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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-140

Filed: 6 September 2016

Iredell County, No. 12 CVS 1419

MARY E. HAIRE, Plaintiff,

v.

BARRY LOREN KRAMER, M.D. and IREDELL MEMORIAL HOSPITAL, INC.,  
Defendants.

Appeal by plaintiff from order entered 10 July 2015 by Judge Joseph N. Crosswhite in Iredell County Superior Court. Heard in the Court of Appeals 10 August 2016.

*Kimberly S. Taylor, for plaintiff-appellant.*

*Parker Poe Adams & Bernstein, LLP, by John H. Beyer and Bradley K. Overcash, for defendant-appellee.*

DIETZ, Judge.

Plaintiff appeals from entry of summary judgment in favor of one of the two defendants in this action. The trial court's summary judgment order did not contain a Rule 54(b) certification, but Plaintiff obtained a separate order certifying the case under Rule 54(b) after she filed her appeal. As explained below, our Supreme Court recently confirmed that this sort of post-hoc certification cannot confer appellate jurisdiction. *Branch Banking & Trust Co. v. Peacock Farm, Inc.*, \_\_\_ N.C. \_\_\_, 780

S.E.2d 553, *aff'g per curiam* \_\_\_ N.C. App. \_\_\_, 772 S.E.2d 495 (2015). Plaintiff offers no other explanation for why this Court has jurisdiction. Accordingly, we dismiss the appeal.

### **Facts and Procedural History**

Plaintiff Mary Haire appeals from the trial court's order granting summary judgment in favor of Defendant Iredell Memorial Hospital. Haire brought medical malpractice claims against Iredell Memorial and a doctor with privileges there.

On 10 July 2015, the trial court entered summary judgment in favor of Iredell Memorial Hospital but not in favor of the doctor, meaning some claims remained in the case. The order did not contain a Rule 54(b) certification.

On 4 August 2015, Haire appealed the trial court's order. On 28 August 2015, after Haire already had appealed the court's ruling, Haire asked the trial court to certify the 10 July 2015 order for immediate appeal. On 4 September 2015, the trial court entered an order purportedly certifying its 10 July 2015 order for immediate appeal under Rule 54(b). The court did not enter an amended summary judgment order containing the Rule 54(b) language.

### **Analysis**

The challenged summary judgment order plainly is interlocutory because Haire still has claims pending against another defendant and, thus, "there is more to be done in the trial court." *State v. Oakes*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 771 S.E.2d 832, 834

(2015). “An interlocutory order entered before final judgment is immediately appealable in only two circumstances: (1) if the trial court has certified the case for appeal under Rule 54(b) of the Rules of Civil Procedure; and (2) when the challenged order affects a substantial right of the appellant that would be lost without immediate review.” *Campbell v. Campbell*, 237 N.C. App. 1, 3, 764 S.E.2d 630, 632 (2014).

Haire did not comply with the requirement of the Rules of Appellate Procedure by identifying which of these two circumstances she relies on in this appeal. *See* N.C. R. App. P. 28(b)(4). Haire combined her statement of the grounds for appellate review with the statement of the case in a section titled “Statement of the Case (and Grounds for Appellate Review).” That portion of her brief does not identify the grounds on which she relies for appellate review, nor do those grounds appear anywhere else in the brief.

We assume that Haire relies on Rule 54(b) of the Rules of Civil Procedure because Haire obtained a separate Rule 54(b) certification order from the trial court after she filed her notice of appeal. That order purported to certify the summary judgment order for immediate appeal. But “[n]either Rule 54(b) itself nor the cases interpreting it authorize such a retroactive attempt to certify a *prior* order for immediate appeal in this fashion.” *Branch Banking & Trust Co. v. Peacock Farm, Inc.*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 772 S.E.2d 495, 500, *aff’d per curiam*, \_\_\_ N.C. \_\_\_, 780 S.E.2d 553 (2015). If a trial court does not include the desired certification language

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in its original order, the party seeking to appeal must obtain an amended final order from the court adding the appropriate language—something that was not possible in this case because Haire already had appealed the original order before she later asked the trial court to certify it under Rule 54(b).

Haire has not identified any other basis for appellate jurisdiction. “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). Accordingly, we dismiss this appeal for lack of appellate jurisdiction.

DISMISSED.

Judges ELMORE and DAVIS concur.

Report per Rule 30(e).