

**JAMES E. BYERS, WILLIAM J. BYERS, BILL GARDNER,  
JOHN A. KENNEDY, J. GORDON SCOTT, J. GORDON SCOTT,  
III AND HAROLD K. STALLCUP, Petitioners, v. NORTH  
CAROLINA SAVINGS INSTITUTIONS DIVISION, Respondent,  
and CENTURA BANK AND CENTURA BANKS, INC.  
Intervenors.**

**No. COA96-297**

**COURT OF APPEALS OF NORTH CAROLINA**

*123 N.C. App. 689; 474 S.E.2d 404; 1996 N.C. App. LEXIS 861*

**August 19, 1996, Heard In The Court Of Appeals  
September 3, 1996, Filed**

**PRIOR HISTORY:** [\*\*\*1] Wake County No. 94 CVS 04489A. Appeal by respondent and intervenors from orders entered 2 March 1995 by Judge Jack A. Thompson in Wake County Superior Court and 31 October 1995 by Judge Knox V. Jenkins.

**DISPOSITION:** Dismissed.

**OVERVIEW:** The savings institution filed a motion to dismiss petitioners' request for judicial relief based upon lack of subject matter jurisdiction, failure to state a claim upon which relief could be granted, and lack of personal jurisdiction. The trial court denied the motion and remanded the cause for a hearing. The savings institution and the banks appealed. Petitioners filed a motion to dismiss the appeal. The court granted petitioners' motion. The court held that the denial of the motion to dismiss on the grounds of lack of subject matter jurisdiction and failure to state a claim did not affect a substantial right and was not appealable prior to final judgment. The court held that the denial of the motion to dismiss for lack of personal jurisdiction was not appealable because the question presented on appeal was not a question of the trial court's authority to exercise jurisdiction.

**OUTCOME:** The court granted petitioners' motion to dismiss the appeals. The court denied the savings institution and banks petitions for writ of certiorari.

**COUNSEL:** Glenn, Mills & Fisher, P.A., by Stewart W. Fisher, William S. Mills, and Robert B. Glenn, Jr., Attorneys at Law, Durham, NC; and Gulley and Calhoun, by Michael D. Calhoun, Attorney at Law, and Wilbur P. Gulley, Durham, NC, for petitioners appellees.

Bailey & Dixon, L.L.P., by Ralph McDonald, Attorney at Law, and Denise Stanford Haskell, Raleigh, NC, for respondent appellant.

Poyner & Spruill, L.L.P., by David Dreifus, Attorney at Law, and Eric P. Stevens, Raleigh, NC, for intervenors appellants.

**JUDGES:** ARNOLD, Chief Judge. Judges GREENE and JOHN concur.

**OPINIONBY:** ARNOLD

**OPINION:** [\*\*407] [\*691] ARNOLD, Chief Judge.

Respondent and intervenors have filed petitions for writs of certiorari [\*\*\*5] in this Court as alternatives to their appeals in recognition that [\*692] they may have had no right to immediately appeal the orders of the trial court. Petitioners have filed a motion to dismiss the appeals. The petitions and the motion were referred to this panel for ruling.

We first consider petitioners' motion to dismiss the appeals. Petitioners contend the orders appealed from are interlocutory, do not affect a substantial right, and are therefore not immediately appealable. [HN1] Generally, there is no right to appeal from an interlocutory order. *Veazey v. Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950). However, an interlocutory order may be appealed prior to final judgment if it affects a substantial right that would be "lost, prejudiced or be less than adequately protected by exception to entry of the interlocutory order." *J & B Slurry Seal Co. v. Mid-South Aviation, Inc.*, 88 N.C. App. 1, 6, 362 S.E.2d 812, 815 (1987).

Respondent and intervenors have appealed from two orders. The order entered 2 March 1995 denied respondent's motion to dismiss the petitioners' request for judicial review based upon lack of subject matter jurisdiction, failure to state a claim upon which [\*\*\*6] relief can be granted, and lack of personal jurisdiction. The order entered 31 October 1995 remanded the case for hearing before respondent.

[HN2] An order denying a motion to dismiss for lack of subject matter jurisdiction does not affect a substantial right and is therefore not appealable prior to final judgment. *Burlington Industries, Inc. v. Richmond County*, 90 N.C. App. 577, 579, 369 S.E.2d 119, 121 (1988). Likewise, an order denying a motion to dismiss for failure to state a claim upon which relief can be granted does not affect a substantial right and is not appealable prior to final judgment. *Id.*

[HN3] An order denying a motion to dismiss for lack of personal jurisdiction is ordinarily appealable prior to final judgment. *Coastal Chemical Corp. v. Guardian Industries*, 63 N.C. App. 176, 178, 303 S.E.2d 642, 644 (1983). However, such an order is not immediately appealable when the question is not one of the authority of the trial court to exercise jurisdiction over the person but instead is a question of whether the jurisdictional prerequisites of the Administrative Procedure Act have been met. *Poret v. State Personnel Comm.*, 74 N.C. App. 536, 540, 328 S.E.2d 880, 882, [\*\*\*7] *disc. review denied*, 314 N.C. 117, 332 S.E.2d 491 (1985), *overruled on other grounds by Batten v. N.C. Dept. of Correction*, 326 N.C. 338, 389 S.E.2d 35 (1990). In this case, the trial court clearly had the authority to exercise jurisdiction because the State of North Carolina has consented to the supervisory jurisdiction by the General Court of [\*693] Justice over appeals from administrative agencies. *See id.* The question presented by the appeals is not one of the authority of the trial court to exercise jurisdiction but is actually a question of whether there is ripeness of the subject matter of the administrative decision for judicial review. Therefore, the order is not immediately appealable on the issue of personal jurisdiction.

Because respondent and intervenors could not appeal from the trial court's 2 March 1995 order prior to final judgment, the question is whether the order entered 31 October 1995 was final or otherwise appealable. [HN4] An order of the trial court remanding an action to an agency for hearing is interlocutory because it directs further action prior to a final decree. *Id.* at 538, 328 S.E.2d at 882; *Blackwelder v. Dept. of Human Resources*, 60 N.C. App. [\*\*\*8] 331, 333, 299 S.E.2d 777, 779 (1983). Furthermore, such an order is not immediately appealable because avoidance of a hearing does not affect a substantial right. *Id.*

Respondent and intervenors had no right to appeal from the trial court's orders. Furthermore, they have failed to show any compelling reason why their petitions for writs of [\*\*408] certiorari should be granted. For these reasons, the motion to dismiss the appeals is allowed and the petitions for writs of certiorari are denied.

Dismissed.  
Judges GREENE and JOHN concur.