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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-870

Filed 19 March 2024

Wake County, No. 21 CVS 1307

CHRISTOPHER B. VENTERS, Plaintiff,

v.

PHILLIP RUSSELL LANIER, Defendant.

Appeal by plaintiff from orders entered 26 June 2023 by Judge Keith O. Gregory in Superior Court, Wake County. Heard in the Court of Appeals 21 February 2024.

*Buckmiller Boyette & Frost, PLLC, by Matthew W. Buckmiller, for plaintiff-appellant.*

*The Armstrong Law Firm, PA, by L. Lamar Armstrong III, for defendant-appellee.*

ARROWOOD, Judge.

Christopher B. Venters (“plaintiff”) appeals from orders entered granting Phillip Russell Lanier’s (“defendant”) Motion for Reconsideration of Summary Judgment and defendant’s Motion for Leave to Amend Answers to plaintiff’s Request for Admissions. For the following reasons, we dismiss the appeal.

I. Background

Plaintiff filed the underlying lawsuit on 25 January 2021 alleging claims of alienation of affections and criminal conversation against defendant. Defendant filed a response pro se on 12 April 2021, and on 28 June 2021, defendant filed an amended response. Plaintiff sent interrogatories and requests for production of documents to defendant on 7 May 2021. Defendant failed to respond to the requests for admission in a timely manner, and by law, they were deemed admitted.

Plaintiff filed a motion for summary judgment on 9 July 2021. The trial court granted plaintiff's motion for summary judgment on 13 September 2021. Defendant appealed the order on 13 October 2021 and subsequently filed motions for reconsideration of summary judgment and for leave to amend answers to plaintiff's interrogatories on 13 March 2022. On 4 May 2022, the trial court denied defendant's motions, and defendant appealed the decision to this Court. We dismissed defendant's appeal for lack of jurisdiction and remanded for the trial court to reconsider defendant's motions. 288 N.C. App. 483 (2023). On 26 June 2023, the trial court granted defendant's motions, and plaintiff appealed the trial court's orders the following day.

II. Discussion

On appeal, plaintiff argues that he has an appeal of right pursuant to N.C.G.S. § 7A-27(b). We disagree and therefore dismiss the appeal.

“An interlocutory order is one made during the pendency of an action, which

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does not dispose of the case, but leaves it for further action by the trial court in order to settle and determine the entire controversy.” *Veazey v. City of Durham*, 231 N.C. 357, 362 (1950) (citation omitted). “As a general rule, interlocutory orders are not immediately appealable.” *Williams v. Devere Constr. Co., Inc.*, 215 N.C. App. 135, 137 (2011) (citation omitted). “The purpose of this rule is ‘to prevent fragmentary and premature appeals that unnecessarily delay the administration of justice and to ensure that the trial divisions fully and finally dispose of the case before an appeal can be heard.’” *Sharpe v. Worland*, 351 N.C. 159, 161 (1999) (quoting *Bailey v. Gooding*, 301 N.C. 205, 209 (1980)). This Court has noted that “[t]here is no more effective way to procrastinate the administration of justice than that of bringing cases to an appellate court piecemeal through the medium of successive appeals from intermediate orders.” *Veazey*, 231 N.C. at 363.

However, there are two circumstances in which an interlocutory appeal may be allowed: (1) “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[;]” and (2) “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.” *C. Terry Hunt Indus., Inc. v. Klausner Lumber Two, LLC*, 255 N.C. App. 8, 11–12 (2017) (quoting *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 379 (1994)); *see also* N.C.G.S. § 7A-27(b)(3) (allowing appeals of interlocutory orders to this Court when the order affects a

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substantial right, “[i]n effect determines the action and prevents a judgment from which an appeal might be taken[,]” or discontinues the action). Under either of these 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.

With respect to those interlocutory orders which allegedly do affect a substantial right, our Supreme Court has additionally long required that the interlocutory ruling or order deprive . . . the appellant of a substantial right which he would lose if the ruling or order is not reviewed before final judgment.

*T'ai Co. v. Mkt. Square Ltd. P'ship*, 92 N.C. App. 234, 235 (1988) (citation and internal quotation marks omitted). Our Court has held that a substantial right is “a right materially affecting those interests which a [person] is entitled to have preserved and protected by law.” *Myers v. Mutton*, 155 N.C. App. 213, 216 (2002) (alteration in original), *writ denied*, 356 N.C. 674 (2003).

Plaintiff cited N.C.G.S. § 7A-27(b) as the basis for his right to appeal. However, he did not acknowledge the appeal as interlocutory, and he did not articulate a specific basis under § 7A-27(b)(3) for appealing an interlocutory order. This appeal is interlocutory because the trial court’s orders granting defendant’s motions for reconsideration of summary judgment and for leave to amend answers to plaintiff’s requests for admission did not dispose of the case or determine the action; in fact, the orders achieved the exact opposite outcome by allowing the case to continue after

previously granting summary judgment for plaintiff. Further, there is no certification from the trial court pursuant to Rule 54(b) that there is no just reason to delay the appeal.

Additionally, plaintiff did not present the necessary showing that the orders affect a substantial right. First, plaintiff did not argue or provide any facts to support that the orders affected a substantial right. *See* N.C.R. App. P. 28(b)(4) (“When an appeal is interlocutory, the statement [of the grounds for appellate review] *must contain sufficient facts and argument* to support appellate review on the ground that the challenged order affects a substantial right.” (emphasis added)).

There are numerous cases that stand for the proposition that if a case is interlocutory and a person is relying on the fact that it affects a substantial right, their brief must articulate the basis for this contention—this Court is not to articulate those grounds for them. *See, e.g., Jeffreys*, 115 N.C. App. at 380; *Hoke Cnty. Bd. of Educ. v. State*, 198 N.C. App. 274, 277–78 (2009) (“The [appellant] must present more than a bare assertion that the order affects a substantial right; they must demonstrate *why* the order affects a substantial right.”). Even if we assume plaintiff argues that the orders burden his substantial rights, as stated above, the orders merely continue action in the case; all issues remain unresolved at the trial level. The consequence of these orders is the very definition of interlocutory, and furthermore, this Court has held consistently that “[t]he avoidance of one trial is not

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ordinarily a substantial right.” *Hull v. Brown*, 279 N.C. App. 570, 572–73 (2021) (citation omitted).

That said, “[i]t is not the duty of this Court to construct arguments for or find support for appellant’s right to appeal from an interlocutory order[.]” *Jeffreys*, 115 N.C. App. at 380 (citation omitted). Plaintiff neither acknowledged the interlocutory nature of his appeal nor asserted any basis for why the orders affect a substantial right. Accordingly, we dismiss the appeal.

DISMISSED.

Judges CARPENTER and THOMPSON concur.

Report per Rule 30(e).