IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-507

No. COA21-747

Filed 19 July 2022

Wilson County, No. 19CVS928

GLENN MOSELEY, Plaintiff,

v.

JOHNNY A. HENDRICKS, JR. and
CITY OF WILSON, Defendants.

Appeal by Plaintiff from partial summary judgment entered 3 June 2021 by Judge William D. Wolfe in Wilson County Superior Court. Heard in the Court of Appeals 25 May 2022.

Narron & Holdford, P.A., by Ben L. Eagles, and Schmidt Law, by Kurt Schmidt, for Plaintiff-Appellant.

Brown, Crump, Vanore & Tierney, PLLC, by Skylar J. Gallagher, O. Craig Tierney, Jr., and Andrew A. Vanore, III, for Defendant-Appellee Hendricks.

CARPENTER, Judge.

¶ 1 Plaintiff-Appellant Glenn Moseley ("Plaintiff") filed a complaint on 17 June 2019 asserting negligence claims against Defendant-Appellee Johnny A. Hendricks, Jr. ("Defendant Hendricks") and Defendant City of Wilson. Plaintiff's complaint alleged each defendant's negligence jointly and severally caused Plaintiff's injuries.

On 3 June 2021, the trial court granted partial summary judgment for Defendant Hendricks on the issues of Plaintiff's contributory negligence, last clear chance, and punitive damages, and dismissed all claims in Plaintiff's complaint against Defendant Hendricks with prejudice. After careful review, we dismiss Plaintiff's appeal as interlocutory.

I. Factual and Procedural Background

¶ 2 Defendant City of Wilson owns Wedgewood Golf Club in Wilson, North Carolina. This case arises from an incident on 23 December 2018, when Plaintiff and Defendant Hendricks played a round of golf together at Wedgewood Golf Club as part of a group of five. After the round, Defendant Hendricks and two other members of the group decided to hit more balls on the driving range while Plaintiff waited in the cart. The first ball Defendant Hendricks hit at the range struck Plaintiff in the eye, blinding Plaintiff in that eye.

¶ 3 Both Plaintiff and Defendant Hendricks drank alcohol during the round of golf. Based on testimony from all members of the group, the exact amount of alcohol consumed by each party is unclear, but testimony supports the contention Plaintiff drank the most (about three-fourths of a quart jar of moonshine and beer); Plaintiff was the only member of the group impaired; and Defendant Hendricks drank the second-most, at no more than one-quarter of the jar of moonshine and one beer.

¶ 4 A fence runs along the right side of the driving range for approximately thirty yards. On the other side of the fence lies an asphalt parking lot where the parties parked their golf carts before entering the range. Taylor Keith ("Keith"), another member of the group, drove Plaintiff's cart, and the location Keith initially parked Plaintiff's cart along the fence is in dispute. Plaintiff does not recall precisely where Keith parked his cart. Two members of the group, including Defendant Hendricks, testified all four of the cart's tires remained on the asphalt behind the fence when Keith parked. Keith testified Plaintiff's cart remained completely on the asphalt, but later conceded Plaintiff's front two tires "could have" been on the asphalt. One witness present on the driving range, not a member of the group, testified seventy-five percent of Plaintiff's cart was originally parked on the driving range, with "maybe just the [back] bumper" behind the fence.

¶ 5 Regardless, the cart somehow ended up on the driving range. Plaintiff remained in the passenger seat of the cart while the others walked onto the driving range. The cart remained exposed to golfers hitting golf balls downrange for as long as ninety seconds. During this time, Plaintiff's full attention was directed at his phone instead of his surroundings.

¶ 6 Defendant Hendricks testified when he looked down the range to prepare his shot, he did not see Plaintiff on the range. After Defendant Hendricks visualized his shot, his focus turned to the golf ball and his mechanics, and he did not look up again

before striking the ball. After hitting the ball, Defendant Hendricks heard a noise, looked up, and saw Plaintiff in his cart holding his eye.

¶ 7 Plaintiff filed a complaint on 17 June 2019 seeking punitive damages for negligence claims against Defendant Hendricks. Plaintiff's complaint alleged Defendant City of Wilson's negligence jointly and severally caused Plaintiff's injuries along with Defendant Hendricks's alleged negligence. Defendant Hendricks answered on 8 August 2019 denying the negligence claim, asserting affirmative defenses of contributory negligence and gross contributory negligence, and seeking dismissal of the claim for punitive damages. Later that day, Plaintiff filed a reply asserting the doctrine of last clear chance. On 14 May 2021, Defendant Hendricks moved for partial summary judgment on the issues of contributory negligence, last clear chance, and punitive damages, which the trial court granted on 3 June 2021. Plaintiff appeals the trial court's summary judgment rulings.

II. Issues

¶ 8 The issues on appeal are whether the trial court properly granted partial summary judgment for Defendant Hendricks on the contributory negligence, last clear chance, and punitive damages claims.

III. Jurisdiction

¶ 9 Plaintiff asserts this Court has jurisdiction to hear his appeal pursuant to N.C. Gen. Stat. § 7-27(b) (2021) because the trial court's order for partial summary judgment in favor of Defendant Hendricks constitutes a final judgment. We disagree.

¶ 10 Although neither party raises the issue in their brief, "it is the duty of an appellate court to dismiss an appeal on its own motion if there is no right to appeal." *Equitable Leasing Corp. v. Myers*, 46 N.C. App. 162, 164, 265 S.E.2d 240, 242 (1980) (citation omitted). "[A] final judgment is one which disposes of the cause as to all parties, leaving nothing to be judicially determined between them in the trial court." *Hinson v. Hinson*, 17 N.C. App. 505, 508–09, 195 S.E.2d 98, 100 (1973) (citation omitted). "An order or judgment is interlocutory if it is made during the pendency of an action and does not dispose of the case but requires further action by the trial court in order to finally determine the entire controversy." *Bartlett v. Jacobs*, 124 N.C. App. 521, 523, 477 S.E.2d 693, 695 (1996) (citation omitted). "Orders which do not dispose of the action as to all parties are interlocutory." *Jarrell v. Coastal Emergency Servs.*, 121 N.C. App. 198, 199, 464 S.E.2d 720, 722 (1995) (citation omitted).

¶ 11 Here, the trial court dismissed Plaintiff's claims against one defendant, Defendant Hendricks. Plaintiff does not assert the negligence claim against Defendant City of Wilson has been resolved. It appears from the record presented the claim against Defendant City of Wilson is still pending in Superior Court. Thus, the trial court's grant of partial summary judgment is interlocutory, not a final

judgment, as it does not "dispose[] of the cause as to all the parties[.]" *See Hinson*, 17 N.C. App. at 508–09, 195 S.E.2d at 100.

¶ 12 Because we conclude the appeal is interlocutory, we next consider whether Plaintiff properly demonstrated a right of appeal. "Ordinarily, there is no right of appeal from interlocutory orders." *Jarrell*, 121 N.C. App. at 200, 464 S.E.2d at 722 (citation omitted). However, there are two instances where a party may appeal an interlocutory judgment.

> First, a party is permitted to appeal from an interlocutory order when the trial court enters a final judgment as to one or more but fewer than all of the claims or parties and the trial court certifies in the judgment that there is no just reason to delay the appeal.

Jeffreys v. Raleigh Oaks Joint Venture, 115 N.C. App. 377, 379, 444 S.E.2d 252, 253 (1994) (internal quotation omitted); *see* N.C. Gen. Stat. § 1A-1, R. 54(b) (2021). "Second, a party is permitted to appeal from an interlocutory order when 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*, 115 N.C. App. at 379, 444 S.E.2d at 253 (internal quotation omitted); *see* N.C. Gen. Stat. § 1-277(a) (2021). "Under either of these two circumstances, it is the appellant's burden to present appropriate grounds for this Court's acceptance of an interlocutory appeal and our Court's responsibility to review those grounds." *Jeffreys*, 115 N.C. App. at 379, 444 S.E.2d at 253.

> It is not the duty of this Court to construct arguments for or find support for appellant's right to appeal from an interlocutory order; instead, the 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.

Id. at 380, 444 S.E.2d at 254 (citations omitted). "If a party attempts to appeal from an interlocutory order without showing that the order in question is immediately appealable, we are required to dismiss that party's appeal on jurisdictional grounds." *Hamilton v. Mortg. Info. Servs., Inc.*, 212 N.C. App. 73, 77, 711 S.E.2d 185, 189 (2011) (citation omitted).

¶ 13 In this case, the trial court did not certify that there is no just reason for delaying this appeal. *See* N.C. Gen. Stat. §1A-1, R. 54(b) (2021); *see also Jeffreys,* 115 N.C. App. at 379, 444 S.E.2d at 253. Furthermore, Plaintiff does not argue the trial court's summary judgment order deprived him of a substantial right, and it is not the duty of this Court to "find support for [Plaintiff]'s right to appeal from an interlocutory order." *See Jeffreys,* 115 N.C. App. at 380, 444 S.E.2d at 254. Because Plaintiff fails to meet the "burden of showing this Court that the order deprives [him] of a substantial right[,]" *see id.* at 380, 444 S.E.2d at 254, we must dismiss Plaintiff's appeal for lack of jurisdiction. *See Hamilton*, 212 N.C. App. at 77, 711 S.E.2d at 189.

IV. Conclusion

¶ 14 Having concluded Plaintiff failed to establish this Court's jurisdiction to consider an interlocutory order, we must dismiss Plaintiff's appeal. Accordingly, we do not reach the issues of whether the trial court erred in granting summary judgment on the claims of contributory negligence, last clear chance, and punitive damages.

DISMISSED.

Judges MURPHY and ARROWOOD concur.

Report per Rule 30(e).