

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA19-631

Filed: 3 March 2020

Henderson County, No. 17 CVD 1195

LESLIE CUEVAS, Plaintiff,

v.

IAN DAVIS, Defendant.

Appeal by defendant from order entered 1 February 2019 by Judge Charles W. McKeller in Henderson County District Court. Heard in the Court of Appeals 3 December 2019.

Carr, Blackwell & Associates, P.C., by Derek A. Jones, for plaintiff-appellee.

Ball Barden & Cury P.A., by J. Boone Tarlton, for defendant-appellant.

ZACHARY, Judge.

Defendant Ian Davis appeals from an order granting Plaintiff Leslie Cuevas a new trial pursuant to N.C. Gen. Stat. § 1A-1, Rule 59 (2019). After careful review, we dismiss this appeal as interlocutory.

Background

On 30 June 2014, Davis rear-ended Cuevas's stopped car at a red traffic light. Cuevas filed a negligence action against Davis on 28 June 2017, seeking to recover

for the expense of, *inter alia*, the medical treatment and therapy for injuries she incurred as a result of the collision. On 7 January 2019, this matter came on for hearing in Henderson County District Court before the Honorable Charles W. McKeller. The jury found that Davis’s negligence was the proximate cause of Cuevas’s damages, and awarded her \$500.

Cuevas timely filed a Rule 59 motion to set aside the jury’s verdict and grant a new trial on the issue of damages. Cuevas asserted, in pertinent part, that Davis’s closing argument included improper “statements suggesting that the jury consider how [its] verdict will affect [Davis] financially and [alluding] to the untruthful and misleading idea that there was no liability insurance coverage to assist [Davis] in satisfying a judgment[.]” On 1 February 2019, the trial court granted Cuevas’s motion for a new trial solely on the issue of damages pursuant to Rule 59(a)(6) of the North Carolina Rules of Civil Procedure. Davis appealed the order on 25 February 2019.

Jurisdiction

Davis argues that the trial court erred in granting Cuevas’s motion for a new trial on the issue of damages pursuant to N.C. Gen. Stat. § 1A-1, Rule 59(a)(6).¹ However, we must first determine whether this Court has jurisdiction to review

¹ “A new trial may be granted to all or any of the parties and on all or part of the issues for . . . [e]xcessive or inadequate damages appearing to have been given under the influence of passion or prejudice[.]” N.C. Gen. Stat. § 1A-1, Rule 59(a)(6).

Davis's interlocutory appeal. Although neither party has addressed this threshold jurisdictional question, "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." *Yordy v. N.C. Farm Bureau Mut. Ins. Co.*, 149 N.C. App. 230, 230-31, 560 S.E.2d 384, 385 (2002).

"Generally, there is no right of immediate appeal from interlocutory orders[.]" *Goldston v. Am. Motors Corp.*, 326 N.C. 723, 725, 392 S.E.2d 735, 736 (1990). "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). Only in limited circumstances may a party take immediate appeal from an interlocutory order. *See, e.g.*, N.C. Gen. Stat. § 7A-27(b)(3); N.C. Gen. Stat. § 1-277; N.C. Gen. Stat. § 1A-1, Rule 54(b).

In the instant case, Davis acknowledges that his appeal of the trial court's Rule 59 order is interlocutory. However, in his statement of grounds for appellate review, Davis cites N.C. Gen. Stat. § 7A-27(b)(3), which provides, *inter alia*, that an "appeal lies of right directly to the Court of Appeals . . . [f]rom any interlocutory order or judgment of a superior court or district court in a civil action or proceeding that . . . [g]rants or refuses a new trial." Notwithstanding the general language found in N.C.

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Gen. Stat. § 7A-27(b)(3), an order granting a *partial* new trial is not immediately appealable. *See, e.g., Loy v. Martin*, 144 N.C. App. 414, 416, 547 S.E.2d 843, 844, *disc. review denied*, 354 N.C. 218, 554 S.E.2d 340 (2001); *LaFalce v. Wolcott*, 76 N.C. App. 565, 568, 334 S.E.2d 236, 238 (1985). More specifically, it is well established that a “[d]efendant may not appeal from the order directing a new trial solely on the issue of damages.” *Johnson v. Garwood*, 49 N.C. App. 462, 463, 271 S.E.2d 544, 545 (1980); *accord Loy*, 144 N.C. App. at 416, 547 S.E.2d at 844; *Unigard Carolina Ins. Co. v. Dickens*, 41 N.C. App. 184, 187, 254 S.E.2d 197, 198 (1979). Thus, in accordance with our case law, we conclude that this Court does not have jurisdiction to address Davis’s case at this stage in the proceedings.

Furthermore, Davis’s brief does not contain any argument that the order granting a new trial on the issue of damages affects a substantial right, or that some other statutory ground permits appellate review. *See Brown v. Brown*, 77 N.C. App. 206, 208, 334 S.E.2d 506, 508 (1985) (observing that interlocutory appeals pursuant to §§ 7A-27 and 1-277 “will be permitted . . . if a substantial right would be affected by not allowing appeal before final judgment”), *disc. review denied*, 315 N.C. 389, 338 S.E.2d 878 (1986); *see also Loy*, 144 N.C. App. at 418, 547 S.E.2d at 846 (noting that “the trial court did not certify either the order granting a partial new trial or the underlying judgment for immediate review,” so that “defendants’ right to an

immediate appeal, if one exist[ed], depend[ed] on whether the order and judgment affect[ed] a substantial right”).

“It is not the duty of this Court to construct arguments for or find support for [the] appellant’s right to appeal from an interlocutory order[.]” *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 380, 444 S.E.2d 252, 254 (1994). Here, Davis has failed to meet his “burden of showing this Court that the order deprives [him] of a substantial right which would be jeopardized absent a review prior to a final determination on the merits.” *Id.* Accordingly, we dismiss Davis’s appeal.

DISMISSED.

Chief Judge McGEE and Judge DIETZ concur.

Report per Rule 30(e).