

The Trial Court's Role in the Appeal Process

Michelle D. Connell
WYRICK ROBBINS YATES & PONTON LLP
4101 Lake Boone Trail, Suite 300, Raleigh, NC 27605
www.wyrick.com
mconnell@wyrick.com

[CLASSIFIED TO PROCEED]



Jurisdiction

- Once a party files notice of appeal from a final judgment, the trial court becomes *functus officio*.
- Trial courts do, however, retain jurisdiction to take action "in aid of the appeal." They can rule on stays, settle the record on appeal. See, e.g., *Faulkenbury v. Teachers' & State Employees' Retirement Sys.*, 108 N.C. App. 357, 424 S.E.2d 420, 422-23 (1993).

[CLASSIFIED TO PROCEED]



N.C.G.S. 1-294

§ 1-294. Scope of stay; security limited for fiduciaries

When an appeal is perfected as provided by this Article it stays all further proceedings in the court below upon the judgment appealed from, or upon the matter embraced therein, unless otherwise provided by the Rules of Appellate Procedure; but the court below may proceed upon any other matter included in the action and not affected by the judgment appealed from. The court below may, in its discretion, dispense with or limit the security required, when the appellant is an executor, administrator, trustee, or other person acting in a fiduciary capacity. It may also limit such security to an amount not more than fifty thousand dollars (\$50,000), where it would otherwise exceed that sum.

[CLASSIFIED TO PROCEED]



N.C.G.S. 1-294

- A stay under N.C.G.S. §1-294 is self-executing.
- N.C.G.S. §1-294 "becomes operative following the appeal of a judgment," and "removes a case from the trial court[,] which is thereafter without jurisdiction to proceed on the matter until the case is returned by mandate of the appellate court." *Woodard v. N.C. Local Gov'tal Employees' Retirement Sys.*, 110 N.C. App. 83, 428 S.E.2d 849, 850 (1993).

[CLASSIFIED TO AVOID]



N.C.G.S. 1-294

- During the stay, the trial court "retains jurisdiction to ... hear motions and grant orders, [but only] so long as they *do not concern the subject matter of the suit and are not affected by the judgment from.*" *Faulkenbury v. Teachers' & State Employees' Retirement Sys.*, 108 N.C. App. 357, 424 S.E.2d 420, 422-23 (1993).

[CLASSIFIED TO AVOID]



Should I Stay or Should I Go?

- *RPR & Associates, Inc. v. University of North Carolina-Chapel Hill*, 153 N.C. App. 342, 570 S.E.2d 510 (2002) – Appeal from an interlocutory order denying motion to dismiss did not deprive the trial court of jurisdiction to proceed in the case.
- *Jacques v. Estrada*, 70 N.C. App. 627, 321 S.E.2d 240 (1984) – In an appeal from an interlocutory order, the trial court loses jurisdiction and the case cannot move forward during the pendency of the appeal.

[CLASSIFIED TO AVOID]



Automatic Stays

- What is an automatic stay and why does it matter?
- N.C.G.S. §1A-1, Rule 62(a):
- "Except as otherwise stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of the time provided in the controlling statute or rule of appellate procedure for giving notice of appeal from the judgment."
- N.C.R. App. P., Rule 3(c) – 30 days to give notice of appeal.

[CLASSIFIED TO APPROX]



N.C.G.S. §1A-1, Rule 54(b) – Partial Final Judgment

When more than one claim for relief is presented in an action ...the court may enter a final judgment a final judgment as to one or more but fewer than all of the claims or parties *only if* there is *no just reason for delay* and *it is so determined in the judgment*.

- To qualify for this rule, an order must truly finish off a claim for a party.
- In addition, it must be "determined in the judgment" that "there is no just reason for delay."

[CLASSIFIED TO APPROX]



N.C.G.S. §1A-1, Rule 54(b) – Partial Final Judgment

- A Rule 54(b) certification, does not guaranteed that the Court of Appeals will hear the appeal if the appellate court deems that the order does not finalize a claim.
- N.C.G.S. §50-19.1 – Immediately appealable interlocutory claims:
 - Absolute Divorce
 - Divorce from Bed and Board
 - Child custody
 - Child support
 - Alimony
 - Equitable Distribution

[CLASSIFIED TO APPROX]



Preliminary Injunction

Can the trial court enforce a preliminary injunction that has been appealed?

- Yes.
- An appeal of a preliminary injunction is interlocutory.
- “[a] preliminary injunction would be a worthless and useless document [if the trial court could not enforce the order pending appeal.] Once granted, the party or parties against whom it was directed could give notice of appeal and continue with the proscribed conduct. This is not our law.” *State ex rel. Jacobs v. Sherard*, 39 N.C. App. 464, 250 S.E.2d 923 (1979).

[CLASSIFIED TO PROCEED]



What Exactly Does it Mean to Grant a Stay?

Staying an Order

- Trial Court loses jurisdiction
- Generally, cannot enforce order pending appeal.
- Exceptions – The following orders remain enforceable pending appeal:
 - N.C.G.S. §50-13.4(f)(9) - Child Support is enforceable by criminal or civil contempt
 - N.C.G.S. §50-16.7(j) – Alimony is enforceable by criminal or civil contempt
- N.C.G.S. §50B-4(g) - Domestic Violence Protective Order – In enforceable unless stayed by the appellate court

[CLASSIFIED TO PROCEED]



What Exactly Does it Mean to Grant a Stay?

Staying an Order, Continued

- Are Show Cause Orders and Motions for Contempt irrelevant during the pendency of the appeal?
 - Not irrelevant, only delayed.
 - Motion can be filed, but not heard.
- Trial court can grant a Show Cause order and hear the motion after the appellate court issues its mandate.

[CLASSIFIED TO PROCEED]



What Exactly Does it Mean to Grant a Stay?

Staying a Judgment

- Judgment for money or to attach property can be enforced without a stay.
- Trial court grants (or denies) a stay pending appeal.
- Set bond or other security.

[CLASSIFIED TO APPROX]



Can a Trial Court Dismiss an Appeal for Failure to Comply with Time Requirements?

Yes!

- N.C.R. App. P., Rule 25
- "If after giving notice of appeal from any court...the appellant shall fail within the times allowed by these rules or by order of court to take any action required to present the appeal for decision, the appeal may on motion of any other party be dismissed. Prior to the filing of an appeal in the appellate court, motions to dismiss are made to the court...from which appeal has been taken..."
- "Filing of appeal in the appellate court" means filing the record on appeal in the appellate court.
- Timing issues include: giving notice of appeal, serving the proposed record on appeal, filing/docketing the record on appeal in the appellate court.

[CLASSIFIED TO APPROX]



Can a Trial Court Dismiss an Appeal Because it is Interlocutory?

- No!
- N.C.R. App. P., Rule 25

[CLASSIFIED TO APPROX]



Motions for Extensions of Time?

When can the trial court grant motions for extensions of time?

- N.C.R. App. P., Rule 27(c)(1)
- Preparation of the transcript – Trial court may grant an extension:
 - To the Appellant
 - Upon a showing of good cause
 - For 30 days

[CLASSIFIED TO APPELLATE]



Motions for Extensions of Time?

When can the trial court grant motions for extensions of time, Continued?

- To Serve the Proposed Record on Appeal – Trial court may grant an extension:
 - To the Appellant
 - Upon a showing of good cause
 - For 30 days
- After the trial court grants the FIRST extension, all subsequent extensions to the appellate court.
- Appellee is not request any extension of time from the trial court. All requests go to the appellate court.

[CLASSIFIED TO APPELLATE]



Judicial Settlement – The Appellate Dinosaur

- What is the trial court’s role in settling the Record on Appeal?
- N.C.R.App.P., Rule 11(c).
 - Generally, everything is included in the Record Proper on Appeal or the Rule 11(c) Supplement.
 - Judicial Settlement is required only if a party to the appeal contends:
 - Proposed materials were not filed, served, submitted for consideration, admitted, or made the subject of an offer of proof; OR,
 - Narration is not factually accurate.

[CLASSIFIED TO APPELLATE]



19

Remand – Who hears what, when?



[CLASSIFIED TO APPROX]

20

Can a Trial Court Grant Attorney Fees for an Appeal?

- N.C. R. App. P., Rule 34(b)(2), (c), and (d)
 - Reasonable attorney fees incurred because of the frivolous appeal
 - Appellate court may remand to the trial division to determine sanctions
- *McKinney v. McKinney*, 228 N.C. App. 300, 745 S.E.2d 356 (2013) – If the statute allows attorneys’ fees in the trial court division, then trial court may grant appellate attorneys’ fees.



[CLASSIFIED TO APPROX]

21

N.C.R. Civ. P., Rule 60

- *Bell v. Martin*, 299 N.C. 715, 264 S.E.2d 101 (1980)
- During the pendency of appeal, Rule 60 Motion may be filed.
- Trial court may be asked to hear the Rule 60 motion
- Trial court may indicate how it would be inclined to rule if it has jurisdiction to do so.



[CLASSIFIED TO APPROX]

22

Thank you!
Any Questions?

[CLASSIFIED TO APOSSERS]


