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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-165

Filed: 17 September 2019

Wake County, No. 18 CVD 4646

CHRISTIAN OKO and FRANCINE MUNYAKAZI, Plaintiffs,

v.

NORTHLAND INVESTMENT CORPORATION, Defendant.

Appeal by Plaintiffs from order entered 13 September 2018 by Judge Debra Sasser in Wake County District Court. Heard in the Court of Appeals 21 August 2019.

Christian Oko and Francine Munyai, pro se.

Hatch, Little & Bunn, L.L.P., by Stephanie Marie D'Atri and David M. Yopp, for Defendant-Appellant.

DILLON, Judge.

Plaintiffs Christian Oko and Francine Munyai appeal from an order granting summary judgment to Defendant Northland Investment Corporation (“Northland”).

I. Background

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Plaintiffs were tenants in an apartment owned by Northland. In April 2018, Plaintiffs filed this action against Northland alleging that Northland failed to upkeep and address certain alleged issues in Plaintiffs' apartment. Northland answered Plaintiffs' complaint and filed motions to dismiss and for summary judgment.

In September 2018, the trial court conducted a hearing on Northland's motions. Plaintiffs failed to submit any evidence to defend against summary judgment or to support their complaint. At the hearing, the trial court repeatedly asked Plaintiffs if they had any supporting evidence. However, the *only* evidence before the trial court at the hearing was that put forth by Northland. Thus, the trial court granted Northland's summary judgment motion.

Plaintiffs timely appealed to our Court.¹

II. Analysis

On appeal, Plaintiffs argue that the trial court erred in granting summary judgment to Northland and in dismissing their case with prejudice. We disagree.

We review a grant of summary judgment *de novo*. *Morrell v. Hardin Creek, Inc.*, 371 N.C. 672, 680, 821 S.E.2d 360, 366 (2018).

¹ While preparing their briefs and record on appeal, Plaintiffs proposed and served a record on Northland that contained numerous documents, photographs, and exhibits *not* considered by the trial court when ruling on the motion for summary judgment and, thus, prohibited to be considered by our Court. As Plaintiffs and Northland failed to agree on what was to be included in the record on appeal, the trial court entered an order settling the record (the "Settlement Order").

Despite the Settlement Order, Plaintiffs filed their proposed record on appeal, including the documents and exhibits ordered to be excluded, with our Court.

We acknowledge Northland's motion to dismiss Plaintiffs' appeal with our Court due to this record on appeal. We deny the motion and address the merits of Plaintiffs' appeal.

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“When a motion for summary judgment is made and supported . . . , an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.” N.C. Gen. Stat. § 1A-1, Rule 56(e) (2018). Such filings must be “served on the other parties *at least two days before the hearing*[.]” or the trial court may continue the matter, proceed without considering the affidavit, or take other appropriate action. N.C. Gen. Stat. § 1A-1, Rule 56(c) (emphasis added).

In the present case, Plaintiffs failed to serve any evidence or affidavits in defense of their claims. In their brief, Plaintiffs concede that they “did not know that for [s]ummary [j]udgment, [they] were supposed to send in an answer ahead of time.” *See* N.C. Gen. Stat. § 1A-1, Rule 56(e) (requiring service of affidavits and supporting evidence “at least two days before the hearing on the motion”). Rather, Plaintiffs arrived at the summary judgment hearing having served no evidence on Northland or the trial court. Therefore, at the hearing, the trial court had the discretion to continue the matter, proceed without referencing the unauthorized evidence, or take other appropriate action. *See* N.C. Gen. Stat. § 1A-1, Rule 56(c). The trial court opted not to continue the matter as Plaintiffs had over two months to prepare for the hearing and failed to do so. Rather, the trial court, in its discretion, proceeded with

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the evidence before it – which all came from Northland. *See Pridgen v. Hughes*, 9 N.C. App. 635, 639, 177 S.E.2d 425, 427-28 (1970) (“Section (e) of Rule 56 clearly states that the unsupported allegations in a pleading are insufficient to create a genuine issue of fact where the moving adverse party supports his motion by allowable evidentiary matter showing the facts to be contrary to that alleged in the pleadings.”). As such, summary judgment was validly rendered for Northland. *See State v. Thomas*, 331 N.C. 671, 675, 417 S.E.2d 473, 476 (1992) (stating that a *pro se* litigant is “held to the same rules of evidence and procedure as an attorney”).

III. Conclusion

Plaintiffs failed to present evidence in opposition to Northland’s motion for summary judgment and, therefore, to create a genuine issue of material fact before the trial court. Thus, the trial court did not err in granting summary judgment in favor of Northland.

AFFIRMED.

Judges ZACHARY and YOUNG concur.

Report per Rule 30(e).