

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA26-215

Filed 7 October 2026

Union County, No. 25CV002529-890

NANCY SUE LOWERY, Plaintiff,

v.

NICHOLAS VICKERS, Defendant.

Appeal by defendant from order entered 16 January 2026 by Judge Megean Simpson in Union County District Court. Heard in the Court of Appeals 16 September 2026.

Carter & Noland, PLLC by Corey A. Noland, for the plaintiff-appellee-grandmother.

Wofford Law, PLLC by J. Huntington Wofford, and Rebecca B. Wofford, for the defendant-appellant-father.

TYSON, Judge.

Nicholas Vickers (“Defendant”) appeals from the trial court’s denial of his motion to dismiss the complaint filed by Nancy Sue Lowery (“Plaintiff”), which seeks custody of his minor child. We dismiss the appeal as interlocutory.

I. Background

Defendant is the natural father of the child, G.V. The child's mother died in a car accident in April 2025. Plaintiff is G.V.'s maternal grandmother. On 28 May 2025, shortly after her daughter's death, Plaintiff filed a complaint for custody of G.V.

The complaint alleges G.V. lived with Plaintiff since his birth in 2013. G.V.'s mother lived in the home with Plaintiff and G.V. until G.V. was approximately two years old, at which time the mother moved out of the home and left G.V. in Plaintiff's care.

The complaint further alleges Defendant has acted inconsistently with his constitutionally-protected status as a parent. G.V. had never lived with Defendant and he visited with Defendant on weekends. Plaintiff had provided for all of G.V.'s care since birth. G.V. was born deaf and Plaintiff has always facilitated his doctor's appointments and managed his hearing aids and the acquisition of cochlear implants. Defendant took custody of G.V. from Plaintiff on 20 May 2025.

Defendant filed a motion to dismiss the complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Rules of Civil Procedure. The matter was heard on 3 November 2025. The trial court denied the motion. Defendant appeals.

II. Issues

Defendant argues the trial court erred by denying his motion to dismiss Plaintiff's complaint for custody of G.V. where he is the natural father of the child and Plaintiff has not alleged sufficient facts to show she has standing, or that Defendant is unfit or has acted inconsistently with his constitutionally-protected

status as a parent.

III. Interlocutory Appeal

Plaintiff argues this appeal is interlocutory and should be dismissed. An interlocutory order is one that is “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.” *Veazey v. Durham*, 231 N.C. 354, 362, 57 S.E.2d 377, 382 (1950) (citation omitted). The general rule holds interlocutory orders are not immediately appealable in order to prevent fragmentary and premature appeals, which unnecessarily delay the administration of justice. *Id.* at 363-64, 57 S.E.2d at 382. Nevertheless, “[a]n interlocutory appeal is ordinarily permissible . . . if (1) the trial court certified the order under Rule 54(b) of the Rules of Civil Procedure, or (2) the order affects a substantial right that would be lost without immediate review.” *Boyd v. Robeson Cty.*, 169 N.C. App. 460, 464, 621 S.E.2d 1, 4, *disc. review denied*, 359 N.C. 629, 615 S.E.2d 866 (2005). The order is not certified by the trial court as immediately appealable under Rule 54(b). *Id.*; N.C. Gen. Stat. § 1A-1, Rule 54(b) (2025).

Defendant acknowledges the appeal is interlocutory, but he asserts it is immediately appealable because it affects a substantial right. See N.C. Gen. Stat. § 7A-27(b)(3)(a) (2025) (appeal lies of right to this Court “[f]rom any interlocutory order or judgment of a superior court or district court in a civil action or proceeding that . . . [a]ffects a substantial right.”); *Boyd*, 169 N.C. App. at 464, 621 S.E.2d at 4.

Our Supreme Court has defined a “substantial right” as “a legal right affecting or involving a matter of substance as distinguished from matters of form: a right materially affecting those interests which a [person] is entitled to have preserved and protected by law: a material right.” *Sharpe v. Worland*, 351 N.C. 159, 162, 522 S.E.2d 577, 579 (1999) (citation omitted). The burden rests upon the appellant to “demonstrate that the challenged order deprives the appellant of a substantial right that will clearly be lost or irretrievably adversely affected if the order is not review[ed] before final judgment.” *Smith v. Polsky*, 251 N.C. App. 589, 595, 796 S.E.2d 354, 359 (2017) (citation and quotation marks omitted). This Court takes a “restricted view of the ‘substantial right’ exception to the general rule prohibiting immediate appeals from interlocutory orders.” *Blackwelder v. Dept. of Human Resources*, 60 N.C. App. 331, 334, 299 S.E.2d 777, 780 (1983).

The substantial right Defendant asserts is the “parental liberty interest” under the Due Process Clause and Fourteenth Amendment, which protects the fundamental right of parents to “make decisions concerning the care, custody, and control of their children.” *Owenby v. Young*, 357 N.C. 142, 144, 579 S.E.2d 264, 266 (2003). We agree with Defendant that a parent’s primary right to the care, custody, and control of their child is fundamental and paramount.

We further recognize “[a] grandparent is a third party to the parent-child relationship. [T]he grandparent’s rights to the care, custody[,] and control of the child are not constitutionally protected while the parent’s rights are protected.” *Eakett v.*

Eakett, 157 N.C. App. 550, 554, 579 S.E.2d 486, 489 (2003). Pursuant to North Carolina General Statutes § 50-13.1, “[a]ny parent, relative, or other person . . . claiming the right to custody of a minor child may institute an action or proceeding for the custody of such child [in accordance with the statute].” N.C. Gen. Stat. § 50-13.1(a) (2025).

Defendant has failed to show at this stage in the proceeding his constitutional right as a natural parent “will clearly be lost or irremediably adversely affected if the order is not review[ed] before final judgment.” *Smith*, 251 N.C. App. at 595, 796 S.E.2d at 359. The trial court concluded it possessed jurisdiction over the subject matter of Plaintiff’s complaint. The question of subject matter jurisdiction may properly be raised at any time, even for the first time on appeal. *Bache Halsey Stuart, Inc. v. Hunsucker*, 38 N.C. App. 414, 421, 248 S.E.2d 567, 571 (1978). The trial court also concluded the pleading was sufficient to state a claim upon which relief can be granted, “when viewed in the light most favorable to the [non-moving party].” *Ford v. Peaches Ent. Corp.*, 83 N.C. App. 155, 156, 349 S.E.2d 82, 83 (1986). As the case proceeds, Defendant will have the opportunity to argue Plaintiff has not met her burden to overcome his constitutionally-protected status as G.V.’s natural father.

The complaint states Defendant has had custody of G.V. since 20 May 2025. The trial court’s order denying his motion to dismiss does not affect Defendant’s constitutional right to the primary care, custody and control of his child. *See Owenby*, 357 N.C. at 144, 579 S.E.2d at 266. Defendant has not met his burden to immediate

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review of this admittedly interlocutory appeal, and it is dismissed. *It is so ordered.*

DISMISSED.

Chief Judge DILLON and Judge ARROWOOD concur.

Report per Rule 30(e).