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NO. COA11-1191  
NORTH CAROLINA COURT OF APPEALS

Filed: 19 June 2012

THE CITY OF CHARLOTTE, a  
municipal corporation,  
Plaintiff-Appellant,

v.

Mecklenburg County  
No. 10 CVS 3835

MPP SOUTH POINT LAND, LLC, a  
North Carolina limited liability  
Company; SOUTH POINT BUSINESS  
PARK PROPERTY OWNERS ASSOCIATION,  
INC., a North Carolina non-profit  
Corporation; and Any Other Parties  
In Interest,  
Defendants-Appellees.

Appeal by Plaintiff from order entered 31 May 2011 by Judge  
W. Robert Bell in Superior Court, Mecklenburg County. Heard in  
the Court of Appeals 20 March 2012.

*Office of the City Attorney, by Gretchen R. Nelli, for  
Plaintiff-Appellant.*

*Katten Muchin Rosenman, LLP, by Christopher A. Hicks and  
David B. Morgen, for Defendant-Appellee South Point  
Business Park Property Owners' Association, Inc.*

McGEE, Judge.

The City of Charlotte (Plaintiff) filed a condemnation  
action on 19 February 2010 to acquire 4.63 acres of real

property owned by MPP South Point Land, LLC. South Point Business Park Property Owners' Association, Inc. (Defendant) was a named defendant in the 19 February 2010 action. Plaintiff moved for default judgment against Defendant on 4 March 2011, pursuant to N.C. Gen. Stat. § 136-107, alleging that Defendant had failed to file any answer within the twelve month period. The trial court entered default judgment against Defendant on 4 March 2011 because of Defendant's failure to timely file an answer in this action. Defendant filed a Rule 60 motion to set aside the default judgment on 8 April 2011. By order entered 31 May 2011, the trial court granted Defendant's Rule 60 motion to set aside the default judgment. Plaintiff filed notice of appeal from the 31 May 2011 order on 20 June 2011.

The dispositive question is whether the 31 May 2011 interlocutory order granting Defendant's Rule 60 motion is properly before this Court. We hold that it is not and dismiss Plaintiff's appeal.

"It is well established in this jurisdiction that if an appealing party has no right of appeal, an appellate court on its own motion should dismiss the appeal even though the question of appealability has not been raised by the parties themselves." *Bailey v. Gooding*, 301 N.C. 205, 208, 270 S.E.2d 431, 433 (1980) (citations omitted).

While final judgments are always appealable, interlocutory decrees are immediately appealable only when they affect some substantial right of the appellant and will work an injury to him if not corrected before an appeal from final judgment. "A nonappealable interlocutory order . . . which involves the merits and necessarily affects the judgment, is reviewable . . . on appropriate exception upon an appeal from the final judgment in the cause."

These rules are designed to prevent fragmentary and premature appeals that unnecessarily delay the administration of justice and to ensure that the trial divisions fully and finally dispose of the case before an appeal can be heard. "There is no more effective way to procrastinate the administration of justice than that of bringing cases to an appellate court piecemeal through the medium of successive appeals from intermediate orders."

Unquestionably, the order [granting the Rule 60(b) motion and] . . . setting aside the default judgment is interlocutory; it does not finally dispose of the case and requires further action by the trial court. Because the order is interlocutory we will not review it unless it "affects some substantial right claimed by the appellant and will work an injury to him if not corrected before an appeal from the final judgment."

*Id.* at 209, 270 S.E.2d at 433-34 (citations omitted). Our Supreme Court in *Bailey* reasoned:

If the ultimate result of a trial on the merits goes against plaintiffs, they will then be able to appeal and assign as error the order setting aside their default judgment. No right of plaintiffs will be

lost by delaying their appeal until after final judgment; their exception fully and adequately preserves their challenges to Judge Stevens' order. The absence of a right of immediate appeal will force plaintiffs to undergo a full trial on the merits instead of a trial solely on the issue of damages. Although this is a much greater burden than the necessity of a rehearing of a motion, we do not think it so difficult a burden, on the facts of this case, to elevate the order to the status of affecting a "substantial right." Avoidance of a trial, in this context, is not a "substantial right." See *Waters v. Personnel, Inc.*, 294 N.C. 200, 240 S.E.2d 338 (1978); cf. *Acoustical Co. v. Cisne and Associates, Inc.*, 25 N.C. App. 114, 212 S.E.2d 402 (1975) (order setting aside entry of default not appealable).

*Id.* at 210, 270 S.E.2d at 434; see also *Gibson v. Mena*, 144 N.C. App. 125, 127, 548 S.E.2d 745, 746 (2001); *Love v. Moore*, 305 N.C. 575, 578, 291 S.E.2d 141, 144-45 (1982). Plaintiff has failed to demonstrate that it will lose any substantial right absent immediate appeal from the 31 May 2011 interlocutory order. *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 379-80, 444 S.E.2d 252, 253-54 (1994). We therefore dismiss Plaintiff's appeal.

Dismissed.

Judges GEER and McCULLOUGH concur.

Report per Rule 30(e).