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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1039

Filed: 6 August 2019

Lincoln County, No. 18 CVS 270

CATHY ANNE CARSWELL REIS, *et al.*, Plaintiffs,

v.

BARBARA ANTHONY CARSWELL, *et al.*, Defendants.

Appeal by plaintiff from order entered 31 July 2018 by Judge Jesse B. Caldwell III, in Lincoln County Superior Court. Heard in the Court of Appeals 22 July 2019.

Cathy Anne Carswell Reis, pro se, for plaintiff-appellant.

No brief filed for defendant-appellee Barbara Anthony Carswell.

BERGER, Judge.

Cathy Anne Carswell Reis (“Plaintiff”) appeals from the trial court’s order (1) granting in part and denying in part the motion to dismiss filed by Barbara Anthony Carswell (“Defendant”), and (2) denying Defendant’s motion for sanctions. We dismiss the appeal as interlocutory.

Factual and Procedural Background

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Opinion of the Court

On March 7, 2018, Plaintiff filed a *pro se* civil action against Defendant alleging claims of “property rights” and negligence. The complaint covered two separate subjects: the ownership of a piece of real property in Catawba County (“the Catawba County property”) and Defendant’s treatment of her deceased husband, John Lewis Carswell (“John”), prior to his death on February 11, 2018.

John Carswell was Plaintiff’s father, and Defendant was his second wife. John’s first wife, Patricia Lawing Carswell (“Patricia”), was Plaintiff’s mother. She died intestate in 1972. Plaintiff alleged in her complaint that at the time of Patricia’s death, John and Patricia had some interest in the Catawba County property. She further alleged that, as one of Patricia’s three daughters, she inherited a share of this property at the time of her mother’s death.

On June 30, 2017, Defendant, acting as John’s attorney in fact, executed a general warranty deed conveying the property to herself. In her complaint, Plaintiff sought to have this transaction invalidated. Plaintiff also alleged that Defendant had improperly obtained a loan secured by a deed of trust in the property.

Plaintiff’s negligence claim was based on her allegations that Defendant failed to properly care for John as his health deteriorated before his death. She alleged that Defendant had abandoned John, going to live with her ex-husband rather than staying with John and providing him with the care he needed. Plaintiff also accused Defendant of failing to pay for the medical services that John required.

On April 27, 2018, Defendant filed a motion to dismiss and motion for sanctions. Defendant argued that the trial court lacked subject matter jurisdiction, that she had not been properly served, and that Plaintiff's complaint failed to state a claim upon which relief could be granted. Defendant also contended that Plaintiff knew the allegations in her complaint were false and that she was attempting to force defendant "to undergo costly, expensive, unnecessary litigation"

On July 31, 2018, the trial court entered an order allowing the motion to dismiss Plaintiff's negligence claim, denying the motion to dismiss the property rights claim, and denying the motion for sanctions. On August 28, 2018, Plaintiff filed written notice of appeal.

Analysis

As an initial matter, we note that Plaintiff appeals from an interlocutory order. *See Veazey v. City of Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950) ("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." (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). This policy is intended to discourage "piecemeal" appeals while litigation is ongoing and "to forestall the

useless delay inseparable from unlimited fragmentary appeals[.]” *Veazey*, 231 N.C. at 363-64, 57 S.E.2d at 382.

[I]mmediate appeal of interlocutory orders and judgments is available in at least two instances. First, immediate review is available when the trial court enters a final judgment as to one or more, but fewer than all, claims or parties and certifies there is no just reason for delay. . . . Second, immediate appeal is available from an interlocutory order or judgment which affects a substantial right.

Sharpe v. Worland, 351 N.C. 159, 161-62, 522 S.E.2d 577, 579 (1999) (quotation marks and citations omitted). The trial court’s order in this case did not include a certification that there is no just reason for delay pursuant to N.C. Gen. Stat. § 1A-1, Rule 54(b) (2017). Consequently, Plaintiff’s appeal is only properly before this Court if the trial court’s order affects a substantial right.

“[T]he 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 v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 380, 444 S.E.2d 252, 254 (1994). Plaintiff fails to meet that burden in this case. While she spends considerable time arguing that her claim was improperly dismissed,¹ she fails to establish any adverse impact to a substantial right that she will suffer if the trial court’s alleged error is not corrected until an appeal from a final

¹ It appears that Plaintiff believes her claim was dismissed pursuant to N.C. Gen. Stat. § 1A-1, Rule 41(b) (2017). However, the trial court’s order reflects that the dismissal was pursuant to N.C. Gen. Stat. § 1A-1, Rule 12(b) (2017).

judgment. Accordingly, we allow Defendant's motion to dismiss this appeal as interlocutory.

Plaintiff has also filed a petition for *writ of certiorari* as an alternative basis for our review of her appeal. "The writ of certiorari may be issued in appropriate circumstances by either appellate court to permit review of the judgments and orders of trial tribunals . . . when no right of appeal from an interlocutory order exists" N.C.R. App. P. 21(a)(1). However, Plaintiff's petition does not provide good cause for this Court to deviate from our general policy disfavoring interlocutory appeals. *See State v. Grundler*, 251 N.C. 177, 189, 111 S.E.2d 1, 9 (1959) (citations omitted) ("Certiorari is a discretionary writ, to be issued only for good and sufficient cause shown."), *cert. denied*, 362 U.S. 917 (1960); *see also Harbour Point Homeowners' Ass'n v. DJF Enters.*, 206 N.C. App. 152, 165, 697 S.E.2d 439, 448 (2010) (refusing to grant *certiorari* review of an interlocutory order "given the general policy against the piecemeal review of interlocutory orders enunciated in *Veazey* and the absence of any compelling reason to depart from our general policy of declining to grant certiorari in order to entertain such appeals in this case"). In our discretion, Plaintiff's petition for *writ of certiorari* is denied.

DISMISSED.

Judges STROUD and ZACHARY concur.

Report per Rule 30(e).