to plaintiffs' properties in Phase 1, Section 1 of Porters Neck Plantation Subdivision in New Hanover County, North Carolina, is "wrongfully store[d]" on plaintiffs' properties, that such water is stored for the purpose of "maintaining the golf course belonging to" one of the named defendants, and that such "wrongful storage" "constitutes a continuing trespass." Plaintiffs sought injunctions requiring the removal of water "now being stored" on plaintiffs' properties and the prevention of such water being "plac[ed] or stor[ed]" on plaintiffs' properties in the future, monetary judgments for the reasonable rental of plaintiffs' properties

for the "storage of water" from 1992 to the present, and costs. From the record before us, it appears that prior to filing an answer to either complaint, defendant Porters Neck Company, Inc. moved to dismiss plaintiffs' complaints as to it with prejudice pursuant to N.C.G.S. § 1A-1, Rule 12(b)(1), (b)(6), and (b)(7).

Defendant's motions to dismiss were heard on 8 March 2012. At the conclusion of the hearing on defendant's motions, the trial court took the matter under advisement. Plaintiffs subsequently moved to amend their complaints pursuant to N.C.G.S. § 1A-1, Rule 15(a) as to defendant Porters Neck Company, Inc. Defendant moved to strike plaintiffs' motions to amend their complaints. On 23 April 2012, the trial court filed orders granting defendant's motions to dismiss and dismissing plaintiffs' complaints as to it pursuant to N.C.G.S. § 1A-1, Rule 12(b)(6), entering the orders "*nunc pro tunc* for March 8, 2012." Plaintiffs gave notice of appeal from the orders dismissing their complaints as to defendant. The records do not reflect that the trial court entered orders with respect to either of plaintiffs' motions to amend their complaints or with respect to defendant's motions to strike plaintiffs' motions to amend. Because this Court allowed plaintiffs' motions to consolidate their separate appeals pursuant to Rule 40 of the North Carolina Rules of Appellate Procedure, we render a single

opinion on all issues properly before us. See N.C.R. App. P. 40 ("Two or more actions that involve common issues of law may be consolidated for hearing upon motion of a party to any of the actions made to the appellate court wherein all are docketed . . . .").

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"Generally, there is no right of immediate appeal from interlocutory orders and judgments." *Sharpe v. Worland*, 351 N.C. 159, 161, 522 S.E.2d 577, 578 (1999) ("Interlocutory orders and judgments are those made during the pendency of an action which do not dispose of the case, but instead leave it for further action by the trial court to settle and determine the entire controversy." (internal quotation marks omitted)), *on remand*, 137 N.C. App. 82, 527 S.E.2d 75 (2000). However, "[n]otwithstanding this cardinal tenet of appellate practice, immediate appeal . . . is available from an interlocutory order or judgment which affects a substantial right." *Id.* at 161-62, 522 S.E.2d at 579 (citations and internal quotation marks omitted) ("[A]n interlocutory order affects a substantial right if the order deprive[s] the appealing party of a substantial right which will be lost if the order is not reviewed before a final judgment is entered." (second alteration in original) (internal quotation marks omitted)); see also N.C. Gen. Stat.

§ 1-277(a) (2011); N.C. Gen. Stat. § 7A-27(d)(1) (2011).

Nevertheless, "[w]hen 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." N.C.R. App. P. 28(b)(4). Since "[t]he burden to show that an appeal is proper is borne by the appellants," "appellants must present more than a bare assertion that the order affects a substantial right; they must demonstrate *why* the order affects a substantial right." *Hoke Cty. Bd. of Educ. v. State*, 198 N.C. App. 274, 277-78, 679 S.E.2d 512, 516, *disc. review denied*, 363 N.C. 653, 686 S.E.2d 515 (2009). "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." *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 380, 444 S.E.2d 252, 254 (1994). "Where the appellant fails to carry the burden of making such a showing to the [C]ourt, the appeal will be dismissed." *Johnson v. Lucas*, 168 N.C. App. 515, 518, 608 S.E.2d 336, 338 (citing *Jeffreys*, 115 N.C. App. at 380, 444 S.E.2d at 254), *aff'd per curiam*, 360 N.C. 53, 619 S.E.2d

502 (2005) .

In the present case, plaintiffs concede that the orders from which they appeal are interlocutory, but make no showing to support their assertion that a substantial right will be lost if the challenged orders are not reviewed before final judgments are entered in these actions. Instead, plaintiffs declare only that "[t]he substantial right at issue relates to the ability of the plaintiff[s] to pursue the claim in a single trial," and that "plaintiff[s] [have] a substantial right to have one jury decide whether the conduct of the defendants caused [their] injuries or should be bound by the judgment." Because plaintiffs' unsupported assertions are not sufficient to comply with the requirements of Appellate Rule 28(b)(4), and plaintiffs have not demonstrated that they are entitled to immediate review of the trial court's orders dismissing defendant Porters Neck Company, Inc. from plaintiffs' respective actions, we must dismiss these appeals.

Dismissed.

Judges HUNTER and STEPHENS concur.

Report per Rule 30(e) .