

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA13-269

NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2013

AARON A. SMITH,
Plaintiff,

v.

Mecklenburg County
No. 12 CVS 13805

WHITNEY SIMONS PARKER,
Defendant.

Appeal by plaintiff from order entered 8 October 2012 by Judge Yvonne Mims Evans in Mecklenburg County Superior Court. Heard in the Court of Appeals 7 October 2013.

Aaron A. Smith, pro se.

No brief for defendant-appellee.

BRYANT, Judge.

Plaintiff Aaron Smith appeals from the trial court's order limiting production of records subpoenaed by plaintiff and partially granting defendant's request for protective orders.

For the reasons set forth below, we dismiss the appeal as interlocutory.

On 29 August 2012, plaintiff filed a complaint asserting claims of breach of contract, *quantum meruit*, abuse of process and malicious prosecution, and violation of the North Carolina Fraudulent Transfers Act. The complaint stemmed from allegations that plaintiff had loaned defendant sums of money, and defendant failed to repay the loans. Defendant filed an answer denying the material allegations in the complaint and offering affirmative defenses. Additionally, defendant filed counterclaims seeking compensatory damages for intentional infliction of emotional distress, libel, and abuse of process.

On 3 August 2012, defendant filed a motion to quash and for a protective order. Defendant stated that plaintiff had issued subpoenas to Wells Fargo, Verizon Wireless, several of defendant's current and former employers, as well as Waterford Square Apartments, the lessor of defendant's apartment. Defendant argued that the subpoenas required disclosure of confidential or privileged information and were oppressive, unreasonable, and procedurally defective. On 8 August 2012, plaintiff moved to dismiss defendant's motion. On 14 August 2012, plaintiff filed a subpoena seeking the financial records

of Lyn Simons Parker, defendant's mother. Parker thereafter filed a motion to quash the subpoena and sought a protective order. On 11 September 2012, plaintiff issued another subpoena, this time seeking defendant's appearance at a deposition. Defendant filed another motion for a protective order. Plaintiff again moved to dismiss defendant's request.

After hearing the various motions on 20 September 2012, the trial court denied plaintiff's motions to dismiss and ordered defendant to produce her Wells Fargo bank records, rental records with Waterford Square Apartments, and Verizon Wireless phone and text message records relating to the plaintiff. The trial court limited the time period of the records to 1 December 2010 to 1 October 2012. Defendant was also ordered to produce certain W-2 forms and tax records from 2010 to 2011. The trial court additionally ordered that any deposition of defendant by plaintiff be held at the office of defendant's attorney. Plaintiff appeals.

The threshold issue to consider is whether plaintiff's appeal is premature, and therefore, not properly before this Court. "An order or judgment is interlocutory if it is made during the pendency of an action and does not dispose of the

case but requires further action by the trial court in order to finally determine the entire controversy." *N.C. Dept. of Transp. v. Page*, 119 N.C. App. 730, 733, 460 S.E.2d 332, 334 (1995) (citing *Cagle v. Teachy*, 111 N.C. App. 244, 247, 431 S.E.2d 801, 803 (1993)). This Court has stated

[t]here are only two means by which an interlocutory order may be appealed: (1) if the order is final as to some but not all of the claims or parties and the trial court certifies there is no just reason to delay the appeal pursuant to N.C.R. Civ. P. 54(b) or (2) "if the trial court's decision deprives the appellant of a substantial right which would be lost absent immediate review."

Turner v. Norfolk S. Corp., 137 N.C. App. 138, 141, 526 S.E.2d 666, 669 (2000) (quoting *Bartlett v. Jacobs*, 124 N.C. App. 521, 524, 477 S.E.2d 693, 695 (1996)). "[T]he 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).

Here, plaintiff concedes that his appeal is interlocutory, but argues that the trial court's restrictions on discovery deprive him of substantial rights. Specifically, he contends the trial court's restrictions impair his ability to prosecute his

claims and to defend against defendant's counterclaims. We are not persuaded.

Discovery orders generally do not affect a substantial right which would be lost if the ruling were not reviewed before the final judgment. *Sharpe v. Worland*, 351 N.C. 159, 163, 522 S.E.2d 577, 579 (1999). However, our courts have recognized two exceptions to the rule against immediate appeal from discovery orders. The first exception is where the orders include a finding of contempt or other sanctions. See *Willis v. Duke Power Co.*, 291 N.C. 19, 30, 229 S.E.2d 191, 198 (1976). The second exception applies where a party asserts a statutory privilege which directly relates to the matter ordered to be disclosed. *Sharpe*, 351 N.C. at 166, 522 S.E.2d at 581. The trial court's order here does not relate to contempt or sanctions, nor does any party assert a statutory privilege. Thus, the trial court's order does not affect a substantial right.

Accordingly, because there was no final judgment or order in this case, nor has plaintiff sustained his burden of demonstrating that the trial court's order is immediately appealable, we hold that this appeal is premature and therefore, dismiss it as interlocutory.

Appeal dismissed.

Judges HUNTER, Robert C., and McCULLOUGH concur.

Report per Rule 30(e).