

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-510

NORTH CAROLINA COURT OF APPEALS

Filed: 19 December 2006

LOUIS C. SPELL, and
PHILLIP A. LEWIS

Plaintiffs,

v.

Beaufort County
No. 05 CVS 1438

HUGH MILLS, JR., and
REBECCA P. MILLS

Defendants.

Appeal by defendants from order entered 28 February 2006 by Judge William C. Griffin, Jr. in Beaufort County Superior Court. Heard in the Court of Appeals 2 November 2006.

Carter, Archie, Hassell & Holbrook, L.L.P., by Sid Hassell, Jr., for plaintiff-appellees.

Ayers, Haidt & Trabucco, P.A., by James M. Ayers, II, for defendant-appellants.

JACKSON, Judge.

On 13 December 2005, Louis Spell and Phillip Lewis ("plaintiffs") filed a complaint and motion for preliminary injunction seeking to have Hugh and Rebecca Mills ("defendants") remove their mobile home and storage building from plaintiffs' land and a private road. In an order entered 28 February 2006, the trial court granted plaintiffs' motion for preliminary injunction,

and ordered defendants to remove their mobile home and storage building from plaintiffs' property and the private road. Defendants further were enjoined from placing anything in the private road or the land of plaintiffs pending the trial on the issues.

Defendants appeal from the entry of the preliminary injunction. On 28 April 2006, this Court granted defendants' petition for writ of supersedeas and motion for a stay of the preliminary injunction pending the outcome of this appeal.

Defendants readily acknowledge that their appeal of the entry of a preliminary injunction is interlocutory. See *A.E.P. Industries v. McClure*, 308 N.C. 393, 400, 302 S.E.2d 754, 759 (1983); *VisionAIR, Inc. v. James*, 167 N.C. App. 504, 507, 606 S.E.2d 359, 361 (2004). However, defendants contend the appeal is properly before this Court because the preliminary injunction affects a substantial right. See N.C. Gen. Stat. §§ 1-277 and 7A-27(d)(1) (2005).

Defendants present little argument as to what substantial right will be lost or prejudiced absent an immediate appeal from the entry of the preliminary injunction. Defendants contend the substantial right affected is that they have been ordered to move their mobile home, which has been in its present location for ten years. Defendants also argue, albeit without citation to any local ordinance, that if they move their home, they may be barred from placing it back on their property due to new set back requirements and other land use regulations. This Court will not take judicial

notice of a local ordinance when the ordinance has not been cited to nor has it been included as part of the record on appeal. See *Town of Scotland Neck v. Surety Co.*, 301 N.C. 331, 338, 271 S.E.2d 501, 505 (1980); *Beau Rivage Homeowners Ass'n v. Billy Earl, L.L.C.*, 163 N.C. App. 325, 327, 593 S.E.2d 120, 122 (2004); *Glenn-Robinson v. Acker*, 140 N.C. App. 606, 634, 538 S.E.2d 601, 620 (2000).

As defendants' appeal is interlocutory, and defendants have failed to argue effectively that a substantial right will be lost absent the right to an immediate appeal of the preliminary injunction, we therefore dismiss defendants' appeal as interlocutory.

Dismissed.

Judges GEER and LEVINSON concur.

Report per Rule 30(e).