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NO. COA05-1680

NORTH CAROLINA COURT OF APPEALS

Filed: 19 December 2006

JAMES W. HARRINGTON and
wife, BARBARA E. HARRINGTON,
Plaintiffs,

v.

Jones County
No. 00 CVS 101

EARL B. OLIVER and wife,
ANGELA D. OLIVER,
Defendants.

Appeal by defendants from orders entered 12 January 2004 and 22 July 2005 by Judge B. Jerry Braswell in Jones County Superior Court. Heard in the Court of Appeals 13 September 2006.

Lee, Hancock and Lasitter, P.A., by Moses D. Lasitter, for plaintiff-appellees.

Earl B. Oliver, pro se, for defendant-appellants.

BRYANT, Judge.

Earl B. Oliver and his wife, Angela D. Oliver, (defendants) appeal from an order entered 12 January 2004, granting summary judgment on defendants' counterclaims, and an order entered 22 July 2005, denying defendants' motion for a new trial. For the reasons below we reverse the trial court's order denying defendants' motion for a new trial and remand for further proceedings consistent with this opinion.

Facts and Procedural History

On 12 June 2000, James W. Harrington and his wife, Barbara E. Harrington, (plaintiffs) filed a Complaint against defendants in Jones County Superior Court, alleging claims for: (1) specific performance and breach of contract to transfer real property; (2) unfair and deceptive trade practices; (3) fraud; and (4) injunction. Defendants filed their Answer and Counterclaims on 28 March 2001, alleging claims for (1) slander; (2) slander of title; (3) abuse of process; (4) unfair and deceptive trade practices; and (5) fraud. On 9 December 2003, plaintiffs filed a Motion for Summary Judgment as to defendants' counterclaims only.

Plaintiffs Motion for Summary Judgment was heard on 15 December 2003, by the Honorable Jerry Braswell. The trial court also considered defendants' Motion for Summary Judgment (as to plaintiffs' claims), Motion to Dismiss, and Motion to Compel. Defendants appeared *pro se* at the 15 December 2003 hearing and Mr. Oliver was questioned in-depth by the trial court concerning his alleged defenses and counterclaims. On 12 January 2004, the trial court entered an order that: (1) granted plaintiffs' motion for summary judgment as to all of defendants' counterclaims; (2) denied defendants' motions to compel and to dismiss; (3) granted defendants' motion for summary judgment as to plaintiffs' claims for unfair trade practices and fraud; and (4) having found the amount in controversy on plaintiffs' remaining breach of contract claim was below the \$10,000 jurisdictional amount for Superior Court, remanded the case to the District Court division. Defendants filed a Motion for New Trial on 20 January 2004. After

a hearing on 11 July 2005, the trial court denied defendants' motion by an order filed 22 July 2005. Defendants appeal both the order entered 12 January 2004, granting summary judgment on defendants' counterclaims, and the order entered 22 July 2005, denying defendants' motion for a new trial.

The dispositive issue in this appeal is whether the trial court erred in denying defendants' motion for a new trial filed pursuant to Rule 59 of the North Carolina Rules of Civil Procedure. See N.C. Gen. Stat. § 1A-1, Rule 59 (2005). Plaintiffs argue defendants' motion for a new trial is merely an attempt to have the trial court reconsider its summary judgment order and the motion is invalid and was properly denied. See N.C. Gen. Stat. § 1A-1, Rule 7(b)(1) (2005) (motion must "state with particularity the grounds" for relief); *Smith v. Johnson*, 125 N.C. App. 603, 606, 481 S.E.2d 415, 417 (1997) ("The mere recitation of the rule number relied upon by the movant is not a statement of the grounds within the meaning of Rule 7(b)(1). The motion, to satisfy the requirements of Rule 7(b)(1), must supply information revealing the basis of the motion.") In their motion for a new trial, defendants argued that the trial court refused to allow them to present evidence and thus the evidence was insufficient to justify a verdict, and that the trial court erred in ruling on their motions because the trial court did not have jurisdiction to hear the motions. These arguments sufficiently state both a specific factual and legal issue which form the basis of a valid motion for a new trial

pursuant to Rule 59(a). N.C. Gen. Stat. § 1A-1, Rule 59(a)(7), (8) (2005). Therefore defendants' motion for a new trial was properly before the trial court.

It is well established that "[a] trial judge's discretionary order made pursuant to Rule 59 for or against a new trial may be reversed only when an abuse of discretion is clearly shown." *City of Charlotte v. Ertel*, 170 N.C. App. 346, 353, 612 S.E.2d 438, 444 (2005) (quoting *Hanna v. Brady*, 73 N.C. App. 521, 525, 327 S.E.2d 22, 24 (1985)). "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988).

At the hearing on defendants' motion for a new trial the defendants attempted to raise arguments pertaining to the trial court's grant of summary judgment for plaintiff as to defendants' counterclaims. The following colloquy ensued:

MR. OLIVER: You ordered it without hearing the thing. You ordered my counterclaims be dismissed. My counterclaims [were] never heard.

THE COURT: Okay.

MR. OLIVER: You heard -- I understand it can't be heard in Superior Court, but your order calls for the dismissing [of] my counterclaims when did I not have a chance to oppose the summary judgment motion.

THE COURT: My order doesn't refer to your counterclaim. My order refers to your motion to dismiss, which you filed, which was denied, your motion to compel which was denied. Your motion for summary judgment on the plaintiff's claim was granted. Those were the three motions that I had a ruling on, and then I

consolidated your case. So I didn't rule on any counterclaim that you contend that you have. I've got the file here, sir. I've got the order here and I'm reading from the order.

MR. OLIVER: Okay.

THE COURT: I'm not going to rely on what you say, because what you say is not the official record. What the official record is in the order that I signed. I believe you've got a copy of it, so you might want to read it again.

MR. OLIVER: I have. If I do read it again, do you mind if I send it back to you?

THE COURT: No. I do mind, because I can tell you now before you send it back, I'm not going to do anything with it. Your case doesn't belong in my courtroom. It doesn't belong in Superior Court.

Contrary to the statements made by the trial court, the trial court's order of 12 January 2004 did refer to defendants' counterclaims. The trial court specifically ordered that "[t]he Motion for Summary Judgment by the plaintiffs as to the defendants' claims for slander, slander of title, abuse of process, unfair and deceptive trade practices, and fraud, is hereby allowed." It is apparent from the record before this Court that the trial court abused its discretion in asserting the 12 January 2004 order did not address defendants' counterclaims and refusing to consider defendants' motion for a new trial on the merits. We reverse the order of the trial court denying defendants' motion for a new trial and remand this matter for consideration of defendants' motion for a new trial.

Reversed and remanded.

Judges McGEE and ELMORE concur.

Report per Rule 30(e).