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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-797

No. COA22-323

Filed 6 December 2022

Wake County, No. 19 CVD 8313

MICHAEL J. BAER, Plaintiff,

v.

MELISSA B. BAER, Defendant.

Appeal by plaintiff from order entered 14 January 2022 by Judge Sam Hamadani in Wake County District Court. Heard in the Court of Appeals 5 October 2022.

Connell & Gelb PLLC, by Michelle D. Connell, for plaintiff-appellant.

Tharrington Smith, LLP, by Jeffrey R. Russell, Alice C. Stubbs, and Casey C. Fiddler, for defendant-appellee.

DIETZ, Judge.

¶ 1

Plaintiff Michael Baer appeals the trial court's interlocutory order granting partial summary judgment in favor of Defendant Melissa Baer on Defendant's counterclaim for breach of contract. The trial court entered partial summary judgment on liability, ruling that there were no genuine issues of material fact and that Plaintiff breached the contract as a matter of law. The trial court also entered

partial summary judgment on the contract damages, ruling that there were no genuine issues of material fact with respect to a portion of the contract damages amounting to \$475,000. But the trial court also ruled that there are “genuine issues of material fact as to the amount and nature of remaining damages resulting from the Plaintiff’s breach of contract” and that the “issue of remaining damages resulting from Plaintiff’s breach of contract shall be set for future hearing upon Defendant’s request.”

¶ 2 As explained below, because the trial court has not entered a final determination with respect to the damages for this contract claim, the partial award of damages at summary judgment is interlocutory, subject to change under Rule 54(b), and thus not subject to execution. Accordingly, that award of partial damages is not the sort of money judgment that permits an interlocutory appeal based on a substantial right. We therefore lack jurisdiction to consider this appeal and dismiss it.

Facts and Procedural History

¶ 3 Plaintiff Michael Baer and Defendant Melissa Baer married in 2014 and later separated in February 2019, when Defendant obtained an *ex parte* domestic violence protective order against Plaintiff. Plaintiff filed a counterclaim for a domestic violence protective order against Defendant, and the parties consented to continue the return hearing in that matter until March 2019.

¶ 4 In March 2019, the parties and their counsel participated in a mediation which resulted in a separation and property settlement agreement that addressed the division of the parties' marital property and other related issues such as alimony. The agreement included a provision that the parties would "promptly file, or cause to be filed, a dismissal with prejudice of the pending 50B claims, motions, etc." The next day, the parties jointly filed notice of voluntary dismissal of their Chapter 50B claims.

¶ 5 In June 2019, Plaintiff filed the complaint in this action, seeking a declaratory judgment to set aside the separation agreement, alleging that it was unenforceable on the grounds of duress and undue influence. Defendant answered the complaint and asserted a counterclaim for breach of contract. Defendant later filed a motion for summary judgment, along with supporting affidavits. Plaintiff filed affidavits opposing the motion.

¶ 6 After a hearing, the trial court entered an order granting Defendant's motion for summary judgment in part and denying it in part. The court granted summary judgment in Defendant's favor on Plaintiff's declaratory judgment claim, ruling as a matter of law that Plaintiff ratified the separation agreement. The trial court also granted partial summary in Defendant's favor on her breach of contract claim, ruling that "Defendant's claim for Breach of Contract is granted as a matter of law in favor of the Defendant"; that there was "no genuine issue of material fact with respect to damages regarding the distributive award owed to the Defendant as a result of

Plaintiff's breach of contract, and judgment shall be entered against the Plaintiff in the sum of \$475,000 in favor of the Defendant as a tax-free distributive award owed to date under the terms of the Separation and Property Settlement Agreement"; and that there are "genuine issues of material fact as to the amount and nature of remaining damages resulting from the Plaintiff's breach of contract" and the "issue of remaining damages resulting from Plaintiff's breach of contract shall be set for future hearing upon Defendant's request."

¶ 7 Plaintiff timely appealed the partial summary judgment order.

Analysis

¶ 8 We must first address our jurisdiction to reach the merits of this interlocutory appeal. "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). However, "immediate appeal is available from an interlocutory order or judgment which affects a substantial right." *Sharpe v. Worland*, 351 N.C. 159, 162, 522 S.E.2d 577, 579 (1999). 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." *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 380, 444 S.E.2d 252, 254 (1994).

¶ 9 Plaintiff acknowledges that this appeal is interlocutory but contends that the trial court's partial summary judgment order affects a substantial right because the

order entered a money judgment against Plaintiff for \$475,000 in damages. Plaintiff points to case law holding that “the entry of a partial summary judgment for a monetary sum against a party affected the substantial right of that party and therefore was immediately appealable.” *Miller v. Henderson*, 71 N.C. App. 366, 368, 322 S.E.2d 594, 596 (1984).

¶ 10 But the line of cases from which this holding stems involved situations in which the court entered a final decision on a money judgment with respect to a claim or party in a case involving multiple claims or parties. *See, e.g., Equitable Leasing Corp. v. Myers*, 46 N.C. App. 162, 168, 265 S.E.2d 240, 245 (1980) (judgment against one party but not the other); *Wachovia Realty Invs. v. Hous., Inc.*, 292 N.C. 93, 99, 232 S.E.2d 667, 672 (1977) (judgment on the contract claim but not on claims for setoff and indemnity). In these cases, the money judgment was immediately enforceable and subjected the appealing party to the possibility of execution on that judgment. *See, e.g., Wachovia Realty*, 292 N.C. at 99, 232 S.E.2d at 671 (“proceedings in execution have been instituted and an order has been entered by the Clerk of the Superior Court declaring the judgment a lien upon funds alleged to be owing”).

¶ 11 Here by contrast, the trial court has not entered a final decision with respect to any claim or party. Defendant brought a breach of contract action. The trial court entered partial summary judgment on liability, and also entered partial summary judgment on a portion of the damages, but reserved for trial the remaining damages

on that same contract claim. This rendering of partial summary judgment on damages is expressly authorized by Rule 56, which provides that when judgment “is not rendered upon the whole case or for all the relief asked and a trial is necessary” the court may “make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy” N.C. R. Civ. P. 56(d).

¶ 12 The trial court’s rulings on these summary judgment issues are interlocutory and not final determinations. *See* N.C. R. Civ. P. 54(b). Plaintiff has not cited any case law indicating that a trial court order that enters partial summary judgment with respect to a portion of damages on a contract claim under Rule 56(d), while reserving for trial the remainder of the damages on the claim, is enforceable as a stand-alone judgment. This would run counter to Rule 62 of the Rules of Civil Procedure, and N.C. Gen. Stat. § 1-289 and N.C. Gen. Stat. § 1-302, which anticipate that a money judgment is fixed upon entry and also subject to appeal. Here, by contrast, the trial court’s partial summary judgment order is interlocutory and the court’s ruling is subject to change at any point until the court enters judgment on the remaining portion of the damages on that claim. N.C. R. Civ. P. 54(b).

¶ 13 We recognize that the trial court’s order states that “judgment *shall be entered* against the Plaintiff in the sum of \$475,000 in favor of Defendant” and thus might appear to the parties to be entry of an enforceable judgment for money damages in

that amount. But Rule 54(b) provides that in the absence of entry of a “final judgment” as defined in the rule, “any order or other form of decision, *however designated*, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties” and that the order “is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.” *Id.* (emphasis added).

¶ 14 Because the only basis for immediate appeal in this case is Plaintiff’s assertion that he is subject to an immediately enforceable money judgment, and because we hold that the partial summary judgment on Defendant’s contract claim is not enforceable until the trial court enters a final determination of the damages on that claim, we conclude that this interlocutory appeal does not affect a substantial right and dismiss it for lack of appellate jurisdiction.

DISMISSED.

Judges DILLON and ARROWOOD concur.

Report per Rule 30(e).