

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA13-328
NORTH CAROLINA COURT OF APPEALS

Filed: 17 September 2013

PREMIERE AUTO, L.L.C, a North
Carolina Limited Liability
Company, and EDWARD STEVENS HOWIE,
III, an individual,
Plaintiffs,

v.

Cumberland County
No. 11 CVS 6838

WACHOVIA BANK, N.A., a National
Association, LARRY MICHAEL
WRIGHT, an individual, and LARRY
MICHAEL WRIGHT, II, an individual,
Defendants.

Appeal by defendant from order entered 30 April 2012 by
Judge Lucy N. Inman in Cumberland County Superior Court. Heard
in the Court of Appeals 26 August 2013.

No Appellee's Brief Filed.

*The Gilliam Law Firm, by J. Duane Gilliam, Jr., for
defendant.*

Elmore, Judge.

Despite the above named defendants in this action, Larry
Michael Wright, II (defendant) appeals in an individual capacity
from an order entered 30 April 2012 denying his motion to

dismiss. After careful consideration, we dismiss defendant's appeal as interlocutory.

I. Background

Premiere Auto, L.L.C. and Edward Stevens Howie, III (plaintiffs) filed this action against defendant pursuing damages for unfair and deceptive trade practices, fraud, conversion, civil conspiracy, unjust enrichment, and punitive damages. Defendant moved to dismiss the action for lack of personal jurisdiction pursuant to N.C. Gen. Stat. § 1A-1, Rule 12(b)(2) and for insufficiency of service of process pursuant to N.C. Gen. Stat. § 1A-1, Rule 12(b)(5). In his motion, defendant contended that the trial court lacked personal jurisdiction over him because he was not served with process in accordance with the law "since service ha[d] not been perfected pursuant to Rule 4 of the North Carolina Rules of Civil Procedure." The trial court found no Rule 4 violation because (1) defendant was served with a copy of the complaint and summons in this action; (2) service by a private process server was proper; and (3) an affidavit of service was filed with Cumberland County's Clerk of Superior Court. Thus, the trial court concluded that it

maintained personal jurisdiction over defendant. Defendant entered notice of appeal on 4 May 2012.

II. Analysis

Defendant argues that the trial court erred in denying his motion to dismiss for lack of personal jurisdiction based on insufficient service of process. For the reasons subsequently set forth, we have no authority to hear defendant's appeal on the merits.

"Generally, there is no right of immediate appeal from interlocutory orders and judgments." *Goldston v. Am. Motors Corp.*, 326 N.C. 723, 725, 392 S.E.2d 735, 736 (1990). However, "immediate appeal is available from an interlocutory order or judgment which affects a substantial right." *Sharpe v. Worland*, 351 N.C. 159, 162, 522 S.E.2d 577, 579 (1999) (citations and quotations omitted).

"Ordinarily an order denying a motion to dismiss pursuant to G.S. § 1A-1, Rule 12(b) is considered interlocutory and not affecting a substantial right, and consequently there is no right of immediate appeal therefrom." *Hart v. F.N. Thompson Constr. Co.*, 132 N.C. App. 229, 230-31, 511 S.E.2d 27, 28 (1999)

(citation omitted). However, “[a]ny interested party shall have the right of immediate appeal from an adverse ruling as to the jurisdiction of the court over the person or property of the defendant[.]” N.C. Gen. Stat. § 1-277(b) (2011). This right “is limited to rulings on minimum contacts questions, the subject matter of Rule 12(b)(2).” *Love v. Moore*, 305 N.C. 575, 581, 291 S.E.2d 141, 146 (1982) (quotations omitted). Thus, the jurisdictional argument must be “substantive rather than merely procedural.” *Hart*, 132 N.C. App. at 231, 511 S.E.2d at 28.

Here, defendant avers that the trial court lacked personal jurisdiction over him solely because of a procedural defect in service of process. Because defendant’s jurisdictional argument is not based on grounds of inadequate minimum contacts, it must be dismissed. *See id.* (dismissing an appeal where defendant alleged lack of personal jurisdiction grounded in service of process issues but not insufficient minimum contacts).

Accordingly, we have no authority to hear defendant’s appeal; we dismiss it as interlocutory.

Appeal Dismissed.

Chief Judge MARTIN and HUNTER, JR., Robert N., concur.

Report per Rule 30(e).