

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-601

No. COA21-62

Filed 2 November 2021

Onslow County, No. 20 CVS 1030

IZMACO INVESTMENTS, LLC, Plaintiff,

v.

ROYAL ROOFING & RESTORATION, LLC and ROYAL FEATHERS, Defendants.

Appeal by Plaintiff from order entered 27 August 2020 by Judge Henry L. Stevens, IV, in Onslow County Superior Court. Heard in the Court of Appeals 11 August 2021.

Starling Law Firm, PLLC, by Casey S. Starling (withdrew after filing briefs), for Plaintiff-Appellant.

Mewborn & DeSelms, Attorneys at Law, by J. Timothy Wilson, Brett J. DeSelms, and Sarah N. Sherrington, for Defendants-Appellees.

INMAN, Judge.

¶ 1

Plaintiff IzMaCo Investments, LLC (“Plaintiff”) appeals from an order awarding Defendants Royal Roofing & Restoration, LLC and Royal Feathers (“Defendants”) \$1,129.29 in attorney’s fees pursuant to N.C. Gen. Stat. § 1D-45. Because the order appealed is interlocutory and does not affect a substantial right,

we dismiss Plaintiff's appeal.

I. FACTUAL AND PROCEDURAL HISTORY

¶ 2 IzMaCo filed suit against Defendants on 27 March 2020. The complaint alleged various claims, including causes of action for breach of contract, constructive fraud, breach of fiduciary duty, and punitive damages. The trial court dismissed all claims except for breach of contract under Rule 12(b)(6) by order entered 22 June 2020.¹

¶ 3 The following month, Defendants filed a Motion for Attorney's fees pursuant to N.C. Gen. Stat. §§ 75-16.1, 1d-45, and 1A-1, Rule 11, asserting Plaintiff knew or should have known that its claims for breach of fiduciary duty, constructive fraud, and punitive damages were frivolous. The trial court granted Defendants' motion by order entered 27 August 2020, awarding Defendants \$1,129.29 in attorneys' fees. Plaintiff appeals.

II. ANALYSIS

¶ 4 The parties both agree that this appeal is interlocutory and is proper only upon a showing that the trial court's order affects a substantial right. *See, e.g., Turner v. Norfolk Southern Corp*, 137 N.C. App. 138, 141, 526 S.E.2d 666, 669 (2000) (noting that interlocutory orders may only be appealed when properly certified pursuant to

¹ The complaint and dismissal of Plaintiffs claims is discussed in greater detail in *IzMaCo Invs., LLC v. Royal Roofing & Restoration, LLC*, 2021-NCCOA-____, COA21-61 (filed Nov. 2, 2021) (unpublished), filed concurrently herewith.

Rule 54(b) or “if the trial court’s decision deprives the appellant of a substantial right which would be lost absent immediate review” (citations and quotation marks omitted)). Ordinarily, an interlocutory award of attorney’s fees is not immediately appealable because “it does not finally determine the action nor affect a substantial right which might be lost, prejudiced or be less than adequately protected by exception to entry of the interlocutory order.” *Cochran v. Cochran*, 93 N.C. App. 574, 577, 378 S.E.2d 580, 582 (1989) (citations omitted).

¶ 5 Plaintiff nonetheless asserts that the trial court’s order affects a substantial right because it requires immediate payment of a “substantial sum.” In support of this argument, Plaintiff cites *Estate of Redden ex rel. Morely v. Redden*, in which the appellant was ordered to pay \$150,000 plus costs in a partial summary judgment order. 179 N.C. App. 113, 116–17, 632 S.E.2d 794, 798 (2006). We held that the appellant in that case established a substantial right sufficient to allow interlocutory review because the order appealed required “immediate payment of a significant sum of money.” *Id.* at 117, 632 S.E.2d at 798.

¶ 6 Though this Court does not appear to have ever defined what minimum sum of money suffices to impact an appellant’s substantial rights, we have no difficulty concluding that the \$1,129.99 award—which Plaintiff has already paid without any

assertion of financial difficulty—does not rise to such a level.² Plaintiff cites to no cases involving sums comparable to the one awarded here, and acknowledges “the amount awarded is less than the amounts awarded in other cases.” In fact, the award in this case is several magnitudes lower than awards our appellate courts have held to be sufficiently substantial. *See Wachovia Realty Invs. v. Housing, Inc.*, 292 N.C. 93, 99, 232 S.E.2d 667, 671 (1977) (\$204,603.55 interlocutory award affected substantial right); *Beck v. American Bankers Life Assurance Co.*, 36 N.C. App. 218, 221, 243 S.E.2d 414, 416 (\$21,500.73 award affected substantial right); *Atkins v. Mitchell*, 91 N.C. App. 730, 733, 373 S.E.2d 152, 154 (1988) (\$1,054,916.80 award affected substantial right). We therefore hold that Plaintiff has failed to meet its burden of showing the interlocutory attorneys’ fee award of \$1,129.99 affects a substantial right and dismiss the appeal.

¶ 7

Plaintiff’s principal and reply briefs request that we treat those briefs as petitions for writ of certiorari in the event we hold Plaintiff has failed to demonstrate the existence of a substantial right warranting interlocutory review. For the reasons set forth in our dismissal of Plaintiff’s other interlocutory appeal, *IzMaCo Invs.*, ¶¶ 15-16, in our discretion we decline to do so.

² Defendants seek sanctions under Rule 34 of the North Carolina Rules of Appellate Procedure in their brief, asserting that Plaintiff’s appeal is frivolous. We decline to impose sanctions in our discretion.

III. CONCLUSION

¶ 8

For the foregoing reasons, we dismiss Plaintiff's appeal as interlocutory and decline, in our discretion, to treat Plaintiff's briefs as petitions for writ of certiorari.

DISMISSED.

Judges DILLON and CARPENTER concur.

Report per Rule 30(e).