An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA25-974

Filed 4 November 2026

Yadkin County, No. 24CVS000234-980

MICKEY W. SIMMONS; WAYNE SIMMONS and wife SALLY SIMMONS, Plaintiffs,

v.

JAMES GREGORY MATTHEWS, as Trustee for the Deed of Trust recorded at Book 1123, Page 573 and Book 1158, Page 67 of the Yadkin County Public Registry; CHRISTOPHER DOUGLAS GROCE; KELLY GROCE GREENE; ANGELA DENISE PIPES; and DONNA SUZANNE GROCE, Defendants.

Appeal by plaintiffs from order and judgment entered 9 January 2025 by Judge William A. Long in Yadkin County Superior Court. Heard in the Court of Appeals 22 April 2026.

Mickey W. Simmons, Wayne Simmons, and Sally Simmons, pro se, plaintiffs-appellants.

Hutchens Law Firm LLP, by Claire Collins Dickerhoff, Hilton T. Hutchens, Jr., and Jeffrey A. Bunda, for defendants-appellees Christopher Douglas Groce, Kelly Groce Greene, Angela Denise Pipes, and Donna Suzanne Groce.

No brief filed for defendant-appellee James Gregory Matthews.

FREEMAN, Judge.

Mickey W. Simmons, Wayne Simmons, and Sally Simmons (plaintiffs) appeal

from an order and judgment granting the Rule 12(b)(6) motion to dismiss by defendants Christopher Douglas Groce, Kelly Groce Greene, Angela Denise Pipes, and Donna Suzanne Groce (the Groce Family). On appeal, plaintiffs argue the Notice of Foreclosure Hearing contained multiple statutory defects which failed to endow the Clerk of Superior Court with subject-matter jurisdiction, thus voiding the foreclosure. After careful review, we dismiss this appeal as interlocutory.

I. Factual and Procedural Background

This case has been before us twice before. *See In re: Simmons*, 285 N.C. App. 569 (2022) (*Simmons I*), *superseded on reh'g by*, *In re: Simmons*, 291 N.C. App. 30 (2023) (*Simmons II*).

In *Simmons I*, this Court vacated and reversed the superior court's order upholding the non-judicial foreclosure of plaintiffs' mortgaged property. 285 N.C. App. at 573. We stated that defendant Matthews' service as trustee while also serving as personal attorney for Donald and Betty Groce during the foreclosure violated the neutrality requirements of N.C.G.S. §§ 45-10(a) and 45.21-16(c)(7)(b). *Simmons I*, 285 N.C. App. at 572–73. On rehearing, this Court overruled *Simmons I* after applying *In re: Lucks*, 369 N.C. 222 (2016).

Having exhausted or missed their window on all other avenues for appeal, plaintiffs turned to the one final challenge that may be raised for the first time at any point in a case: subject-matter jurisdiction. *See N.C. Dep't of Revenue v. Philip Morris USA, Inc.*, 388 N.C. 181, 186 (2025). Plaintiffs filed a new complaint in superior court

on 29 April 2024, alleging that the Yadkin County Clerk of Superior Court never acquired subject-matter jurisdiction over this action because defendant Matthews' 2016 Notice of Foreclosure Hearing was defective; therefore, the entire foreclosure was void.

On 12 July 2024, Matthews, in his capacity as trustee, filed an answer on his own behalf. On 15 July 2024, the Groce Family filed their answer, which included counterclaims for, *inter alia*, interference with contract, trespass to property, waste, and conversion. Both answers included motions for Rule 12(b)(6) dismissals with prejudice. On 19 August 2024, plaintiffs filed a reply and motion to dismiss the Groce Family's counterclaims. On 25 November 2024, plaintiffs moved for summary judgment on the counterclaims.

On 9 January 2025, the superior court issued an order and judgment from which plaintiffs' current appeal is taken. This order granted the Groce Family's 12(b)(6) motion to dismiss the complaint for failure to state a claim, thereby mooting plaintiffs' motion for summary judgment. However, the Groce Family's counterclaims remained unadjudicated, rendering this order interlocutory.

On 10 February 2025, plaintiffs entered written notice of appeal.

II. Jurisdiction

"Interlocutory orders are those made during the pendency of an action which do not dispose of the case, but instead leave it for further action by the trial court in order to settle and determine the entire controversy." *Carriker v. Carriker*, 350 N.C.

71, 73 (1999) (citing *Veazey v. City of Durham*, 231 N.C. 357, 362 (1950)). Generally, interlocutory orders are not immediately appealable; however, immediate appeal of interlocutory orders and judgments is available in at least two situations: (1) when the trial court certifies that there is no just reason for delay of the appeal, and (2) when the interlocutory order affects a substantial right. *Turner v. Hammocks Beach Corp.*, 363 N.C. 555, 558 (2009). When an appellant argues an interlocutory order affects a substantial right, the statement of the grounds for appellate review "must contain sufficient facts and argument to support appellate review on the ground that the challenged order affects a substantial right." N.C. R. App. P., Rule 28(b)(4) (2025); *Estate of Redden v. Redden*, 179 N.C. App. 113, 116 (2006).

Here, plaintiff's Statement of Grounds for Appellate Review in its entirety states:

> Appellants show the court that they have a right to immediate appeal from the interlocutory order which dismissed all of Appellants claims for the following reasons;
>
> [No personal jurisdiction without jurisdiction of the subject matter]
>
> 1. clerk lacking jurisdiction of the parties without jurisdiction of the subject matter. No personal jurisdiction
>
> 2. 1-277a. grants the right to immediately appeal a ruling by the court that effectively discontinued the action
>
> 3. Court ruling on the courts jurisdiction over property or persons is immediately appealable under l-277b.
>
> 4. Re: C.M.C 373, N. C. 24 (2019) is stated precedent that

> interlocutory order is appealable when dealing with "an issue of law." This is an issue of law that the clerk never had jurisdiction over the case or the parties "Subject matter jurisdiction is an issue of law, based on the law independent from the actions of the parties." Burgess vs Smith, 260 N. C. App.504, 818 S. E. 2d 164 (2018)

Section 1-277 of the North Carolina General Statutes states:

> (a) An appeal may be taken from every judicial order or determination of a judge of a superior or district court, upon or involving a matter of law or legal inference, whether made in or out of session, that affects a substantial right claimed in any action or proceeding; or that in effect determines the action and prevents a judgment from which an appeal might be taken; or discontinues the action or grants or refuses a new trial.
>
> (b) Any interested party has the right of immediate appeal from an adverse ruling as to the jurisdiction of the court over the person or property of the defendant, or the party may preserve the party's objection for determination upon any subsequent appeal in the cause.

N.C.G.S. § 1-277 (2025).

Plaintiffs' argument regarding subsection (a) fails; the action is not "effectively discontinued" as the Groce Family's counterclaims remained unadjudicated.

Plaintiffs' arguments on jurisdiction regarding subsection (b) also fail. Although subsection (b) "provides that appeal . . . lie[s] from denial of a motion to dismiss for lack of *personal* jurisdiction, this does not apply to the denial of a motion challenging *subject matter* jurisdiction." *Duke Univ. v. Bryant-Durham Elec. Co.*, 66 N.C. App. 726, 727 (1984). We have repeatedly held that "an appellant does not obtain a right to immediate review of an interlocutory order simply by arguing that

the tribunal lacked subject matter jurisdiction to enter the interlocutory order." *In re Becky King Props., LLC*, 234 N.C. App. 699, 703 (2014).

Finally, plaintiff's claim that an "interlocutory order is appealable when dealing with 'an issue of law' " is false, and plaintiff's cited authority does not support such a proposition. *See In re C.M.C.*, 373 N.C. 24 (2019).

Plaintiffs' statement for grounds for appellate review simply lacks sufficient facts or arguments to show that a substantial right is affected or that they are entitled to appellate review. Accordingly, plaintiffs have not demonstrated that the interlocutory order is appealable.

III. Conclusion

For the foregoing reasons, we hold that plaintiffs failed to allege sufficient facts and arguments in their grounds for appellate review, and we dismiss this appeal as interlocutory.

DISMISSED.

Judges HAMPSON and GRIFFIN concur.

Report per Rule 30(e).