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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-848

Filed: 20 June 2017

Wake County, No. 16 CvD 2057

LE RMAH, Plaintiff,

v.

UNITED SERVICES AUTOMOBILE ASSOCIATION and MAUREEN MIHANS,
Defendants.

Appeal by plaintiff from order entered 5 July 2016 by Judge Debra S. Sasser
in District Court, Wake County. Heard in the Court of Appeals 6 February 2017.

E. Gregory Stott for Plaintiff-Appellant.

*Goldberg Segalla LLP, by John I. Malone, Jr., for Defendant-Appellee United
Services Automobile Association.*

McGEE, Chief Judge.

I. Factual Background

Le Rmah (“Plaintiff”) alleged in his complaint that, on 13 November 2015, Defendant Maureen Mihans (“Mihans”) negligently backed her vehicle into the side of his vehicle, causing substantial damage to Plaintiff’s automobile. Mihans was

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insured through Defendant United Services Automobile Association (“USAA”).¹ Plaintiff alleged that, after the collision, he conferred with an agent of USAA and entered into an oral settlement agreement with the agent. Plaintiff then alleged USAA refused to pay under the terms of USAA’s contract with Mihans and under its oral agreement with Plaintiff.

Plaintiff filed claims on 17 February 2016 against Mihans for negligence, and against USAA for breach of the insurance contract, breach of an oral settlement agreement, unfair claims settlement practices, unfair and deceptive trade practices, bad faith, and punitive or exemplary damages. USAA filed a motion on 4 May 2016 to dismiss Plaintiff’s claims pursuant to, *inter alia*, N.C. Gen. Stat. § 1A-1, Rule 12(b)(6).

The trial court dismissed Plaintiff’s claims against USAA for breach of the insurance contract, unfair claims settlement practices, unfair and deceptive trade practices, bad faith, and punitive or exemplary damages by order entered 5 July 2016. For the remaining issue relevant to USAA –breach of an oral contract – the trial court ordered Plaintiff to amend his complaint and set forth sufficient allegations to assert a claim for breach of an oral settlement agreement. Plaintiff appeals.

II. *Jurisdiction*

¹ Subsequent to the filing of this appeal, Plaintiff was granted leave to amend his complaint to change the name of insurer defendant to USAA Casualty Insurance Company.

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Plaintiff's Statement of the Grounds for Appellate Review states in its entirety: "The Plaintiff-Appellant seeks appellate review, pursuant to G.S. § 7A-27(c), of the District Court's rulings and its final Order, which was signed and filed on July 5, 2016." Initially, N.C. Gen. Stat. § 7A-27(c) was repealed effective 23 August 2013 and, therefore, provides no avenue for appeal. Further, the 5 July 2016 order is an interlocutory order, not a final order, and Plaintiff makes no argument in his brief that the 5 July 2016 order affects a substantial right of his, or that it is otherwise appropriate for immediate review.

Judgments and orders of the Superior Court are divisible into these two classes: (1) Final judgments; and (2) interlocutory orders. A final judgment is one which disposes of the cause as to all the parties, leaving nothing to be judicially determined between them in the trial court. An interlocutory order is one made during the pendency of an action, which 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. Durham, 231 N.C. 357, 361–62, 57 S.E.2d 377, 381 (1950) (citations omitted). "Generally, there is no right of immediate appeal from interlocutory orders and judgments." *Goldston v. American Motors Corp.*, 326 N.C. 723, 725, 392 S.E.2d 735, 736 (1990).

The 5 July 2016 order from which Plaintiff attempts an appeal was interlocutory at the time Plaintiff attempted appeal for two separate reasons. First, one of Plaintiff's claims against USAA, breach of an oral contract, was still pending

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at the time Plaintiff filed his notice of appeal. However, the breach of an oral contract claim was subsequently dismissed with prejudice by order entered 14 November 2016, and Plaintiff has appealed that order to this Court. Therefore, there are currently no outstanding claims against USAA in this matter.

Second, however, is that there is no record evidence in either this appeal, COA16-848, or Plaintiff's subsequent appeal, COA17-131, that Plaintiff's negligence claim against Mihans has been disposed of. Absent record evidence that the claim against Mihans is no longer pending, this matter continues to be interlocutory. *Veazey*, 231 N.C. at 361–62, 57 S.E.2d at 381.

Appeals from interlocutory orders are only available in “exceptional cases.” Interlocutory orders are, however, subject to appellate review:

“if (1) the order is final as to some claims or parties, and the trial court certifies pursuant to [N.C. Gen. Stat.] § 1A–1, Rule 54(b) that there is no just reason to delay the appeal, or (2) the order deprives the appellant of a substantial right that would be lost unless immediately reviewed.”

The appealing party bears the burden of demonstrating that the order from which he or she seeks to appeal is appealable despite its interlocutory nature. If a party attempts to appeal from an interlocutory order without showing that the order in question is immediately appealable, we are required to dismiss that party's appeal on jurisdictional grounds.

Hamilton v. Mortg. Info. Servs., Inc., 212 N.C. App. 73, 77, 711 S.E.2d 185, 188–89 (2011) (citations omitted).

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In the present case, Plaintiff does not acknowledge in his brief that this appeal is interlocutory, much less make any argument demonstrating why this Court should consider this interlocutory appeal prior to issuance of a judgment or order that fully determines the entire controversy. As noted above,

the appellant must demonstrate the applicability of the substantial right exception to the particular case before the appellate court. *See generally Jeffreys*, 115 N.C. App. at 380, 444 S.E.2d at 254 (stating that “[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; instead, the appellant has the burden of showing this Court that the order deprives the appellant of a substantial right which would be jeopardized absent a review prior to a final determination on the merits”).

Hamilton, 212 N.C. App. at 79, 711 S.E.2d at 190 (citations omitted). Because Plaintiff does not demonstrate that this interlocutory appeal affects any substantial right of Plaintiff, we are required to dismiss Plaintiff's appeal. *Id.* at 77, 711 S.E.2d at 189.

DISMISSED.

Judges STROUD and HUNTER, Jr. concur.

Report per Rule 30(e).