

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA25-676

Filed 16 September 2026

Forsyth County, No. 24CVS006662-330

PINE HALL BRICK CO., INC., Plaintiff,

v.

NORTH CAROLINA DEPARTMENT
OF LABOR and LUKE FARLEY,
in his capacity as Commissioner of
Labor of the State of North Carolina, Defendants.

Appeal by Plaintiff from order entered 4 April 2025 by Judge Eric C. Morgan
in Forsyth County Superior Court. Heard in the Court of Appeals 28 January 2026.

*Fisher & Phillips, LLP, by Travis W. Vance and Caroline E. Cheek, for
Plaintiff-Appellant.*

*Attorney General Jeff Jackson, by Special Deputy Attorney General Sage A.
Boyd and Assistant Attorney General Jonathan D. Jones, for Defendants-
Appellees.*

CARPENTER, Judge.

Pine Hall Brick Co., Inc. (“Plaintiff”) appeals from the trial court’s 4 April 2025
order (the “Order”) granting the motion to dismiss filed by the North Carolina

Department of Labor and the Commissioner of Labor in his official capacity (collectively, “Defendants”). On appeal, Plaintiff argues the trial court erred by granting Defendants’ motion to dismiss. After careful review, we dismiss Plaintiff’s appeal as interlocutory.

I. Factual & Procedural Background

On 7 May 2024, the North Carolina Department of Labor (“NCDOL”) received a report of a workplace injury, which purportedly occurred on 7 February 2024 at Plaintiff’s facility in Madison, North Carolina. On 10 May 2024, NCDOL initiated an inspection (the “Inspection”) related to the workplace injury. On 6 June 2024, NCDOL issued a citation to Plaintiff alleging three violations of safety regulations and assessing penalties totaling \$29,500. On 9 July 2024, Plaintiff filed a notice of contest with the North Carolina Occupational Safety and Health Review Commission, which remained pending when the Order was filed.

On 10 September 2024, Plaintiff emailed a public records request to NCDOL for NCDOL’s “full and complete investigatory file pertaining to the Inspection . . . and any related information.” Plaintiff’s request “include[d], but [was] not limited to, any and all notes, documents, records, videos, recordings, statements, emails, any photographs, charts, drawings, any witness affidavits, and evidence or other information related in any way to [the] Inspection” The next day, NCDOL acknowledged receipt of Plaintiff’s email and indicated that the request “for the unredacted file” would be “processed . . . and forwarded . . . in adherence [with N.C.

Gen. Stat. §] 95-136(e)(1).”

Plaintiff’s counsel responded by requesting “confirm[ation] that NCDOL . . . received a request for all items relating to [the Inspection], and not simply the unredacted file.” On 3 October 2024, Plaintiff sent a follow-up request reiterating that it was seeking “all public records relating to [the] Inspection” On 22 October 2024, NCDOL acknowledged receipt of both requests and assured Plaintiff that “documentation that is releasable under [N.C. Gen. Stat. §] 95-136 and Chapter 132 of the NC General Statutes will be released as promptly as possible.”

On 7 November 2024, Plaintiff filed a civil complaint against NCDOL in Forsyth County pursuant to the Public Records Act, N.C. Gen. Stat. § 132-9. Plaintiff alleged that NCDOL “failed to produce all public records relating to [the] Inspection” According to Plaintiff, the inspector “took handwritten notes during the [I]nspection[,]” “the handwritten notes were not included verbatim in the case file[,]” and “the handwritten notes ha[d] been shredded or otherwise destroyed.” On 12 November 2024, NCDOL sent a redacted copy of the Inspection report to Plaintiff. Plaintiff filed an amended complaint that added interim Commissioner of Labor Kevin O’Barr as a defendant.

On 13 January 2025, Defendants jointly filed a motion to dismiss Plaintiff’s amended complaint with prejudice for failure to exhaust administrative and statutory remedies, lack of subject matter and personal jurisdiction, failure to state a claim, and sovereign immunity. After a hearing on the matter, the trial court

entered the Order, which granted O'Barr's motion to substitute Commissioner of Labor Luke Farley as a defendant and granted Defendants' motion to dismiss Plaintiff's complaint and amended complaint *without* prejudice. Plaintiff filed timely notice of appeal.

II. Jurisdiction

As an initial matter, we consider whether Plaintiff's appeal is properly before us. "A judgment is either interlocutory or the final determination of the rights of the parties." N.C. Gen. Stat. 1A-1, Rule 54(a) (2025). Interlocutory orders are generally not immediately appealable. *See Ayala v. Perry*, 298 N.C. App. 134, 137–38, 913 S.E.2d 271, 275 (2025).

"Unless an exception applies, an order of dismissal without prejudice is interlocutory." *Harbin Yinhai Tech. Dev. Co. v. Greentree Fin. Grp., Inc.*, 196 N.C. App. 615, 620, 677 S.E.2d 854, 858 (2009). "'Ordinarily, an appeal from an interlocutory order will be dismissed as fragmentary and premature unless the order affects some substantial right and will work injury to appellant if not corrected before appeal from final judgment.'" *Goldston v. Am. Motors Corp.*, 326 N.C. 723, 726, 392 S.E.2d 735, 736 (1990) (quoting *Stanback v. Stanback*, 287 N.C. 448, 453, 215 S.E.2d 30, 34 (1975)).

Nevertheless, "it remains the appellant's burden to raise and sufficiently brief the threshold question of jurisdiction." *Ayala*, 298 N.C. App. at 139, 913 S.E.2d at 276. Unless the trial court certifies an interlocutory order for immediate review, the

appellant “must include in [the] opening brief, in the statement of the grounds for appellate review, ‘sufficient facts and argument to support appellate review on the ground that the challenged order affects a substantial right.’” *Denney v. Wardson Constr., Inc.*, 264 N.C. App. 15, 17, 824 S.E.2d 436, 438 (2019) (quoting *Larsen v. Black Diamond French Truffles, Inc.*, 241 N.C. App. 74, 77, 772 S.E.2d 93, 95 (2015)). Moreover, “this Court will not ‘construct arguments for or find support for appellant’s right to appeal from an interlocutory order’ on our own initiative.” *Id.* at 17, 824 S.E.2d at 438 (quoting *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 380, 444 S.E.2d 252, 254 (1994)).

Here, the Order is interlocutory because the trial court dismissed Plaintiff’s amended complaint without prejudice. *See Harbin*, 196 N.C. App. at 620, 677 S.E.2d at 858. Because the Order is interlocutory, Plaintiff bears the burden of raising and sufficiently briefing the threshold question of jurisdiction. *See Ayala*, 298 N.C. App. at 139, 913 S.E.2d at 276; *Denney*, 264 N.C. App. at 17, 824 S.E.2d at 438.

Here, Plaintiff’s statement of the grounds for appellate review reads as follows: “The trial court’s order dismissing [Plaintiff]’s claims is a final judgment and appeal lies as of right under N.C. Gen. Stat. § 7A-27(b)(1).” Plaintiff neither acknowledges the interlocutory nature of its appeal nor asserts the order affects a substantial right. *See Ayala*, 298 N.C. App. at 139, 913 S.E.2d at 276; *Denney*, 264 N.C. App. at 17, 824 S.E.2d at 438. Thus, Plaintiff did not carry its burden to establish jurisdiction. *See Ayala*, 298 N.C. App. at 139, 913 S.E.2d at 276; *Denney*, 264 N.C. App. at 17, 824

Opinion of the Court

S.E.2d at 438. Accordingly, we dismiss Plaintiff's appeal as interlocutory. *See Goldston*, 326 N.C. at 726, 392 S.E.2d at 736.

III. Conclusion

We lack jurisdiction over this interlocutory appeal because Plaintiff did not raise or sufficiently brief the threshold question of appellate jurisdiction. Accordingly, we dismiss Plaintiff's appeal.

DISMISSED.

Judge TYSON concurs.

Chief Judge DILLON dissents by separate opinion.

Report per Rule 30(e).

Dillon, Chief Judge, dissenting.

This is an appeal where the trial court essentially dismissed Plaintiff's public records request claim based on a prior pending administrative matter. I disagree with the majority's mandate to dismiss this appeal for the reasoning below. I would reach the merits and affirm the order. I note neither party briefed the issue as to whether the order being appealed is indeed interlocutory in nature, rather than final. And it is unclear to me whether the order is final or interlocutory. If interlocutory, it appears we would have the jurisdiction to consider the appeal anyway; and I would excuse Plaintiff's failure to articulate the substantial right as all parties treated the order as final in their briefing.

I note the decretal language used by the trial court is ambiguous as to whether the court was dismissing with prejudice or without prejudice. Specifically, the order states the trial court was granting Defendants' motions to dismiss, where each Defendant moved Plaintiff's complaint be dismissed "with prejudice". But in the very next sentence, the trial court states its dismissal is "without prejudice", which contradicts its previous sentence. *See, e.g., Philip Morris v. Tolson*, 176 N.C. App. 509, 515 (2006) (stating "[w]here two provisions in separate parts of an order are contradictory, the order is ambiguous").

We further held in *Philip Morris* that, when construing an order, "the order should be read as a whole." *Id.* Reading the order as a whole, my understanding is

that the trial court, here, concluded Plaintiff had no right to bring this present action because of the pending administrative matter. Essentially, the trial court concluded Plaintiff has no right to refile its complaint under the Public Records Act, at least at this time, and maybe never. The order may, therefore, indeed be final. But to the extent the order is interlocutory in nature – perhaps based on an understanding that the order works as an abatement of this case until the other administrative matter is resolved – I conclude we still should consider the merits. *See, e.g., Jessee v. Jessee*, 212 N.C. App. 426, 431 (2011) (holding that a “trial court’s refusal to abate an action based on a prior pending action doctrine is immediately appealable”).