An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

2022-NCCOA-143

No. COA21-199

Filed 1 March 2022

Durham County, No. 19 CVS 3400

TAMMY LOWREY, Plaintiff,

v.

CHOICE HOTELS INTERNATIONAL, INC., MANOJKUMAR (AKA "MANOJ") MOHANLAL GANDHI, MONA GANDHI, MM SHIVAH, LLC, MM VAIBHAVLAXMI, LLC, CI HOTELS, LLC and WS HOTELS, LLC, Defendants.

Appeal by Defendants from order entered 25 June 2020 by Judge Orlando F. Hudson in Durham County Superior Court. Heard in the Court of Appeals 1 December 2021.

Ruth Sheehan Law, by Ruth Sheehan, The Francis Law Firm, PLLC, by Charles T. Francis, and Kennedy Kennedy Kennedy & Kennedy, LLP. by Harvey L. Kennedy and Harold L. Kennedy, III, for Plaintiff-Appellee.

Brown, Crump, Vanore & Tierney, PLLC, by Skylar J. Gallagher and O. Craig Tierney, Jr., and Daughtry Woodard Lawrence & Starling, LLP, by N. Leo Daughtry and Luther D. Starling, Jr., for Defendants-Appellants.

GRIFFIN, Judge.

¶ 1 Defendants appeal from an order denying their motion to reconsider a previously entered protective order restricting the scope of discovery. Plaintiff has filed a motion to dismiss Defendants' appeal as interlocutory. Because the

reconsideration order is interlocutory and does not affect a substantial right, we grant Plaintiff's motion to dismiss Defendants' appeal for lack of appellate jurisdiction.

¶ 2 Defendants have also filed a petition for writ of certiorari requesting discretionary review of the reconsideration order. We deny the petition.

I. Factual and Procedural Background

¶ 3 On 19 December 2019, Plaintiff Tammy Lowrey filed an Amended Complaint alleging that her former supervisor, Defendant Manojkumar ("Manoj") Mohanlal Gandhi, sexually assaulted her and wrongfully discharged her from employment with Choice Hotels International. During discovery, Defendants requested that Plaintiff respond to interrogatories regarding alleged intimate encounters between herself and a guest at the hotel. Plaintiff asserted that the requested information was protected by Evidentiary Rule 412 and otherwise "irrelevant to th[e] case and . . . not reasonably likely to lead to the discovery of admissible evidence."

¶ 4 On 3 February 2020, Defendants filed a Motion to Compel discovery, requesting that the trial court compel Plaintiff to respond to Defendants' interrogatories. Defendants' motion was heard on 24 February 2020 in Durham County Superior Court. Plaintiff argued during the hearing that the trial court should deny Defendants' motion because Plaintiff's intimate encounters with individuals other than Manoj were inadmissible under Rule 412. Following the hearing, the trial court entered a protective order allowing "Plaintiff's Oral Motion to

Preclude the Defendants from conducting any discovery about the sexual relations . . . between the Plaintiff and other individuals, besides . . . Manoj . . . , pursuant to Rule 412 . . . and well-settled North Carolina case law[.]" Defendants did not appeal from this order.

¶ 5 On 1 June 2020, Defendants filed a Motion to Reconsider, requesting that the trial court reconsider its previous order restricting discovery under Rule 412. The trial court then entered the reconsideration order denying Defendants' motion. Defendants timely appealed from the reconsideration order.

II. Analysis

¶ 6 Defendants request that we reverse the reconsideration order because the court "misapplied the law and abused its discretion in limiting discovery of Plaintiff's . . . sexual behavior under Rule 412." We hold that this Court does not have appellate jurisdiction to address Defendants' appeal because the reconsideration order is interlocutory and does not affect a substantial right.

¶ 7 "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). A discovery order is interlocutory and not subject to immediate appeal unless the order affects a substantial right. *Sharpe v. Worland*, 351 N.C. 159, 163, 522 S.E.2d 577, 579–80 (1999). Interlocutory orders denying

discovery affect a substantial right when "the desired discovery would not have delayed trial or have caused the opposing party any unreasonable annoyance, embarrassment, oppression or undue burden or expense, and if the information desired is highly material to a determination of the critical question to be resolved in the case[.]" *Dworsky v. Travelers Ins. Co.*, 49 N.C. App. 447–48, 271 S.E.2d 522, 523 (1980). It is on this basis that Defendants argue the reconsideration order affects a substantial right.

¶ 8 Although the original protective order may have affected a substantial right, Defendants failed to appeal from the order. Defendants now appeal from the reconsideration order instead. The reconsideration order, however, is not an order denying discovery and thus cannot affect a substantial right entitling Defendants to immediate appeal. Rather, the reconsideration "order substantively denies [Defendants'] request to reevaluate the trial court's" protective order. *Zairy v. VKO, Inc.*, 212 N.C. App. 687, 690, 712 S.E.2d 392, 394 (2011). "[I]t in no way makes any determinations as to" the scope of discovery. *Id.* Moreover, Defendants cite to no cases holding that a reconsideration order affects a substantial right, and we are aware of none. *See id.* (dismissing an appeal as interlocutory where the appellant did not establish that a reconsideration order affected a substantial right). We therefore allow Plaintiff's motion to dismiss Defendants' appeal as interlocutory.

III. Conclusion

¶ 9 For the foregoing reasons, we allow Plaintiff's motion to dismiss Defendants' appeal as interlocutory. Defendants' petition for writ of certiorari is denied.

DISMISSED.

Judges TYSON and ARROWOOD concur.

Report per Rule 30(e).