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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA21-600

Filed 02 May 2023

Richmond County, No. 20 CVS 1127

CHAD GARDNER, LISA GARDNER, LONNIE NORTON, HOPE NORTON, THE
TOWN OF DOBBINS HEIGHTS, and THE CITY OF HAMLET, Plaintiffs,

v.

RICHMOND COUNTY, Defendant.

Appeal by plaintiff Town of Dobbins Heights from order entered 14 June 2021
by Judge Dawn M. Layton in Superior Court, Richmond County. Heard in the Court
of Appeals 5 April 2022.

*The Brough Law Firm, PLLC, by T.C. Morphis, Jr. and Brady N. Herman, for
plaintiff-appellant Town of Dobbins Heights.*

*McGuireWoods LLP, by Henry L. Kitchin, Jr. and Caroline E. Keen, for
defendant-appellee.*

STROUD, Chief Judge.

Town of Dobbins Heights (“Plaintiff”) appeals from a trial court order granting
Defendant’s motion to dismiss Plaintiff’s complaint for lack of standing. Because this
appeal is interlocutory, and Plaintiff Town of Dobbins Heights has not demonstrated
any basis for immediate review, we dismiss.

I. Background

On 3 December 2020, four individual plaintiffs and two municipal plaintiffs filed a verified complaint “seeking a declaratory judgment that the rezoning” of certain property “by the Richmond County Board of Commissioners on [8 October 2020] is void and of no effect[.]” This appeal is only in regard to Plaintiff Dobbins Heights, which alleged Defendant’s proposed changes to the property would negatively impact its water supply and residents. Further, Plaintiff specifically contended it had standing because the proposed changes to the property would “have a significant negative impact both on the water supply . . . and on the general quality of life for the residents” of Dobbins Heights.¹ In February of 2021, Defendant filed a pre-answer motion to dismiss alleging the municipal plaintiffs did not have standing.

In May of 2021, the trial court held a hearing on Defendant’s motion to dismiss. On 14 June 2021, the trial court entered an order, among other things, granting Defendant’s motion to dismiss Dobbins Heights. As of the date of the order, all other plaintiffs remained. Dobbins Heights appeals.

II. Interlocutory Appeal

Dobbins Heights’s appeal is interlocutory because claims remain pending before the trial court by the remaining parties. *See Veazey v. City of Durham*, 231

¹ According to the pleadings, Dobbins Heights obtains water from Plaintiff City of Hamlet. Plaintiff City of Hamlet raised the same claims as to negative impacts on its water supply, and the trial court did not dismiss its claims.

N.C. 357, 362, 57 S.E.2d 377, 381 (1950) (“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.”). In this case, all plaintiffs sought a declaratory judgment. None of the plaintiffs, including Dobbins Heights, seek monetary damages or injunctive relief.

Generally, there is no right of immediate appeal from an interlocutory order. However, an interlocutory order is immediately appealable if (1) the order is final as to some claims or parties, and the trial court certifies pursuant to N.C.G.S. § 1A–1, Rule 54(b) that there is no just reason to delay the appeal, or (2) the order deprives the appellant of a substantial right that would be lost unless immediately reviewed.

Currin & Currin Const., Inc. v. Lingerfelt, 158 N.C. App. 711, 713, 582 S.E.2d 321, 323 (2003) (citations omitted). Here, there is no Rule 54(b) certification, but Dobbins Heights asserts that the trial court’s order affects a substantial right which would be impaired without immediate review. “If a party attempts to appeal from an interlocutory order without showing that the order in question is immediately appealable, we are required to dismiss that party’s appeal on jurisdictional grounds.” *Hamilton v. Mortgage Information Services, Inc.*, 212 N.C. App. 73, 77, 711 S.E.2d 185, 189 (2011) (citation omitted).

The test for whether a substantial right has been affected consists of two parts: (1) the right itself must be substantial; and (2) the deprivation of that substantial right must potentially work injury to the appealing party if not corrected before appeal from final judgment.

Whether a substantial right is affected is determined on a case-by-case basis and should be strictly construed.

The right to immediate appeal of an order affecting a substantial right is reserved for those cases in which the normal course of procedure is inadequate to protect the substantial right affected by the order sought to be appealed. Our courts have generally taken a restrictive view of the substantial right exception.

Peters v. Peters, 232 N.C. App. 444, 448, 754 S.E.2d 437, 440-41 (2014) (citations and original brackets omitted).

Dobbins Heights asserts a substantial right will be affected because there is a possibility of inconsistent verdicts, if this appeal is dismissed, citing *Creek Pointe Homeowner's Ass'n, Inc. v. Happ*, 146 N.C. App. 159, 552 S.E.2d 220 (2001):

Akin to *Creek Pointe*, here, the trial court concluded that Dobbins Heights lacks standing but that all other Plaintiffs have standing. Were this Court to conclude that Dobbins Heights does not have a substantial right affected and dismiss this appeal, there would be the possibility of two trials (one for the remaining Plaintiffs and one for Dobbins Heights if the Court were to find that it has standing through a subsequent appeal). Two trials on the same issue would raise the possibility of inconsistent verdicts, and per this Court's holding in *Creek Pointe*, such duplicative litigation would work significant injury and prejudice to Dobbins Heights.

However, in *Creek Pointe*, while the law on "substantial right" is mentioned, there is no legal analysis explaining what the plaintiff's substantial right actually was. *See id.* at 162-63, 552 S.E.2d at 223-24. Further, the plaintiff in *Creek Pointe* was seeking monetary damages as well as an injunction. *See id.* at 161, 552 S.E.2d

at 222-23.

Here,

the appellant cannot meet its burden under the inconsistent verdicts doctrine simply by asserting that the facts involved in the claims remaining before the trial court may overlap with the facts involved in the claims that have been dismissed. Instead, the appellant must explain to the Court how, in a second trial on the challenged claims, a second fact-finder might reach a result that cannot be reconciled with the outcome of the first trial.

Doe v. City of Charlotte, 273 N.C. App. 10, 21, 848 S.E.2d 1, 10 (2020) (citations and quotation marks omitted).

Dobbins Heights's argument does not meet its burden of "demonstrat[ing] the applicability of the substantial right exception to the particular case before" this Court. *Hamilton*, 212 N.C. App. at 79, 711 S.E.2d at 190. Dobbins Heights simply cites *Creek Pointe* and essentially asserts the holding in *Creek Pointe* requires immediate review of Dobbins Heights's appeal without analysis. This Court in *Doe* expressly warned against this type of overreliance on a past case finding a substantial right, which Dobbins Heights engages in here:

A final observation: Plaintiffs' failure to adequately assert how the challenged order affects a substantial right may be partly explained by Plaintiffs' fixation on a published case that they believed to be controlling. This is a mistake our Court has warned against for years. Whether a particular ruling affects a substantial right must be determined on a case-by-case basis. Consequently, outside of a few exceptions such as sovereign immunity, the appellant cannot rely on citation to precedent to show that an order affects a substantial right. *Instead, the appellant*

must explain, in the statement of the grounds for appellate review, why the facts of that particular case demonstrate that the challenged order affects a substantial right.

Doe, 273 N.C. App. at 22, 848 S.E.2d at 10 (emphasis added) (citations and quotation marks omitted). Dobbins Heights has failed to do so here. Accordingly, we dismiss the appeal as interlocutory. *See Hamilton*, 212 N.C. App. at 77, 711 S.E.2d at 189.

III. Conclusion

Because Dobbins Heights failed to demonstrate a substantial right that would be impacted by this Court's failure to immediately hear its appeal, we dismiss as interlocutory.

DISMISSED.

Judges TYSON and ZACHARY concur.

Report per Rule 30(e).