IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-530

Filed: 1 December 2015

Guilford County, No. 14 CVS 5148

PHILIP PARKER, Plaintiff,

v.

ARCARO DRIVE HOMEOWNERS ASSOCIATION, Defendant.

Appeal by plaintiff from order entered 9 January 2015 by Judge Lindsay R. Davis, Jr., in Guilford County Superior Court. Heard in the Court of Appeals 20 October 2015.

The Lile-King Firm, by Phyllis Lile-King, for plaintiff-appellant.

Gregory A. Wendling for defendant-appellee.

ZACHARY, Judge.

Where the trial court did not certify its interlocutory order for immediate appeal, and appellant does not argue that a substantial right would be prejudiced by delay in review, the appeal is dismissed as interlocutory.

I. Factual and Procedural Background

On 28 April 2014, Philip Parker (plaintiff) filed a complaint alleging that on 17 February 2013, he entered into a contract with Arcaro Drive Homeowners Association (the HOA), which would give him "the right and title to trees and timber in certain

common areas" owned by the HOA, "in exchange for plaintiff's felling the trees and removing them[.]" Plaintiff contended that, in reliance on this contract, he leased equipment and paid for a right of way onto the land. During plaintiff's removal of timber, a member of the HOA made a nuisance complaint regarding the fallen brush; plaintiff was hired to perform cleanup. Plaintiff further asserted that on 30 July 2013, attorney Steve Black, on behalf of the HOA, agreed to pay plaintiff to stop work and clean up the debris, which plaintiff did. Subsequently, plaintiff was prevented from resuming work and ordered to take his equipment and leave the property. Plaintiff's complaint alleged breach of contract, fraudulent inducement, and unfair and deceptive trade practices.

On 17 December 2014, the HOA moved for summary judgment, alleging that no meeting of the minds existed as to essential elements of plaintiff's purported contract, that the Statute of Frauds requires a timber deed to be in writing to be enforceable, and that plaintiff failed to raise any genuine issues of material fact with respect to his claims for fraudulent inducement and unfair and deceptive trade practices. On 23 December 2014, plaintiff moved for summary judgment as well.

On 9 January 2015, the trial court entered its order on the parties' motions for summary judgment. The trial court determined that no genuine issue of material fact existed with respect to plaintiff's claim for breach of contract, in that any such contract, "if the contract alleged by the plaintiff existed," was merely a license to cut

unspecified trees, which the HOA was free to terminate at will. The trial court further determined that the HOA failed to show the absence of a genuine issue of material fact with respect to plaintiff's claims for fraudulent inducement and unfair and deceptive trade practices, and denied the remainder of the HOA's motion for summary judgment. Lastly, the trial court determined that plaintiff failed to show an absence of any genuine issue of material fact entitling him to judgment, and denied plaintiff's motion for summary judgment.

From the trial court's order granting the HOA's motion for summary judgment in part, denying the HOA's motion for summary judgment in part, and denying plaintiff's motion for summary judgment, plaintiff appeals.

II. Interlocutory Appeal

Plaintiff appeals from a partial summary judgment order. Because this order was interlocutory, and because the trial court did not certify its interlocutory order for immediate appeal and plaintiff has failed to argue for review of this interlocutory order, we dismiss this appeal.

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." *Cagle v. Teachy,* 111 N.C. App. 244, 247, 431 S.E.2d 801, 803 (1993). "There is generally no right to appeal an

interlocutory order." *N.C. Dept. of Transp. v. Page,* 119 N.C. App. 730, 733, 460 S.E.2d 332, 334 (1995).

> "A grant of partial summary judgment, because it does not completely dispose of the case, is an interlocutory order from which there is ordinarily no right of appeal." *Liggett Group, Inc. v. Sunas,* 113 N.C. App. 19, 23, 437 S.E.2d 674, 677 (1993). "The reason for this rule is to prevent fragmentary, premature and unnecessary appeals by permitting the trial court to bring the case to final judgment before it is presented to the appellate courts." *Fraser v. Di Santi,* 75 N.C. App. 654, 655, 331 S.E.2d 217, 218, *disc. review denied,* 315 N.C. 183, 337 S.E.2d 856 (1985).
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> "Nonetheless, in two instances a party is <u>permitted</u> to appeal interlocutory orders...." *Liggett Group Inc.,* 113 N.C. App. at 23, 437 S.E.2d at 677 (emphasis by underline added). First, a party is permitted to appeal from an interlocutory order when the trial court enters "a final judgment as to one or more but fewer than all of the claims or parties" and the trial court certifies in the judgment that there is no just reason to delay the appeal. N.C.R. Civ. P. 54(b); *Liggett Group Inc.,* 113 N.C. App. at 23, 437 S.E.2d at 677. Second, a party is permitted to appeal from an interlocutory order when "the order deprives the appellant of a substantial right which would be jeopardized absent a review prior to a final determination on the merits." *Southern Uniform Rentals, Inc. v. Iowa Nat'l Mut. Ins. Co.,* 90 N.C. App. 738, 740, 370 S.E.2d 76, 78 (1988); N.C. Gen. Stat. § 1-277. Under either of these two circumstances, it is the appellant's burden to present appropriate grounds for this Court's acceptance of an interlocutory appeal and our Court's responsibility to review those grounds.

Jeffreys v. Raleigh Oaks Joint Venture, 115 N.C. App. 377, 379, 444 S.E.2d 252, 253 (1994).

"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*, 115 N.C. App. at 380, 444 S.E.2d at 254.

Plaintiff appeals from the denial of his motion for summary judgment. We note first that "[t]he denial of summary judgment is an interlocutory order not ordinarily subject to appeal." *DeMurry v. N.C. Dep't of Corr.*, 195 N.C. App. 485, 490, 673 S.E.2d 374, 379 (2009). We further observe that although plaintiff repeatedly refers to the order as a "final judgment," the order in which plaintiff's motion was denied did not dispose of all of the issues before the trial court and therefore constituted a partial summary judgment order. This order, because it "does not completely dispose of the case, is an interlocutory order from which there is ordinarily no right of appeal." *Curl v. Am. Multimedia, Inc.*, 187 N.C. App. 649, 652, 654 S.E.2d 76, 79 (2007) (quoting *Liggett Group v. Sunas,* 113 N.C. App. 19, 23, 437 S.E.2d 674, 677 (1993)). In either event, this matter is clearly interlocutory.

On appeal from an interlocutory order, the burden is on the appellant to establish a reason for this Court to review the matter. The two bases for review of an interlocutory order are the valid certification by the trial court that no just reason exists for delay, or a successful argument by the appellant that a substantial right

would be impacted by delay. *Jeffreys*, 115 N.C. App. at 379, 444 S.E.2d at 253. In the instant case, neither of the two is present. The trial court did not certify its order for immediate appeal. Moreover, plaintiff makes no argument as to a substantial right that would be prejudiced by the delay, and we shall not construct such an argument for him.

There is no evidence in the record that the matter has been resolved completely. The record merely establishes that an interlocutory order was entered, and that matters are still pending before the trial court. Plaintiff has failed to impress upon this Court the necessity of prompt review of this interlocutory order. Accordingly, we dismiss this appeal as interlocutory.

III. Other Motions

Because we dismiss this appeal as interlocutory, we need not address the HOA's motion to strike.

DISMISSED.

Judges BRYANT and CALABRIA concur.

Report per Rule 30(e).