IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-116

Filed 3 October 2023

Rowan County, No. 21 CVS 2204

PAMELA LOWRIE, Individually and as personal Representative of the Estate of SCOTT ROBERT LOWRIE, Deceased, Plaintiff,

v.

THE ESTATE OF LESLIE GEORGE CSANYI, ALAN DAY OVERCASH, MICHAEL A. STRICKLAND, Individually and doing business as THUMBS UP SERVICES, LLC, a North Carolina Limited Liability Company, DELHAIZE AMERICA, LLC, a North Carolina Limited Liability Company, and RETAIL BUSINESS SERVICES, LLC, a Delaware Limited Liability Company, Defendants.

Appeal by plaintiff from order entered 13 October 2022 by Judge Lori Hamilton in Rowan County Superior Court. Heard in the Court of Appeals 20 September 2023.

Osborne Law Firm, P.C., by Curtis C. Osborne, and Motley Rice, LLC, by James R. Brauchle, pro hac vice, for plaintiff-appellant.

Cranfill Sumner, LLP, by Steven A. Bader and Susan L. Hofer, for defendant-appellee.

ARROWOOD, Judge.

Pamela Lowrie ("plaintiff") appeals from an order entered enforcing a settlement agreement between plaintiff and Alan Day Overcash ("defendant Overcash"). On appeal, plaintiff argues the agreement is unenforceable because there

was no meeting of the minds and because her previous counsel lacked the authority to accept the offer to settle. For the following reasons, we affirm.

I. Background

On 30 October 2019, an aircraft crashed after departing an airport in Atlanta, Georgia. The pilot and passenger were both killed in the crash. Plaintiff, wife of the deceased passenger Scott Robert Lowrie, was appointed as the personal representative of Scott Robert Lowrie's estate. Defendant Overcash was the owner of the aircraft. A policy on the aircraft from Old Republic Insurance Company provided $100,000.00 for losses from a crash. Attorney Daniel Barks ("Barks") of Speiser Krause, P.C. initially represented plaintiff and the Lowrie estate.

Beginning January 2020, Barks communicated with defendant Overcash's counsel as well as the claims manager from Old Republic assigned to the crash David Huie ("Huie") via email and telephone regarding the accident. On 21 June 2021, defendant Overcash's counsel Susan Hofer ("Hofer") emailed Barks the following:

> I am drafting the release upon your agreement to accept Old Republic's $100,000 sublimit in settlement of the above estate's claim against Mr. Overcash. I don't know that you had confirmed that to me in writing and would most appreciate if you could reply and confirm acceptance of this settlement.

The same day, Barks responded, "[O]n behalf of the Lowrie Estate, we accept Old Republic's tender of its $100,000.00 per seat limit in settlement regarding the estate['s] claim against Mr. Overcash."

On 1 September 2021, Barks sent Hofer an email notifying her that "Speiser Krause is no longer representing the [Lowrie] Estate or any member of the family." On 29 October 2021, plaintiff filed suit for wrongful death and negligence against several defendants responsible for maintaining the aircraft, including defendant Overcash.

On 12 August 2022, defendant Overcash filed a motion to enforce the settlement agreement. The trial court held a hearing on the motion on 19 September 2022, Judge Hamilton presiding. At the hearing, defendant Overcash's counsel Hofer stated that "for a year and seven months I was dealing on a continuing basis with Mr. Barks and at no time had any thought that he was not representing Mrs. Lowrie and the Lowrie Estate." Hofer and the claims manager Huie submitted affidavits stating that from January 2020 until the 1 September 2021 email from Barks, it was apparent to them from their communications that Barks had authority to act on behalf of the Lowrie estate. Plaintiff and her new counsel submitted affidavits declaring Barks did not have the authority to settle the claim against defendant Overcash. Plaintiff did not provide any statement from Barks himself regarding his authority. On 13 October 2022, the trial court granted the motion and entered the order of enforcement. On 10 November 2022, plaintiff appealed the order.

II. Discussion

On appeal, plaintiff argues that the settlement agreement should not be

enforced because (1) there was no meeting of the minds on all material terms of the agreement and (2) attorney Barks did not have authority to enter into the agreement. In response, defendant Overcash filed a motion to dismiss the appeal as interlocutory on 2 June 2023. Before addressing the merits of plaintiff's appeal, we first must determine whether it is properly before this Court.

A. Interlocutory Appeal

An order is either a final judgment or an interlocutory order. *See Veazey v. City of Durham*, 231 N.C. 357, 361, 57 S.E.2d 377, 381 (1950). Plaintiff concedes the appeal of the trial court's order is interlocutory. "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." *Id.* at 362, 57 S.E.2d at 381 (citation omitted).

"As a general rule, interlocutory orders are not immediately appealable." *Turner v. Hammocks Beach Corp.*, 363 N.C. 555, 558, 681 S.E.2d 770, 773 (2009) (citation omitted). However, immediate appeal is available "in at least two instances: when the trial court certifies . . . that there is no just reason for delay of the appeal; and when the interlocutory order affects a substantial right." *Id.* (citing *Sharpe v. Worland*, 351 N.C. 159, 161-62, 522 S.E.2d 577, 579 (1999)) (internal quotation marks omitted).

To determine whether an order affects a substantial right, "we utilize a two-part test, with the first inquiry being whether a substantial right is affected by the

challenged order and the second being whether this substantial right might be lost, prejudiced, or inadequately preserved in the absence of an immediate appeal." *Hamilton v. Mortg. Info. Servs., Inc.*, 212 N.C. App. 73, 78, 711 S.E.2d 185, 189 (2011) (citations omitted).

"[S]imply having all claims determined in one proceeding is not a substantial right. A party has instead the substantial right to avoid two separate trials of the same 'issues[.]' " *Id.* at 79, 711 S.E.2d at 190 (citation omitted). For this analysis, issues are the same "if the facts relevant to their resolution overlap in such a way as to create a risk that separate litigation of those issues might result in inconsistent verdicts." *Id.* (citation omitted).

"In cases where there are complex facts and a possibility of inconsistent verdicts in separate trials, an order allowing summary judgment as to fewer than all defendants affects a substantial right." *Michael v. Huffman Oil Co., Inc.*, 190 N.C. App. 256, 260, 661 S.E.2d 1, 5 (2008) (citing *Fed. Land Bank of Columbia v. Lieben*, 86 N.C. App. 342, 344, 357 S.E.2d 700, 702 (1987)). For purposes of appellate review, "[a] motion to enforce a settlement agreement is treated as a motion for summary judgment[.]" *Williams v. Habul*, 219 N.C. App. 281, 288, 724 S.E.2d 104, 109 (2012) (citations and internal quotation marks omitted).

In the present case, the trial court's granting defendant Overcash's motion to enforce the settlement agreement serves to dismiss him from the case. The facts regarding defendant Overcash's care of the aircraft could be linked to the facts

regarding the remaining defendants' alleged wrongful conduct in maintaining the aircraft. Should the issues arise in separate litigation, the risk of inconsistent verdicts raises a substantial right to immediate review of defendant Overcash's dismissal from the underlying suit. As such, we deny defendant Overcash's motion to dismiss and review the merits of plaintiff's appeal.

B. Enforcement of Settlement Agreement

Plaintiff first argues that there was no meeting of the minds to form the settlement agreement because the parties did not agree to the essential terms of the settlement. We disagree.

"A compromise and settlement agreement terminating or purporting to terminate a controversy is a contract, to be interpreted and tested by established rules relating to contracts." *Smith v. Young Moving and Storage, Inc.*, 167 N.C. App. 487, 492-93, 606 S.E.2d 173, 179 (2004) (quoting *Harris v. Ray Johnson Constr. Co.*, 139 N.C. App. 827, 829, 534 S.E.2d 653, 654 (2000)) (internal quotation marks omitted). Matters of contract interpretation are questions of law this Court reviews de novo. *Powell v. City of Newton*, 200 N.C. App. 342, 344, 684 S.E.2d 55, 58 (2009) (citations omitted).

For a valid contract to exist, "there must be a meeting of the minds as to all essential terms of the agreement." *McKinnon v. CV Indus., Inc.*, 213 N.C. App. 328, 333, 713 S.E.2d 495, 500 (2011) (citation and internal quotation marks omitted). "[G]iven the consensual nature of any settlement, a court cannot compel compliance

with terms not agreed upon or expressed by the parties in the settlement agreement." *Chappell v. Roth*, 353 N.C. 690, 692, 548 S.E.2d 499, 500 (2001).

This Court has found an enforceable settlement agreement exists where a party accepts an offer to settle a claim for a specified sum. *See Harris*, 139 N.C. App. at 831, 534 S.E.2d at 655-56. In *Harris*, this Court held that an attorney's oral acceptance of an insurance carrier's offer to settle the plaintiff's claim for $2,000 in exchange for release of the defendant created an enforceable agreement to settle. *Id.*

However, when a condition of an agreement is not met, a settlement agreement is not enforceable. *See Chappell*, 353 N.C. at 692, 548 S.E.2d at 500. In *Chappell*, the settlement agreement provided that "defendants would pay $20,000 to plaintiff in exchange for a voluntary dismissal with prejudice and a 'full and complete release, mutually agreeable to both parties.' " *Id.* at 693, 548 S.E.2d at 500. The Court held that the "mutually agreeable" release was a material term of the settlement agreement, and because the parties failed to agree on terms of the release, "no meeting of the minds occurred between the parties as to a material term[.]" *Id.*

Here, the agreement is closely similar to that in *Harris*. Defendant Overcash's counsel communicated an offer "to accept Old Republic's $100,000 sublimit in settlement of the above estate's claim against Mr. Overcash." Plaintiff's former counsel accepted "Old Republic's tender of its $100,000.00 per seat limit in settlement regarding the estate['s] claim against Mr. Overcash." Like the parties in *Harris*, the parties here agreed to the sum of the settlement and that it would resolve plaintiff's

claim against defendant Overcash. Those being the only terms of the agreement, "there remained nothing to negotiate." *Harris*, 139 N.C. App. at 831, 534 S.E.2d at 655-56.

Plaintiff likens her case to *Chappell* in that there were no terms of release in either case, which she argues makes the agreement here unenforceable. Plaintiff's case is distinguishable from *Chappell*. The agreement in that case required the parties to agree to a release with "mutually agreeable" terms as a condition of settlement; however, the agreement here provided no such condition on the terms of release. The only terms within the agreement here on which the parties were required to assent were the sum of the settlement and the release of the claim against defendant Overcash. As *Harris* illustrates, the fact that the terms of release or other administrative details were not contemplated within the agreement does not preclude enforcement of the settlement. Thus, the settlement agreement here is a valid contract.

Plaintiff further contends that her former attorney Daniel Barks did not have authority to enter into the settlement agreement on behalf of the Lowrie estate. We again disagree.

Special authorization from the client is required before an attorney may enter into an agreement discharging or terminating a cause of action on the client's behalf. *Id.* at 829, 534 S.E.2d at 655. However, "there is a presumption in North Carolina in favor of an attorney's authority to act for the client he professes to represent." *Id.* at

829, 534 S.E.2d at 654; *see also Greenhill v. Crabtree*, 45 N.C. App. 49, 52, 262 S.E.2d 315, 317, *aff'd per curiam*, 301 N.C. 520, 271 S.E.2d 908 (1980) ("Where special authorization is necessary in order to make a dismissal or other termination of an action by an attorney binding on the client, . . . it will be presumed, prima facie, that the attorney acted under and pursuant to such authorization." (citation omitted)). The challenger of the attorney's authority has the burden of rebutting this presumption. *See Harris*, 139 N.C. App. at 829, 534 S.E.2d at 655.

"The attorney-client relationship is based upon principles of agency." *Id.* at 830, 534 S.E.2d at 655 (citing *Dunkley v. Shoemate*, 350 N.C. 573, 577, 515 S.E.2d 442, 444 (1999)). North Carolina law states that

> [a]n act is within the power of an agent if the agent has the legal ability to bind the principal to a third person thereby, even though the act constitutes a violation of the agent's duty to the principal. . . . When a[n] . . . agent acts within the scope of his apparent authority, and the third party has no notice of the limitation on such authority, the [principal] will be bound by the acts of the agent[.]

Purcell Int'l Textile Grp., Inc. v. Algemene AFW N.V., 185 N.C. App. 135, 138-39, 647 S.E.2d 667, 671 (2007) (citing *Zimmerman v. Hogg & Allen, Pro. Ass'n*, 286 N.C. 24, 30, 209 S.E.2d 795, 799 (1974)). However, "the determination of a principal's liability in any particular case must be determined by what authority the third person in the exercise of reasonable care was justified in believing that the principal had, under the circumstances, conferred upon his agent." *Zimmerman*, 286 N.C. at 30-31, 209 S.E.2d at 799 (citations omitted).

An attorney acting as an agent can bind their client to their acts even when they exceed the authority granted. *Compare Royal v. Hartle*, 145 N.C. App. 181, 184, 551 S.E.2d 168, 171 (2001), *with Gentry v. Hill*, 57 N.C. App. 151, 154, 290 S.E.2d 777, 780 (1982) (finding sufficient evidence to rebut the presumption of authority where both the plaintiff and his attorney entered affidavits denying that the attorney had the necessary consent). In *Royal*, defendants contended that their attorney signed a consent order without their authority and submitted affidavits to support their argument. 145 N.C. App. at 184, 551 S.E.2d at 171. This Court reasoned that because the attorney "represented to the plaintiff . . . that he had the necessary authority to sign the consent order on behalf of the defendants" and "[t]he only evidence properly before the trial court was the affidavits of [defendants,]" the defendants failed to rebut the presumption. *Id.*

Here, Hofer and the Old Republic claims manager Huie communicated with Barks from January 2020 until his email on 1 September 2021 that he no longer represented plaintiff or the estate. They negotiated and discussed the details of the case during that time, and both Hofer and Huie submitted affidavits stating Barks held himself out as having authority to act on behalf of plaintiff and the Lowrie estate. Based on the length and contents of their communications, Hofer and Huie were justified in their belief that plaintiff authorized Barks to accept the offer to settle. While plaintiff and her new attorney submitted affidavits stating that Barks did not have the authority to settle her claim, like the defendants in *Royal*, these affidavits

were the only evidence before the trial court supporting Barks's lack of authority. Without acknowledgment from Barks that he lacked authority to settle the claim, as was the case in *Gentry*, or some other evidence, plaintiff has not sufficiently rebutted the presumption that Barks acted within his apparent authority.

III. Conclusion

For all the foregoing reasons, we find that the settlement agreement was valid, and plaintiff's attorney had apparent authority to enter into the agreement on behalf of his client.

AFFIRMED.

Judges DILLON and GORE concur.

Report per Rule 30(e).