IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-857

No. COA22-521

Filed 20 December 2022

Mecklenburg County, No. 21 CVS 14150

ALBERT HUDSON, Plaintiff,

v.

ANSLE HUDSON, Defendant.

Appeal by Plaintiff from order entered 19 January 2022 by Judge Carla Archie in Mecklenburg County Superior Court. Heard in the Court of Appeals 30 November 2022.

Sodoma Law, by Amy Elizabeth Simpson, for Plaintiff-Appellant.

Marcellino & Tyson, PLLC, by Clay A. Campbell and Danielle J. Walle, for Defendant-Appellee.

JACKSON, Judge.

¶ 1 Plaintiff Albert Hudson ("Plaintiff") appeals from an order granting Defendant Ansle Hudson's ("Defendant") motion to dismiss. For the reasons detailed below, we affirm the order of the trial court.

I. Background

¶ 2 Plaintiff and Defendant were married on 12 April 1986. The parties separated

in November of 2018. The parties have three children, two of whom were under the age of 18 at the time of separation ("the minor children"). On 11 December 2018, Plaintiff filed a complaint for child custody and equitable distribution and a motion for a temporary parenting agreement. Custody of the minor children was and continues to be heavily litigated by the parties.

¶ 3 On 8 September 2021, Plaintiff filed a complaint in Mecklenburg County Superior Court alleging intentional infliction of emotional distress, negligent infliction of emotional distress, and a claim for punitive damages against Defendant. At the time this action was initiated, the parties were engaged in litigation over alimony, with trial on alimony set for 7 September 2021 through 9 September 2021.

¶ 4 Plaintiff's claims stem from Defendant's alleged conduct during the parties' marriage, separation, and divorce and related domestic proceedings, including how Defendant interacted with the minor children and Plaintiff and her conduct during Plaintiff's visitation periods.

¶ 5 On 29 October 2021, Defendant filed her answer and a counterclaim for abuse of process. On the same day, Defendant filed a motion to dismiss and a motion for sanctions against Plaintiff.

¶ 6 A hearing on Defendant's motion to dismiss and motion for sanctions was held on 11 January 2022 before the Honorable Carla Archie. On 19 January 2022, the trial court entered an order granting Defendant's motion to dismiss and denying

Defendant's motion for sanctions.

¶ 7 On 27 January 2022, Plaintiff filed a notice of appeal. On 28 January 2022, Defendant filed a motion to dismiss Plaintiff's appeal as interlocutory. A hearing was held on Plaintiff's motion to dismiss Defendant's appeal on 7 April 2022 before the Honorable Karen Eady-Williams. The trial court entered an order denying the motion to dismiss the appeal on 16 May 2022, finding that there are overlapping factual issues between Plaintiff's dismissed claims and Defendant's pending claim which creates the potential for inconsistent verdicts, and that, as a result, a substantial right may be lost in the absence of an immediate appeal.

II. Analysis

A. Interlocutory Appeal

¶ 8 While the motion to dismiss fully disposed of Plaintiff's claims, it did not address Defendant's counterclaim for abuse of process. Therefore, Plaintiff's appeal to this Court is interlocutory. However, we hold that Plaintiff is entitled to immediate appellate review.

¶ 9 "As a general proposition, only final judgments, as opposed to interlocutory orders, may be appealed to the appellate courts." *Hamilton v. Mortgage Info. Servs., Inc.*, 212 N.C. App. 73, 77, 711 S.E.2d 185, 188 (2011). There are two avenues by which a party may appeal an interlocutory order, one of which is under N.C. Gen. Stat. §§ 1-277(a) and 7A-27(d)(1) "if the trial court's decision deprives the appellant

of a substantial right which would be lost absent immediate review." *North Carolina Dep't. of Transp. v. Page*, 119 N.C. App. 730, 734, 460 S.E.2d 332, 334 (1995).

¶ 10 Our appellate courts have developed a two-fold inquiry for the appealability of interlocutory orders under the "substantial right" exception. *J & B Slurry Seal Co. v. Mid-S. Aviation, Inc.*, 88 N.C. App. 1, 5, 362 S.E.2d 812, 815 (1987). "First, the right itself must be 'substantial.'" *Id.* "Second, the enforcement of the substantial right must be lost, prejudiced, or be less than adequately protected by exception to entry of the interlocutory order." *Id.* at 6, 362 S.E.2d at 815.

¶ 11 The right to avoid the possibility of two trials on the same issues can be a substantial one where "(1) the same factual issues would be present in both trials and (2) the possibility of inconsistent verdicts on those issues exists." *Page*, 119 N.C. App. at 735-36, 460 S.E.2d at 335.

¶ 12 Here, Defendant's abuse of process claim remains. A claim of abuse of process is predicated on there being wrongful litigation, specifically that the legal process is being misused for an ulterior purpose. *Chidnese v. Chidnese*, 210 N.C. App. 299, 304, 708 S.E.2d 725, 731 (2011). "It is the malicious perversion of a legally issued process whereby a result not lawfully or properly attainable under it is atte[mpted] to be secured." *Id.* at 310, 708 S.E.2d at 734.

¶ 13 Defendant's counterclaim alleges that Plaintiff "purposefully filed this lawsuit and arranged to have the Defendant served with it in the Courtroom where the

alimony trial was taking place immediately before she took the stand to testify in that trial." Defendant alleges that Plaintiff's suit is without merit and was initiated for the purpose of confusing, harassing, and interfering with Defendant's efforts in the alimony action.

¶ 14 Defendant's counterclaim hinges on whether Plaintiff's suit was filed for a meritorious, valid purpose. It necessarily contains the same factual issues and questions as Plaintiff's appeal—whether Plaintiff's claims have merit. Thus, there exists the possibility of inconsistent verdicts if we were to hold that Defendant's counterclaim must be resolved before Plaintiff's appeal may be heard. We therefore hold that Plaintiff is entitled to immediate appellate review of the trial court's motion to dismiss.

B. Standard of Review

¶ 15 On appeal of a trial court's grant of a motion to dismiss, we review the pleadings *de novo* to determine "whether the complaint states a claim for which relief can be granted under some legal theory." *Burgin v. Owen*, 181 N.C. App. 511, 512, 640 S.E.2d 427, 428 (2007). We construe the complaint liberally and take allegations of fact contained within as true. *Acosta v. Byrum*, 180 N.C. App. 562, 566-67, 638 S.E.2d 246, 250 (2006).

C. Intentional Infliction of Emotional Distress

¶ 16 Plaintiff first contends that the trial court erred in dismissing his claim for

intentional infliction of emotional distress. We disagree.

¶ 17 "The elements of the tort of intentional infliction of emotional distress are: (1) extreme and outrageous conduct, (2) which is intended to cause and does cause (3) severe emotional distress." *Shreve v. Duke Power Co.*, 85 N.C. App. 253, 256, 354 S.E.2d 357, 359 (1987). Liability is only appropriate for this claim where the alleged conduct is "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community[.]" *Hogan v. Forsyth Country Club Co.*, 79 N.C. App. 483, 493, 340 S.E.2d 116, 123 (1986). This conduct must go beyond insults, indignities, and threats. *Id.* Whether a defendant's alleged behavior rises to the level of being extreme and outrageous is a question of law for the court to decide. *Stamper v. Charlotte-Mecklenburg Bd. of Ed.*, 143 N.C. App. 172, 175, 544 S.E.2d 818, 820 (2001).

¶ 18 Further, in order to survive a motion to dismiss a claim of intentional infliction of emotional distress, a plaintiff must include allegations of severe emotional distress, which our Supreme Court has interpreted to mean:

> any emotions or mental disorder, such as, for example, neurosis, psychosis, chronic depression, phobia, or any other type of severe and disabling emotional or mental condition which may be generally recognized and diagnosed by professionals trained to do so.

Holloway v. Wachovia Bank & Trust Co., 339 N.C. 338, 354-55, 452 S.E.2d 233, 243 (1994).

¶ 19 For example, in *Hogan*, we held that a claim of intentional infliction of emotional distress may be based on allegations of sexually harassing behavior. 79 N.C. App. at 490, 340 S.E.2d at 121. The plaintiff there was entitled to submit her intentional infliction of emotional distress claim to the jury based on her allegations that:

> [The defendant] made sexually suggestive remarks to her while she was working, coaxing her to have sex with him and telling her that he wanted to "take" her. He would brush up against her, rub his penis against her buttocks and touch her buttocks with his hands. When she refused his advances, he screamed profane names at her, threatened her with bodily injury, and on one occasion, advanced toward her with a knife and slammed it down on a table in front of her.

Id.

¶ 20 In *Burgess v. Busby*, we held that a claim for intentional infliction of emotional distress may be based on a defendant's intentional interference with a plaintiff's relationship with their primary medical provider. 142 N.C. App. 393, 398, 544 S.E.2d 4, 6 (2001). There, the plaintiffs sufficiently stated a claim for intentional infliction of emotional distress where they alleged that the defendant, a physician who had recently been tried for medical malpractice along with a fellow physician, compiled a letter that included the plaintiffs in that action, all the jurors, and the plaintiffs' witnesses along with their addresses and distributed the letter to every practitioner at the only hospital in the county. *Id.* The plaintiffs alleged that, as a result, "they

fear in emergency and non-emergency situations they will be refused medical treatment or that their medical practitioners will sever the doctor-patient relationship." *Id.* (cleaned up).

¶ 21 Here, Plaintiff's complaint, viewed in the light most favorable to him, alleges that throughout the course of Plaintiff and Defendant's marriage and final separation Defendant engaged in financial mismanagement. Plaintiff further alleges that Defendant engages in a relaxed parenting style and allows the minor children "to do what they want when they want" and that all the minor children needed to do if they wanted something "was ask and they would get it[.]" Defendant has allowed the minor children to miss 40 days of school and has taken the children out of school to bring them to hearings related to the parties' divorce and custody proceedings.

¶ 22 Plaintiff further alleges that, after the parties' final separation and during their divorce and custody proceedings, Defendant interfered with Plaintiff's ability to visit with and see the minor children and that she has used the legal system to keep the minor children away from Plaintiff. Plaintiff alleges that Defendant engaged in the following specific conduct:

> a. Burning incense in front of the children stating that she was trying to rid the home of "evil;"
>
> b. Various comments about destroying the Plaintiff;
>
> c. Taking the children out of school to come to Court when they were not needed for the Court

proceedings;

d. Allowing the children to have access to emails with their attorneys;

e. Having [one of the minor children] in the car during a deposition of a third-party witness who Defendant falsely accused Plaintiff of having an affair with during the marriage;

f. Meeting the children without the Plaintiff's knowledge or consent during his parenting time stating, "I can't do anything about that right now;"

g. Showing up and refusing to leave when Plaintiff was having ordered time with the children;

h. Sitting in her car in the driveway next door during Plaintiff's parenting time;

i. Coming to a restaurant where father was having parenting time and refusing to leave;

j. Parking at the entrance of the Plaintiff's neighborhood; and

k. Picking up the children without permission from Plaintiff's home.

¶ 23 While Defendant's conduct as alleged by Plaintiff may border on inappropriate, or potentially be in contravention to any custody order the parties may have in place, we cannot hold that it rises to the level of being outrageous to the point of exceeding all bounds of decency in our society. *See Hogan*, 79 N.C. App. at 493, 340 S.E.2d at 123.

¶ 24 Further, the only allegations related to any emotional distress suffered by

Plaintiff because of this conduct is the following:

> 33. By the time of this first overnight Plaintiff had spent $600,000 dollars in legal fees trying to secure custodial time with his daughters and defending an astronomical request for post-separation support and temporary child support lodged against him by Defendant.
>
> 34. Under North Carolina law, the parent who has more overnights with a minor child is entitled to more child support. As a result, Defendant benefited financially from depriving Plaintiff with the time and relationship with his children. Despite the final custody ruling, Defendant is attempting to reengage the Court to modify the ruling.
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> . . .
>
> 43. Defendant's conduct did, in fact, cause severe emotional distress to Plaintiff.
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> 44. Defendant's conduct proximately damaged Plaintiff. Defendant's conduct was willful, malicious, wanton, and oppressive. As a result, Plaintiff is entitled to compensatory damages in excess of Twenty-Five Thousand dollars ($25,000).

¶ 25 Plaintiff has failed to allege any specific "emotional or mental disorder" caused by Defendant's actions and has thus failed to sufficiently state a claim for intentional infliction of emotional distress. We therefore hold that the trial court did not err in dismissing this claim.

D. Negligent Infliction of Emotional Distress

¶ 26 Plaintiff next contends that the trial court erred in dismissing his claim for negligent infliction of emotional distress. For the same reasons that we hold that the

trial court did not err in dismissing Plaintiff's intentional infliction of emotional distress claim, we also hold it did not err in dismissing his negligent infliction of emotional distress claims.

¶ 27 "The substantive elements of negligent infliction of emotional distress are: (1) the defendant negligently engaged in the conduct, (2) it was reasonably foreseeable that such conduct would cause the plaintiff severe emotional distress, and (3) the conduct did in fact cause the plaintiff severe emotional distress." *Acosta*, 180 N.C. App. at 567, 638 S.E.2d at 250 (cleaned up).

¶ 28 Our courts have defined "severe emotional distress" for the purposes of negligent infliction of emotional distress the same as for intentional infliction of emotional distress. *See Hardin v. York Mem'l Park*, 221 N.C. App. 317, 327, 730 S.E.2d 768, 777 (2012). We have further said that "a plaintiff must present evidence of diagnosable mental health conditions" and that allegations of pain and suffering are not sufficient to rise to the level of severe emotional distress. *Id.* (internal quotations omitted).

¶ 29 A complaint for negligent infliction of emotional distress may be properly dismissed where it is devoid of any specific factual allegations regarding the plaintiff's severe emotional distress. *Cauley v. Bean*, 282 N.C. App. 443, 450, 2022-NCCOA-202 ¶ 21 (2022), *rev. denied*, 876 S.E.2d 281 (2022). While there are no magic words or phrases that a plaintiff must use to sufficiently plead emotional distress, bare

allegations that the plaintiff has "suffered severe emotional distress" without factual allegations describing what that emotional distress is or how it has manifested are insufficient to state a valid claim for negligent infliction of emotional distress. *Id.* at 451, 2022-NCCOA-202 ¶ 21.

¶ 30 In *McAllister v. Ha*, our Supreme Court held that the plaintiffs sufficiently stated a claim for negligent infliction of emotional distress where they alleged that the "plaintiff-wife became pregnant and gave birth to a child with sickle-cell disease as a result of [the] defendant's negligence. [The] [p]laintiffs alleged that [the] defendant's negligence caused them 'extreme mental and emotional distress,' specifically referring to the plaintiff-wife's fears regarding her son's health and her resultant sleeplessness." 347 N.C. 638, 646, 496 S.E.2d 577, 583 (1998).

¶ 31 In *Newman v. Stepp*, our Supreme Court held that the plaintiffs adequately stated a claim for negligent infliction of emotional distress where they alleged that the defendants, who ran an unlicensed daycare that the plaintiffs' daughter attended, left a loaded firearm on their kitchen table, which was discharged by one of the defendants' children, killing the plaintiffs' daughter. 376 N.C. 300, 301, 852 S.E.2d 104, 106 (2020). The plaintiffs specifically alleged that "[b]oth plaintiffs have incurred severe emotional distress. The mother has incurred such severe emotional distress that she has been under constant psychiatric care and has been placed on numerous strong anti-depressants as well as other medications." *Id.* at 303, 852

S.E.2d at 107.

¶ 32 Here, in addition to general allegations 33 and 34, described above, Plaintiff's only allegation relating to emotional distress under his negligent infliction of emotional distress claim is "47. Because of Defendant's actions, Plaintiff suffered severe emotional distress." This is insufficient under our case law to describe what emotional distress, if any, that Plaintiff suffered.

¶ 33 Because Plaintiff's complaint contains no specific allegations of what severe emotional distress he has suffered as a result of Defendant's conduct, we hold that the trial court properly dismissed his claim for negligent infliction of emotional distress.

III. Conclusion

¶ 34 For the aforementioned reasons, we affirm the trial court's dismissal of Plaintiff's complaint.

AFFIRMED.

Judges ZACHARY and COLLINS concur.

Report per Rule 30(e).