IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-327

Filed: 17 November 2015

Nash County, No. 11 CVD 1437

CHERI JOYNER STALLINGS, Plaintiff,

v.

JEFFREY DRIVER STALLINGS, Defendant.

Appeal by Defendant from order entered 24 October 2014, *nunc pro tunc* 17-18 December 2013, by Judge John J. Covolo in Nash County District Court. Heard in the Court of Appeals 23 September 2015.

Narron & Holdford, P.A., by I. Joe Ivey; McKinney Law Offices, P.L.L.C., by Elizabeth B. McKinney; and Sallenger & Brown, L.L.P., by Thomas R. Sallenger, for Plaintiff.

The Armstrong Law Firm, P.A., by L. Lamar Armstrong, Jr., L. Lamar Armstrong, III, and Marcia H. Armstrong, for Defendant.

STEPHENS, Judge.

This appeal arises from a proceeding for divorce, alimony, equitable distribution, and related claims brought by the wife where the husband has raised the existence of a premarital agreement ("PMA") as a bar to some of the wife's claims. The husband appeals from an order entered by the trial court pursuant to the wife's

motion for declaratory judgment filed in the cause, seeking a determination of the validity of the PMA. We dismiss the appeal as interlocutory.

Factual and Procedural Background

Plaintiff Cheri Joyner Stallings ("Cheri") and Defendant Jeffrey Driver Stallings ("Jeff") lived together in a mobile home in Nash County for nine years before their marriage on 16 July 1993. In June of that year, Jeff decided to ask Cheri to marry him because he had learned that she was pregnant and wanted to do "the right thing[.]" Before actually proposing to Cheri, however, on either 12 or 13 July 1993, Jeff spoke to Cheri at their home and asked her to sign some papers. One of the documents Jeff produced for Cheri to sign was a premarital agreement ("PMA"). Although Jeff suggested that Cheri read the PMA before signing it, she did not do so, nor did she consult a lawyer about the document. Jeff did not threaten Cheri or yell at her about signing the PMA, although he did tell her that he would not marry her unless she signed it.

According to Cheri, Jeff told her that the PMA was to protect a filling station owned and operated by Jeff's family business, Stallings Brothers, Inc. Jeff asserts that he never told Cheri that the PMA only covered Jeff's interest in the filling station and Stalling Brothers. The parties agree that they never discussed whether the PMA governed the distribution of assets obtained during marriage in the event of their divorce. This is, however, exactly what the PMA purports to govern. Specifically, the

PMA provides that, in the event of divorce, (1) both parties waive postseparation support and alimony, (2) Cheri receives a lump sum payment of $20,000 in consideration for those waivers, (3) both parties waive their rights to all martial property and agree to equally divide all jointly owned property, and (4) both parties waive any interest in the other's separate property.

Cheri and Jeff signed the PMA on 12 or 13 July 1993 and were married on 16 July 1993. On 25 August 2011, Cheri filed a complaint against Jeff in Nash County District Court seeking divorce from bed and board, postseparation support, alimony, equitable distribution, and attorney's fees. She also filed motions in the cause for interim distribution and for an injunction. On 8 September 2011, Jeff filed a motion to dismiss, an answer, and an alternative counterclaim, attaching to that pleading as Exhibit A the PMA executed by the parties in July 1993. Jeff asserted that, if valid, the PMA bars Cheri's claims for postseparation support, alimony, and equitable distribution. On 1 December 2011, Jeff moved for summary judgment, asserting the PMA as a bar to Cheri's claims for postseparation support, alimony, and equitable distribution. On 6 December 2011, Cheri filed a motion for summary judgment and a motion to dismiss and response to Jeff's motion to dismiss, answer, and alternative counterclaim. On 12 October 2012, the parties filed a consent order bifurcating discovery and adjudication of the PMA's validity from all remaining claims. On 9 July 2013, Cheri filed a motion for declaratory judgment challenging the validity of

the PMA. Following a hearing, the trial court denied both parties' summary judgment motions by order entered 20 November 2013, *nunc pro tunc* 10 October 2013. In the same order, the court set a hearing on Cheri's declaratory judgment motion for December 2013. On 17 and 18 December 2013, the trial court presided over a bench trial on the PMA's validity. The court entered an order ("the PMA order") on 24 October 2014, *nunc pro tunc* 17-18 December 2013, in which it determined that the PMA was void and unenforceable under section 52B-7 of our State's Uniform Premarital Agreement Act. From the PMA order, Jeff gave timely notice of appeal, arguing that the trial court erred in determining that the PMA was void and unenforceable. We do not address those arguments because they are not properly before us at this time.

In her brief filed with this Court on 18 June 2015, Cheri moved to dismiss Jeff's appeal, contending that the PMA order is interlocutory, does not contain a Rule 54(b) certification, and does not affect a substantial right.[1] We agree.

As both parties acknowledge, the PMA order is interlocutory because all of Cheri's original claims remain to be resolved. *See, e.g.*, *Tridyn Indus., Inc. v. Am. Mut. Ins. Co.*, 296 N.C. 486, 488, 251 S.E.2d 443, 445 (1979) ("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

[1] On 27 October 2015, Cheri filed a separate motion to dismiss Jeff's appeal on the same basis.

controversy.") (citation and internal quotation marks omitted). "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).

> Immediate appeal from an interlocutory order such as this one may be pursued by either of two avenues. First, an interlocutory order can be immediately appealed if the order is final as to some but not all of the claims or parties and the trial court certifies [pursuant to Rule 54(b)] there is no just reason to delay the appeal. Second, an interlocutory order can be immediately appealed 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.

Johnson v. Johnson, 208 N.C. App. 118, 121, 701 S.E.2d 722, 724-25 (2010) (citations and internal quotation marks omitted). Our decision in *Johnson* requires dismissal of Jeff's appeal.

In *Johnson*, the plaintiff filed for divorce and alleged the existence of a separation agreement which resolved all equitable distribution claims between the parties "as a preemptive plea in bar—essentially, an anticipated response to [the d]efendant's potential counterclaims for divorce, postseparation support, alimony, and equitable distribution." *Id.* at 122, 701 S.E.2d at 725 (citations omitted). The defendant moved, *inter alia*, to set aside the separation agreement, a motion the trial court granted in an order which provided: "This judgment is not interlocutory and the court finds that it effects [sic] a substantial right, because it effects [sic] a substantial amount of property, and [the] plaintiff's motion for certification of the

immediate appeal per [R]ule 54(b) is allowed." *Id.* at 120, 701 S.E.2d at 724 (internal quotation marks omitted).

This Court dismissed the plaintiff's appeal, noting that the order setting aside the agreement "is properly viewed as a judgment on [the p]laintiff's plea in bar. . . [and thus] is not immediately appealable because an order disposing of a plea in bar is not a final judgment on a claim for relief under Rule 54(b)." *Id.* at 122-23, 701 S.E.2d at 726 (citation omitted).[2] Regarding the plaintiff's assertion of a substantial right that would be lost absent immediate appellate review of the order, the *Johnson* Court observed that the order was "analogous to the court's refusal to dismiss [the d]efendant's claims for equitable distribution, postseparation support, and alimony despite [the p]laintiff's assertion of some affirmative defense. Such a refusal would not affect a substantial right entitling [the p]laintiff to appeal the interlocutory ruling." *Id.* at 126, 701 S.E.2d at 727-28 (citations omitted). Therefore, the appeal was dismissed.

Here, the trial court did not certify the PMA order for immediate appeal pursuant to Rule 54(b), and, following the precedent set forth in *Johnson*, we reject

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[2] Jeff cites *Holbert v. Holbert*, __ N.C. App. __, 762 S.E.2d 298 (2014), for the proposition that "[a]n order overruling a plea in bar is immediately appealable as affecting a substantial right." However, *Holbert* does not so hold. Rather, that decision expressed doubt as to whether "the legal principle affording any party asserting a plea in bar against which a demurrer has been sustained the right to seek immediate appellate relief has survived the enactment of the North Carolina Rules of Appellate Procedure," citing *Thompson v. Norfolk S. Ry. Co.*, 140 N.C. App. 115, 121, 535 S.E.2d 397, 401 (2000), and, in any event, concluded "that the principle [did not have] any application in this case." *Holbert*, __ N.C. App. at __, 762 S.E.2d at 305.

Jeff's arguments that the PMA order affects a substantial right that will be lost without immediate appellate review. Accordingly, this appeal is

DISMISSED.

Judges MCCULLOUGH and ZACHARY concur.

Report per Rule 30(e).