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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-358

Filed: 6 December 2016

Wake County, No. 10 CVD 18622

MINA KOMPANI HASHEMI, Plaintiff,

v.

ALI REZA HASHEMI NEJAD, Defendant.

Appeal by defendant from order entered 14 October 2015 by Judge Anna E. Worley in Wake County District Court. Heard in the Court of Appeals 21 September 2016.

Higgins Benjamin, PLLC, by John F. Bloss, for defendant-appellant.

No brief filed for plaintiff-appellee.

ELMORE, Judge.

In this equitable distribution action, defendant moved to file a request for judicial assistance from the Iranian judiciary to discover the nature of plaintiff's real estate holdings in Iran. The trial court denied defendant's motion on the grounds that it lacked authority to issue such a request. On appeal, defendant argues that (1) despite its interlocutory nature, the trial court's order is immediately appealable because it affects a substantial right, and (2) the trial court abused its discretion in denying his request for judicial assistance. Because defendant failed to demonstrate

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a substantial right at stake to vest this Court with jurisdiction, we dismiss defendant's appeal as interlocutory and do not address the merits of his second argument.

I. Background

Mina Kompani Hashemi (plaintiff) and Ali Reza Hashemi-Nejad (defendant) were married in Iran on 3 November 1976. They relocated to the United States ten years later, establishing a marital residence in Wake County and maintaining dual American and Iranian citizenship. The parties eventually separated on 15 April 2009.

On 4 November 2010, plaintiff filed a complaint seeking, *inter alia*, equitable distribution of the marital and divisible property. Defendant answered, alleging that plaintiff "actively traded and worked to increase the values of her separate properties" during the marriage. In his equitable distribution inventory affidavit, defendant listed 109 properties located in Iran which he claimed were marital property in plaintiff's possession. He did not value every parcel, but he alleged that the aggregate value of the properties was more than \$286 million.

In response to defendant's interrogatories, plaintiff offered the following explanation of her alleged interest in the Iranian real estate:

1. Please identify every parcel of real estate in Iran in which you have an ownership interest—as title holder or as member of any other entity—describing the nature of the real estate, the percentage of your ownership interest,

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the amount of revenue which said real estate produces annually, and the date on which you acquired said ownership interest.

ANSWER: Plaintiff has no idea as to what, if any, properties in Iran she currently has an ownership interest in. The current political regime has taken many if not most of the properties my family had accumulated over the years. Plaintiff has no idea if the list of the properties alleged by the Defendant in his equitable distribution affidavit is exhaustive or if Plaintiff has nay [sic] ownership interest in any of the same.

.....

7. State whether you, or an agent on your behalf, was present at a meeting in Iran on October 6, 2003 when assets of [your father] were divided, and identify all assets in which you were allocated an ownership interest.

ANSWER: I was present, but I would not describe the event as a “meeting” to discuss the division of assets. My father had simply gathered the family together to express his wishes concerning his estate after he passed. No specific allocations of property were discussed at this “meeting.”

.....

11. If you have an agent managing your real estate holdings in Iran at any time since 2003, state the name, address and telephone number of said entity, and identify the time span during which each said individual or entity has served as your fiduciary.

ANSWER: I have no real estate holdings to manage. My brother and sister in Iran have been interacting with the government and other parties with respect to the properties formerly owned by my father.

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Unsatisfied with plaintiff's answers, defendant filed a motion to compel. The trial court granted the motion and ordered plaintiff to "provide an explanation of the status of each parcel of real estate" listed in defendant's equitable distribution inventory affidavit. Plaintiff responded by filing an affidavit in which she asserted the following:

5. None of the properties listed as A1 through A108 on Schedule A of Defendant's EDIA are marital.

6. At one time, prior to the Iranian Revolution of 1979, my father owned real estate in Iran. However, my father's real estate was seized by the government after the Revolution. Any property that may have been owned by my father and could have been inherited by my siblings and/or me after his death is under the control of the Iranian government.

7. I do not know who owns each of the properties listed as A1 through A108 on Schedule A of Defendant's EDIA. My father sold some of the properties he owned when I was a child, so it is likely that some of them were sold to other people well before Defendant and I were married. It is possible that my name is on the deeds to some of the properties, but I don't know which ones and I don't have any control over those properties. I do not have any way of finding out who owns each property or obtaining any records with respect to these properties.

In an effort to prove the extent of plaintiff's real estate holdings in Iran, defendant filed a *pro se* request for "judicial assistance from Iran's judiciary for uncovering billions in assets." In his request, defendant asks the Iranian judiciary for assistance to determine plaintiff's property ownership between January 2004 and

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July 2009. By order entered 14 October 2015, the trial court denied defendant's request based on the conclusion that "it has no authority to request the production of persons or documents from the head of a foreign country" or "to request that a legal action be initiated in the country of Iran for any purpose."

Defendant timely appeals from the court's order denying his request for judicial assistance. Plaintiff did not file a brief with this Court.

II. Discussion

Defendant argues that we have jurisdiction over this appeal because the trial court's interlocutory order denying his request affects a substantial right and is therefore immediately appealable.

"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) (citation 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). Such a right does exist, but only in limited circumstances. See N.C. Gen. Stat. § 1A-1, Rule 54(b) (2015); N.C. Gen. Stat. § 1-277 (2015); N.C. Gen. Stat. § 7A-27(b)(3) (2015).

A party has the right to appeal to this Court from an interlocutory order issued by a superior or district court in a civil action if the order "affects a substantial right."

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N.C. Gen. Stat. §§ 1-277, 7A-27(b)(3). The “substantial right” test consists of two components. First, there must be “a legal right affecting or involving a matter of substance as distinguished from matters of form,” i.e., “a right materially affecting those interests which a [person] is entitled to have preserved and protected by law.” *Oestreicher v. Am. Nat’l Stores, Inc.*, 290 N.C. 118, 130, 225 S.E.2d 797, 805 (1976) (quoting Webster’s Third New International Dictionary 2280 (1971)). Second, “the deprivation of that . . . right must potentially work injury . . . if not corrected before appeal from final judgment.” *Goldston*, 326 N.C. at 726, 392 S.E.2d at 736 (citing *Wachovia Realty Invs. v. Housing, Inc.*, 292 N.C. 93, 232 S.E.2d 667 (1977)); *see also Turner v. Norfolk S. Corp.*, 137 N.C. App. 138, 142, 526 S.E.2d 666, 670 (2000) (“A substantial right is one which will clearly be lost or irremediably adversely affected if the order is not reviewable before final judgment.” (citation and internal quotation marks omitted)).

We have previously held that “orders denying or allowing discovery are not appealable since they are interlocutory and do not affect a substantial right which would be lost if the ruling were not reviewed before final judgment.” *Dworsky v. Travelers Ins. Co.*, 49 N.C. App. 446, 447, 271 S.E.2d 522, 523 (1980) (citing *First Union Nat’l Bank v. Olive*, 42 N.C. App. 574, 257 S.E.2d 100 (1979)).

If, however, the desired discovery would not have delayed trial or have caused the opposing party any unreasonable annoyance, embarrassment, oppression or undue burden or expense, and if the information desired is highly

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material to a determination of the critical question to be resolved in the case, an order denying such discovery does affect a substantial right and is appealable.

Dworsky, 49 N.C. App. at 447–48, 271 S.E.2d at 523 (citing *Tennessee-Carolina Transp., Inc. v. Strick Corp.*, 291 N.C. 618, 231 S.E.2d 597 (1977); *Starmount Co. v. City of Greensboro*, 41 N.C. App. 591, 255 S.E.2d 267 (1979)).

Defendant, relying on *Dworsky*, contends that the trial court’s order denying his request for judicial assistance affects a substantial right because plaintiff’s Iranian property ownership “is without question a critical issue” in this equitable distribution action, “this Court’s review of [the] order would not delay trial,” and the discovery “would put [plaintiff] to no unreasonable annoyance, embarrassment, undue burden, or expense.”

We agree with defendant that any interest plaintiff may have in Iranian real estate would be highly material to the trial court’s identification, classification, and equitable distribution of property. See N.C. Gen. Stat. § 50-20(a) (2015) (“[T]he court shall determine what is the marital property and divisible property and shall provide for an equitable distribution of the marital property and divisible property between the parties”); N.C. Gen. Stat. § 50-21(a) (2015) (“Real or personal property located outside of North Carolina is subject to equitable distribution in accordance with the provisions of G.S. 50-20”).

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This is not a situation, however, in which defendant has been “effectively precluded” from introducing evidence of plaintiff’s real estate holdings. *Cf. Tennessee-Carolina Transp.*, 291 N.C. at 625, 231 S.E.2d at 601. If that were the case, we would wonder how defendant was able to identify and describe in detail (including, at minimum, PINs and ownership percentages) over 100 parcels of real estate located in Iran which he claims are marital property. In fact, many of the real estate entries in his inventory affidavit contain a cross-reference to the following note: “All information has been attained through email attachment, agreements, sales contracts, and over 30 years of being her husband.” Defendant even references an “ownership booklet” in plaintiff’s possession, which allegedly contains the record of all real estate transfers to which plaintiff was a party.

In addition, we cannot overlook the significant amount of time it would take to process defendant’s request. According to his own expert in Iranian law, it would take *one year* to determine the status, ownership, and assessment of plaintiff’s alleged property interests in Iran. That is assuming the Iranian judiciary even decides to grant defendant’s request. Although a trial date had not been set, the discovery would have delayed it considerably nonetheless.

III. Conclusion

Because defendant has failed to demonstrate that the trial court’s interlocutory order denying his request for judicial assistance affects a substantial right, he has

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also failed to vest this Court with jurisdiction over the appeal. In dismissing the appeal, we express no opinion on the merits of defendant's substantive argument.

DISMISSED.

Judges ZACHARY and ENOCHS concur.

Report per Rule 30(e).