An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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-225

No. COA21-479

Filed 5 April 2022

Bertie County, No. 20 CVS 175

STANLEY HILL and REGINA HILL, Plaintiffs,

v.

CORNELIUS GRANT, Defendant.

Appeal by Defendant from order entered 17 May 2021 by Judge Cy A. Grant, Sr., in Bertie County Superior Court. Heard in the Court of Appeals 9 February 2022.

Bratcher Adams Folk, PLLC, by Brice Bratcher and Jeremy Denton Adams, for Plaintiffs-Appellees.

Hornthal, Riley, Ellis & Malland, LLP, by L. Phillip Hornthal, III, for Defendant-Appellant.

COLLINS, Judge.

¶ 1 Defendant Cornelius Grant appeals an interlocutory order granting partial summary judgment to Plaintiffs Stanley and Regina Hill. Because Defendant did not demonstrate that the interlocutory order is immediately appealable, we dismiss the appeal.

I. Background

¶ 2 Plaintiffs Stanley Hill and his wife, Regina Hill, filed a complaint against

Defendant Cornelius Grant on 3 August 2020, seeking to recover from Defendant $271,768.92 in damages. Plaintiffs alleged claims for intentional misrepresentation, fraud, breach of contract, and quantum meruit. Plaintiffs also sought a declaratory judgment that the contract between Plaintiffs and Defendant is "null and void as against public policy," and "prohibiting Defendant from seeking any protections under the contract executed by the parties."

¶ 3 Plaintiffs alleged in their complaint the following: They entered into an agreement with Defendant whereby Defendant agreed to perform construction services on real property owned by Plaintiffs. Defendant "represented to Plaintiffs that he was a licensed general contractor in Virginia and that his Virginia general contractor's license allowed him to perform construction work in North Carolina. Defendant is not a licensed general contractor in either Virginia or North Carolina." "As of the filing of this complaint, the agreed upon work has not been completed and no final completion date has been provided" and "what work was performed was below workmanlike quality and requires additional work to repair." Plaintiffs paid Defendant $145,000.00 pursuant to the contract. Further, Plaintiffs' estimated cost to complete and correct the construction services is $131,768.92. Defendant filed an answer and moved to dismiss the complaint pursuant to Rules 12(b)(2), (4), and (5) of the North Carolina Rules of Civil Procedure. Defendant also filed an affidavit.

¶ 4 Plaintiffs filed a motion for summary judgment on all claims, pursuant to Rule

56 of the North Carolina Rules of Civil Procedure. The motion was accompanied by an affidavit of Plaintiff Stanley Hill and various exhibits. The matter came on for hearing on 3 May 2021. On 17 May 2021, the trial court entered an Order Granting in Part and Denying in Part Plaintiffs' Motion for Summary Judgment ("Order"). The trial court granted summary judgment on Plaintiffs' claims for declaratory judgment and unjust enrichment.[1] Because the "contract between the parties is declared void," the trial court denied summary judgment as to Plaintiffs' claim for breach of contract.[2] The trial court stated in its findings, "For the purpose of clarity, summary judgment is neither granted nor denied as to the Plaintiffs' Second and Third Claims for relief, specifically the claims for Intentional Misrepresentation and Fraud." The trial court awarded Plaintiffs $156,475.76 plus interest.

¶ 5 Defendant timely filed notice of appeal.

II. Discussion

¶ 6 As a threshold issue, we must determine whether Defendant may immediately

[1] The trial court's Order refers to Plaintiffs' claim for quantum meruit both as a claim for unjust enrichment and as a claim for equitable relief.

[2] The Order contains an inconsistency as to the disposition of the breach of contract claim. In the findings of fact section it states, "There is no genuine issue of material fact pertaining to Plaintiffs' claims for declaratory [judgment], breach of contract and unjust enrichment, and summary judgment is appropriate as to those claims." In the decretal section it states, "Because the contract between the parties is declared void, summary judgment is denied as to Plaintiffs' claim for breach of contract." The inconsistency is immaterial to the disposition of this appeal.

appeal the trial court's Order.

¶ 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." *Hanesbrands Inc. v. Fowler*, 369 N.C. 216, 218, 794 S.E.2d 497, 499 (2016) (quoting *Veazey v. City of Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950)). "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). "A grant of partial summary judgment, because it does not completely dispose of the case, is an interlocutory order from which there is ordinarily no right of appeal." *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 379, 444 S.E.2d 252, 253 (1994) (citation omitted).

¶ 8 Immediate appeal from an interlocutory order may be allowed: "(1) if the order is final as to some but not all of the claims or parties and the trial court certifies there is no just reason to delay the appeal pursuant to [N.C. Gen. Stat. § 1A-1], Rule 54(b), or (2) if the trial court's decision deprives the appellant of a substantial right" that will be lost absent immediate review pursuant to N.C. Gen. Stat. §§ 1-277(a) and 7A-27(b)(3)(a). *Woody v. Vickrey*, 276 N.C. App. 427, 2021-NCCOA-105, ¶ 13 (citation omitted). In this case, the trial court did not certify the Order under North Carolina Rule of Civil Procedure 54(b).

An appellant is deprived of a substantial right if the right is "lost, prejudiced

or [will] be less than adequately protected" without an immediate appeal. *J & B Slurry Seal Co. v. Mid-South Aviation, Inc.*, 88 N.C. App. 1, 6, 362 S.E.2d 812, 815 (1987). "It is the appellant's burden to present appropriate grounds for . . . acceptance of an interlocutory appeal, . . . and not the duty of this Court to construct arguments for or find support for appellant's right to appeal[.]" *Hanesbrands*, 369 N.C. at 218, 794 S.E.2d at 499 (quotation marks and citation omitted). To satisfy this burden, the appellant must allege in the "statement of the grounds for appellate review" section of their brief "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); *see, e.g.*, *Denney v. Wardson Constr., Inc.*, 264 N.C. App. 15, 18, 824 S.E.2d 436, 438 (2019) (burden is on appellant to explain "why the facts of that particular case demonstrate that the challenged order affects a substantial right"). "Where the appellant fails to carry the burden of making such a showing to the court, the appeal will be dismissed." *Hanesbrands*, 369 N.C. at 218, 794 S.E.2d at 499 (citation omitted).

¶ 9 Here, the trial court's Order was final as to some but not all of Plaintiffs' claims. Plaintiffs' complaint alleged five causes of action: declaratory judgment, breach of contract, quantum meruit, fraud, and intentional misrepresentation. The trial court granted summary judgment on Plaintiffs' declaratory judgment and quantum meruit causes of action, denied summary judgment on Plaintiffs' breach of contract cause of action, and neither granted nor denied summary judgment on

Plaintiffs' fraud and intentional misrepresentation causes of action. Accordingly, the Order on appeal is interlocutory.

¶ 10 In his brief, Defendant fails to acknowledge the interlocutory nature of the Order and makes no argument in his grounds for appellate review, or elsewhere, that the Order deprived him of a substantial right that would be lost, prejudiced, or less than adequately protected absent immediate review. *See Woody*, 276 N.C. App. 427, 2021-NCCOA-105 at ¶ 14 (citations omitted). Because Defendant has failed to carry his burden of showing that a substantial right has been affected, and therefore, has failed to show that the Order is immediately appealable, the appeal must be dismissed. *Radiator Specialty Co. v. Arrowood Indem. Co.*, 253 N.C. App. 508, 522, 800 S.E.2d 452, 461-62 (2017).

DISMISSED.

Judges ZACHARY and CARPENTER concur.

Report per Rule 30(e).