An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA18-447

Filed: 6 November 2018

Franklin County, No. 17 CVD 315

MARK WOODLIEF, Plaintiff,

v.

CANAL WOOD, LLC WILLIAM A. MCCALL as registered agent, Defendant.

Appeal by defendant from order entered 25 October 2017 by Judge Caroline S. Burnette in Franklin County District Court. Heard in the Court of Appeals 15 October 2018.

No brief filed by plaintiff-appellee.

Battle, Winslow, Scott & Wiley, P.A., by W. Dudley Whitley III and Eleanor M. Redhage, for defendant-appellant.

ARROWOOD, Judge.

Canal Wood, L.L.C., ("defendant") appeals from order denying its motion for a change of venue. For the following reasons, we reverse.

I. Background

Mark Woodlief ("plaintiff") initiated this action for breach of contract by filing a civil summons and complaint in Franklin County on 13 April 2017. Defendant

responded on 9 June 2017 by filing an answer and counterclaim that included the following motion to change venue:

> Pursuant to N.C. Gen. Stat. §§ 1-77 and 1-82, proper venue of this action lies only in Vance County and Robeson County. Defendant hereby demands pursuant to N.C. Gen. Stat. § 1-82 this action be conducted in the proper county and be removed to Robeson County before there are any further proceedings herein.

A reply filed by plaintiff on 25 September 2017 did not address defendant's motion to change venue.

Defendant filed notice of hearing on the motion to change venue on 4 August 2017 and the issue was heard as noticed in Franklin County District Court on 25 October 2017. An order denying defendant's motion to change venue was filed the same day. A certificate of service attached to the 25 October 2017 order shows service on all parties on 31 January 2018. Defendant filed notice of appeal from the order on 12 February 2018.

II. Discussion

As an initial matter, we note that the 25 October 2018 order denying defendant's motion to change venue did not dispose of the case and is therefore interlocutory. *See Veazey v. City of Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950) ("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."). "Generally, there is no right of

immediate appeal from interlocutory orders and judgments." *Goldston v. Am. Motors Corp.*, 326 N.C. 723, 725, 392 S.E.2d 735, 736 (1990). However, "immediate appeal is available from an interlocutory order . . . which affects a substantial right." *Sharpe v. Worland*, 351 N.C. 159, 162, 522 S.E.2d 577, 579 (1999) (quotation marks omitted); *see also* N.C. Gen. Stat. §§ 1-277(a) and 7A-27(b)(3)(a) (2017).

" '[T]he denial of a motion for change of venue, though interlocutory, affects a substantial right and is immediately appealable where the county designated in the complaint is not proper.' " *TD Bank, N.A. v. Crown Leasing Partners, LLC*, 224 N.C. App. 649, 653, 737 S.E.2d 738, 741 (2012) (quoting *Caldwell v. Smith*, 203 N.C. App. 725, 727, 692 S.E.2d 483, 484 (2010) (citations omitted)); *see also Gardner v. Gardner*, 300 N.C. 715, 719, 268 S.E.2d 468, 471 (1980) ("[A] right to venue established by statute is a substantial right. Its grant or denial is immediately appealable.") (internal citation omitted). Accordingly, we address the merits of defendant's appeal.

The sole issue on appeal is whether the trial court erred in denying defendant's motion to change venue. Defendant contends the trial court erred because venue in Franklin County is contrary to North Carolina Law. We agree.

N.C. Gen. Stat. § 1-79 governs venue for domestic entities, including limited liability companies. In the complaint, plaintiff alleged that defendant is a North Carolina limited liability company organized under the laws of the State of North Carolina with William A. McCall as its registered agent. Defendant admitted this

allegation in its answer, but now contends that "[d]efendant is in fact a Delaware limited liability company authorized to do business in North Carolina with its registered office in Lumberton, Robeson County, North Carolina." This distinction is inconsequential in the determination of proper venue in this case.

> For purposes of [venue under N.C. Gen. Stat. § 1-79], the term "domestic" when applied to an entity means:
>
> (1) An entity formed under the laws of this State, or
>
> (2) An entity that (i) is formed under the laws of any jurisdiction other than this State, and (ii) maintains a registered office in this State pursuant to a certificate of authority from the Secretary of State."

N.C. Gen. Stat. § 1-79(b) (2017). Thus, regardless of whether defendant is organized under the laws of North Carolina or defendant is registered in the State, it is a domestic entity for purposes of venue.

The residence of a domestic limited liability company for the purpose of suing and being sued is:

> (1) Where the registered or principal office of the . . . limited liability company . . . is located, or
>
> (2) Where the . . . limited liability company . . . maintains a place of business, or
>
> (3) If no registered or principal office is in existence, and no place of business is currently maintained or can reasonably be found, the term "residence" shall include any place where the . . . limited liability company . . . is regularly engaged in carrying on business.

N.C. Gen. Stat. § 1-79 (a). In this case, plaintiff issued the summons to defendant through defendant's registered agent at its office in Lumberton. There is no indication that defendant has any connection to Franklin County. Robeson County is therefore defendant's residence and venue is proper in Robeson County.

We further note that there is no indication that plaintiff or the contract has any connection to Franklin County. Plaintiff alleged in the complaint that he is a citizen of Vance County and that the parties entered into a contract wherein defendant offered to purchase and he offered to sell timber on a tract of land in Vance County. Thus, if venue was proper in any county besides Robeson County, it would be Vance County. *See* N.C. Gen. Stat. § 1-82 (2017). It appears from the record that the only connection this case has to Franklin County is plaintiff's attorney, which does not provide a basis for venue.

N.C. Gen. Stat. § 1-83 provides that a court "may" change the place of trial "[w]hen the county designated . . . is not the proper one." N.C. Gen. Stat. § 1-83 (2017). This Court has held that " '[t]he provision in [N.C. Gen. Stat.] § 1-83 that the court "may change" the place of trial when the county designated is not the proper one has been interpreted to mean "must change." ' " *TD Bank*, 224 N.C. App. at 653-54, 737 S.E.2d at 741 (quoting *Roberts v. Adventure Holdings, LLC*, 208 N.C. App. 705, 707, 703 S.E.2d 784, 786 (2010)); *see also Noland Co. v. Laxton Const. Co.*, 244 N.C. 50, 52, 92 S.E.2d 398, 400 (1956) ("When the motion to remove to the county of

the residence of the defendant, the action not having been brought in the proper county, is made, the question of removal is not one of discretion, but 'may' means *shall*, or *must*, and it becomes the duty of the judge to remove the cause."). Thus, the trial court was required to change venue to Robeson County upon defendant's motion in this case; failing to do so was error.

III. Conclusion

For the reasons stated above, the trial court erred in denying defendant's motion to change venue.

REVERSED.

Chief Judge McGee and Judge ELMORE concur.

Report per Rule 30(e).