

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA13-351

NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2013

BEVERLY GULVIN ELLIS,  
Plaintiff,

v.

Durham County  
No. 11 CVD 709

PAUL JASON ELLIS,  
Defendant.

Appeal by plaintiff from order entered 29 November 2012 by Judge James T. Hill in Durham County District Court. Heard in the Court of Appeals 7 October 2013.

*The Law Offices of Martin J. Horn, PLLC, by Martin J. Horn, for plaintiff-appellant.*

*No brief for defendant-appellee.*

BRYANT, Judge.

Plaintiff Beverly Ellis appeals from the trial court's order denying her motions for post-separation support and alimony. For the reasons set forth below, we dismiss the appeal as interlocutory.

On 29 June 2011, plaintiff filed a complaint seeking custody of the parties' children. On 19 September 2011, plaintiff filed her amended complaint to add claims for equitable distribution, post-separation support, alimony, and child support. On 29 November 2012, the trial court entered an order concluding that plaintiff was not a dependent spouse and defendant was not a supporting spouse, and denying plaintiff's motions for post-separation support and alimony. Plaintiff appeals.

---

The threshold issue is whether plaintiff's appeal is interlocutory 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)). With limited exceptions, there is no right of immediate appeal from interlocutory orders or judgments. See N.C. Gen. Stat. §§ 1-277; 1A-1, Rule 54(b); 7A-27(d) (2011). This Court has outlined the proper procedure for determining

whether a case is appealable under our statutes, rules and case law. *Equitable Leasing Corp. v. Myers*, 46 N.C. App. 162, 168-69, 265 S.E.2d 240, 245 (1980). First, N.C. Gen. Stat. §§ 1-277 and 7A-27 provide that where a substantial right of the parties would be affected if immediate appeal were not permitted, the judgment is appealable whether it is final or interlocutory in nature. *Id.* If there is no statutory right to appeal under N.C. Gen. Stat. §§ 1-277 or 7A-27, the next question is whether the judgment is in effect final as to all of the claims and parties. *Id.* at 169, 265 S.E.2d at 245. If so, the judgment is immediately appealable. *Id.* If not, the next question is whether the trial court's action is final or interlocutory. *Id.* If it is interlocutory, a party may not appeal even though the trial court certified the action for appeal. *Id.* If the action is final as to fewer than all the claims or parties, an appeal will lie only if the action is certified for appeal by the trial court under N.C. Gen. Stat. § 1A-1, Rule 54(b). *Id.*

In the instant case, Rule 54(b) does not provide an avenue for appeal because the trial court did not certify the action for appeal. The trial court's order was final as to the plaintiff's claims for post separation support and permanent alimony, but the claims for child custody and equitable

distribution remain pending. Such a disposition permits appeal only if the trial court certifies the action for appeal. However, the trial court did not certify the case for immediate appeal pursuant to Rule 54(b). Therefore, we consider whether "the challenged order affects a substantial right that may be lost without immediate review" such that the order may be appealed pursuant to section 1-277. See *McConnell v. McConnell*, 151 N.C. App. 622, 624, 566 S.E.2d 801, 803 (2002).

North Carolina Rules of Appellate Procedure, Rule 28(b)(4), requires that the appellant's brief contain a statement of the grounds for appellate review with "sufficient facts and argument to support appellate review on the ground that the challenged order affects a substantial right." Plaintiff, however, fails to include a statement in her brief stating the grounds for interlocutory review. "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 . . . ." *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 380, 444 S.E.2d 252, 254 (1994). Additionally, "[i]nterlocutory appeals that challenge only the financial repercussions of a separation or divorce generally have not been held to affect a substantial right." *Embler v. Embler*, 143 N.C. App. 162, 166, 545 S.E.2d 259, 262

(2001); see also *Musick v. Musick*, 203 N.C. App. 368, 370-71, 691 S.E.2d 61, 63 (2010) (dismissing an appeal from an order awarding alimony where equitable distribution claim remained outstanding).

Accordingly, because the order dismissing plaintiff's post-separation support and alimony claims was not certified for appeal and because plaintiff has not sustained her burden of demonstrating that the trial court's order is immediately appealable, we hold that this appeal is premature and dismiss it as interlocutory.

Appeal dismissed.

Judges HUNTER, Robert C., and McCULLOUGH concur.

Report per Rule 30(e).