

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

No. COA23-922

Filed 4 June 2024

Iredell County, No. 21 CVD 2569

JEFFREY LYNN RAPER II, Plaintiff,

v.

AMANDA PERRY RAPER, Defendant,

v.

J.L. RAPER CORP., and RAPER MANAGEMENT GROUP, LLC, Third-Party Defendants.

Appeal by Defendant from orders entered 30 March 2023 and 28 April 2023 by Judge Thomas R. Young in Iredell County District Court. Heard in the Court of Appeals 30 April 2024.

*Arnold & Smith, PLLC, by Ashley A. Crowder, for Plaintiff-Appellee.*

*Pope McMillan, P.A., by Clark D. Tew and Christian Kiechel, for Defendant-Appellant.*

*James, McElroy, Diehl, P.A., by Jon R. Burns and Preston O. Odom, III, for Third-Party Defendants-Appellees.*

GRIFFIN, Judge.

Defendant Amanda Perry Raper appeals from the trial court's order and

amended order dismissing Defendant's third-party complaint against Third-Party Defendants J.L. Raper Corp. and Raper Management Group, LLC. We dismiss Defendant's appeal as interlocutory.

### **I. Factual and Procedural Background**

This appeal arises out of an action initiated by Plaintiff Jeffrey Lynn Raper, II, upon filing a complaint for child custody and equitable distribution against Defendant on 16 September 2021. The record reflects the following timeline:

Plaintiff Jeffrey Lynn Raper, II, and Defendant were married on 6 March 2015.

One child was born of the marriage on 8 February 2021.

On 1 June 2021, Plaintiff and Defendant separated.

On 16 September 2021, Plaintiff filed a complaint for child custody and equitable distribution against Defendant.

On 15 October 2021, Defendant filed an answer and counterclaims for child custody and support, postseparation support and alimony, attorney fees, and equitable distribution.

On 13 December 2021, Defendant filed a reply to Defendant's counterclaims.

On 31 May 2022, Plaintiff filed a motion to join Third-Party Defendants J.L. Raper Corp. and Raper Management Group, LLC.

On 13 June 2022, Plaintiff filed a supplemental pleading for absolute divorce.

On 8 November 2022, the trial court entered a judgment granting Plaintiff absolute divorce from Defendant.

On 22 November 2022, the trial court entered an order granting

Defendant's motion to join the parties.

On 19 December 2022, Defendant filed a third-party complaint against Third-Party Defendants.

On 20 February 2023, Third-Party Defendants filed a motion to dismiss, answer, and affirmative defenses.

On 21 March 2023, Third-Party Defendants motion to dismiss came on for hearing before Judge Young in Iredell County District Court.

On 30 March 2023, the trial court entered an order granting Third-Party Defendants motion to dismiss, dismissing Defendant's third-party complaint.

On 13 April 2023, Defendant filed a Rule 59 motion, a Rule 60 motion, a motion for reconsideration, and a motion to amend her third-party complaint.

On 28 April 2023, the trial court entered an amended order on the motion to dismiss, making certain non-substantive corrections to the original order.

On 28 April 2023, Defendant filed a notice of appeal as to both the original and amended orders on the motion to dismiss.

## **II. Analysis**

Defendant appeals from the trial court's order and amended order granting Third-Party Defendants' motion to dismiss. As these orders are interlocutory orders, we address whether this Court has jurisdiction to review Defendant's appeal.

An interlocutory order is an order "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) (internal marks and citation omitted)). Generally, there is no right of immediate appeal from an interlocutory order, except by way of Rule 54(b) or instances where “the order affects some substantial right and will work injury to [the] appellant if not corrected before appeal from final judgment.” *Hanesbrands*, 369 N.C. at 218, 794 S.E.2d at 499; *see also* N.C. Gen. Stat. § 7A-27 (2023); *see also Lee v. Baxter*, 147 N.C. App. 517, 519, 556 S.E.2d 36, 37 (2001) (“Rule 54(b) provides that in an action with multiple parties or multiple claims, if the trial court enters a final judgment as to a party or a claim and certifies there is no just reason for delay, the judgment is immediately appealable.”).

Our Supreme Court has determined a substantial right to be “a legal right affecting or involving a matter of substance as distinguished from matters of form: a right materially affecting those interests which [one] is entitled to have preserved and protected by law: a material right.” *Gilbert v. N.C. State Bar*, 363 N.C. 70, 75, 678 S.E.2d 602, 605 (2009) (internal marks and citation omitted). In determining whether a substantial right is affected, our Courts have employed a two-part test: “the right itself must be substantial and the deprivation of that substantial right must potentially work injury to [the] appellant if not corrected before appeal from final judgment.” *Tanner v. Tanner*, 248 N.C. App. 828, 831, 789 S.E.2d 888, 890 (2016); *see also Sharpe v. Worland*, 351 N.C. 159, 162, 522 S.E.2d 577, 579 (1999). The appellant bears the 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 [the] appellant's right to appeal[.]" *Hanesbrands*, 369 N.C. at 218, 794 S.E.2d at 499 (internal marks and citation omitted). Moreover, where the appellant fails to present appropriate grounds, "the appeal will be dismissed." *Id.*

Relevant here, our Court has repeatedly held "the avoidance of a rehearing or trial is not a 'substantial right' entitling a party to an immediate appeal." *Banner v. Hatcher*, 124 N.C. App. 439, 442, 477 S.E.2d 249, 251 (1996) (quoting *Blackwelder v. Dep't of Human Resources*, 60 N.C. App. 331, 335, 299 S.E.2d 777, 780 (1983)); see also *Brown v. Brown*, 77 N.C. App. 206, 209, 334 S.E.2d 506, 508 (1985) (holding a substantial right is not affected where the property in question may, on appeal, be found to be subject to the plaintiff's equitable distribution claim, requiring the property be added to the marital pie and the marital property redivided).

Here, the trial court entered an order and amended order granting Third-Party Defendants' motion to dismiss, thereby dismissing Defendant's third-party complaint. Defendant, in appealing these orders, recognizes the orders are interlocutory but contends she has a right of immediate appeal as the orders affect a substantial right. Defendant alleges the ultimate distribution award is so intertwined with Third-Party Defendants that the dismissal orders, if not reviewed now, "will assuredly result in two trials." Moreover, Defendant argues she has a substantial right "to avoid unnecessary duplicitous trials" which will be lost absent an immediate appeal.

However, as is well established by our precedent, avoidance of a rehearing or

trial is not a substantial right which would entitle Defendant to immediate appeal. *See Banner*, 124 N.C. App. at 442, 477 S.E.2d at 251 (quoting *Blackwelder*, 60 N.C. App. at 335, 299 S.E.2d at 780); *Brown*, 77 N.C. App. at 209, 334 S.E.2d at 508. Because Defendant has not shown a substantial right would be affected absent immediate appeal of the trial court's order and amended order on Third-Party Defendants' motion to dismiss, we dismiss Defendant's appeal to allow the trial court to settle and determine the entire controversy.

### **III. Conclusion**

Defendant's substantial rights will not be affected absent immediate appeal of the trial court's order and amended order on Third-Party Defendants' motion to dismiss. Therefore, we dismiss Defendant's appeal as interlocutory.

DISMISSED.

Chief Judge DILLON and Judge STADING concur.

Report per Rule 30(e).