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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-14

Filed: 15 November 2016

Bladen County, No. 15 CVS 108

DENISE GUIDOTTI, Plaintiff,

v.

DONALD MAC MOORE, SR., Defendant.

Appeal by plaintiff and plaintiff's counsel from orders entered 21 July 2015, 27 August 2015, and 18 November 2015 by Judge James Gregory Bell in Bladen County Superior Court. Heard in the Court of Appeals 26 May 2016.

Denise Guidotti, pro se.

Christopher W. Livingston, pro se.

Alan I. Maynard for defendant-appellee.

McCULLOUGH, Judge.

Denise Guidotti ("plaintiff") and her trial attorney Christopher W. Livingston ("counsel") (together "appellants") appeal from an order setting aside entry of default and default judgment and from an order denying relief from the order setting aside entry of default and default judgment and awarding attorney's fees. For the following reasons, we reverse in part and dismiss in part.

I. Background

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Plaintiff commenced this action on 27 February 2015 with the filing of a complaint seeking over \$25,000 in damages based on claims for: (1) unjust enrichment or breach of contract, (2) fraud, (3) unfair and deceptive acts and practices, (4) conversion, (5) intentional infliction of emotional distress, (6) NCRICO, (7) civil conspiracy, (8) constructive trust, and (9) negligence. Plaintiff's claims stem from allegations of unlawful business practices by defendant and defendant's failure to satisfactorily complete home repairs that plaintiff hired defendant to complete. A summons was issued the same day the complaint was filed and both the complaint and summons were served by the sheriff on 18 March 2015. After no response from defendant, on 20 April 2015, plaintiff filed a motion for entry of default and the Clerk of Bladen County Superior Court entered default against defendant. Plaintiff then moved for default judgment on 8 May 2015 and the motion came on for hearing in Bladen County Superior Court on 18 May 2015 before the Honorable James Gregory Bell. On 26 May 2015, judgment was filed awarding plaintiff \$59,305.00 in damages and \$10,800.00 in attorney's fees. Plaintiff filed a certificate of service of final judgment the same day the judgment was filed indicating that a copy of the judgment was served on defendant.

On 16 June 2015, defendant filed a motion to set aside entry of default and default judgment, requested attorney's fees, and gave notice of hearing. Plaintiff filed a response to defendant's motion on 25 June 2015 before defendant's motion came on

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for hearing before Judge Bell on 29 June 2015. Following the hearing, the trial court filed an order granting defendant's motion to set aside entry of default and default judgment on 21 July 2015. Per that order, the trial court reserved the issue of defendant's request for attorney's fees, ordering "[t]hat [the] matter shall be recalendared for a hearing on the amount of attorney's fees to be awarded to . . . [d]efendant for the prosecution of [the motion to set aside]."

On 30 July 2015, plaintiff filed a motion for relief from or rehearing of the order setting aside entry of default and default judgment. Defendant responded to plaintiff's motion for relief on 10 August 2015 and, again, requested attorney's fees. On 27 August 2015, plaintiff's motion for relief and defendant's requests for attorney's fees came on for hearing before Judge Bell. By order filed on 27 August 2015, the trial court denied plaintiff's motion for relief and ordered "[t]hat . . . [p]laintiff shall reimburse . . . [d]efendant's attorney's fees in the amount of \$2,740.00." The order indicated the attorney's fees award was for work on defendant's motion to set aside entry of default and default judgment and for defense of plaintiff's motion for relief.

On 31 August 2015, appellants filed notice of appeal from the court's 21 July 2015 order setting aside entry of default and default judgment and from the court's 27 August 2015 order denying plaintiff's motion for relief and awarding defendant attorney's fees. Plaintiff and defendant filed a joint motion on 15 September 2015 to request "that the Order of 27 August 2015 be corrected to

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impose attorney fees not on [p]laintiff but on [p]laintiff's [c]ounsel, . . . as [the c]ourt orally ruled at the hearing on that date." The joint motion was allowed and a corrected order was filed on 18 November 2015. Appellants filed notice of appeal from the 21 July 2015 order, the 27 August 2015 order, and the corrected 18 November 2015 order on 20 November 2015.

II. Discussion

Appellants raise two issues on appeal: whether the trial court erred (1) in imposing sanctions on counsel and (2) setting aside entry of default and default judgment, finding meritorious defenses, and allowing late answers to requests for admissions. Yet, as an initial matter, we must first address the interlocutory nature of 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." *Veazey v. City of Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950) (citations 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). "The purpose of 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.' ' " *N.C. Dept. of Transp. v. Page*, 119 N.C. App. 730, 733-34, 460

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S.E.2d 332, 334 (1995) (quoting *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 379, 444 S.E.2d 252, 253 (1994) (quoting *Fraser v. Di Santi*, 75 N.C. App. 654, 655, 331 S.E.2d 217, 218, *disc. rev. denied*, 315 N.C. 183, 337 S.E.2d 856 (1985))). “However, a party may appeal an interlocutory order ‘where the order represents 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,’ or ‘where delaying the appeal will irreparably impair a substantial right of the party.’” *Mills Pointe Homeowner’s Ass’n, Inc. v. Whitmire*, 146 N.C. App. 297, 298-99, 551 S.E.2d 924, 926 (2001) (quoting *Hudson–Cole Dev. Corp. v. Beemer*, 132 N.C. App. 341, 344, 511 S.E.2d 309, 311 (1999) (internal quotation marks omitted)). “The appealing party bears the burden of demonstrating that the order from which he or she seeks to appeal is appealable despite its interlocutory nature.” *Hamilton v. Mortg. Info. Servs., Inc.*, 212 N.C. App. 73, 77, 711 S.E.2d 185, 189 (2011) (citation omitted). “If a party attempts to appeal from an interlocutory order without showing that the order in question is immediately appealable, we are required to dismiss that party's appeal on jurisdictional grounds.” *Id.*

In the present case, plaintiff and plaintiff’s counsel acknowledge that the orders appealed from are interlocutory. We agree, as subsequent to the 21 July 2015 order setting aside entry of default and default judgment and the 18 November 2015 corrected order denying relief from the 21 July 2015 order and awarding attorney’s

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fees, there has been no resolution to plaintiff's underlying claims. Nevertheless, appellants assert that counsel has a right of immediate appeal from the attorney's fees he was ordered to reimburse defendant. To the extent there is no appeal as of right from the trial court's other orders, plaintiff requests that we review all orders pursuant to Rules 2 and 21 of the North Carolina Rules of Appellate Procedure.

This Court has recognized that "an order imposing sanctions on counsel, or any other non-party to the underlying action, may immediately be appealed as a final order." *Mack v. Moore*, 107 N.C. App. 87, 90, 418 S.E.2d 685, 687 (1992); *see also Adams v. M.A. Hanna Co.*, 166 N.C. App 619, 623, 603 S.E.2d 402, 405 (2004) ("[A]n order imposing sanctions may affect a substantial right, and thus be immediately appealable."). "[W]here an award of sanctions runs only against the attorney, the attorney is the party in interest and must appeal in his or her name." *Id.* (quotation marks and citation omitted). Consequently, we review counsel's appeal from the award of attorney's fees in the present case despite the interlocutory nature of the order. However, we decline plaintiff's request to review the court's other interlocutory rulings where no substantial right is implicated. The mere inclusion of an award of attorney's fees does not persuade us to review an appeal that would otherwise be dismissed outright as interlocutory.

Regarding attorney's fees, defendant first requested attorney's fees in his motion to set aside entry of default and default judgment as follows: "That

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[d]efendant receive attorney fees for this motion pursuant to Rule 11 and [N.C. Gen. Stat. §] 6-21.5.” Defendant then requested costs and attorney’s fees again in his response to plaintiff’s motion for relief or rehearing. An affidavit later submitted by defense counsel provided that defense counsel charged a fee of \$200.00 per hour and spent a total of 13.7 hours on the case. As detailed above, the trial court ultimately granted defendant’s requests for attorney’s fees and ordered counsel to pay \$2,740.00. The only finding by the trial court concerning fees in either the 27 August 2015 order or the 18 November 2015 corrected order was “8. That the Defendant is entitled to attorney[']s fees pursuant to the Court’s previous order and for defense of the Plaintiff’s present Motion.”

Upon review of the orders, we reverse the attorney’s fees award for lack of sufficient findings by the trial court as to basis of the attorney’s fees award or the reasonableness of the attorney’s fees awarded. Without more detailed findings, it is impossible for this court to perform an intelligent review of the trial court’s determination.

III. Conclusion

For the reasons discussed, we reverse the attorney’s fees portion of the order and dismiss the remainder of the appeal.

REVERSED IN PART AND DISMISSED IN PART.

Judges STEPHENS and ZACHARY concur.

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Report per Rule 30(e).