IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-810

No. COA22-398

Filed 6 December 2022

Moore County, No. 21 CVS 1164

JOSEPH MONROE, Plaintiff

v.

JAMES KNOWINGS and WANDA SIMMONS, Defendants

Appeal by plaintiff from order entered 16 December 2021 by Judge James M. Webb in Moore County Superior Court. Heard in the Court of Appeals 2 November 2022.

William Taylor for plaintiff-appellant.

Bagwell Holt Smith P.A. by Nathaniel C. Smith for defendant-appellees.

TYSON, Judge.

¶ 1 Joseph Monroe ("Plaintiff") appeals from a trial court's order setting aside the entry of a default. We dismiss the purported appeal as interlocutory, without prejudice, and remand.

I. Background

¶ 2 Plaintiff sought to quiet title to the subject property by filing a complaint and summons on 30 August 2021 against James Knowings and Wanda Simmons

(collectively "Defendants"). Both Plaintiff's and Defendants' claims of right to the real property derive from the title of Ruth Monroe. Plaintiff claims to be the adopted child of Ruth Monroe. Plaintiff's father, Odell Monroe, was married to Ruth Monroe, but predeceased her. Defendants allege Ruth Monroe died with only two children: James Hemingway and Ledell Monroe Sr. Knowings and Simmons are siblings and the children of James Hemingway.

¶ 3 Ledell Monroe Sr. died in 1996 leaving two children: Ledell Monroe Jr. and Lisa Monroe. Ruth Monroe, his mother, died intestate in 1999. James Hemingway died intestate in 2008 leaving a spouse, Albertha Hemingway and their two children, Defendants herein. Albertha Hemingway died intestate in 2009 leaving Defendants as her only heirs.

¶ 4 Plaintiff has continuously lived on the subject property for almost twenty years. Plaintiff claims he inherited the property from his adopted mother, Ruth Monroe. Defendants claim they inherited their share of the property from their grandmother, Ruth Monroe, upon their parents' deaths. The remaining one-half ownership interest purportedly lies with their cousins, the children of Ledell Monroe Sr. Defendants both filed non-warranty deeds in the Moore County Registry granting each of them a purported twenty-five percent interest in the property on 15 September 2015 at Book 4570, Page 1 and Book 4569, Page 599.

¶ 5 On 22 October 2020, Plaintiff filed a non-warranty deed as both grantor and

grantee along with a kinship affidavit claiming ownership of the property, asserting "James Monroe died intestate in 2008 leaving the remaining son, heir of the property being Joseph Monroe[,]" Plaintiff herein. Defendants filed ejectment proceedings, and Plaintiff was evicted from the property on 4 March 2021. Plaintiff was also charged with uttering and forgery. On 30 August 2021, Plaintiff filed this civil action.

¶ 6 Plaintiff attempted to serve process on both Defendants on 3 September 2021 by the Hoke County Sheriff. This attempted service was unsuccessful because, according to the officer's return, the "listed address is vacant per neighbors." Plaintiff mailed copies of the 30 August 2021 complaint and summons to both Defendants via United States Postal Service ("USPS") certified mail, return receipt requested. The signature cards were signed by USPS employees as "COVID-19" and did not contain a signature date. Neither Defendant nor any person residing within their household of suitable age signed the signature cards.

¶ 7 Plaintiff filed for entry of default on 14 October 2021, which was noted by the Moore County Clerk of Superior Court. Plaintiff filed a motion for default judgment on 26 October 2021.

¶ 8 Defendants inquired of the status of Plaintiff's pending criminal uttering and forgery charges with the Moore County District Attorney's Office on 27 October 2021. Moore County District Attorneys' Office personnel informed them of Plaintiff's 30 August 2021 civil action.

¶ 9 Defendants' attorney filed a notice of appearance and a verified motion to set aside entry of default and motion in opposition of default judgment on 24 November 2021. Following a hearing on 16 December 2021, the trial court entered an order setting aside the entry of default. Plaintiff appeals.

II. Jurisdiction

¶ 10 Our Supreme Court has long held: "An interlocutory order is one made during the pendency of an action, which does not dispose of the case, but leaves it for further action by the trial court in order to settle and determine the entire controversy." *Veazey v. Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950) (citation omitted). "Generally, there is no right of immediate appeal from interlocutory orders and judgments." *Goldston v. American Motors Corp.*, 326 N.C. 723, 725, 392 S.E.2d 735, 736 (1990).

¶ 11 "This general prohibition against immediate appeal exists because [t]here is no more effective way to procrastinate the administration of justice than that of bringing cases to an appellate court piecemeal through the medium of successive appeals from intermediate orders." *Harris v. Matthews*, 361 N.C. 265, 269, 643 S.E.2d 566, 568 (2007) (citation and internal quotations omitted).

¶ 12 Two circumstances allow a party to seek immediate appeal of an interlocutory order:

> First, a party is permitted to appeal from an interlocutory

> order when the trial court enters a final judgment as to one or more but fewer than all of the claims or parties and the trial court certifies in the judgment that there is no just reason to delay the appeal. Second, a party is permitted to appeal from an interlocutory order when the order deprives the appellant of a substantial right which would be jeopardized absent a review prior to a final determination on the merits.

Jeffreys v. Raleigh Oaks Joint Venture, 115 N.C. App. 377, 379, 444 S.E.2d 252, 253 (1994) (internal citations and quotation marks omitted).

¶ 13 To assert a cognizable appeal from an interlocutory order, absent a Rule 54(b) certification by the trial court, "the appellant has the burden of showing this Court that the order deprives the appellant of a substantial right which would be jeopardized absent a review prior to a final determination on the merits." *Id.* at 380, 444 S.E.2d at 254 (citations omitted).

¶ 14 "It is not the duty of this Court to construct arguments for or find support for appellant's right to appeal from an interlocutory order; instead, the appellant has the burden of showing this Court that the order deprives the appellant of a substantial right" to warrant immediate review. *Id.* Under either circumstance laid out in *Jeffreys*, "it is the appellant's burden to present appropriate grounds for this Court's acceptance of an interlocutory appeal[.]" *Id.*

¶ 15 The trial court's order setting aside the entry of default is interlocutory because it is not a final order. The trial court did not certify the judgment for "no just reason

for delay" of the appeal pursuant to N.C. Gen. Stat. § 1A-1, Rule 54(b) (2021). In order for this Court to acquire jurisdiction of Plaintiffs' appeal, Plaintiff must show the trial court's order deprives him of a substantial right that will be lost absent immediate review. *See Jeffreys,* 115 N.C. App. at 379, 444 S.E.2d at 253.

¶ 16 No general right of immediate appeal exists from an interlocutory order entered pursuant to Rule 60(b) motion to set aside a judgment. *See Bailey v. Gooding*, 301 N.C. 205, 210, 270 S.E.2d 431, 434 (1980). Plaintiff asserts his substantial rights are violated because he may lose the opportunity to have his appeal heard because of his advanced age, seventy-eight at time of filing. Neither avoidance of trial nor expediting review has been held to be grounds for showing a substantial right. *Waters v. Personnel, Inc.*, 294 N.C. 200, 208, 240 S.E.2d 338, 344 (1978).

¶ 17 Plaintiff recognizes his appeal is interlocutory and petitions this Court in his principal brief to issue a writ of certiorari ("PWC"). An applicant must "file a petition . . . with the clerk of the court of the appellate division to which appeal of right might lie from a final judgment in the cause by the tribunal to which issuance of the writ is sought." N.C. R. App. P. 21(b).

¶ 18 This Court does have authority pursuant to our Rules of Appellate Procedure to treat a purported appeal as a petition for writ of certiorari, which we may grant, in our discretion, without a showing of a substantial right. *Luther v. Seawell*, 191 N.C. App. 139, 142, 662 S.E.2d 1, 3 (2008).

¶ 19 "Certiorari is a discretionary writ, to be issued only for good and sufficient cause shown." *State v. Grundler*, 251 N.C. 177, 189, 111 S.E.2d 1, 9 (1959) (citation omitted); *see State v. Ricks*, 2021-NCSC-116, 378 N.C. 737, 862 S.E.2d 835 (2021). "A petition for the writ must show merit or that error was probably committed below." *Id.* (citation omitted). Plaintiff has not met this burden. Plaintiff's PWC is denied and purported appeal is dismissed as interlocutory without prejudice. *Id.*

III. Conclusion

¶ 20 Plaintiff has not shown a substantial right that will be impacted or lost absent an immediate appellate review. Plaintiff's purported petition in his brief for writ of certiorari does not show a substantial right nor assert merit or prejudice to warrant the writ. Plaintiff's PWC is denied and interlocutory appeal is dismissed. *It is so ordered.*

DISMISSED.

Judges MURPHY and WOOD concur.

Report per Rule 30(e).