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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-144

Filed 05 September 2023

Mecklenburg County, No. 19-CVS-8071

NANCY SEYMORE, Plaintiff,

v.

TERESA ANN GARDNER HARTMAN, Individually and as Guardian of the Person of Berell Gardner, Attorney-in-Fact for Berell Gardner, a/k/a Teresa Ann Gardner, and BERELL GARDNER, Defendant.

Appeal by Plaintiff from order entered 12 August 2022 by Judge Carla N. Archie in Mecklenburg County Superior Court. Heard in the Court of Appeals 22 August 2023.

Plumides, Romano & Johnson, P.C., by Richard B. Johnson and Clint Davis, for Plaintiff-Appellant.

Joseph L. Ledford for Defendant-Appellee.

COLLINS, Judge.

This case arises out of a dispute between Plaintiff Nancy Seymore and Defendant Teresa Ann Gardner Hartman, Plaintiff's daughter, over real and personal property. Plaintiff argues that the trial court erred by adopting a referee report filed "prior to either party being able to except the report or hold a hearing on the report."

Although the trial court prematurely adopted the referee's report, Plaintiff has failed to show prejudice. Accordingly, the trial court's order is affirmed.

I. Background

The underlying substantive claims in this action are not at issue in this appeal. The relevant facts are as follows: Plaintiff filed a Motion for Referee on 14 February 2020, and the parties entered into a consent order appointing a referee on 20 August 2020. Over the course of several months in 2021, the parties, their attorneys, and the referee met several times. The referee also reviewed numerous financial documents from the parties. On 3 March 2022, the parties and their attorneys met with the referee to offer testimony concerning the property at issue and ownership thereof.

The referee drafted a report on 21 June 2022, recommending the disposition of the property at issue. The referee contacted the trial court administrator's office on 28 June 2022 via email, requesting guidance on submitting his report. The trial court coordinator responded, copying the parties, and instructing the referee to hand deliver or mail the report to the trial court administrator's office for the trial court's review. Plaintiff's attorney responded to the email chain with the verbiage of Rule 53 of the North Carolina Rules of Civil Procedure. The referee hand delivered a letter addressed to Judge Archie and three copies of the report to the trial court administrator's office on 29 June 2022. Also on that date, the referee sent counsel for the parties an email that included an attachment identified as "2022-06-29 Letter to Judge Archie.pdf."

On 12 August 2022, the trial court filed the referee’s report and entered an order adopting the report. Plaintiff timely filed her notice of appeal.

II. Discussion

Plaintiff argues that the trial court erred by adopting the referee report “prior to either party being able to except the report or hold a hearing on the report.”

Whether the trial court violated Rule 53 is a question of law, reviewed de novo. *See Crowley v. McDougald*, 241 N.C. 404, 406, 85 S.E.2d 377, 378 (1955). Furthermore, the party asserting error must show from the record not only that the trial court committed error, but that the aggrieved party was prejudiced as a result. N.C. Gen. Stat. § 1A-1, Rule 61 (2022).

The parties to an action may consent to refer any or all of the issues in the action to a referee.¹ N.C. Gen. Stat. § 1A-1, Rule 53(a)(1) (2022). After receiving an order of reference, the referee shall follow the statutory procedures outlined in Rule 53 for meeting with the parties and gathering evidence. *Id.* § 1A-1, Rule 53(f) (2022). After doing so, “[t]he referee shall prepare a report upon the matters submitted to him by the order of reference and shall include therein his decision on all matters so submitted.” *Id.* § 1A-1, Rule 53(g)(1) (2022). The referee “shall file the report with the clerk of the court in which the action is pending and unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and of the

¹ Except in certain circumstances that do not apply here.

evidence and the original exhibits.” *Id.* “The clerk shall forthwith mail to all parties notice of the filing.” *Id.*

Within 30 days from the filing of the report, any party may except to all or any part of the report. *Id.* § 1A-1, Rule 53(g)(2) (2022). “Thereafter, and upon 10 days’ notice to the other parties, any party may apply to the judge for action on the report.” *Id.* The judge, after hearing, “may adopt, modify or reject the report in whole or in part, render judgment, or may remand the proceedings to the referee with instructions.” *Id.*

Here, at the direction of the trial court administrator’s office, the referee hand delivered his report to the trial court on 29 June 2022. Because the report and the order adopting the report were both filed on 12 August 2022, the trial court erred by adopting the report prior to either party being able to except to the report or have a hearing on the report.

Nonetheless, Plaintiff has failed show that she was prejudiced as a result. Nowhere in the record or her brief does Plaintiff allege that she would have excepted to all or any part of the report, nor does she allege that she would have requested a hearing before the court adopted the report. Accordingly, Plaintiff has failed to carry her burden to show prejudice.

III. Conclusion

Because Plaintiff has failed to show prejudice from the trial court’s premature adoption of the referee’s report, we affirm the trial court’s order.

SEYMORE V. HARTMAN

Opinion of the Court

AFFIRMED.

Judges ARROWOOD and CARPENTER concur.

Report per Rule 30(e).