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NO. COA13-242  
NORTH CAROLINA COURT OF APPEALS

Filed: 1 October 2013

ALICE JOPPA CEBULA,  
Plaintiff

v.

Buncombe County  
No. 12 CVS 373

THE GIVENS ESTATES, INC.,  
Defendant

Appeal by plaintiff from order entered 12 September 2012 by Judge Marvin P. Pope, Jr. in Buncombe County Superior Court. Heard in the Court of Appeals 23 September 2013.

*Donald H. Barton, P.C., by Donald H. Barton, for plaintiff-appellant.*

*McGuire, Wood & Bisette, P.A., by Joseph P. McGuire, for defendant-appellee.*

ERVIN, Judge.

Plaintiff Alice Joppa Cebula appeals from an order awarding attorney fees to Defendant Givens Estate. On appeal, Plaintiff argues that the trial court erroneously awarded attorney's fees in favor of Defendant on the grounds that the evidence was insufficient to support the trial court's attorney's fees order, that the trial court's order did not contain findings of fact

addressing all of the issues which had to be resolved in order to adequately support an attorney's fees award, and that the trial court lacked the authority to award attorney's fees unless Plaintiff had completely refused to respond to Defendant's discovery requests. In addition, Plaintiff argues that the trial court erroneously entered an order compelling the provision of discovery despite the fact that the requested discovery had already been provided. After careful consideration of Plaintiff's challenges to the trial court's orders in light of the record and the applicable law, we conclude that Plaintiff failed to note an appeal from the order compelling discovery and that Plaintiff's appeal from the trial court's attorney's fees award should be dismissed as having been taken from an unappealable interlocutory order.

#### I. Factual Background

On 25 January 2012, Plaintiff filed a complaint in which she attempted to assert several claims against Defendant relating to a residence and services agreement that she had entered into with Defendant on 12 September 2007. On 28 June 2012, Defendant filed a motion seeking the entry of an order compelling Plaintiff to provide certain items of discovery. Defendant's motion to compel was heard on 12 July and 4 September 2012. On 4 September 2012, the trial court entered an

order granting Defendant's motion to compel and requiring Plaintiff to respond to certain specific discovery requests. On 12 September 2012, the trial court entered an order concluding that Plaintiff's opposition to Defendant's motion to compel was not substantially justified and awarding Defendant \$2,210.00 in attorney's fees pursuant to N.C. Gen. Stat. § 1A-1, Rule 37(a)(4). Defendant noted an appeal to this Court from the trial court's attorney's fees order.

## II. Legal Analysis

### A. Order Compelling Discovery

As an initial matter, we note that Plaintiff has advanced two arguments challenging the propriety of the trial court's order granting Defendant's motion to compel discovery. Plaintiff did not, however, note an appeal from this order. As a result, this Court lacks the authority to consider these arguments on the merits. *Finley Forest Condo. Ass'n v. Perry*, 163 N.C. App. 735, 741, 594 S.E.2d 227, 231 (2004). Thus, wholly aside from the deficiency in Plaintiff's appeal addressed in the next section of this opinion, we have no ability to address the arguments that Plaintiff has raised in opposition to the order compelling discovery given our lack of jurisdiction over Plaintiff's challenges to that order.

### B. Attorney's Fees Order

In addition, Plaintiff argues that the trial court erred by requiring her to pay attorney's fees to Defendant. The trial court's attorney's fees order is an interlocutory order because "it does not determine the entire controversy between all of the parties." *Abe v. Westview Capital L.C.*, 130 N.C. App. 332, 334, 502 S.E.2d 879, 881 (1998).

[I]mmediate appeal of interlocutory orders and judgments is available in at least two instances. First, immediate review is available when the trial court enters a final judgment as to one or more, but fewer than all, claims or parties and certifies there is no just reason for delay. . . . Second, immediate appeal is available from an interlocutory order or judgment which affects a substantial right.

*Sharpe v. Worland*, 351 N.C. 159, 161-62, 522 S.E.2d 577, 579 (1999) (quotation marks omitted).

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); see also N.C.R. App. P. 28(b)(4) (stating that, "[w]hen an appeal is interlocutory, the statement [of the grounds for appellate review] must contain sufficient facts and argument to support appellate review on the ground

that the challenged order affects a substantial right.”). “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, *affirmed*, 360 N.C. 53, 619 S.E.2d 502 (2005).

In this case, the trial court did not enter final judgment as to one or more claims or parties after certifying that there was no just reason for delay as authorized by N.C. Gen. Stat. § 1A-1, Rule 54(b). For that reason, Plaintiff’s appeal is not properly before this Court unless Plaintiff has established that the trial court’s attorney’s fees order affected a substantial right. Aside from the fact that she did not include a statement of the grounds for appellate review as required by N.C. Gen. Stat. § 1A-1, Rule 28(b)(4), Plaintiff has not advanced any argument in her brief to the effect that the trial court’s attorney’s fees order affected a substantial right. Moreover, as a general proposition, “an order to pay attorney’s fees as a sanction does not affect a substantial right.” *Long v. Joyner*, 155 N.C. App. 129, 134, 574 S.E.2d 171, 175 (2002), *disc. review denied*, 356 N.C. 673, 577 S.E.2d 624 (2003). Thus, for all of these reasons, we conclude that Plaintiff’s appeal has been taken from an unappealable interlocutory order and should be, and hereby is, dismissed.

APPEAL DISMISSED.

Judges GEER and DILLON concur.

Report per Rule 30(e).