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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-850

No. COA22-479

Filed 20 December 2022

Jackson County, No. 18 CVS 775

ADVENTURE TRAIL OF CHEROKEE, INC., A NORTH CAROLINA CORPORATION, Plaintiff,

v.

RUTH A. OWENS AND WILLIAM FREDRICK OWENS, Individuals, Defendants.

Appeal by Defendant from order and judgment entered 8 February 2022 by Judge Daniel A. Kuehnert in Jackson County Superior Court. Heard in the Court of Appeals 18 October 2022.

Shira Hedgepeth for Plaintiff-Appellee.

Mark Hayes for Defendant-Appellant.

GRIFFIN, Judge.

¶ 1 Defendant William Fredrick Owens appeals from an order and judgment concluding that a lease agreement that Plaintiff Adventure Trail of Cherokee, Inc., had with his mother, Ruth A. Owens, terminated upon her April 2019 death, granting him no rights in the lease. Superior Court Judge Daniel Kuehnert entered this order and judgment on 8 February 2022 after a hearing on pretrial motions. Previously, on

17 July 2019, Superior Court Judge Bradley B. Letts entered an order denying Adventure Trail’s request for summary judgment and declaratory judgment as to the validity of the lease. Defendant argues (1) Judge Kuehnert had no authority to overrule Judge Letts’s order, and (2) Judge Kuehnert’s interpretation of the lease was contrary to its plain meaning. We hold that Judge Kuehnert had no authority to overrule Judge Letts’s order and vacate his order and judgment for lack of subject matter jurisdiction.

I. Factual and Procedural Background

¶ 2

On 1 October 2005, Ruth A. Owens entered a lease agreement with Adventure Trail of Cherokee, Inc. Adventure Trail, the lessor, operated a business known as Adventure Trail Campground on a twenty-three acre tract of property in Whittier, North Carolina. The lease provided Ms. Owens, the lessee, the “right to occupy the space under [her] manufactured home” on a portion of Adventure Trail’s property. In consideration for the right to occupy a portion of Adventure Trail’s property, Ms. Owens promised to “continue assisting the Lessor, as physically able in maintaining the campground during the season and off season as needed by the Lessor” and to contribute and pay for certain utility costs.

¶ 3

The term of the lease was for “the life of the Lessees or the survivor of the Lessee or as long as the Lessees or surviving Lessee continues to maintain the residence as their primary residence.” Adventure Trail also reserved the right to

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terminate the lease if Ms. Owens violated any of the lease's rules and conditions, which included her agreement to abide by all campground rules. The lease permitted the lessee's children to reside on the leased premises. It was agreed that "[a]ny amendment to this Lease must be put in writing and signed by all parties surviving." The only parties to the lease were Donald Gaskins, the President of Adventure Trail, who signed as the lessor, and Ms. Owens, who signed as the lessee.

¶ 4 Ms. Owens lived on the property from the time the lease was executed in 2005 until her death in April 2019. From about 2006 to present, Ms. Owens's son, Defendant, has resided on the property. Ms. Owens assisted the campground until 2009 when she provided Mr. Gaskins a doctor's note stating that she was "medically unable to walk up and down steps and ramps[.]" Defendant also assisted in maintaining the campground until 2015, but Adventure Trail claims that "[Defendant] stood in the capacity of his mother . . . to perform duties for the campground" while Defendant claims that he was hired by Mr. Gaskins to work at the campground. Parties also differ in their explanations as to why Defendant stopped working at the campground in 2015. Adventure Trail asserts that Defendant quit, while Defendant asserts that Mr. Gaskins banned him from working for the campground.

¶ 5 On 13 December 2018, Adventure Trail filed a complaint naming Ms. Owens and Defendant as defendants. Adventure Trail alleged that Defendants were in

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“breach of the Lease Agreement for the failure to comply with the terms of consideration for the residency and violation of several Rules of the Campground to which the Lease Agreement is subject.” Adventure Trail also requested a declaratory judgment to determine “the rights of the parties under the provisions of the Lease Agreement.” In their 29 January 2019 answer, Defendants denied that they were in breach of the lease agreement but agreed that “the rights of the Parties need[ed] to be defined.” Defendants also filed a counterclaim alleging that Adventure Trail had engaged in unfair and deceptive trade practices and was in breach of the lease agreement.

¶ 6

On 2 July 2019, after Ms. Owens’s death in April 2019, Adventure Trail motioned for a declaratory judgment regarding the validity of the lease as to Defendant and requested summary judgment based on a determination that the lease was no longer valid as to Defendant. On 17 July 2019, Judge Letts denied Adventure Trail’s motions for declaratory judgment and summary judgment. Judge Letts’s orders denying the motions did not provide an explanation for his rulings.

¶ 7

On 19 March 2021, Adventure Trail filed an amended complaint. The only change to Adventure Trail’s original complaint was a request for compensatory damages for Defendant’s failure to pay rent. Defendant answered Adventure Trail’s amended complaint and raised the same counterclaims as raised previously. On 24 May 2021, Adventure Trail voluntarily dismissed its claims against Ms. Owens. In

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anticipation of trial, Defendant filed a brief opposing Adventure Trail’s use of witness testimony. Defendant argued that the language within the lease was unambiguous and therefore that “the Court should interpret the Lease according to the Four Corners of the document” and not permit any witness testimony.

¶ 8 The case was called into trial court with Judge Kuehnert for pretrial motions on 24 January 2022. At the outset of the proceedings Judge Kuehnert stated that he did not believe that Judge Letts’s order denying declaratory judgment to Adventure Trail in 2019 was binding on the trial court. Judge Kuehnert explained, “that [it] seems like I have to . . . determine something, if I’m taking evidence or not.” Both parties’ attorneys agreed that Judge Kuehnert had to “determine the rights and responsibilities of the parties” in the lease.

¶ 9 Judge Kuehnert determined that he was going to treat Defendant’s brief opposing witness testimony as a motion in limine or a motion on the legal status of the lease. He stated that if the lease was “clear in and of itself” that “the court can make a determination” without taking evidence. In evaluating the meaning of the lease’s term clause stating that “the term of this Lease shall be for the life of the Lessees or the survivor of the Lessee[,]” Judge Kuehnert found the “survivor of the Lessee” phrase was a nullity without effect. Judge Kuehnert explained that he had made this judgment based on the four corners of the lease document, stating “there’s no way . . . that the court can read it otherwise.” Thus, Judge Kuehnert made a

declaratory judgment that the lease terminated upon the death of Ms. Owens and that Defendant had no rights in the lease as a matter of law. Judge Kuehnert entered an order and judgment on 8 February 2022 concluding that Defendant was “not a Lessee and there [was] no assignment of the Lease Agreement upon the death of [Ms. Owens].” He ordered Defendant to remove his property from the campground. Defendant timely appeals.

II. Analysis

¶ 10 Defendant brings two arguments on appeal. Defendant first argues that Judge Kuehnert had no authority to overturn Judge Letts’s prior denial of Adventure Trail’s motion for declaratory judgment or summary judgment. Second, Defendant argues that Judge Kuehnert’s interpretation of the lease’s term provision was “contrary to the plain meaning of the lease.” We need only resolve the first issue because we agree that Judge Kuehnert did not have the authority to overturn Judge Letts’s order.

¶ 11 It is well established in North Carolina that “no appeal lies from one Superior Court judge to another.” *Calloway v. Ford Motor Co.*, 281 N.C. 496, 501, 189 S.E.2d 484, 488 (1972). Further, “one Superior Court judge may not correct another’s errors of law; and . . . ordinarily one judge may not modify, overrule, or change the judgment of another Superior Court judge previously made in the same action.” *Id.* (citations omitted). Alleged errors of one judge should be corrected on appellate review “and not by resort to relitigation of the same issue before a different trial judge.” *Huffaker*

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v. Holley, 111 N.C. App. 914, 916, 433 S.E.2d 474, 475 (1993) (citation omitted). A trial court judge has the authority to modify an interlocutory order only “whenever there is a showing of changed conditions which warrant such action.” *Calloway*, 281 N.C. at 502, 189 S.E.2d at 488. A party cannot relitigate a legal issue identical to one raised and decided on a prior motion. *Carr v. Great Lakes Carbon Corp.*, 49 N.C. App. 631, 634, 272 S.E.2d 374, 377 (1980).

¶ 12 A judge’s grant or denial of summary judgment is a ruling as a matter of law and is determinative as to the issue presented. *Id.* at 633, 272 S.E.2d at 376. Adventure Trail’s motion for summary judgment was denied by Judge Letts. This denial definitively concluded that neither party was entitled to judgment as a matter of law regarding Defendant’s rights in the lease. Judge Kuehnert considered the issue a second time and incongruously concluded that Defendant did not have any right in the lease as a matter of law, granting judgment to Adventure Trail.

¶ 13 The record reveals no change in circumstances that permitted Judge Kuehnert to reverse Judge Letts’s determination. Judge Letts denied summary judgment months after Ms. Owens died, so both judges considered only Defendant’s rights in making their determinations. After Judge Letts denied summary judgment and before Judge Kuehnert ruled on the issue, Adventure Trail added a request for compensatory damages to the complaint and dismissed the suit against Ms. Owens. However, neither update to the case had any bearing on the legal issue of whether

Defendant had any rights in the lease. Because Judge Letts concluded that the case could not be resolved as a matter of law, Judge Kuehnert did not have the authority to enter a contrary order.

¶ 14 *Daughtridge v. N.C. Zoological Society, Inc.*, 247 N.C. App. 33, 785 S.E.2d 729 (2016), supports our holding here. *Daughtridge* involved a real property dispute. *Id.* at 34, 785 S.E.2d at 730. After some discovery had been completed, a trial judge reviewed each parties' respective claims to a tract of land and determined that summary judgment was inappropriate. *Id.* at 35, 785 S.E.2d at 730. Five months later, a different trial judge conducted a pretrial hearing and determined that the defendants were entitled to judgment as a matter of law. *Id.* On appeal, the defendants argued that the judgment in their favor was a directed verdict and distinguishable from the first judge's denial of summary judgment. *Id.* at 36, 785 S.E.2d at 731. We disagreed, holding that "[w]hether labeled as such or not" the second judge "purported to grant summary judgment to [the] defendant" because he concluded that the case could be decided as a matter of law without presentation of evidence at trial. *Id.* at 36–37, 785 S.E.2d at 731.

¶ 15 Our reasoning in *Daughtridge* applies here. Judge Kuehnert said that he would treat Defendant's brief opposing witness testimony as a motion in limine or a motion on the legal status of the lease and later made a declaratory judgment on Defendant's rights in the lease. Regardless of how Judge Kuehnert labeled his

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judgment, he made a determinative ruling in favor of Adventure Trail that, as a matter of law, the lease terminated upon Ms. Owens death. As in *Daughtridge*, this judgment was a legal conclusion made before the presentation of evidence at a trial. Judge Letts had determined that summary judgment was inappropriate for either party. Thus, Judge Kuehnert's determination violated the rule that in the same action, one trial court judge may not overrule the prior judgment of another. *Calloway*, 281 N.C. at 501, 189 S.E.2d at 488.

¶ 16 Adventure Trail argues that Judge Kuehnert's order did not overrule Judge Letts's order because Defendant agreed that Judge Kuehnert needed to make a declaratory judgment on the parties' rights and responsibilities in the lease. Judge Kuehnert reasoned that he had authority to make this decision because Judge Letts's order denying Adventure Trail's request for declaratory judgment was not binding on the trial court. However, Judge Letts's order also denied either party's right to summary judgment. A denial of summary judgment is determinative as to the issue presented. *Carr* 49 N.C. App. at 634, 272 S.E.2d at 377. Based on Judge Letts's summary judgment decision, Judge Kuehnert was precluded from determining that Adventure Trail was entitled to judgment as a matter of law.

¶ 17 Finally, Defendant was not required to preserve for appeal his argument that Judge Kuehnert had no authority to overturn Judge Letts's order. Judge Keuhnert's authority to make a declaratory judgment is a question of subject matter jurisdiction.

A trial judge is “without jurisdiction to reconsider another [trial] judge’s ruling on the same matter without . . . a substantial change in circumstances.” *Global Furniture, Inc. v. Proctor*, 165 N.C. App. 229, 235, 598 S.E.2d 232, 236 (2004) (citations omitted). Questions of subject matter jurisdiction “may be raised at any time, even for the first time on appeal or by a court *sua sponte*.” *State v. Kostick*, 233 N.C. App. 62, 72, 755 S.E.2d 411, 418 (2014) (citation omitted).

¶ 18 Because Judge Kuehnert’s judgment is void for lack of subject matter jurisdiction, we do not reach the question of whether his interpretation of the lease was correct.

III. Conclusion

¶ 19 We conclude that Judge Kuehnert did not have authority to overrule Judge Letts’s order denying summary judgment. Judge Kuehnert’s order and judgment is vacated for lack of subject matter jurisdiction.

VACATED.

Judges INMAN and JACKSON concur.

Report per Rule 30(e).