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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-210

Filed: 4 October 2016

Macon County, No. 15 CVS 438

CHARLES F. WALTER, JR., Plaintiff,

v.

LAWRENCE JOSEPH WALTER, SR.; LAURIE WALTER, LAWRENCE JOSEPH WALTER, JR.; ANGEL WALTER; THOMAS D. WALTER, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF LOUISE WALTER; JUDITH WALTER; THE LOUISE M. WALTER TRUST u/t/d FEBRUARY 7, 2000 AS AMENDED THROUGH THOMAS D. WALTER, FIRST SUCCESSOR TRUSTEE; MELANIE WALTER DAY; PATRICK DAY; EDWIN BOYER as ADMINISTRATOR AD LITEM OF THE ESTATE OF CHARLES WALTER; BARBARA EVERS as PERSONAL REPRESENTATIVE OF THE ESTATE OF CHARLES WALTER, Defendants.

Appeal by defendant Edwin Boyer from order entered 21 December 2015 by Judge J. Thomas Davis in Macon County Superior Court. Heard in the Court of Appeals 7 September 2016.

McKinney Law Firm, P.A., by Zeyland G. McKinney, Jr., for plaintiff-appellee.

Phelps Dunbar LLP, by Nathan A. Huff, for defendant-appellant Edwin Boyer.

ZACHARY, Judge.

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Edwin Boyer (defendant)¹, appeals from an order denying his motion to dismiss the action filed against him by Charles F. Walter, Jr. (plaintiff) for lack of personal jurisdiction or, in the alternative, to dismiss the action pursuant to N.C. Gen. Stat. § 1A-1 Rule 12(b)(6), for failure to state a claim for relief. On appeal, defendant argues that the trial court erred in denying his motion to dismiss for lack of personal jurisdiction. For the reasons that follow, we agree.

I. Factual and Procedural Background

In 1969, Charles F. Walter, Sr. and Louise M. Walter purchased property in Macon County, North Carolina. Charles Walter, Sr. and Louise Walter later separated, but did not divorce. Both Charles Walter, Sr. and Louise Walter relocated to Florida, where Charles Walter, Sr. died on 30 August 2003, and Louise Walter died on 5 February 2005. Barbara Evers is the personal representative of the Estate of Charles Walter, Sr. Following the death of Charles Walter, Sr., his heirs have engaged in protracted litigation over the distribution of the assets of his estate, which includes the Macon County property.

On 16 June 2004, defendant was appointed by the Circuit Court of the Twelfth Judicial Circuit in Sarasota County, Florida, Probate Division, as Administrator *ad*

¹ The other defendants named in this action are Lawrence Joseph Walter, Sr., Lawrence Joseph Walter, Jr., Laurie Walter, Angel Walter, Thomas D. Walter, individually and as personal representative of the Estate of Louise Walter, Judith Walter, the Louise M. Walter Trust, Melanie Walter Day, Patrick Day, and Barbara Evers as Personal Representative of the Estate of Charles Walter, Sr. This appeal involves only Edwin Boyer.

Litem of the Estate of Charles Walter, Sr., pursuant to Fla. Stat. § 733.308 (2015), which provides in relevant part that “[w]hen an estate must be represented and the personal representative is unable to do so, the court shall appoint an administrator ad litem without bond to represent the estate in that proceeding.” Florida law authorizes the appointment of an administrator *ad litem* to perform the specific functions assigned by the trial court:

An administrator *ad litem* may be appointed where the adverse interest of the personal representative does not interfere with the administration of the estate as a whole and therefore does not warrant the representative’s removal. The appointee becomes solely responsible for the performance of specific duties authorized by the court, *supplanting in that regard the authority of the personal representative, who continues to perform all other responsibilities involving the administration of the estate.*

Cont’l Nat’l Bank v. Brill, 636 So. 2d 782, 783-84 (Fla. 3rd DCA 1994) (citation omitted) (emphasis added). In this case, defendant was appointed in response to a petition filed by plaintiff requesting the appointment of an administrator *ad litem* to investigate various actions taken by Ms. Evers as the personal representative of the Estate of Charles Walter, Sr. The order appointing defendant as Administrator *ad Litem* directed him solely to investigate the allegations raised against Ms. Evers in plaintiff’s petition and to submit a report to the trial court within forty-five days. Defendant completed the duties assigned by the trial court when he submitted his report to the court on 27 December 2004. He was later called as a witness in a lawsuit filed by plaintiff against Ms. Evers, and testified about this report. It is

uncontroverted that since defendant submitted a report to the trial court in 2004, he has not been asked by the court to perform any other services as Administrator *ad Litem* of this Estate.

On 23 July 2015, plaintiff filed a complaint seeking “declaratory relief under the provisions of N.C. Gen. Stat. § 1-254” and also brought “an action to quiet title.” In his complaint, plaintiff generally alleged the following circumstances and events:

1. That Charles Walter, Sr. and Louise Walter were the parents of plaintiff and of defendants Melanie Walter Day, Lawrence Joseph Walter, Sr. and Thomas D. Walter.²
2. That in 2000, Charles Walter, Sr. and Louise Walter signed a settlement agreement in which Louise Walter agreed to execute a quitclaim deed transferring her interest in the Macon County property to Charles Walter, Sr.
3. That Louise Walter recorded a quitclaim deed from herself to the Louise Walter Trust instead of to Charles Walter, Sr., and later recorded a second deed from the Louise Walter Trust to Charles Walter, Sr.
3. That neither of the deeds recorded by Louise Walter were effective to transfer Louise Walter’s interest in the Macon County property to Charles Walter, Sr.
4. That plaintiff had been “advised” that Louise Walter also executed an unrecorded deed from herself to Charles Walter, Sr.
5. That the intent of Charles Walter, Sr. and Louise Walter, as evidenced by the deeds signed by Louise Walter, was to comply with the terms of their agreement.

² The relationship of the other defendants is unclear.

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6 That in 2003, shortly before Charles Walter, Sr. died, Ms. Evers, acting as the attorney-in-fact for Charles Walter, Sr., executed a deed “purporting” to sell a life estate in the Macon County property to defendant Lawrence Walter, Sr. and granting the remainder to Lawrence Walter, Jr.

7. That in 2015, defendants Lawrence Walter, Sr., Lawrence Walter, Jr., Laurie Walter, Angel Walter, Thomas Walter, and Judith Walter executed a settlement agreement in Macon County Superior Court, in which they agreed that Lawrence Walter, Sr. would have a life estate in the Macon County property, with all future interest to pass to Lawrence Walter, Jr.

8. That, as a result of various legal defects alleged in plaintiff’s complaint, the deeds recorded by Louise Walter, the deed filed by Ms. Evers, and the 2015 settlement agreement were void and of no effect.

Plaintiff’s complaint sought in relevant part the following relief:

1. A Judgment declaring that the deed recorded in Deed Book G-27 at Page 1746 of the Macon County Registry is void for the reasons stated in [plaintiff’s complaint.]
2. A Judgment of this Court quieting title to the [Macon County property] and a Judgment holding that [plaintiff] and Melanie Walter Day are the owners in fee simple absolute of such real property free from the claims of any other person or entity[.]³

In Paragraph No. 11 of his complaint, plaintiff notes that “[t]he Defendant, Edwin Boyer, is the duly appointed Administrator *ad litem* of the Estate of Charles

³ It is not clear from the record and briefs what the basis is for plaintiff’s contention that Melanie Walter Day is the legal co-owner of the Macon County property.

Walter in the State of Florida[.]” This is the only reference to defendant in the complaint.

On 31 August 2015, defendant filed a motion to dismiss for lack of personal jurisdiction or in the alternative to dismiss pursuant to N.C. Gen. Stat. § 1A-1, Rule 12(b)(6) (2015), for failure to state a claim for relief against defendant. Defendant submitted an affidavit and an amended affidavit in support of his motion. Plaintiff submitted an affidavit on 20 November 2015. On 21 December 2015, the trial court entered a summary order, without findings of fact or conclusions of law, denying both of defendant’s motions. Defendant appealed to this Court.

II. Personal Jurisdiction

A. Legal Principles

Preliminarily, we address the interlocutory nature of the order from which defendant has appealed. “Interlocutory orders are those made during the pendency of an action which do not dispose of the case, but instead leave it for further action by the trial court in order to settle and determine the entire controversy.” *Carriker v. Carriker*, 350 N.C. 71, 73, 511 S.E.2d 2, 4 (1999) (citing *Veazey v. Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950)). “As a general rule, interlocutory orders are not immediately appealable.” *Turner v. Hammocks Beach Corp.*, 363 N.C. 555, 558, 681 S.E.2d 770, 773 (2009) (citation omitted). “An exception lies, however, as concerns a denial of a motion to dismiss based on a lack of personal jurisdiction. N.C. Gen. Stat.

§ 1-277 [(2015)] ‘allows a party to immediately appeal an order that . . . constitutes an adverse ruling as to personal jurisdiction.’ ” *Credit Union Auto v. Berkshire Properties*, __ N.C. App. __, __, 776 S.E.2d 737, 739 (2015) (internal quotation omitted). Thus defendant’s appeal from the denial of his motion for dismissal based on lack of personal jurisdiction is properly before us.

“Whether the courts of this State may exercise personal jurisdiction over a nonresident defendant involves a two-prong analysis: ‘(1) Does a statutory basis for personal jurisdiction exist, and (2) If so, does the exercise of this jurisdiction violate constitutional due process?’ ” *Golds v. Central Express, Inc.*, 142 N.C. App. 664, 665, 544 S.E.2d 23, 25 (quoting *J.M. Thompson Co. v. Doral Manufacturing Co.*, 72 N.C. App. 419, 424, 324 S.E.2d 909, 913 (1985)), *disc. review denied*, 353 N.C. 725, 550 S.E.2d 775 (2001). “The statutory basis for asserting personal jurisdiction pursuant to N.C. Gen. Stat. § 1-75.4 is referred to as the ‘long-arm statute.’ ” *Golds*, 142 N.C. App. at 666, 544 S.E.2d at 25. N.C. Gen. Stat. § 1-75.4(1)(d) (2015) provides that personal jurisdiction may be exercised over a defendant who is “engaged in substantial activity within this State, whether such activity is wholly interstate, intrastate, or otherwise.”

It is long-established that “[t]he long-arm statute is ‘liberally construed to find personal jurisdiction over nonresident defendants to the full extent allowed by due

process.’ ” *Hardin v. York Mem’l Park*, 221 N.C. App. 317, 322, 730 S.E.2d 768, 774 (2012) (quoting *Golds* at 666, 544 S.E.2d at 26). Thus:

[w]hen personal jurisdiction is alleged to exist pursuant to the long-arm statute, the question of statutory authority collapses into one inquiry — whether the defendant has the minimum contacts with North Carolina necessary to meet the requirements of due process. In order to satisfy the requirements of the Due Process Clause, the pivotal inquiry is whether the defendant has established certain minimum contacts with [the forum state] such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.

Replacements, Ltd. v. Midwesterling, 133 N.C. App. 139, 143, 515 S.E.2d 46, 49 (1999) (citation and quotations omitted). Accordingly, it is necessary for this Court to review the record and the trial court’s order to determine whether defendant has the requisite “minimum contacts” with North Carolina, such that the exercise of personal jurisdiction over him complies with the requirements of the Due Process Clause.

“When this Court reviews a decision as to personal jurisdiction, it considers only ‘whether the findings of fact by the trial court are supported by competent evidence in the record; if so, this Court must affirm the order of the trial court.’ ” *Banc of Am. Sec. LLC v. Evergreen Int’l Aviation, Inc.*, 169 N.C. App. 690, 694, 611 S.E.2d 179, 183 (2005) (quoting *Replacements*, 133 N.C. App. at 140-41, 515 S.E.2d at 48). If, as in the present case, the trial court’s order does not contain findings of fact, we “presume that the trial judge made factual findings sufficient to support [its] ruling” and “review the record to determine whether it contains any evidence that

would support the trial judge's conclusion that the North Carolina courts may exercise jurisdiction over defendant[] without violating [his] due process rights." *Banc of Am.*, 169 N.C. App. at 695, 611 S.E.2d at 183.

" 'Application of the minimum contacts rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.' " *Skinner v. Preferred Credit*, 361 N.C. 114, 123, 638 S.E.2d 203, 210-211 (2006) (quoting *Chadbourn, Inc. v. Katz*, 285 N.C. 700, 705, 208 S.E.2d 676, 679 (1974)). In addition, there are two types of personal jurisdiction:

The United States Supreme Court has recognized two bases for finding sufficient minimum contacts: specific jurisdiction and general jurisdiction. Specific jurisdiction exists when "the controversy arises out of the defendant's contacts with the forum state." General jurisdiction may be asserted over a defendant "even if the cause of action is unrelated to defendant's activities in the forum as long as there are sufficient continuous and systematic contacts between defendant and the forum state."

Lab. Corp. of Am. Holdings v. Caccuro, 212 N.C. App. 564, 569, 712 S.E.2d 696, 701 (quoting *Tom Togs, Inc. v. Ben Elias Industries Corp.*, 318 N.C. 361, 366, 348 S.E.2d 782, 786 (1986), and *Replacements* at 145, 515 S.E.2d at 51)), *disc. review denied*, 365 N.C. 367, 732 S.E.2d 472 (2011). In this case, plaintiff does not allege that defendant has engaged in any "continuous and systematic contacts" with North Carolina. Therefore, "[g]eneral jurisdiction is not at issue in this case. Specific jurisdiction is

the only possible basis for finding minimum contacts here.” *Lab. Corp.*, 212 N.C. App. at 569-70, 712 S.E.2d at 701.

B. Discussion

In support of his motion to dismiss plaintiff’s complaint for lack of personal jurisdiction, defendant filed sworn affidavits attesting to the following:

1. Defendant is a resident of Florida and an elder law attorney who lives and works in Sarasota County, Florida.
2. Defendant is not licensed to practice law in North Carolina and has never practiced law or engaged in business in North Carolina.
3. Defendant has visited North Carolina on just two occasions as an adult, both in connection with a conference or retreat.
4. Defendant’s role as Administrator *ad Litem* for the Estate of Charles Walter, Sr., was limited to the preparation of a report for the trial court, which he submitted to the court in 2004. Defendant was later called as a witness to testify about his report in a lawsuit filed by plaintiff.
5. Preparation of the report for the trial court did not require defendant to travel to North Carolina or to offer an opinion on North Carolina law.
6. Since 2004, defendant has not performed any other services for the trial court in his capacity as Administrator *ad Litem* for the Estate of Charles Walter, Sr.

Plaintiff also submitted an affidavit; however, it does not contradict any the pertinent averments of defendant’s affidavit. Moreover, an examination of the record, including plaintiff’s affidavit, reveals no evidence or allegations in plaintiff’s

complaint suggesting that defendant has ever asserted a claim to the Macon County property either for himself or on behalf of any party involved in this matter. There is no evidence that defendant has ever acted on behalf of any party to this case or that defendant has taken any action whatsoever connected to the Estate of Charles Walter, Sr., beyond submitting the requested report to a trial court in Florida more than ten years ago. Plaintiff's complaint mentions defendant only once, in its recitation of the fact that defendant was appointed as Administrator *ad Litem* in 2004. The complaint fails to allege any acts or omissions attributable to defendant, and does not state any facts tending to show that plaintiff and defendant are involved in a legal dispute or controversy pertaining to the Macon County property.

As discussed above, plaintiff has not alleged that defendant is subject to general personal jurisdiction on the basis of defendant's ongoing systematic contacts with North Carolina. "Specific jurisdiction exists if the defendant has purposely directed his conduct towards a resident of the forum state, and thereby 'purposefully availed itself of the privilege of conducting activities in-state, thereby invoking the benefits and protections of the forum state's laws[.]'" *Credit Union Auto*, __ N.C. App. at __, 776 S.E.2d at 740 (quoting *Wyatt v. Walt Disney World Co.*, 151 N.C. App. 158, 165, 565 S.E.2d 705, 710 (2002)). In addition, "[i]n cases which arise from or are related to defendant's contacts with the forum, a court is said to exercise specific jurisdiction over the defendant." *Bruggeman v. Meditrust Acquisition Co.*, 138 N.C.

App. 612, 617, 532 S.E.2d 215, 219 (2000). “The Supreme Court has also said that for purposes of asserting ‘specific’ jurisdiction, a defendant has ‘fair warning’ that he may be sued in a state for injuries arising from activities that he ‘purposefully directed’ toward that state’s residents.” *Tom Togs*, 318 N.C. at 366, 348 S.E.2d at 786 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 85 L.Ed.2d. 2d 528, 540-41 (1985)).

None of the circumstances that allow a court to exercise specific jurisdiction over a defendant are present in this case. There is no evidence that defendant has ever done business in North Carolina and no allegation that this case arises from an act or omission of defendant, or that any party has been injured by any act of defendant. We conclude that the record fails to contain any evidence that might support the trial court’s denial of defendant’s motion to dismiss for lack of personal jurisdiction.

On appeal, plaintiff does not dispute the facts discussed above or direct our attention to specific evidence or allegations in his complaint that support the exercise of personal jurisdiction over defendant. Instead, plaintiff reviews the *general* parameters for the exercise of personal jurisdiction and discusses the potential role that an administrator *ad litem* might play in the resolution of estate matters, pursuant to Florida law. Plaintiff notes that a Florida trial court has authority in appropriate situations to direct an administrator *ad litem* to assume responsibility

for the administration of an estate, including the representation of an estate's interests in real property. Plaintiff then argues *generally* that "a Florida fiduciary . . . administering an estate's real property" should "anticipate being a party to litigation" in the state where such property is located. However, plaintiff does not dispute that in the *present* case defendant was assigned a single discrete task as Administrator *ad Litem*: the preparation of a report which was submitted to the court more than a decade ago. As a result, we are not required to evaluate and therefore express no opinion on the accuracy of plaintiff's analysis of the potential scope of the duties to which an administrator *ad litem* might hypothetically be assigned by the Florida trial court.

Plaintiff also urges that personal jurisdiction may be asserted simply by characterizing the matter as an "*in rem*" proceeding. During the hearing on defendant's motion for dismissal, the parties and the trial court discussed the application of *in rem* jurisdiction to the facts of this case. N.C. Gen. Stat. § 1-75.8 (2015) provides in pertinent part that a North Carolina court "may exercise jurisdiction *in rem* . . . in any of the following cases:

- (1) When the subject of the action is real or personal property in this State and the defendant has or claims any lien or interest therein, or the relief demanded consists wholly or partially in excluding the defendant from any interest or lien therein. . . .

. . .

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(5) In any other action in which *in rem* or quasi *in rem* jurisdiction may be constitutionally exercised.

On appeal plaintiff makes a conclusory allegation that by agreeing to serve as an Administrator *ad Litem* for the Florida Estate of Charles Walter, Sr., defendant thereby “established sufficient contacts with North Carolina for personal jurisdiction in this *in rem* action, and/or he waived contested issues of *in rem* jurisdiction.” However, it is long established that “[t]he due process requirement of ‘minimum contacts’ discussed heretofore applies with equal force to actions quasi *in rem* as to actions *in personam*.” *Cameron-Brown Co. v. Daves*, 83 N.C. App. 281, 288, 350 S.E.2d 111, 116 (1986) (citing *Shaffer v. Heitner*, 433 U.S. 186, 53 L.Ed.2d. 2d 684 (1977)). As discussed above, the record fails to establish that defendant had the minimum contacts with North Carolina that would allow the State to exercise personal jurisdiction over him.

For the reasons discussed above, we conclude that the trial court erred by denying defendant’s motion to dismiss for lack of personal jurisdiction and that its order must be

REVERSED.

Judges ELMORE and ENOCHS concur.

Report per Rule 30(e).