An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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-679

No. COA20-901

Filed 7 December 2021

Mecklenburg County, No. 18CVD19752

PATRICK PRESTON, Plaintiff,

v.

TOSHIKO PRESTON, Defendant.

Appeal by defendant from order entered 10 March 2020 by Judge Karen McCallum in Mecklenburg County District Court. Heard in the Court of Appeals 6 October 2021.

Hamilton Stephens Steele & Martin, PLLC, by Kyle W. LeBlanc, for Plaintiff-Appellee.

Fleet Law, by Jennifer L. Fleet, for Defendant-Appellant.

CARPENTER, Judge.

¶ 1 Defendant-Wife appeals Judge McCallum's order denying Defendant-Wife's motion to dismiss for lack of subject matter jurisdiction. For the following reasons, we dismiss Defendant-Wife's appeal.

I. Factual and Procedural Background

¶ 2 In 2017, Toshiko Preston, hereinafter, "Defendant-Wife," and Patrick Preston, hereinafter, "Plaintiff-Husband," moved to an apartment in Beltsville, Maryland. However, shortly thereafter, Plaintiff-Husband moved to North Carolina. While Plaintiff-Husband was overseas working as a contractor in Afghanistan, Defendant-Wife renewed the Maryland apartment lease.

¶ 3 Plaintiff-Husband filed an initial complaint for absolute divorce against Defendant-Wife on 12 October 2018 in Mecklenburg County District Court. On 12 July 2019, Defendant-Wife filed her answer, motions to dismiss, and motion for sanctions claiming that Plaintiff-Husband was not domiciled in North Carolina.

¶ 4 The record reflects Plaintiff-Husband took steps to establish North Carolina as his domicile. Plaintiff-Husband submitted evidence to the trial court that his address was in North Carolina, his only driver's license was issued in North Carolina, his license plate was North Carolina-issued, all his mail was addressed to his residence in North Carolina, he paid North Carolina taxes, his doctors were at the Veterans Affairs hospital in North Carolina, and he voted in North Carolina. After a full evidentiary hearing, the trial court denied Defendant-Wife's motion to dismiss, concluding as a matter of law Plaintiff-Husband was domiciled in North Carolina, and therefore, North Carolina had subject matter jurisdiction over Plaintiff-Husband's claim for absolute divorce. On 1 June 2020, Defendant-Wife filed her

notice of appeal of Judge McCallum's order denying Defendant-Wife's motion to dismiss for lack of subject matter jurisdiction.

II. Issues

¶ 5 The issues on appeal are (1) whether the trial court's denial of Defendant-Wife's motion to dismiss for lack of subject matter jurisdiction affects a substantial right under N.C. Gen. Stat. § 7A-27(b)(3), and (2) whether the trial court lacked subject matter jurisdiction to hear Plaintiff-Husband's claim for absolute divorce because he was not domiciled in North Carolina.

III. Jurisdiction

¶ 6 Defendant-Wife asserts this Court has jurisdiction to hear her appeal of the trial court's denial of her motion to dismiss for lack of subject matter jurisdiction because the interlocutory order affects a substantial right pursuant to N.C. Gen. Stat. § 7A-27(b)(3)(a) (2019).

¶ 7 "In order to determine whether a particular interlocutory order is appealable pursuant to N.C. Gen. Stat. §§ 1-277(a) and 7A–27 (d)(1), we utilize a two-part test, with the first inquiry being whether a substantial right is affected by the challenged order and the second being whether this substantial right might be lost, prejudiced, or inadequately preserved in the absence of an immediate appeal." *Clements v. Clements*, 219 N.C. App. 581, 584, 725 S.E.2d 373, 376 (2012) (internal citations omitted). To obtain review of an interlocutory order, the appellant must state

"sufficient facts and argument to support appellate review on the ground that the challenged order affects a substantial right." N.C. R. App. P. 28(b)(4) (2019). *See also, Clements*, 219 N.C. App. at 583, 725 S.E.2d at 376. A "substantial right . . . is considered affected if there are overlapping factual issues between the claim determined and any claims which have not yet been determined because such overlap creates the potential for inconsistent verdicts resulting from two trials on the same factual issues." *Carsanaro v. Colvin*, 215 N.C. App. 455, 457, 716 S.E.2d 40, 44 (2011) (internal quotations and citations omitted). "Where a party is appealing an interlocutory order to avoid two trials, the party must show that (1) the same factual issues would be present in both trials and (2) the possibility of inconsistent verdicts on those issues exists." *Clements*, 219 N.C. App. at 585, 725 S.E.2d at 376 (internal quotations and citations omitted).

¶ 8 Defendant-Wife alleges no actual facts or plausible argument to support appellate review on the ground that the challenged order affects a substantial right. *See* N.C.R. App. P. 28(b)(4). Defendant-Wife's "factual" support comes from a contention the divorce could also proceed in Maryland, since she is a Maryland resident; therefore, she contends she has a substantial right in the avoidance of differing verdicts in two separate trials. It appears no action for divorce has been filed in Maryland, and there is no litigation pending in Maryland regarding the parties' divorce. In the case law of this State in which the review of an interlocutory

order was taken, citing the avoidance of two separate trials, the procedural scenarios involved a separation of issues between district and superior courts in North Carolina. *See*, *e.g.*, *Clements*, 219 N.C. App. 581, 725 S.E.2d 373; *Carsanaro*, 215 N.C. App. at 455, 716 S.E.2d at 40.

¶ 9 Further, Defendant-Wife cites no case law supporting the idea that subject matter jurisdiction does not exist in a state where one spouse is domiciled and files for divorce, just because jurisdiction may have existed in another state where the other spouse is domiciled had divorce proceedings been initiated in that state. Rather, Defendant-Wife correctly cites to N.C. Gen. Stat. § 50-6, which requires only one party to a divorce action to be domiciled as a resident of North Carolina in order for subject matter jurisdiction to lie in the State. Defendant-Wife's argument her appeal affects a substantial right in the avoidance of differing verdicts in two separate trials is therefore without merit.

IV. Conclusion

¶ 10 For the reasons described above, this Court dismisses Defendant-Wife's appeal as interlocutory. Therefore, we do not reach Defendant-Wife's second raised issue on the question whether competent evidence existed in the record to support the trial court's finding Plaintiff-Husband was domiciled in North Carolina.

DISMISSED.

Judges ZACHARY and WOOD concur.

Report per Rule 30(e).