

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA24-193

Filed 1 October 2024

Wake County, No. 22CVD005064-910

TIM HADLEY, Plaintiff,

v.

ROLLINGWOOD HOMEOWNERS ASSOCIATION (ROLLINGWOOD ESTATES
HOMEOWNERS ASSOCIATION, INC.), Defendant.

Appeal by plaintiff from order entered 24 July 2023 by Judge Debra S. Sasser
in Wake County District Court. Heard in the Court of Appeals 30 August 2024.

Law Offices of John M. Kirby, by John M. Kirby, for plaintiff-appellant.

*Brown, Crump & Tierney, PLLC, by O. Craig Tierney, Jr. and Erin K. T. Berry,
for defendant-appellee.*

PER CURIAM.

This case arises out of a foreclosure action. During the course of litigation, Defendant Rollingwood Homeowners Association moved for sanctions, pursuant to N.C. Gen. Stat. § 6-21.5 (2023), against Plaintiff Tim Hadley. N.C. Gen. Stat. § 6-21.5 allows a court to “award a reasonable attorney’s fee to the prevailing party if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party in any pleading.” N.C. Gen. Stat. § 6-21.5. On 24 July

2023, the district court granted sanctions but did not set the amount of attorney's fees owed. Plaintiff appeals from the 24 July 2023 order.

Where an award of attorney's fees is collateral to an otherwise final judgment, an appeal from the judgment is proper even where the amount of attorney's fees awarded has not yet been determined. *See Duncan v. Duncan*, 366 N.C. 544, 546, 742 S.E.2d 799, 801 (2013) ("An order that completely decides the merits of an action therefore constitutes a final judgment for purposes of appeal even when the trial court reserves for later determination collateral issues such as attorney's fees and costs." (citation omitted)).

Where an award of attorney's fees, however, is itself *the* matter being appealed—and not a collateral issue to a final judgment—any such order that does not set the amount of the fees awarded, but instead leaves the issue for later determination, is not a final order; thus, an appeal from such order is interlocutory. *See In re Cranor*, 247 N.C. App. 565, 569, 786 S.E.2d 379, 382 (2016); *see also Sanders v. State Pers. Comm'n*, 236 N.C. App. 94, 99, 762 S.E.2d 850, 854 (2014); *Triad Women's Center, P.A. v. Rogers*, 207 N.C. App. 353, 356–58, 699 S.E.2d 657, 659–61 (2010). An interlocutory order may be immediately appealed only if (1) the order is final as to some claims or parties, and the trial court certifies there is no just reason for delay pursuant to Rule of Civil Procedure 54(b), or (2) the order affects a substantial right that will be lost without an immediate appeal. *See Triad*, 207 N.C. App. at 356, 699 S.E.2d at 659.

HADLEY V. ROLLINGWOOD HOMEOWNERS ASS'N

Opinion of the Court

Because the order from which Plaintiff appeals did not set the amount of attorney's fees owed, and this appeal does not fall under one of the exceptions that allow for immediate review of interlocutory orders, we dismiss this appeal.

DISMISSED.

Panel consisting of Judges COLLINS, FLOOD, and THOMPSON.

Report per Rule 30(e).