

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA 24-766

Filed 16 April 2025

Gaston County, No. 23CVS003647-350

KRISTA DEDMON KUSTRA, individually as Co-Trustee of the Betty S. Dedmon Living Trust FBO Daughters and beneficiary of the Betty S. Dedmon Revocable Trust Agreement executed February 23, 2006 as amended; and JANE DEDMON ELDER, individually and as Co-Trustee of the Betty S. Dedmon Living Trust FBO Daughters and beneficiary of the Betty S. Dedmon Revocable Trust Agreement executed February 23, 2006 as amended, Plaintiffs,

v.

JOHN GRIFFING, individually and in his representative capacities, and as Trustee of the Betty S. Dedmon Revocable Trust Agreement executed February 23, 2006, as Amended, Trustee of Don's Trust FBO Donald Gene Dedmon, Sr. and Donald Gene Dedmon, Jr.; DONALD GENE DEDMON, SR.; and DONALD GENE DEDMON, JR., Defendants.

Appeal by plaintiffs from order entered 21 March 2024 by Judge Sally Kirby-Turner in Superior Court, Gaston County. Heard in the Court of Appeals 26 February 2025.

Falls Law Firm, PLLC, by David C. Boggs, for Plaintiffs-Appellants.

Johnston, Allison & Hord, P.A., by Kimberly J. Kirk, Lauren S. Martin, and William D. McClelland, for Defendants-Appellees Donald Gene Dedmon, Sr., and Donald Gene Dedmon, Jr.

Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., by Shameka C. Rolla and J. Mitchell Armbruster, for Defendant-Appellee John Griffing.

ARROWOOD, Judge.

Krista Dedmon Kustra and Jane Dedmon Elder (“plaintiffs”) appeal from the trial court’s order partially granting defendants’ motion to dismiss on the basis that an alleged defect in the deed was a mere scrivener’s error and did not materially affect the rights of the parties to the deed. For the following reasons, we dismiss plaintiffs’ appeal as interlocutory.

I. Factual Background

This case concerns the contested disposition of Betty S. Dedmon’s (“Betty”) property. This case was initiated by a three-claim complaint filed by plaintiffs on 24 October 2023, and the following facts are derived from the complaint and associated exhibits.

Plaintiffs are daughters of Betty, defendant Donald Sr. is Betty’s son, defendant Donald Jr. is Betty’s grandson (these defendants are referred to hereinafter as “Don Sr.,” “Don Jr.,” and together, “Dedmon defendants”), and defendant John Griffing (“Griffing”) served as Betty’s personal attorney. During her lifetime, Betty executed three trusts: one, the Betty S. Dedmon Revocable Trust (“the Revocable Trust”), of which Griffing was the sole trustee at the time of the appeal; the Betty S. Dedmon Living Trust FBO Daughters (“the Daughters Trust”), of which Betty was the initial trustee and plaintiffs the beneficiaries, plaintiffs now being co-trustees; and Don’s Trust FBO Donald Gene Dedmon, Sr. and Donald Gene Dedmon

Jr. (“Don’s Trust”), which was created under the Revocable Trust for the benefit of the Dedmon defendants.

In their complaint, plaintiffs made three claims for relief. The first claim concerned the validity of a deed for a condo in Cleveland County. This condo was originally conveyed to the Daughters Trust in 2003; Betty then attempted to convey the condo from the Daughters Trust to the Revocable Trust via deed on 18 June 2015. Plaintiffs allege that this deed was void and did not transfer title. It listed the Daughters Trust as the Grantor, the Revocable Trust as the grantee, and contained a notary block certifying that Betty was the trustee of the Daughters Trust and that she was executing the deed as Trustee. However, above her signature line were the words “Betty S. Dedmon Revocable Trust,” which plaintiffs contend meant that Betty attempted to transfer the condo as the trustee of the Revocable Trust, which was the grantee, and not as trustee of the Daughters Trust.

The second claim concerned Griffing’s changes and transactions regarding the Revocable Trust and Betty’s property, and plaintiffs request for disclosure, accounting, and distribution. The second claim is not directly implicated in the case before us.

The third claim concerns Betty’s progressive cognitive decline between 2010 and 2014. Plaintiffs and defendants agreed that she was incompetent or incapacitated. Plaintiffs alleged that Don Sr. took Betty out of her assisted living facility in May 2014 and took over her care and affairs in violation of the health care

power of attorney. In June 2014, Betty executed a second amendment to the Revocable Trust, which provided for distribution of property interests to the Dedmon defendants that were previously set to be distributed to plaintiffs in equal shares. A third amendment, made in June 2015, provided for outright distribution of property to the Dedmon defendants, as well as the distribution of the condo to Don's Trust. Plaintiffs alleged that the deed to the condo and the second and third amendments were the result of the undue influence of the Dedmon defendants while Betty was incapacitated.

All defendants moved to dismiss the complaint in December 2023. The trial court granted the Dedmon defendants' motion to dismiss as to the first claim concerning the deed, ruling that the alleged defect was a mere "scrivener's error" and did not change the rights of the parties regarding the deed. The court dismissed all claims against Griffing in his personal capacity. The defendants' motions to dismiss were denied in all other respects. Plaintiffs gave notice of appeal 17 April 2024.

II. Discussion

Plaintiffs raise one issue on appeal, that the trial court erred in granting the Dedmon defendants' motion to dismiss as to the first claim for relief. However, we lack jurisdiction to hear plaintiffs' appeal, as it is interlocutory and does not fall within one of the exceptions.

"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.” *Veazy v. City of Durham*, 231 N.C. 357, 362 (1950) (citation omitted). Only one of plaintiffs’ three claims for relief is currently before us. Since “further action” by the trial court is required to “determine the entire controversy,” this appeal is interlocutory, which plaintiff does not contest.

When an appeal is interlocutory, there is usually no immediate right to appeal, *Goldston v. American Motors Corp.*, 326 N.C. 723, 725 (1990), a prohibition intended to promote “judicial economy by preventing fragmentary appeals,” *Liggett Group, Inc. v. Sunas*, 113 N.C. App. 19, 23 (1993) (citation omitted). However, there are two exceptions:

(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.

Myers v. Mutton, 155 N.C. App. 213, 215 (2002) (citation omitted). The trial court did not make a Rule 54 certification in this case, so we review the order dismissing the claim for loss of a substantial right.

The appellant bears the burden of presenting “appropriate grounds” that they would lose a substantial right if their interlocutory appeal were not heard. *See Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 379 (1994). Plaintiffs present two arguments as to why they would lose a substantial right. In their first argument, they state that North Carolina appellate courts have found negative effects on business operations constitute a fundamental right, but they do not support

this contention with case law, nor is it applicable to the facts of this case. Plaintiffs also cite to *Liggett Group*, in which the trial court “effectively decided ownership” of a patent by granting summary judgment. 113 N.C. App. at 24. We held that, while interlocutory, this issue was appealable. *Id.* However, the determining factor was not the right to the patent itself, but the possibility of two separate trials with concomitant expenses. *Id.* We proceed to plaintiffs’ second argument, that the trial court’s ruling created a risk of inconsistent verdicts.

The right to avoid inconsistent verdicts is a substantial right. *See Shearon Farms Townhome Owners Ass’n II, Inc. v. Shearon Farms Dev., LLC*, 272 N.C. App. 643, 647 (2020). However, “there is no right to have all related claims decided in one proceeding.” *Id.* at 646–47. (citation omitted). “A party has . . . the substantial right to avoid two separate trials of the same ‘issues’: conversely, avoiding separate trials of different issues is not a substantial right.” *J & B Slurry Seal Co. v. Mid-South Aviation, Inc.*, 88 N.C. App. 1, 7 (1987) (citation omitted). “Issues are the ‘same’ if the facts relevant to their resolution overlap in such a way as to create a risk that separate litigation of those issues might result in inconsistent verdicts.” *Hamilton v. Mortgage Info. Services, Inc.*, 212 N.C. App. 73, 79 (2011) (citation omitted).

To meet their burden, plaintiffs may not simply make a perfunctory declaration that there is a risk of overlapping facts. *See Doe v. City of Charlotte*, 273 N.C. App. 10, 21 (2020). “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.” *Id.* (citation omitted).

Plaintiffs contend that Claim III of their complaint, a claim “for damages resulting from the alleged undue influence affecting the disposition of the Condominium under the Trust,” is “materially and adversely impacted by the Order,” and that there is a “possibility of two trials with conflicting or inconsistent verdicts.” This is not enough, and is reminiscent of the argument in *Doe* this Court found to be inadequate. There, we held that “[i]n effect, Plaintiffs asked this Court to comb through the record to understand the facts, research the elements of the various . . . claims, and then come up with a legal theory that links these separate claims (all with distinct legal elements) to an underlying, determinative question” *Doe*, 273 N.C. App. at 21–22. Plaintiffs appear to have a similar expectation here, as they do not explain *how* this claim for damages is affected by the order; an alleged error in the construction of the deed and damages from undue influence that may have affected the creation of the deed implicate distinct legal concepts.

III. Conclusion

Accordingly, we hold that this appeal is interlocutory and must be dismissed, as plaintiffs have not met their burden of showing that they will lose a substantial right absent immediate review.

DISMISSED.

Judges CARPENTER and STADING concur.

KUSTRA V. GRIFFING

Opinion of the Court

Report per Rule 30(e).