IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA20-76

Filed: 3 November 2020

Wayne County No. 19 CVD 1183

THEODORE JUSTICE, Plaintiff,

v.

DEACON JONES AUTOMOTIVE OF CLINTON, LLC; DEACON JONES AUTO PARK, INC; and BOBBY KENNETH JONES, III, Defendants.

Appeal by Plaintiff from Order entered 12 September 2019 by Judge Ericka Y. James in Wayne County District Court. Heard in the Court of Appeals 12 May 2020.

Theodore Justice, pro se, plaintiff-appellant.

Woodruff & Fortner, by Gordon C. Woodruff, for defendants-appellees.

MURPHY, Judge.

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. Here, Plaintiff's appeal is interlocutory because it arises from an order that does not finally dispose of the case but requires further action by the small claims division of Wayne County District Court ("Small Claims Court"). We generally do not have jurisdiction

to hear an interlocutory appeal unless it affects a substantial right. Plaintiff has failed to demonstrate this appeal affects a substantial right. Therefore, we lack jurisdiction and dismiss this appeal.

BACKGROUND

In early March 2019, Plaintiff, Theodore Justice, purchased a 2019 GMC Sierra 1500 ("Truck") from Deacon Jones Automotive of Clinton, LLC. On 24 May 2019, following a dispute between the parties, Plaintiff filed a complaint against Defendants, Deacon Jones Automotive of Clinton, LLC, Deacon Jones Auto Park, Inc., and Bobby Kenneth Jones, III, in Small Claims Court, seeking to recover $7,500.00 for "complete repair of the [Truck] to make it whole as new when purchased[.]" When Defendants failed to timely appear at the trial on 24 June 2019, the Small Claims Court entered default judgment for Plaintiff.

Defendants timely filed notice of appeal to District Court. Arguing excusable neglect, Defendants filed a *Motion to Set Aside Judgments* ("Set-Aside Motion") on 2 August 2019 and a memorandum of law in support of its Set-Aside Motion on 5 September 2019. At the hearing on 9 September 2019, Plaintiff claimed he "did not receive a memorandum of law" but "did see the motion to dismiss." On 12 September 2019, the trial court issued an order granting Defendants' Set-Aside Motion and vacating the Small Claims Court's entry of default judgment ("Order"). Plaintiff appealed prior to a full resolution of all matters.

ANALYSIS

"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." *Horne v. Nobility Homes, Inc.*, 88 N.C. App. 476, 477, 363 S.E.2d 642, 643 (1988) (citation omitted). "An order setting aside a default judgment is interlocutory as 'it does not finally dispose of the case and requires further action by the trial court.'" *Id.* (quoting *Bailey v. Gooding*, 301 N.C. 205, 209, 270 S.E.2d 431, 434 (1980)). Plaintiff's appeal arises from an order setting aside default judgment and is interlocutory.

"[A]ppeal lies of right directly to the Court of Appeals . . . [f]rom an interlocutory order or judgment of a [S]uperior [C]ourt or [D]istrict [C]ourt in a civil action or proceeding that . . . [a]ffects a substantial right." N.C.G.S. § 7A-27(b)(3) (2019); *see also Horne*, 88 N.C. App. at 477, 363 S.E.2d at 643 (citations omitted) ("No appeal lies from an interlocutory order unless it affects a substantial right and will result in injury if not reviewed before final judgment."). "[I]t is the appellant's burden to present appropriate grounds for this Court's acceptance of an interlocutory appeal[.]" *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 379, 444 S.E.2d 252, 253 (1994).

Plaintiff argues Rule 6(d) of the North Carolina Rules of Civil Procedure provides a substantial right to notice, which Defendants allegedly violated by failing

to timely serve their memorandum of law in support of their Set-Aside Motion. Even assuming, *arguendo*, Rule 6(d) provides a substantial right to notice, the Order did not affect such a right in the present case because Rule 6(d) only applies to motions and related affidavits, not memoranda:

> A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than five days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. . . . When a motion is supported by affidavit, the affidavit shall be served with the motion; and except as otherwise provided in Rule 59(c), opposing affidavits shall be served at least two days before the hearing.

N.C.G.S. § 1A-1, Rule 6(d) (2019). Plaintiff has not demonstrated he has a substantial right to service of a memorandum of law on the basis of Rule 6(d).

In his brief, Plaintiff also alleges violations of his procedural due process rights. Plaintiff does not argue these alleged due process violations affect a substantial right. "It is not the role of the appellate courts . . . to create an appeal for an appellant, nor is it the duty of the appellate courts to supplement an appellant's brief with legal authority or arguments not contained therein." *First Charter Bank v. Am. Children's Home*, 203 N.C. App. 574, 580, 692 S.E.2d 457, 463 (2010) (internal citations and quotation marks omitted).

Plaintiff has failed to show his interlocutory appeal affects a substantial right. We lack subject matter jurisdiction to hear this appeal and therefore dismiss it.

CONCLUSION

No appeal lies from an interlocutory order unless it affects a substantial right. Because Plaintiff has failed to demonstrate this interlocutory appeal affects a substantial right, we do not have jurisdiction to hear it. Therefore, we dismiss Plaintiff's appeal.

DISMISSED.

Judges BRYANT and BERGER concur.

Report per Rule 30(e).