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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-749

No. COA22-164

Filed 15 November 2022

Forsyth County, No. 19 CVS 5114

BEST ASSET GROUP, LLC, Plaintiff,

v.

ROSA LEE JACOBS, Defendant/Third-Party Plaintiff,

v.

WILLIAM JAMES CALDER, Third-Party Defendant.

Appeal by plaintiff and third-party defendant from order entered 8 November 2021 by Judge Logan Todd Burke in Forsyth County Superior Court. Heard in the Court of Appeals 20 September 2022.

*Ragsdale Liggett PLLC, by William W. Pollock and Amie C. Sivon, for plaintiff-appellant and third-party defendant-appellant.*

*Anderson, Johnson, Lawrence & Butler, LLP, by Steven C. Lawrence, for defendant/third-party plaintiff-appellee.*

DIETZ, Judge.

¶ 1

Plaintiff Best Asset Group and Third-Party Defendant William James Calder appeal from the trial court's order granting a motion to change venue for the convenience of witnesses and to promote the ends of justice. As explained below, the

statement of grounds for appellate review does not establish that this interlocutory order affects a substantial right. We therefore dismiss this appeal for lack of appellate jurisdiction.

### **Facts and Procedural History**

¶ 2 In 2017, Defendant Rosa Jacobs and Third-Party Defendant William James Calder were involved in an automobile accident near the border of Scotland County and Robeson County. Calder was operating a vehicle owned by Plaintiff Best Asset Group, LLC.

¶ 3 Best Asset Group has its principal place of business in Forsyth County. Jacobs and Calder are both residents of Robeson County.

¶ 4 In 2019, Best Asset Group filed this action against Jacobs in Forsyth County Superior Court, alleging property damage resulting from the accident. Jacobs initially moved under N.C. Gen. Stat. § 1-83(2) to change venue from Forsyth County to Robeson County based upon convenience of the witnesses and the ends of justice. The trial court denied that motion for change of venue.

¶ 5 In 2021, Jacobs's passenger and husband, James Jacobs, Jr., filed a complaint in Robeson County against all of the parties in this action, alleging personal injuries. Jacobs then filed an amended motion for change of venue asserting that this "change of circumstances" warranted reconsideration of her earlier motion to change venue. The trial court, through a different superior court judge, granted this second motion

to change venue and ordered this action transferred to Robeson County. Best Asset Group and Calder appealed.

### **Analysis**

¶ 6 Before we can address the merits of the parties' arguments, we must determine whether we have jurisdiction.

¶ 7 "A judgment is either interlocutory or the final determination of the rights of the parties." N.C. R. Civ. P. 54(a). A "final judgment" is one that disposes of the entire action and "leaves nothing further to be done in the trial court." *Denney v. Wardson Constr., Inc.*, 264 N.C. App. 15, 17, 824 S.E.2d 436, 438 (2019). By contrast, a judgment "which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties" is an interlocutory ruling, not a final judgment. N.C. R. Civ. P. 54(b). Generally, "there is no right of appeal from an interlocutory order." *Larsen v. Black Diamond French Truffles, Inc.*, 241 N.C. App. 74, 76, 772 S.E.2d 93, 95 (2015). "The reason for this rule is to prevent fragmentary, premature and unnecessary appeals by permitting the trial court to bring the case to final judgment before it is presented to the appellate courts." *Id.*

¶ 8 An interlocutory ruling may be immediately appealable if the challenged ruling affects a substantial right. To confer appellate jurisdiction based on a substantial right, "the appellant must include in its opening brief, in the statement of the grounds for appellate review, sufficient facts and argument to support appellate

review on the ground that the challenged order affects a substantial right.” *Doe v. City of Charlotte*, 273 N.C. App. 10, 21, 848 S.E.2d 1, 9 (2020).

¶ 9 Here, Best Asset Group and Calder acknowledge that they seek to appeal from an order changing venue to promote the convenience of witnesses and the ends of justice, and that a change of venue on this basis “is not ordinarily appealable.” *See, e.g., Stokes v. Stokes*, 371 N.C. 770, 774, 821 S.E.2d 161, 164 (2018). But these parties contend that the challenged order affects a substantial right because “one trial court judge overruled another trial court judge on the issue of venue” thus depriving them of the chosen venue “as originally approved by the first trial court judge.”

¶ 10 We are not persuaded that this purported error is sufficient to transform this otherwise unappealable ruling into one that affects a substantial right. Best Asset Group and Calder have not cited any case law holding that this type of ruling affects a substantial right. Moreover, the stated basis for why the ruling affects a substantial right—that Best Asset Group would be deprived of its right “to be heard in the forum of its choice”—is true of any motion granting a change of venue for the convenience of witnesses or the ends of justice. Nevertheless, our Supreme Court has held that this type of venue motion ordinarily is not immediately appealable and instead may be challenged after entry of final judgment. *Id.*

¶ 11 In their reply brief, Best Asset Group and Calder analogize this issue to collateral estoppel. But the cases finding a substantial right based on collateral

estoppel or res judicata concerned “a risk of inconsistent verdicts.” *Denney*, 264 N.C. App. at 19, 824 S.E.2d at 439. Here, the opposite is true: the trial court based its decision to grant the motion to change venue, in part, on the fact that transfer “would allow consolidation of the cases, and avoid duplicative trials and potentially inconsistent verdicts.” In any event, the basis for appellate jurisdiction must be clear from the statement of the grounds for appellate review in the opening brief. This Court has held that parties cannot “use their reply brief to independently establish grounds for appellate review.” *Larsen*, 241 N.C. App. at 78, 772 S.E.2d at 96.

¶ 12 We therefore hold that Best Asset Group and Calder have not established that the challenged order affects a substantial right and we therefore dismiss this appeal for lack of appellate jurisdiction.

### **Conclusion**

¶ 13 We dismiss this appeal.

DISMISSED.

Judges WOOD and JACKSON concur.

Report per Rule 30(e).