An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

2021-NCCOA-621

No. COA21-58

Filed 16 November 2021

Cumberland County, No. 20 CVS 2804

JEFFERY S. CAMBRE and GLORIA CAMBRE, Plaintiffs,

v.

REGIONAL IMAGING, P.A. d/b/a VALLEY REGIONAL IMAGING; VALLEY RADIOLOGY, P.A.; DAVID FISHER, M.D., individually and as owner and/or authorized agent/employee of REGIONAL IMAGING P.A. d/b/a VALLEY REGIONAL IMAGING, and VALLEY RADIOLOGY, P.A., Defendants.

Appeal by Defendant from order entered 16 October 2020 by Judge Mary Ann Tally in Cumberland County Superior Court. Heard in the Court of Appeals 20 October 2021.

Anderson, Johnson, Lawrence & Butler, L.L.P., by J. Stewart Butler, III, and Smith, Dickey & Dempster, P.A., by Allen D. Smith, for Plaintiffs-Appellees.

Carrie E. Meigs and Lewis Brisbois Bisgaard & Smith, LLP, by Justin G. May, for Defendant-Appellant.

GRIFFIN, Judge.

¶ 1 Defendant The Medical Imaging Center, LLC ("TMIC"), d/b/a Valley Regional Imaging, appeals an interlocutory order which denied TMIC's motions to dismiss and allowed Plaintiffs Jeffery S. Cambre's and Gloria Cambre's (collectively, "Plaintiffs")

motion to amend their complaint. TMIC has not demonstrated that the order affected a substantial right which would be lost without immediate review, and the trial court did not certify the appeal pursuant to N.C. Gen. Stat. § 1A-1, Rule 54(b). Because we lack jurisdiction over TMIC's appeal, we must dismiss.

I. Factual and Procedural Background

¶ 2 TMIC is a limited liability company registered in North Carolina. TMIC registered "Valley Regional Imaging" as its trade name. Regional Imaging, P.A., is a professional corporation registered in North Carolina.

¶ 3 In their complaint, Plaintiffs named Valley Regional Imaging and incorrectly stated that Regional Imaging, P.A., was the entity doing business as Valley Regional Imaging. Plaintiffs attempted to serve Regional Imaging, P.A., by mail; their summons and complaint were returned as undeliverable. Subsequently, Plaintiffs timely served Valley Regional Imaging with process. Prior to filing the lawsuit, Plaintiffs' counsel and TMIC's counsel had communicated with each other regarding Plaintiffs' claim.

¶ 4 On 21 August 2020, TMIC filed motions to dismiss pursuant to N.C. R. Civ. P. 12(b)(2), (4), (5), and (6). On 3 September 2020 and 1 October 2020, respectively, Plaintiffs filed a Motion to Amend Complaint and an Amended Motion to Amend Complaint, seeking to add TMIC to the complaint as a defendant.

¶ 5 On 16 October 2020, the trial court entered an order denying TMIC's motions

to dismiss and granting Plaintiffs' amended motion to amend. TMIC appeals.

II. Analysis

¶ 6 TMIC argues that the trial court's order affected its substantial right to due process. We acknowledge that "the constitutional right to due process is a substantial right." *Savage Towing Inc., v. Town of Cary*, 259 N.C. App. 94, 99, 814 S.E.2d 869, 873 (2018) (citing *K2 Asia Ventures v. Trota*, 209 N.C. App. 716, 724, 708 S.E.2d 106, 112 (2011)). However, we disagree that TMIC's right to due process would be lost without immediate review.

¶ 7 TMIC concedes that this appeal is interlocutory. "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 (1950) (citation omitted).

¶ 8 "Generally, there is no right of immediate appeal from interlocutory orders and judgments." *Sharpe v. Worland*, 351 N.C. 159, 161, 522 S.E.2d 577, 578 (1999) (citations omitted). Immediate appeal is available when "the trial court certifies the case for appeal pursuant to N.C. Gen. Stat. § 1A-1, Rule 54(b)," or "the trial court's decision deprives the appellant of a substantial right which would be lost absent immediate review." *N.C. Dep't of Transp. v. Page*, 119 N.C. App. 730, 734, 460 S.E.2d 332, 334 (1995) (citations omitted).

¶ 9 Here, the trial court's 16 October 2020 order did not certify the case for appeal pursuant to Rule 54(b). Therefore, TMIC's appeal is proper only if it can demonstrate that the "decision deprive[d] [it] of a substantial right which would be lost absent immediate review." *Id.*; *see also Embler v. Embler*, 143 N.C. App. 162, 166, 545 S.E.2d 259, 262 (2001) ("The burden is on the appellant to establish that a substantial right will be affected unless he is allowed immediate appeal from an interlocutory order." (citation omitted)).

¶ 10 In *Love v. Moore*, 305 N.C. 575, 291 S.E.2d 141 (1982), our Supreme Court considered an interlocutory appeal of an adverse ruling on a motion to dismiss. The "defendant characterized its Rule 12 motion as one to dismiss for lack of personal jurisdiction," but the motion "in reality challenge[d] the sufficiency of the service . . . and the sufficiency of the process[.]" *Id.* at 579, 291 S.E.2d at 145. The defendant "contended that use of the incorrect middle name in the published notice made the process itself insufficient and that service by publication . . . was defective." *Id.* The defendant made no argument that it lacked minimum contacts with North Carolina. *Id.* at 581, 291 S.E.2d at 146. The Supreme Court held that this Court should have dismissed the appeal as interlocutory, reasoning that although challenges to personal jurisdiction for lack of minimum contacts are immediately appealable under N.C. Gen. Stat. § 1-277(b), the statute does not allow immediate appeals of challenges to "questions of technical error involving service and process." *Id.* at 581-82, 291 S.E.2d

at 146-47.

¶ 11 TMIC's appeal is analogous to the defendant's appeal in *Love*. Although TMIC defines its right to due process as "a right to be free from the court's assertion of power over it when that court has no personal jurisdiction over it", nothing in the Record suggests that TMIC lacks the requisite minimum contacts with North Carolina. Instead, TMIC's argument centers on its allegation that Plaintiffs failed to properly serve TMIC with process, and thus the trial court never acquired personal jurisdiction over TMIC. In other words, TMIC is appealing "questions of technical error involving service and process" which do not warrant immediate review. *See id.*

¶ 12 Within the factual context of this case, TMIC has not demonstrated that the 16 October 2020 order "deprived [TMIC] of its substantial right to due process, absent immediate appellate review." *Savage Towing Inc.*, 259 N.C. App. at 99-100, 814 S.E.2d at 873 (dismissing the plaintiff's interlocutory appeal). TMIC apparently received notice of Plaintiffs' claim, as TMIC's counsel and Plaintiffs' counsel had communicated about Plaintiffs' claim prior to the lawsuit. Valley Regional Imaging, the entity which Plaintiffs named and timely served, was not an entity unrelated to TMIC: it was TMIC's registered trade name. *See Liss v. Seamark Foods*, 147 N.C. App. 281, 285-86, 555 S.E.2d 365, 368-69 (2001) (allowing motion to amend where the original and amended names of the corporations were "not two separate and distinct entities" and the newly named corporation had notice of the suit) (citation omitted).

III. Conclusion

¶ 13 For the foregoing reasons, we dismiss TMIC's appeal.

DISMISSED.

Judges CARPENTER and JACKSON concur.

Report per Rule 30(e).