NO. COA13-177
NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2013

STUART TODD LYNCH and wife, SALLY S. LYNCH,

Plaintiffs,

v. Brunswick County
No. 12 CVS 1532

OAK ISLAND BEACH VILLA OWNERS ASSOCIATION, INC., a North Carolina non-profit corporation,

Defendant.

Appeal by defendant from order entered 25 October 2012 by Judge Ola M. Lewis in Brunswick County Superior Court. Heard in the Court of Appeals 4 June 2013.

Johnson & Moore, P.A., by Kimberly L. Moore, for plaintiffs-appellees.

Cranfill Sumner & Hartzog LLP, by Melody J. Jolly, for defendant-appellant.

STEELMAN, Judge.

Where appellant fails to articulate the violation of a substantial right, its appeal from the denial of motions to dismiss is dismissed as interlocutory.

I. Factual and Procedural History

Stuart and Sally Lynch (plaintiffs) own a condominium unit in the Oak Island Beach Villas development in Brunswick County. Oak Island Beach Villa Owners Association (defendant) is a non-profit corporation whose purpose is to manage and maintain the development. Plaintiffs' unit, unlike all but three of the other 150 units in the development, has an enclosed front porch, which was constructed by a prior owner with the express permission of defendant. Plaintiffs purchased the unit in 2005.

In late 2011, defendant prepared to make improvements to the exterior of the condominium units, including plaintiffs' unit. Defendant informed plaintiffs that the porch was a common area under defendant's control and that it would have to be removed in order for the improvements to be made to plaintiffs' unit. Defendant further advised plaintiffs that once the improvements were completed, plaintiffs could construct a new front porch, at their expense. On 2 February 2012, plaintiffs advised defendant that they owned the front porch, and that any entry upon the porch by defendant would be considered a

trespass. Defendant proceeded to have plaintiffs' front porch removed.

On 18 July 2012, plaintiffs filed a verified complaint stating the following claims: (1) to quiet title to the front porch; (2) an alternative claim for adverse possession; and (3) a claim for damages arising out of trespass and damage to real property. On 17 September 2012, defendant filed an answer, including a motion to dismiss pursuant to Rules 12(b)(6) and 12(b)(7) of the North Carolina Rules of Civil Procedure. On 25 October 2012, the trial court denied both of defendant's motions to dismiss.

Defendant appeals.

II. Interlocutory Appeal

Defendant contends that the trial court's order affects a substantial right, and that therefore its appeal of the trial court's order is appropriately before us. We disagree.

A. Standard of Review

"Generally, there is no right of immediate appeal from interlocutory orders and judgments." *Goldston v. Am. Motors Corp.*, 326 N.C. 723, 725, 392 S.E.2d 735, 736 (1990).

"[W]hen an appeal is interlocutory, the appellant must include in its statement of grounds for appellate review

'sufficient facts and argument to support appellate review on the ground that the challenged order affects a substantial right.'" *Johnson v. Lucas*, 168 N.C. App. 515, 518, 608 S.E.2d 336, 338 (quoting N.C.R. App. P. 28(b)(4)), *aff'd per curiam*, 360 N.C. 53, 619 S.E.2d 502 (2005).

> 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 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, 380, 444 S.E.2d 252, 254 (1994).

B. 12(b)(6) Motion

Defendant's motion to dismiss alleged a failure to state a claim, pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure.

Defendant cites our Supreme Court's decision in *N.C. Dep't Of Transp. v. Stagecoach Vill.*, 360 N.C. 46, 619 S.E.2d 495 (2005). In *Stagecoach*, the Supreme Court held that "interlocutory orders concerning title or area taken must be immediately appealed as 'vital preliminary issues' involving substantial rights adversely affected." *Id.* at 48, 619 S.E.2d

at 496. However, defendant's reliance on *Stagecoach* is misplaced. In *FMB v. Creech*, we held that "*Stagecoach Village* and the cases upon which it bases its analysis deal solely with issues of condemnation and the involuntary taking of a private citizen's property by the State of North Carolina." *FMB, Inc. v. Creech*, 198 N.C. App. 177, 180, 679 S.E.2d 410, 412 (2009). *Stagecoach* is strictly limited to condemnation proceedings, and is thus not applicable to the instant case.

Defendant's assertion of a substantial right is based entirely upon its misreading of *Stagecoach*. Defendant's appeal from the denial of its Rule 12(b)(6) motion to dismiss is dismissed.

C. 12(b)(7) Motion

Defendant also appeals on the basis of the denial of its motion to dismiss for failure to join necessary parties, pursuant to Rule 12(b)(7) of the North Carolina Rules of Civil Procedure.

We note that "the denial of a motion to dismiss for failure to join a necessary party does not affect a substantial right and is therefore not appealable." *Builders Mut. Ins. Co. v. Meeting St. Builders, LLC*, ___ N.C. App. ___, ___, 736 S.E.2d 197, 199 (2012) (citing *Fraser v. Di Santi*, 75 N.C. App. 654,

331 S.E.2d 217 (1985); *Godley Auction Co., Inc. v. Myers*, 40 N.C. App. 570, 253 S.E.2d 362 (1979)).[1] Defendant's appeal from the denial of its Rule 12(b)(7) motion to dismiss is dismissed.

DISMISSED.

Judges McGEE and ERVIN concur.

Report per Rule 30(e).

[1] The opinion also cited two unpublished opinions for the same rationale. *See Hill v. Taylor*, 149 N.C. App. 488, 562 S.E.2d 469 (2002) (unpublished); *Wilson v. Taylor*, 149 N.C. App. 491, 562 S.E.2d 469 (2002) (unpublished).