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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-77

Filed: 2 July 2019

Cabarrus County, No. 16 CVD 1863

DESIREE G. WALLACE, Plaintiff,

v.

WILLIAM D. WALLACE, SR., Defendant.

Appeal by defendant from order entered 3 August 2018 by Judge Christy E. Wilhelm in Cabarrus County District Court. Heard in the Court of Appeals 6 June 2019.

No brief filed for plaintiff-appellee.

Hartsell & Williams, P.A., by J. Merritt White, III and Austin Entwistle III, for defendant-appellant.

ARROWOOD, Judge.

William D. Wallace, Sr. (“defendant”) appeals from the trial court’s order appointing a receiver. For the reasons stated herein, we dismiss defendant’s appeal.

I. Background

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Desiree G. Wallace (“plaintiff”) filed a complaint against defendant for post-separation support, alimony, equitable distribution, and attorneys’ fees on 27 June 2016. She also moved for injunctive relief and interim distribution of martial property. Defendant answered and counterclaimed for equitable distribution on or about 8 July 2016.

On 3 August 2016, the Honorable Brent D. Cloninger entered a consent order whereby the parties “agreed that pending further orders or the entry of a final judgment and order of equitable distribution, the parties” would “maintain the financial status quo of the marriage in the following respects:” (1) each party will continue to draw a salary from Wallace Industrial, Inc., a company owned by the parties and subject to equitable distribution, to pay their personal living expenses; (2) plaintiff will remain away from Wallace Industrial, Inc.’s premises and defendant will manage its daily operations; and (3) the parties will equally share in any distributions of profits from the three companies owned by the parties: Wallace Industrial Inc., WI, Inc., and D&DW Development, LLC, which the parties agreed to continue to utilize to pay certain expenses enumerated in the consent order.

Thereafter, the parties each filed various motions for contempt, restraining orders, injunctions, and relief relating to the 3 August 2016 consent order. Although defendant did not include the entire order in the record on appeal, the record tends to show that the matter came on for hearing before the Honorable Christy E. Wilhelm

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in Cabarrus County District Court on 31 July 2018. On the court’s own motion, it entered an order appointing a receiver “for all businesses owned or operated by the parties as well as real estate properties being used and managed by the businesses.” The parties have three businesses that fall within the scope of this order: (1) Wallace Industrial, Inc., a North Carolina business corporation of which the parties are the sole shareholders; (2) WI, Inc., a North Carolina business corporation of which defendant is the sole shareholder; and (3) D&DW Development, LLC, a North Carolina member managed limited liability company of which each party owns a fifty-percent membership interest (collectively, “the companies”). Neither party objected to the appointment of a receiver at the hearing.

Defendant appeals.

II. Discussion

Defendant raises four arguments on appeal: (1) the trial court lacked subject matter jurisdiction to appoint a receiver; (2) the trial court’s findings of fact were unsupported by competent evidence; (3) the trial court lacked personal jurisdiction to appoint a receiver; and (4) assuming *arguendo* the trial court had jurisdiction and made appropriate findings of fact, the trial court nonetheless erred by appointing a receiver. However, we do not reach the merits of arguments because defendant’s appeal is interlocutory.

A. Interlocutory Receivership Order

An order appointing a receiver during litigation is an interlocutory order. *Barnes v. St. Rose Church of Christ, Disciples of Christ*, 160 N.C. App. 590, 591, 586 S.E.2d 548, 549-50 (2003). As a matter of course, our Court does not consider interlocutory appeals. *Id.* at 591, 586 S.E.2d at 550. Nonetheless, defendant maintains our Court has appellate jurisdiction to review this appeal pursuant to N.C. Gen. Stat. § 7A-27(b)(3)(a) and N.C. Gen. Stat. § 1-277(a) and (b) (2017). We disagree.

i. Substantial Right Doctrine

N.C. Gen. Stat. §§ 7A-27(b)(3)(a) and 1-277(a) authorize our Court to consider an appeal of an interlocutory order if “the order deprives the appellant of a substantial right which would be jeopardized absent a review prior to a final determination on the merits.” *Barnes*, 160 N.C. App. at 591, 586 S.E.2d at 550 (citation and quotation marks omitted). Our Court assesses whether a substantial right is implicated “on a case by case basis.” *Hausle v. Hausle*, 226 N.C. App. 241, 244, 739 S.E.2d 203, 206 (2013) (citation and quotation marks omitted). “If appellant’s rights would be fully and adequately protected by an exception to the order that could then be assigned as error on appeal after final judgment, there is no right to an immediate appeal.” *Frost v. Mazda Motor of Am., Inc.*, 353 N.C. 188, 194, 540 S.E.2d 324, 328 (2000) (citation and internal quotation marks omitted).

An order appointing a receiver may affect a substantial right. *See Batesville Casket Co., Inc. v. Wings Aviation, Inc.*, 214 N.C. App. 447, 453, 716 S.E.2d 13, 18

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(2011). In *Batesville Casket Co., Inc.* this Court dismissed an appeal from an order appointing a receiver as interlocutory because the receivership order did not implicate a substantial right because the appointment of a receiver did not halt the day to day operation of the business, and the effect of the order was to prevent any potential harm to the assets of the business. *Id.* at 457, 716 S.E.2d at 20.

Batesville Casket Co., Inc. relies on *Barnes v. St. Rose Church of Christ, Disciples of Christ*, 160 N.C. App. 590, 586 S.E.2d 548 (2003), a case wherein our Court considered the defendants' appeal from a preliminary injunction freezing one defendant's assets and appointing a receiver to handle defendant's financial affairs. *Barnes*, 160 N.C. App. at 591, 586 S.E.2d at 549. This Court dismissed the appeal as interlocutory because a substantial right was not implicated, as defendants failed to show the orders had the potential to result in any harm, and the orders were:

designed to maintain the *status quo* of the church's finances during this litigation by placing the assets of the church and control of the day to day finances in the hands of a neutral party until this litigation involving control of those assets and finances is completed.

The order specifying the powers of the receiver authorizes the receiver to pay the ordinary operating expenses of the church as well as salary and a housing allowance for [a defendant], prohibits the church from incurring new liabilities, and allows the receiver to continue the collection of donations. *Thus, the day to day operation of the church is not halted by the trial court's orders, and the effect of the orders is to prevent removal of the church's assets prior to a determination of which entity and set of bylaws properly controls the affairs of the church in order to prevent any*

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potential harm to the assets of the church. Therefore, there is no substantial right of defendants that will be lost or irretrievably and adversely affected prior to a determination on the merits. Accordingly this appeal is dismissed as interlocutory and not affecting a substantial right.

Id. at 592, 586 S.E.2d at 550 (emphasis added) (internal citation omitted).

Thus, in both *Batesville Casket Co., Inc.* and *Barnes*, our Court held that a substantial right was not implicated by the appointment of a receiver, or the denial thereof, when “the day to day operation of the [business] is not halted by the trial court’s order[], and the effect of the orders is to prevent . . . any potential harm to the assets of the [business].” *Batesville Casket Co., Inc.*, 214 N.C. App. at 457, 716 S.E.2d at 20 (alterations in original). Defendant argues that, here, unlike *Batesville Casket Co., Inc.* and *Barnes*, the order affects a substantial right because it was entered without any evidence the companies in question were in danger of being lost or materially injured or impaired.

We disagree. The trial court entered an order appointing a receiver because, after the consent order was entered, “the parties [] made numerous allegations of contempt, unpaid/undistributed salaries or assets, misuse of business assets, and interference with access to records.” Based on these allegations, the court determined that the appointment of a receiver was “both necessary and appropriate in order to prevent waste and dissipation of the assets of the parties pending equitable distribution of the marital property.” The order grants the receiver “the full power of

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an equity Receiver under common law as well as such powers as are enumerated” in the order and N.C. Gen. Stat. § 1-507.2 (2017). It specifically limited the receiver’s duties “to matters relating to the Receivership Estate and unsettled claims thereof remaining in the possession of the Receiver[,]” and stated that nothing in the order “shall be construed to require further investigation of Receivership Estate assets heretofore liquidated and/or distributed or claims of the Receivership Estate settled prior to the issuance of this Order.” Therefore, just as in *Batesville Casket Co., Inc.* and *Barnes*, the trial court’s order does not halt the day to day operation of the business and the effect of the order is to prevent potential harm to the business. As a result, we hold the order does not deprive defendant of a substantial right which would be jeopardized absent a review prior to a final determination on the merits.

ii. N.C. Gen. Stat. § 1-277(b)

Defendant also argues that N.C. Gen. Stat. § 1-277(b) authorizes our court to consider his appeal as it relates to his jurisdictional arguments.

N.C. Gen. Stat. § 1-277(b) provides that: “Any interested party shall have 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 such party may preserve his exception for determination upon any subsequent appeal in the cause.” N.C. Gen. Stat. § 1-277(b). Notably, although defendant argues our Court has jurisdiction to consider both his personal and subject matter jurisdiction arguments pursuant to this

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subsection, our Court has held that the “adverse ruling[s] on jurisdiction over person or property” described by subsection (b) only authorizes interlocutory appeals based on arguments concerning *personal* jurisdiction, not subject matter jurisdiction. *Duke Univ. v. Bryant-Durham Elec. Co., Inc.*, 66 N.C. App. 726, 727, 311 S.E.2d 638, 639 (1984).

Nonetheless, even assuming *arguendo* defendant preserved his personal jurisdiction argument, we decline to consider this issue on appeal because defendant cannot assert a lack of personal jurisdiction on behalf of the companies.

N.C. Gen. Stat. § 1-75.3(b) provides:

(b) Personal Jurisdiction. - A court of this State having jurisdiction of the subject matter may render a judgment against a *party* personally only if there exists one or more of the jurisdictional grounds set forth in G.S. 1-75.4 or G.S. 1-75.7 and in addition either:

(1) Personal service or substituted personal service of summons, or service of publication of a notice of service of process is made upon the defendant pursuant to Rule 4(j) or Rule 4(j1) of the Rules of Civil Procedure; or

(2) Service of a summons is dispensed with under the conditions in G.S. 1-75.7.

N.C. Gen. Stat. § 1-75.3 (2017) (emphasis added). As set forth by this statute, personal jurisdiction is a court’s power over the *parties* in a lawsuit. For this reason, our State permits a defendant to both challenge a plaintiff’s allegation that the court has personal jurisdiction over his “person,” *see* N.C. Gen. Stat. § 1A-1, Rule 12(b)(2)

(2017), and also to waive the requirement that a court has personal jurisdiction over him by making a general appearance in the action, “provided, that obtaining an extension of time within which to answer or otherwise plead shall not be considered a general appearance[.]” N.C. Gen. Stat. § 1-75.7 (2017). However, defendant cites, and we have found, no statute or case law that defendant may raise a personal jurisdiction argument on behalf of a *non-party*.

Furthermore, the statute he invokes to proceed on this interlocutory appeal only permits challenges to a court’s personal power over the *parties* in the lawsuit: “Any interested *party* shall have 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 such party* may preserve his exception for determination upon any subsequent appeal in the cause.” N.C. Gen. Stat. § 1-277(b) (emphasis added). Accordingly, defendant’s argument that the court did not have personal jurisdiction over the companies does not meet the requirements of N.C. Gen. Stat. § 1-277(b).

Therefore, this appeal is not properly before our Court as a matter of right.

III. Conclusion

For the foregoing reasons, we dismiss defendant’s appeal.

DISMISSED.

Judges INMAN and COLLINS concur.

Report per Rule 30(e).