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NO. COA01-903

NORTH CAROLINA COURT OF APPEALS

Filed: 6 August 2002

JAMES R. BOYD, III and
PAMALA BOYD,
Plaintiff-Appellants,

v.

Iredell County
No. 00 CVS 2499

LINDA EDMUND, DARRYL EDMUND
and A&E EQUIPMENT, INC.,
Defendant-Appellees.

Appeal by plaintiffs from order dated 16 April 2001 and order dated 9 May 2001 by Judge Larry G. Ford in Superior Court, Iredell County. Heard in the Court of Appeals 13 May 2002.

Carruthers & Roth, P.A., by Norman F. Klick, Jr. and Joseph Finarelli, for plaintiff-appellants.

Eisele, Ashburn, Greene & Chapman, PA, by John D. Greene, for defendant-appellees.

McGEE, Judge.

James R. Boyd, III and Pamala Boyd (plaintiffs) filed a verified complaint on 28 September 2000 against Linda Edmund and Darryl Edmund (individual defendants), as well as A&E Equipment, Inc. (corporate defendant) (collectively, defendants). In their complaint, plaintiffs alleged that on or about 6 January 1998, Mr. Boyd entered into an employment contract with defendants in which defendants agreed to pay Mr. Boyd a salary of \$5,500.00 per month. The complaint also alleged that individual defendants "acted

directly and/or indirectly in the interest of an employer in relation to an employee." Further, the complaint alleged that although defendants had agreed to reimburse Mr. Boyd for expenses incurred while performing his duties and obligations, defendants refused to do so. The complaint alleged that defendants failed to pay Mr. Boyd wages of \$8,250.00 for 1998, \$30,250.00 in 1999, and failed to pay any wages in 2000, along with expenses totaling \$1,231.08. The complaint alleged that due to defendants' failure to pay Mr. Boyd, he resigned his employment and as a result plaintiffs have suffered severe financial difficulties. Plaintiffs requested unpaid wages, liquidated damages, attorney's fees and costs, all pursuant to N.C. Gen. Stat. §§ 95-25.2 and -25.22. Plaintiffs further requested an entry of judicial dissolution of corporate defendant, as well as the appointment of a receiver to wind up and liquidate assets of corporate defendant, or to assume control of corporate defendant.

Defendants were served with summons and complaint on 11 October 2000. Defendants did not file an answer and plaintiffs moved for entry of default pursuant to N.C. Gen. Stat. § 1A-1, Rule 55(a) on 15 November 2000. Default was entered against all defendants on 15 November 2000. In a motion dated 20 December 2000, plaintiffs moved the trial court to enter judgment against all defendants pursuant to N.C. Gen. Stat. § 1A-1, Rule 55(b)(1). Defendants moved to set aside entry of default and filed a proposed answer on 21 March 2001. The trial court denied defendants' motion to set aside entry of default in an order dated 16 April 2001 and

made the following findings of fact:

1. That this matter is properly before this Court, and Defendants were properly served with summons and complaint and the instant motion.

2. That Defendants have failed to answer complaint in this matter and plaintiffs are entitled to Default Judgment as hereinafter found.

3. That plaintiff James R. Boyd, III was an employee of [corporate defendant] during the period approximately January, 1998 through April, 2000.

4. That during the time of employment of said plaintiff, [corporate defendant] failed to pay all wages earned and due to said plaintiff.

5. That upon the evidence presented, the Court finds that the sum of \$40,722.97 in wages and unreimbursed expenses are due to plaintiff James R. Boyd, III from [corporate defendant].

6. That the only evidence of a reason for non-payment of said wages by [corporate defendant] was that said corporation ". . . did not have the money . . ." and that said corporation ". . . may file bankruptcy . . ."

7. That there is sufficient evidence in the record to find that Defendant's failure to pay wages due to plaintiff was in good faith and that the employer had reasonable grounds to believe that its failure to so pay was not a violation of [N.C. Gen. Stat. §] 95-25.22.

8. That there is insufficient evidence before the Court to find that the individual Defendants are liable to plaintiffs for unpaid wages or expenses.

9. That there is insufficient evidence before the Court to find a basis for dissolution of the corporate defendant or for the appointment of a receiver.

The trial court concluded as a matter of law

1. That plaintiffs have judgment against the [corporate defendant] in the principal amount of \$40,722.97 for unpaid wages and unreimbursed expenses through April, 2000.

2. That in the discretion of the Court no liquidated damages are imposed against

[corporate defendant].

The trial court ordered corporate defendant to pay the wages and expenses.

Plaintiffs moved the trial court on 25 April 2001 to alter or amend its 16 April 2001 order. The trial court granted plaintiffs' motion to alter or amend in an order entered 9 May 2001 and concluded as a matter of law that

1. The [corporate defendant] unjustifiably breached the Employment Contract with Mr. Boyd.

2. The [corporate defendant] violated the North Carolina Wage and Hour Act, as set forth in N.C.G.S. § 95-25.1 et. seq;

3. Pursuant to N.C. Gen. Stat. § 95-25.22(a), Mr. Boyd is entitled to recover from the [corporate defendant] unpaid wages and expenses from January 6, 1998 through April 14, 2000 in the amount of \$40,722.97, together with interest at the legal rate from April 14, 2000 until paid.

4. Pursuant to N.C. Gen. Stat. § 95-25.22(a1), Mr. Boyd is entitled to recover from the [corporate defendant] liquidated damages in the amount of \$40,722.97 together with interest at the legal rate.

The trial court ordered the corporate defendant to pay the wages, expenses and liquidated damages. The court then stated that it

retains jurisdiction over Plaintiffs' causes of action pursuant to [N.C. Gen. Stat.] § 55-14-30, for Judicial Dissolution of [corporate defendant] and, alternatively, pursuant to [N.C. Gen. Stat.] § 55-14-32 for the Appointment of a Receiver, and these remaining causes of action and the appropriate equitable relief therefor will be determined at a subsequent hearing before this Court.

Plaintiffs appeal from the 16 April 2001 order and the 9 May 2001 order, arguing the trial court erred in not entering judgment against the individual defendants.

We must first determine if plaintiffs' appeal is interlocutory. An appeal from an order is interlocutory if the order does not dispose of the entire case, but instead requires further action by the trial court in order to settle and determine the entire controversy. *Veazey v. City of Durham*, 231 N.C. 357, 361-62, 57 S.E.2d 377, 381 (1950). Rules restricting immediate appealability of interlocutory orders "are designed to prevent fragmentary and premature appeals that unnecessarily delay the administration of justice and to ensure that trial divisions fully and finally dispose of the case before an appeal can be heard." *Bailey v. Gooding*, 301 N.C. 205, 209, 270 S.E.2d 431, 434 (1980).

Plaintiffs' appeal in the case before us is interlocutory because their claims against the individual defendants are still pending before the trial court. While the trial court found as fact that there was insufficient evidence to find individual defendants liable to plaintiffs in the 16 April 2001 order, the trial court made no conclusion of law or final judgment with respect to the individual defendants.

There are, however, two circumstances in which a party may appeal an interlocutory order. The first instance arises when there has been a final determination as to one or more of the claims or parties, and the trial court certifies that there is no just reason to delay an appeal. *Liggett Group v. Sunas*, 113 N.C. App. 19, 23, 437 S.E.2d 674, 677 (1993). See also N.C. Gen. Stat. § 1A-1, Rule 54(b) (1999). The trial court in this case made no such certification. The second circumstance arises when the

decision of the trial court "deprives the appellant of a substantial right which would be lost absent immediate review." N.C. Gen. Stat. § 7A-27(d)(1) (1999) and N.C. Gen. Stat. § 1-277 (1999). See also *Davidson v. Knauff Ins. Agency*, 93 N.C. App. 20, 24, 376 S.E.2d 488, 490-91, *disc. review denied*, 324 N.C. 577, 381 S.E.2d 772 (1989). Whether a substantial right is affected must be determined on a case-by-case basis. *Burnick v. Jurden*, 306 N.C. 435, 439, 293 S.E.2d 405, 408 (1982). The party desiring an immediate appeal of an interlocutory order must show that the affected right is a substantial one, and that deprivation of that right, if not corrected before final judgment, will potentially injure the moving party. *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 379, 444 S.E.2d 252, 253 (1994). Plaintiffs in this case have failed to show that the trial court's orders affected a substantial right which would be lost absent immediate appellate review. Plaintiffs' appeal is dismissed.

Appeal dismissed.

Chief Judge EAGLES and Judge TYSON concur.

Report per Rule 30(e).