

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA24-245

Filed 17 September 2024

Forsyth County, No. 22 CVS 5302

TED SMITH, Plaintiff,

v.

SHIRLEY SMITH and CURTIS SCOTT, Defendants.

Appeal by Plaintiff from order entered 27 October 2023 by Judge Aaron Berlin in Forsyth County Superior Court. Heard in the Court of Appeals 30 August 2024.

*James A. Davis for Plaintiff-Appellant.*

*Smith Law Group, PLLC, by Brian A. Wooten, Matthew L. Spencer, and Steven D. Smith, for Defendant-Appellee.*

PER CURIAM.

Plaintiff Ted Smith brought claims against Defendants Shirley Smith and Curtis Scott in an action arising out of a dispute over payment of proceeds of a life insurance policy. Defendant Scott moved for summary judgment on all claims against him. By order entered on 27 October 2023, Defendant Scott's motion was granted. Plaintiff appealed from that summary judgment order. Because Plaintiff has not shown a right to immediate review of this interlocutory order, we dismiss the

appeal.

“An order or judgment is interlocutory if it is made during the pendency of an action and does not dispose of the case but requires further action by the trial court in order to finally determine the entire controversy.” *N.C. Dep’t. of Transp. v. Page*, 119 N.C. App. 730, 733, 460 S.E.2d 332, 334 (1995) (citation omitted). Interlocutory orders are subject to appellate review in two main instances:

[I]f (1) the order is final as to some claims or parties, and the trial court certifies pursuant to [N.C. Gen. Stat.] § 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) (citation omitted).

“[T]he burden is on the party seeking review of an interlocutory order to show how it will affect a substantial right absent immediate review.” *Whitehurst Inv. Properties, LLC v. NewBridge Bank*, 237 N.C. App. 92, 95, 764 S.E.2d 487, 489 (2014) (citations omitted). “[T]o meet its burden of showing how a substantial right would be lost without immediate review, the appealing 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.” *Id.* at 96, 764 S.E.2d at 490 (quotation marks and citation omitted).

Plaintiff’s claims against Defendant Smith are still pending, as the summary judgment order only disposed of Plaintiff’s claims against Defendant Scott. The

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summary judgment order is therefore not final, but interlocutory. The trial court's summary judgment order is not certified for immediate review and Plaintiff makes no argument in his brief as to why the appeal is properly before us or how the summary judgment order from which he appeals affects a substantial right. Rather, Plaintiff incorrectly states that the appeal is from a final judgment.

Accordingly, we dismiss Plaintiff's appeal.

DISMISSED.

Panel Consisting of:

Judges COLLINS, FLOOD, and THOMPSON.

Report per Rule 30(e).