No. P25-113 TENTH JUDICIAL DISTRICT

NORTH CAROLINA COURT OF APPEALS
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CHARITY MAINVILLE, Plaintiff-Petitioner, v. THE HONORABLE VARTAN A. DAVIDIAN III, Judicial Respondent, and ANNA DE SANTIS and DE SANTIS RENTALS, LLC, Defendants-Respondents.	)	From Wake County 24 CV 022933-910

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DEFENDANTS-RESPONDENTS' RESPONSE TO
PLAINTIFF-PETITIONER'S PETITION FOR WRIT OF PROHIBITION

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TO THE HONORABLE NORTH CAROLINA COURT OF APPEALS:

Under Rule 22 of the North Carolina Rules of Appellate Procedure, Defendants-Respondents Anna De Santis and De Santis Rentals, LLC ("Defendants") are responding in opposition to Plaintiff-Petitioner Charity Mainville's Petition for a Writ of Prohibition.

RELEVANT PROCEDURAL HISTORY

Mainville filed a complaint for money owed in small claims court, alleging claims against her former landlord, Anna De Santis. The magistrate dismissed Mainville's complaint, and she appealed to Wake County District Court. After the parties conducted court-ordered arbitration, and Mainville was awarded nothing, she demanded a trial de novo in district court.

While this action was pending in the small claims division, Mainville amended her complaint twice. Then, on 16 December 2024, she filed her demand for a trial de novo and her third amended complaint ("Complaint"). All of Mainville's amended complaints were filed without leave of court. Mainville filed a motion on 23 December 2024, requesting that this case be designated as "exceptional" under Rule 2.1 of the General Rules of Practice for the Superior and District Courts ("Rule 2.1 Motion").

On 13 January 2025, Defendants filed a motion to extend their time for answering the Complaint. Two days later, under Rules 12(f) and 12(b)6) of the Civil Procedure, respectively, Defendants filed their motion to strike, or in the alternative, to dismiss the Complaint. Curiously, even though Defendants' extension motion was pending and their motion to strike or dismiss under Rule 12 tolled the time for responding to the Complaint, *see* N.C. Gen. Stat. § 1A-1, R. 12(a)(1)(a.), Mainville filed a motion for entry of default judgment on 16 January 2025. Respondents' former counsel, Frank McGraw, filed a motion to withdraw on 17 January 2025.

Between 23 January and 30 January 2025, the district court entered five routine interlocutory orders: (1) continuing hearings on Mainville's Rule 2.1 Motion

and her motion for default judgment; (2) granting Respondents' motion for extension of time for answering the Complaint; (3) granting Mr. McGraw's motion to withdraw and denying, as moot, Mainville's motion to compel an answer and her emergency motion to vacate orders; (4) granting Defendants' motion for extension of time for answering Mainville's first interrogatories and first requests for production of documents; and (5) denying Mainville's Rule 2.1 Motion. On 10 February 2025, Mainville filed a notice of appeal from these five orders and a motion to stay all trial court proceedings, asking the district court to recognize a blanket automatic stay under N.C. Gen. Stat § 1-294.

Defendants' motion to strike the Complaint was set for virtual hearing on 13 February 2025, the Honorable Vartan A. Davidian III presiding. Mainville asserted that the trial court could not proceed in any way due to her pending interlocutory appeals. Counsel for Defendants disagreed, citing case law on nonappealable interlocutory orders, and Judge Davidian heard arguments on Mainville's motion to stay and Defendants' motion to strike. Judge Davidian deferred his ruling and asked the parties to reconvene the next day, 14 February 2025, via WebEx at 3:00 p.m. The purpose of reconvening was not to continue arguments, instead, it allowed Judge Davidian to review the law and determine if the trial court could proceed pending Mainville's appeals.

Shortly after the hearing on 13 February 2025, Mainville filed an objection to reconvening on 14 February, asserting improper notice and stating that she would not attend due to a work conflict. Defendants' counsel attended and listened to Judge

Davidian announce his ruling and read it into the record. Meanwhile, also on 14 February 2025, this Court entered orders denying Mainville's (1) petition for writ of supersedeas ("PWS") and motion for temporary stay ("MTS") and (2) her motion for clarification of the order denying her PWS and MTS.

On 17 February 2025, Judge Davidian entered an order allowing the Complaint as Mainville's operative pleading, denying Defendants' motion to strike, setting a date for Defendants' answer, and removing the action from the trial calendar (it was scheduled for trial on 24 February 2025) so it could be reset by the parties or the trial court administrator. Mainville appealed Judge Davidian's order on 19 February 2025. Then, on 21 February 2025, she filed her petition for writ of prohibition with this Court.

REFERENCES FOR PROCEDURAL HISTORY

Although Mainville did not submit certified copies of orders and other filings "that may be essential to an understanding of the matters set forth in the petition"—as required by Appellate Rule 22(b)—Defendants are not questioning the authenticity of the exhibits attached to her petition. The procedural history recited above refers to Mainville's attachments and the case history on Odyssey, which can be viewed using the following link:

https://portalnc.tylertech.cloud/app/RegisterOfActions/#/537B4DEAD0EB3242F72484B1FFCB508A217B4E4AB1A31F161B78062EC349762BD0C4CB917FAFB489D54F39F5BAEADF52837620FCC6DFA8C11246849912BABA12D6F7625375B5BE76F6687D1E85C4B781/anon/portalembed

REASONS WHY THE PETITION SHOULD BE DENIED

I. The petition should be denied because Mainville has failed to show extraordinary circumstances and to establish the requirements for prohibition

The writ of prohibition is reserved for extraordinary situations and there are stringent guardrails on its use. *Holly Shelter R.R. Co. v. Newton*, 133 N.C. 132, 45 S.E. 549, 550 (1903). "It only issues in cases where it is necessary to restrain the action of the lower courts, proceeding outside of their powers, and even then it is not a writ of right, but its issuance is a matter of discretion, and it issues only in cases of extreme necessity." *Id.* (cleaned up).

In North Carolina, it is well established that the writ of prohibition "does not lie" when another avenue for relief is available. *State v. Whitaker*, 114 N.C. 818, 820, 19 S.E. 376, 376-77 (1894). The writ is used "with great caution and forbearance," and only where "none of the ordinary remedies provided by law will give the desired relief." *Id.* at 820, 19 S.E. at 377. For that reason, prohibition is unavailable where a "grievance" can be addressed through "the ordinary course of judicial proceedings[,]" including direct appeal. *Id.* at 820, 19 S.E. at 376. Consequently, "where there is any sufficient remedy by ordinary methods"—including "appeal, injunction, etc., or when no irreparable damage will be done"—prohibition "will not issue." *Holly Shelter*, 133 N.C. at 132, 45 S.E. at 550; *see also State v. Inman*, 224 N.C. 531, 542, 31 S.E.2d 641, 646-47 (1944) (recognizing prohibition must be "uniformly denied where there is [an]other remedy").

Here, Mainville has not explained why the extraordinary writ of prohibition should issue, especially after this Court summarily denied her PWS and MTS. Rather, she is simply protesting district court orders that she doesn't like, including routine orders granting extensions of time and allowing counsel to withdraw. Mainville cannot establish that prohibition is the only way she can obtain relief. Prohibition is "not a writ of right." *Holly Shelter*, 133 N.C. at 132, 45 S.E. at 550. This Court has discretion to deny the writ even when the legal wrong is clear. *Id.* at 139, 45 S.E. at 551 ("But even if an appeal lay and the clerk had been proceeding unadvisedly, it does not follow that the court would intervene by this extraordinary writ."). All told, Mainville does not present a case of "extreme necessity," and because there are sufficient remedies "by ordinary methods" before the district court and this Court, *id.* at 132, 45 S.E. at 550, her petition should be denied.

II. Judge Davidian properly determined that Mainville's numerous interlocutory appeals are not immediately appealable and, therefore, the trial court is justified in continuing to exercise jurisdiction over this action.

Mainville erroneously argues that section 1-294 automatically strips the trial court's jurisdiction pending appeal. She is confused about the roles of this Court and the district court in determining whether her pending appeals affect a substantial right. Although the trial court cannot dismiss a pending appeal because it was taken from an interlocutory order not subject to immediate appellate review, *Estrada v. Jaques*, 70 N.C. App. 627, 639-40, 321 S.E.2d 240, 248-49 (1984), the trial court can disregard interlocutory appeals that it holds are not subject to immediate appeal.

Under North Carolina law, giving notice of appeal from an interlocutory order does not automatically stay trial court proceedings. Instead, the scope of the trial court's continuing jurisdiction depends on whether the interlocutory order being challenged is eligible for immediate appellate review.

An appeal from a nonappealable interlocutory order does not divest the trial court of jurisdiction. *Veazey v. Durham*, 231 N.C. 357, 364, 57 S.E.2d 377, 382-83 (1950) ("[A] litigant cannot deprive the Superior Court of jurisdiction to try and determine a case on its merits by taking an appeal to the [appellate] Court from a nonappealable interlocutory order of the Superior Court."). This rule prevents litigants from delaying "the administration of justice [by] bringing cases to an appellate court piecemeal through the medium of successive appeals from intermediate orders." *Id.* at 363, 57 S.E.2d at 382.

Some interlocutory orders are immediately appealable, including ones that affect a substantial right. N.C. Gen. Stat. § 1-277. A valid appeal from an interlocutory order divests the trial court of jurisdiction regarding any matter "embraced" by the order. N.C. Gen. Stat. § 1-294; *Lowder v. All Star Mills, Inc.*, 301 N.C. 561, 580, 273 S.E.2d 247, 258 (1981) ("The well-established rule of law is that an appeal from a judgment rendered in the Superior Court suspends all further proceedings in the cause in that court, pending the appeal."). Still, "the court below may proceed upon any other matter included in the action and not affected by the judgment appealed from." N.C. Gen. Stat. § 1-294.

The trial court may disregard an improper notice of appeal and make its own determination on the question of appellate jurisdiction. In this way, a litigant cannot use a notice of appeal from a nonappealable interlocutory order to deprive the trial court of jurisdiction to proceed with a case. *Veazey*, 231 N.C. at 364, 57 S.E.2d at 382-83 (noting that a contrary rule would allow a party to "paralyze the administration of justice . . . by the simple expedient of doing what the law does not allow him to do, i.e., taking an appeal from an order which is not appealable"). Accordingly, trial court orders entered following a valid, properly noticed appeal of an interlocutory order are valid if: (1) the trial court continued to exercise jurisdiction under a reasonable belief that the interlocutory order was not immediately appealable and (2) the appealing party was not prejudiced by the trial court's continued exercise of jurisdiction. *RPR & Assoc., Inc., v. University of N.C.-Chapel Hill*, 153 N.C. App. 342, 347-49, 570 S.E.2d 510, 514-15 (2002); *Plasman v. Decca Furniture, Inc.*, 253 N.C. App. 484, 491, 800 S.E.2d 761, 767-71 (2017).

Here, Mainville appealed numerous interlocutory orders—including routine extensions of time and an order allowing withdrawal of representation—that are not subject to immediate review. She cannot demonstrate an express right to immediate review, and the burden is on her to establish how each order "affects a substantial right that will clearly be lost or irremediably adversely affected if the order is not reviewed before final judgment. *Edmondson v. Macclesfield L-P Gas Co.*, 182 N.C. App. 381, 391, 642 S.E.2d 265, 272 (2007) (cleaned up). Absent from Mainville's petition is any colorable argument regarding how the orders on appeal affect a

substantial right that will be lost absent immediate review. Ironically, in her argumentative statement of facts section, Mainville's main complaint appears to be that Judge Davidian's order "violated [her] right to a timely trial de novo" when Mainville is the one who filed an amended complaint without leave of court (requiring a hearing on its legitimacy), objected to virtually every motion filed by Defendants, and appealed interlocutory orders that are not immediately appealable. [PWP at 3].

Judge Davidian reasonably determined that the orders on appeal do not pass the substantial right test, and he had every right to do so under *RPR & Assocs.* and its progeny: "The trial court has the authority . . . to determine whether or not its order affects a substantial right of the parties or is otherwise immediately appealable." *RPR & Assocs.*, 153 N.C. App. at 348, 570 S.E.2d at 514 (cleaned up). Mainville's appeal of Judge Davidian's order does not change anything—she has failed to demonstrate why prohibition is necessary in this garden variety lawsuit.

CONCLUSION

Based on the foregoing, Mainville's petition should be denied.

Respectfully submitted this 10th day of March 2025.

HATCH, LITTLE & BUNN, L.L.P.
Attorneys for Defendants-Respondents

Electronically Submitted

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[redacted]