NO. COA12-304
NORTH CAROLINA COURT OF APPEALS

Filed: 18 September 2012

JACOB GINSBURG, ESQ.,
Plaintiff-Appellant,

v.

Iredell County
No. 10 CVS 00924

DOUGLAS D. PRITCHARD, MD; STATESVILLE PAIN ASSOCIATES, PLLC; ROBIN PRITCHARD, RN; CAROLINA PAIN CONSULTANTS; and BOBBY KEARNEY, MD,
Defendants-Appellees.

Appeal by Plaintiff from order entered 29 November 2010 by Judge A. Robinson Hassell in Superior Court, Iredell County. Heard in the Court of Appeals 28 August 2012.

Jacob Ginsburg, Esq., Plaintiff-Appellant, pro se.

Young, Morphis, Bach & Taylor, LLP, by Paul E. Culpepper and Timothy D. Swanson, for Defendants-Appellees Douglas D. Pritchard, Robin Pritchard, Statesville Pain Associates, PLLC and Carolina Pain Consultants.

No brief for Defendant-Appellee Bobby Kearney, MD.

McGEE, Judge.

Jacob Ginsburg (Plaintiff) filed a complaint dated 22 March 2010 asserting causes of action for constructive trust,

conversion, unjust enrichment, breach of contract and interference with contract, *quantum meruit*, and unfair or deceptive acts in or affecting commerce against Douglas D. Pritchard, (Dr. Pritchard); Statesville Pain Associates, PLLC (SPA); Robin Pritchard (Mrs. Pritchard); Carolina Pain Consultants (CPC) (collectively, the Pritchard Defendants); and Bobby Kearney (Dr. Kearney) (collectively, Defendants).

Plaintiff alleged in his complaint that Dr. Pritchard and Dr. Kearney were "owners, principals and/or agents of each other" with respect to ownership of SPA when Dr. Kearney and SPA hired Plaintiff to advise them concerning an appeal in a Medicare audit. Plaintiff further alleged that, "[d]uring the pendency of the appeals, Medicare wrongfully recouped i.e. collected $48,255.00 from [D]efendants." After years of litigation and Medicare appeals, Plaintiff alleged a Florida administrative law judge awarded a refund in favor of Defendants with respect to their SPA patients in the amount of $40,689.43. Plaintiff also alleged that an "attorney charging lien" attached to that award. A Medicare refund check (the check) was issued in the amount of $40,689.43, and was mailed to Defendants Kearney and SPA "on or about February 4, 2008." Plaintiff made demand for the check on 4 February 2008 and Dr. Pritchard rejected Plaintiff's demand.

Dr. Pritchard and Dr. Kearney entered into a dissolution agreement (the agreement) with respect to SPA on 25 February 2008. The agreement provided that all unresolved accounting matters be submitted to an arbitrator. Plaintiff filed a complaint against Defendants in New York on 13 February 2009. Plaintiff states in his brief that the New York trial court dismissed the matter on 2 December 2009, "based upon the false Pritchard NY Representations[.]" Plaintiff appealed to the New York appellate court, and states in his brief that that court has stayed that proceeding pending resolution of the present case.

The Pritchard Defendants filed an answer and cross-claim against Dr. Kearney on 8 June 2010 in North Carolina, seeking contribution and indemnity. Dr. Kearney filed an answer and cross-claim on 17 June 2010 in North Carolina, also seeking contribution and indemnity from the Pritchard Defendants. The contribution and indemnity cross-claims arise, in part, from the management of funds related to SPA and CPC.

The Pritchard Defendants filed a motion, dated 4 October 2010, to compel arbitration and stay litigation, arguing that "ownership of the . . . check must be resolved" pursuant to the terms of the agreement. The Pritchard Defendants asserted that the agreement required that unresolved accounting issues be

submitted to an arbitrator. The trial court entered an order on 29 November 2010, granting the Pritchard Defendants' motion to stay litigation and compel arbitration. The trial court's order stated "nothing [in] this Order shall operate as a waiver or prejudice of any of Plaintiff's rights or remedies herein or in Plaintiff's New York litigation against any of the Defendants." Plaintiff appeals.

Grounds for Appeal

We must first address whether Plaintiff's appeal is properly before this Court. "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).

> A final judgment is one which disposes of the cause as to all the parties, leaving nothing to be judicially determined between them in the trial court. 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, 361-62, 57 S.E.2d 377, 381 (1950) (citations omitted). "There 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." *Id.* at

363, 57 S.E.2d at 382.

Plaintiff first argues that his appeal is not interlocutory in that the trial court's order compelling arbitration and staying litigation "effectively precludes 'further action by the trial court . . . to settle and determine the entire controversy' because it eviscerates and subordinates Plaintiff's secured charging lien claim[.]" However, we note that, even if Plaintiff's secured charging lien claim was "eviscerated" by the trial court's order, Plaintiff's complaint contains several other claims which are not "eviscerated."

Further, our Court has consistently held that "[a]n order compelling the parties to arbitrate is an interlocutory order." *The Bluffs v. Wysocki*, 68 N.C. App. 284, 285, 314 S.E.2d 291, 293 (1984). In *The Bluffs*, this Court noted that, "[f]ollowing the conclusion of arbitration, a party may apply to the court for an order either confirming, vacating, modifying or correcting an arbitration award[.]" *Id.* "Upon the entry of such an order, the trial court must enter a judgment or decree in conformity with such order . . . . A dissatisfied party then . . . has a right of appeal from the trial court's order or judgment." *Id.* Concluding that orders compelling arbitration are interlocutory, this Court observed that, because of the procedures discussed above, "[t]he parties thus have access to

the courts." *Id.*; *accord Darroch v. Lea*, 150 N.C. App. 156, 162, 563 S.E.2d 219, 223 (2002); *Russell v. State Farm Ins. Co.*, 136 N.C. App. 798, 800, 526 S.E.2d 494, 496 (2000) ("An order compelling arbitration . . ., such as that entered in the instant case, is interlocutory and therefore not immediately appealable.").

> [I]mmediate appeal of interlocutory orders and judgments is available in at least two instances. First, immediate review is available when the trial court enters a final judgment as to one or more, but fewer than all, claims or parties and certifies there is no just reason for delay. . . . Second, immediate appeal is available from an interlocutory order or judgment which affects a substantial right.

Sharpe v. Worland, 351 N.C. 159, 161-62, 522 S.E.2d 577, 579 (1999) (citations and quotation marks omitted). Plaintiff argues the trial court's interlocutory order affects a substantial right that will be lost without this Court's immediate review. Plaintiff contends the trial court's order "affects 'substantial rights' of Plaintiff, by eliminating Plaintiff's charging lien in the $40,689.43 . . . check, his right to discovery and a jury trial, and his claims through claim or issue preclusion." **[P11]**

Plaintiff cites no cases in which an order staying litigation and compelling arbitration between co-defendants has been held to affect a substantial right of a plaintiff.

Plaintiff's argument is essentially that "there is no legal reason to nullify his charging lien, collateral, and eviscerate his claims through an Order which binds him to an arbitration which he is a stranger to."

> Admittedly the "substantial right" test for appealability of interlocutory orders is more easily stated than applied. It is usually necessary to resolve the question in each case by considering the particular facts of that case and the procedural context in which the order from which appeal is sought was entered.

Waters v. Personnel, Inc., 294 N.C. 200, 208, 240 S.E.2d 338, 343 (1978). In the present case, the trial court's order clearly compels arbitration between the Pritchard Defendants and Dr. Kearney. The only section of the trial court's order that has an effect on Plaintiff is that portion of the order staying litigation while the Pritchard Defendants and Dr. Kearney undergo arbitration to resolve the dissolution of SPC. The order did not require Plaintiff to submit to arbitration; rather, Plaintiff's claims are simply stayed until the co-defendants resolve their issues pursuant to arbitration. The arbitration between co-defendants arises from their cross-claims against each other concerning the dissolution of SPC and, pursuant to N.C. Gen. Stat. § 1-569.7 (f) (2011): "If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a

claim alleged to be subject to the arbitration until the court renders a final decision under this section."

This Court has consistently held that orders compelling arbitration are not immediately appealable and do not affect a substantial right. *The Bluffs*, 68 N.C. App. at 285, 314 S.E.2d at 293 ("We do not believe it affects a substantial right and works an injury to the appellant if not corrected before an appeal from a final judgment."); *see also Laws v. Horizon Housing, Inc.*, 137 N.C. App. 770, 771, 529 S.E.2d 695, 696 (2000) ("The statute does not provide for an immediate appeal from an order compelling arbitration, and this Court has expressly held 'that there is no immediate right of appeal from an order compelling arbitration.'" (citation omitted)). As Plaintiff cites no authority supporting his argument that the arbitration between Defendants will "eviscerate" Plaintiff's claims, we are not persuaded to overlook this Court's consistent position. Plaintiff's argument that the trial court's order affects a substantial right is ineffective and we therefore dismiss his appeal as interlocutory

Dismissed.

Judges BEASLEY and THIGPEN concur.

Report per Rule 30(e).