An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

No. COA18-51

Filed: 21 August 2018

New Hanover County, No. 15 CVS 2192

JAMES O. CARTER, Administrator of the Estate of GEORGE W. BAUGHMAN, Plaintiff

v.

RUBY BAUGHMAN f/k/a RUBY BRYAN NOBLE, a/k/a RUBY BRYAN SLEDGE, a/k/a RUBY BRYAN, a/k/a KIM JONES, a/k/a JANET MERCER, a/k/a RUBY BRYAN IVES, a/k/a JUSTINA JONES, Defendant

Appeal by defendant from order entered 10 August 2017 by Judge John E. Nobles, Jr. in New Hanover County Superior Court. Heard in the Court of Appeals 7 August 2018.

Shipman & Wright, L.L.P., by William G. Wright, for plaintiff-appellee.

Sherman and Rodgers, PLLC, by Scott G. Sherman and Richard T. Rodgers, Jr., for defendant-appellant.

CALABRIA, Judge.

Ruby Baughman ("defendant") appeals from the trial court's order granting partial summary judgment to James O. Carter in his capacity as administrator of the Estate of George W. Baughman ("plaintiff"). After careful review, we conclude that

the trial court failed to properly certify the interlocutory order for immediate review pursuant to N.C. Gen. Stat. § 1A-1, Rule 54(b) (2017). Accordingly, we dismiss defendant's appeal.

I. Background

Plaintiff filed this action on behalf of the Estate of George W. Baughman. During his younger years, Mr. Baughman was a successful businessman with a net worth in excess of $5 million. As he aged, however, Mr. Baughman's mental capacity significantly decreased. He was diagnosed with and treated for, *inter alia*, dementia and post-traumatic stress disorder arising from his prior military service. Since Mr. Baughman feared losing his independence as he aged, he sought an elder care specialist to assist him with his declining health.

Defendant responded to the advertisement, and in October or November 2010, Mr. Baughman hired defendant as his caregiver. Defendant held herself out as "a professional elder care specialist" with "substantial experience working with Alzheimer's patients." Unbeknownst to Mr. Baughman and his family, however, defendant was then on supervised probation for larceny from a merchant and had a significant criminal record along with numerous aliases.

At first, defendant worked on weekdays from 9:00 a.m. until 5:00 p.m. and was paid hourly. But after several weeks, defendant told Mr. Baughman's family that his health had deteriorated and he feared staying alone at night. She suggested that Mr.

Baughman begin spending nights with defendant and her daughter at their house and return to his home in the mornings. Approximately two weeks after this arrangement began, however, defendant informed Mr. Baughman's family that she "could not have a man living in her house when they were not married since she was a good Christian woman." Rather than "living with [Mr. Baughman] in sin," defendant proposed that she would marry, live with, and care for him for the rest of his life, in exchange for 20% of his Estate upon his death. Mr. Baughman told his family that although he did not love defendant, he would accept her proposed arrangement because he did not want to be placed in a nursing home.

On 23 December 2010, Mr. Baughman and defendant executed a Premarital Agreement providing, *inter alia*, that the parties' separate property would remain separate, regardless of whether it was acquired before or during the marriage. Mr. Baughman and defendant were married on 7 January 2011. Thereafter, defendant began to exert considerable control over Mr. Baughman by isolating him from his family, friends, and advisors; threatening to withhold his prescription medications; and obtaining power of attorney over his financial affairs. Over the next few years, Mr. Baughman made numerous complaints to family and friends, his attorneys, law enforcement, and the New Hanover County Department of Social Services that defendant was physically and mentally abusing him and misappropriating his funds.

However, defendant was able to brush off the allegations by claiming that Mr. Baughman was "dementiated" and further isolating him from others.

On 20 May 2014, Mr. Baughman died from colon cancer at the age of 87. When he died, Mr. Baughman believed that "he still had a net worth, including substantial liquid assets, of millions of dollars, and that the vast majority of his estate would still be passing to his children and grandchildren." In reality, however, Mr. Baughman's Estate had been substantially depleted, and he died nearly penniless, except for certain real property in Wrightsville Beach. By contrast, defendant, who had very few assets when she first met Mr. Baughman, had a significant net worth at the time of his death.

Initially, defendant was appointed to serve as executrix of Mr. Baughman's Estate. When the family learned of defendant's criminal history, however, they sought her removal, and defendant resigned the position. Plaintiff was appointed administrator of Mr. Baughman's Estate on 5 February 2015. On 7 July 2015, plaintiff filed a complaint against defendant in New Hanover County Superior Court, asserting claims for (1) conversion and trover; (2) replevin; (3) breach of fiduciary relationship; (4) constructive fraud; (5) breach of contract; (6)-(7) voidability of certain contracts, due to Mr. Baughman's lack of mental capacity and defendant's undue influence; (8) constructive trust; and (9) punitive damages. On 30 October 2015, defendant filed an answer asserting various affirmative defenses.

On 28 July 2017, plaintiff filed a motion for summary judgment on all claims except punitive damages. Following a hearing, on 10 August 2017, the trial court entered an Order on Partial Summary Judgment granting plaintiff's motion. That same day, after filing a notice of appeal to this Court, defendant filed a motion to continue alleging that "[t]he Order for Partial Summary Judgment affects a substantial right of the Defendant[,]" and therefore, "trial should be continued until the issues addressed in the Defendant's appeal to the North Carolina Court of Appeals are fully and finally adjudicated."

On 14 August 2017, the trial court entered an Order to Continue and Certification, finding, *inter alia*, that:

> 3) The possibility exists that the ruling of the North Carolina Court of Appeals could make a ruling that would render any verdict obtained in a trial of this matter as moot and order that the same be overturned and re-tried; and,
>
> 4) As a consequence of the Partial Summary Judgment Order entered by this Court on Thursday, August 10, 2017, there is no just reason to delay an immediate appeal of this matter to the North Carolina Court of Appeals.

The trial court " 'certifie[d]' pursuant to Rule 54(b) of the North Carolina Rules of Civil Procedure, that there is no just reason for delay" of defendant's appeal of the

Order for Partial Summary Judgment, and ordered that trial be continued "until such time as the rendering of a final ruling or dismissal" of defendant's appeal.[1]

II. Partial Summary Judgment Order

On appeal, defendant challenges the trial court's entry of partial summary judgment against her on several grounds. We do not reach defendant's arguments, however, because defendant fails to establish a right to immediate review of the trial court's interlocutory order.

"An interlocutory order is one made during the pendency of an action, which does not dispose of the case, but leaves it for further action by the trial court in order to settle and determine the entire controversy." *Veazey v. City of Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381, *reh'g denied*, 232 N.C. 744, 59 S.E.2d 429 (1950). "A grant of partial summary judgment, because it does not completely dispose of the case, is an interlocutory order from which there is ordinarily no right of appeal." *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 379, 444 S.E.2d 252, 253 (1994) (citation and quotation marks omitted). However, Rule 54(b) of the North Carolina Rules of Civil Procedure and the substantial right doctrine provide two exceptions to this general rule of no immediate appeal. *Evans v. Evans*, 158 N.C. App. 533, 535, 581 S.E.2d 464, 465 (2003).

[1] The original Partial Summary Judgment Order entered by the trial court did not state the specific amount of recovery to which plaintiff was entitled. Upon plaintiff's motion, the trial court subsequently entered a Corrected Order on Partial Summary Judgment, which was submitted to this Court via defendant's Motion to Supplement the Printed Record on Appeal.

"[I]t is the appellant's burden to present appropriate grounds for this Court's acceptance of an interlocutory appeal and our Court's responsibility to review those grounds." *Jeffreys*, 115 N.C. App. at 379, 444 S.E.2d at 253. To that end, the appellant's brief must include a Statement of the Grounds for Appellate Review, including citation to the statutes authorizing our review. N.C.R. App. P. 28(b)(4).

> When an appeal is based on Rule 54(b) of the Rules of Civil Procedure, the statement shall show that there has been a final judgment as to one or more but fewer than all of the claims or parties and that there has been a certification by the trial court that there is no just reason for delay. When an appeal is interlocutory, the statement must contain sufficient facts and argument to support appellate review on the ground that the challenged order affects a substantial right.

Id.

Here, defendant's brief includes the following Statement of the Grounds for Appellate Review:

> Judge Nobles [sic] partial summary judgment order entering judgment for the Plaintiff on all the Plaintiff's claims is a final disposition of those claims. The only claim that remains outstanding is the Plaintiff's claim for punitive damages. Judge Nobles [sic] order contains a finding, pursuant to Rule 54(b) of the North Carolina Rules of Civil Procedure, that there is no just reason for delaying the appeal of the order.

Defendant therefore contends that her appeal of the Partial Summary Judgment Order is properly before this Court pursuant to Rule 54(b), which provides, in pertinent part:

> When more than one claim for relief is presented in an action, whether as a claim, counterclaim, crossclaim, or third-party claim, or when multiple parties are involved, the court may enter a final judgment as to one or more but fewer than all of the claims or parties only if there is no just reason for delay and it is so determined in the judgment. Such judgment shall then be subject to review by appeal or as otherwise provided by these rules or other statutes.

N.C. Gen. Stat. § 1A-1, Rule 54(b).

In order to be immediately appealable pursuant to Rule 54(b), an order in a multi-claim action must be "(1) in effect final as to one or more of the claims . . . ; and (2) certified for appeal by the trial judge." *N.C. R.R. Co. v. City of Charlotte*, 112 N.C. App. 762, 769, 437 S.E.2d 393, 396 (1993), *appeal dismissed and disc. review denied*, 336 N.C. 608, 447 S.E.2d 397 (1994). The trial court's Rule 54(b) certification must appear within the body of the judgment from which appeal is sought. *Branch Banking & Tr. Co. v. Peacock Farm, Inc.*, 241 N.C. App. 213, 218, 772 S.E.2d 495, 500, *aff'd per curiam*, 368 N.C. 478, 780 S.E.2d 553 (2015).

Where the trial court properly certifies an interlocutory order pursuant to Rule 54(b), appellate review is mandatory. *Etheridge v. Cty. of Currituck*, 235 N.C. App. 469, 471, 762 S.E.2d 289, 292 (2014). However, a trial judge cannot, simply by denominating its ruling a "final judgment," make an order "immediately appealable under Rule 54(b) if it is not such a judgment." *Tridyn Indus., Inc. v. Am. Mut. Ins. Co.*, 296 N.C. 486, 491, 251 S.E.2d 443, 447 (1979). "[T]he trial court's determination

that there is no just reason to delay the appeal, while accorded great deference, cannot bind the appellate courts because ruling on the interlocutory nature of appeals is properly a matter for the appellate division, not the trial court." *Branch Banking & Tr. Co.*, 241 N.C. App. at 218, 772 S.E.2d at 499 (citation and quotation marks omitted).

Here, the trial court did not properly certify its Partial Summary Judgment Order for immediate appeal pursuant to Rule 54(b). Contrary to defendant's statement in her appellate brief, neither the original nor the corrected order includes "a finding, pursuant to Rule 54(b) of the North Carolina Rules of Civil Procedure, that there is no just reason for delaying the appeal of the order." Although the trial court's Order to Continue and Certification includes such a finding, "Rule 54(b) cannot be used to create appellate jurisdiction based on certification language that is not contained in the body of the judgment itself from which appeal is being sought[.]" *Id.* at 219, 772 S.E.2d at 500. "Neither Rule 54(b) itself nor the cases interpreting it authorize . . . a retroactive attempt to certify a prior order for immediate appeal . . . ." *Id.*; *see also* N.C. Gen. Stat. § 1A-1, Rule 54(b) (providing that in actions involving multiple claims or parties, "the court may enter a final judgment as to one or more but fewer than all of the claims or parties only if there is no just reason for delay and it is so determined *in the judgment*" (emphasis added)). Accordingly, defendant's appeal is not properly before this Court pursuant to Rule 54(b).

Furthermore, defendant neither demonstrates nor argues that the Partial Summary Judgment Order affects a substantial right and "will work injury" to her absent our immediate review. *Hanesbrands, Inc. v. Fowler*, 369 N.C. 216, 218, 794 S.E.2d 497, 499 (2016).

> It is the appellant's burden to present appropriate grounds for acceptance of an interlocutory appeal, and not the duty of this Court to construct arguments for or find support for appellant's right to appeal. Where the appellant fails to carry the burden of making such a showing to the court, the appeal will be dismissed.

Id. (citation, quotation marks, and original alterations omitted).

Since defendant has failed to present appropriate grounds for immediate review of the Partial Summary Judgment Order, we dismiss her interlocutory appeal.

APPEAL DISMISSED.

Judges MURPHY and ARROWOOD concur.

Report per Rule 30(e).