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NO. COA11-1418
NORTH CAROLINA COURT OF APPEALS

Filed: 19 June 2012

MAXINE LEMAY HARDY, ELLA MARABLE
BRYANT, BESSIE BULLOCK, HILDA
JOYNER DELBRIDGE, CLARA M. FOSTER,
BARRY N. HORTON, JOHN L. PECORA
JR., ROBERT CHARLES WEST, M.
FRANCHESKIA WILLIAMS, Citizens and
Residents of Durham, Granville,
Vance, and Warren Counties, NC,
Plaintiffs,

v.

Vance County
No. 10 CVS 1037

VANCE COUNTY BOARD OF EDUCATION, A
Public Body and its Members, in
their official capacities, DR.
NORMAN SHEARIN, JR.,
SUPERINTENDENT, VANCE COUNTY
SCHOOLS, In His Official and
Individual Capacities, NORTH
CAROLINA DEPARTMENT OF PUBLIC
INSTRUCTION, NORTH CAROLINA STATE
BOARD OF EDUCATION, A Public Body
and Its Members, in their official
capacities,
Defendants.

Appeal by plaintiff Maxine Lemay Hardy from order entered
14 June 2011 by Judge R. Allen Baddour in Vance County Superior
Court. Heard in the Court of Appeals 22 March 2012.

Sandra J. Polin for plaintiff.

Attorney General Roy Cooper, by Assistant Attorney General Laura E. Crumpler, for defendants North Carolina Department of Public Instruction and North Carolina State Board of Education.

Tharrington Smith, L.L.P., by Neal A. Ramee, for defendants Vance County Board of Education and Dr. Norman Shearin, Jr.

ELMORE, Judge.

Maxine Lemay Hardy (plaintiff Hardy) appeals from an order denying her motion for reconsideration of a 27 April 2011 order dismissing her complaint against the Vance County Board of Education, the Superintendent of the Vance County Schools, the North Carolina Department of Public Instruction, and the North Carolina Board of Education (collectively, defendants). We affirm.

Plaintiff and eight other retired school teachers (original plaintiffs) sued defendants in September 2010, alleging claims arising out of the nonrenewal of their teaching contracts with the Vance County Schools. Defendants moved to dismiss, and the trial court granted their motion on 27 April 2011, listing a number of reasons for the dismissal in its order, including: (1) the claims against defendants were barred by the doctrines of sovereign immunity and public official immunity, (2) the original plaintiffs failed to comply with the time deadlines for challenging the nonrenewal of their contracts, and (3) the

original plaintiffs failed to exhaust their administrative remedies.

Rather than appealing the dismissal order, the original plaintiffs filed a "motion for reconsideration" pursuant to Rule 60(b) of our Rules of Civil Procedure. In their motion for reconsideration, the original plaintiffs asserted that they had been denied a fair and impartial hearing because: (1) the trial judge allegedly "failed to read" the memorandum in opposition to defendants' motion to dismiss, which the original plaintiffs submitted the morning of the dismissal hearing, yet wrote that he had considered the memorandum in his order; (2) the dismissal order lacked findings of facts and conclusions of law, which the original plaintiffs contended they were entitled to "in order to prepare their appeal"; and (3) the trial judge failed to address the underlying legal arguments in the original plaintiffs' memorandum.

Following a hearing attended by counsel for both sides, the trial judge denied the original plaintiffs' motion to reconsider by written order on 14 June 2011. On 12 July 2011, the original plaintiffs filed a notice of appeal from the order dismissing their complaint, entered on 27 April 2011. However, the notice of appeal was signed only by plaintiff Hardy, acting *pro se*.

Defendants then moved to dismiss the appeal as untimely. Defendants also argued that the appeal should be dismissed as to all plaintiffs except plaintiff Hardy because, as a *pro se* plaintiff, she could appeal only on behalf of herself. The original plaintiffs then submitted an amended notice of appeal that included all nine original plaintiffs' signatures as *pro se* plaintiffs. Defendants then amended their motion to dismiss the appeal, asserting that the amended notice of appeal should be dismissed as untimely. According to the amended motion to dismiss the appeal, the only timely appeal was plaintiff Hardy's *pro se* appeal of the denial of the motion for reconsideration.

The trial court agreed with defendants and, on 7 October 2011, granted their amended motion to dismiss the original plaintiffs' appeal. It concluded that the original plaintiffs' appeal of the order dismissing their claims was untimely. It also concluded that the appeal of the order denying the motion for reconsideration was untimely as to all of the original plaintiffs except plaintiff Hardy. Nothing in the motion for reconsideration tolled the deadline for filing the notice of appeal from either order. Accordingly, we review only plaintiff Hardy's appeal from the order denying her motion for reconsideration. All of plaintiff Hardy's arguments lack merit.

Plaintiff Hardy argues that the trial court erred by denying her motion for reconsideration. "We review the trial court's denial of a motion for reconsideration for abuse of discretion and reverse only upon a showing that [the] ruling was so arbitrary that it could not have been the result of a reasoned decision." *Jackson v. Culbreth*, 199 N.C. App. 531, 538, 681 S.E.2d 813, 818 (2009) (citation and quotations omitted; alteration in original). Rule 60(b) allows a court to relieve a party from a final judgment or order for a variety of reasons, only one of which could possibly apply here: "(6) Any other reason justifying relief from the operation of the judgment." N.C. Gen. Stat. § 1A-1, Rule 60(b)(6) (2011). "Although section (6) of Rule 60(b) has often been termed 'a vast reservoir of equitable power,' a court cannot set aside a judgment pursuant to this rule without a showing (1) that extraordinary circumstances exist and (2) that justice demands relief." *Thacker v. Thacker*, 107 N.C. App. 479, 481, 420 S.E.2d 479, 480 (1992) (citations and quotations omitted).

Here, plaintiff Hardy cannot show that extraordinary circumstances exist. Her complaint was dismissed for multiple jurisdictional reasons, any one of which alone would have mandated a dismissal. Nevertheless, she argues that the trial

court should reconsider its decision to dismiss the case because it did not properly consider her memorandum in opposition to defendants' motion to dismiss, it dismissed the case without making findings of fact or conclusions of law, and it signed the order drafted by defendants.

Plaintiff Hardy, through counsel, repeatedly asserts in her brief that the trial court failed to read or consider her memorandum, resulting in the complained-of injustice. However, the trial judge specifically said, "I am here to tell you that I read your brief," when plaintiff Hardy's counsel complained to him - on the record - that he had not read the memorandum. Obviously, this particular argument is not persuasive.

Plaintiff Hardy also asserts that the trial court should have made findings of fact and conclusions of law in its dismissal order, even though she stated at the reconsideration hearing that she "did not ask for findings of fact." As a general rule, a trial court does not need to make findings of fact when ruling on a motion to dismiss unless one of the parties requests them. *Cunningham v. Sams*, 161 N.C. App. 295, 298-99, 588 S.E.2d 484, 488 (2003). Plaintiff Hardy contends that she requested findings of fact and conclusions of law in her motion for reconsideration, though she did not specifically

mention the applicable rule of civil procedure - Rule 52 - in the motion or specifically ask that the trial court make findings of fact or conclusions of law. See N.C. Gen. Stat. § 1A-1, Rule 52 (2011). Her motion states, in relevant part: "Plaintiffs request that the Court reconsider its Order because the Court's Order lacks any factual findings and conclusions of law from which the Order can be appealed. Plaintiffs are entitled to such findings of fact and conclusions of law in order to prepare their appeal." Regardless of the supposed intent behind this statement, it is not a request for findings of fact and conclusions of law sufficient to trigger Rule 52.

Similarly, there is no legal basis for plaintiff Hardy's assertion that the trial court "negate[d] any appearance of judicial impartiality and substantially undermine[d] the integrity of the court's opinion" by adopting the order drafted by defendants. The law cited in her brief does not support her argument, and, regardless, it is common practice in North Carolina for counsel for prevailing parties to draft proposed orders in civil cases. See *In re J.B.*, 172 N.C. App. 1, 25, 616 S.E.2d 264, 279 (2005) ("Nothing in the statute or common practice precludes the trial court from directing the prevailing party to draft an order on its behalf. Instead, [s]imilar

procedures are routine in civil cases[.]") (citations and quotation omitted; alterations in original). Plaintiff Hardy cannot show that the trial court in this case did not consider the proposed order before signing it or otherwise failed to exercise its independent judgment.

Accordingly, we affirm the order of the trial court.

Affirmed.

Judges STEELMAN and STROUD concur.

Report per Rule 30(e).