

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-358

Filed: 21 November 2017

Catawba County, No. 12 CVS 2832

CHRISTIAN G. PLASMAN, in his individual capacity and derivatively for the benefit of, on behalf of and right of nominal party BOLIER & COMPANY, LLC, Plaintiff,

v.

DECCA FURNITURE (USA), INC., DECCA CONTRACT FURNITURE, LLC, RICHARD HERBST, WAI THENG TIN, TSANG C. HUNG, DECCA FURNITURE, LTD., DECCA HOSPITALITY FURNISHINGS, LLC, DONGGUAN DECCA FURNITURE CO. LTD., DARREN HUDGINS, DECCA HOME, LLC, and ELAN BY DECCA, LLC, Defendants,

and BOLIER & COMPANY, LLC, Nominal Defendant,

v.

CHRISTIAN J. PLASMAN a/k/a BARRETT PLASMAN, Third-Party Defendant.

Appeal by plaintiff from order entered 19 September 2016 by Judge Louis A. Bledsoe, III, in Catawba County Superior Court. Heard in the Court of Appeals 19 October 2017.

The Law Offices of Matthew K. Rogers, PLLC, by Matthew K. Rogers, for plaintiffs-appellants and third-party defendant-appellant.

Opinion of the Court

McGuireWoods LLP, by Robert A. Muckenfuss, Jodie H. Lawson, and Andrew D. Atkins, for defendants-appellees.

DAVIS, Judge.

Christian G. Plasman appeals from an order by the trial court modifying a preliminary injunction previously entered in this action. After a thorough review of the record and the applicable principles of law, we dismiss this appeal.

Factual and Procedural Background

This dispute between the parties is before us for the fourth time. The facts giving rise to this appeal are set out in full in our previous opinions involving this litigation. *See Bolier & Company, LLC v. Decca Furniture (USA)*, __ N.C. App. __, 792 S.E.2d 865 (2016) (hereinafter “*Plasman I*”), *disc. review denied*, __ N.C. App. __, 799 S.E.2d 620 (2017); *Plasman v. Decca Furniture (USA), Inc.*, __ N.C. App. __, 800 S.E.2d 761 (2017) (hereinafter “*Plasman II*”). The pertinent facts are repeated below.

In April 2002, Plasman founded Bolier & Company, LLC (“Bolier”), a closely held North Carolina furniture company. On 31 August 2003, Plasman executed an operating agreement granting Decca Furniture (USA), Inc. (“Decca USA”) a majority ownership interest in Bolier with Plasman retaining a 45% minority ownership interest in the company. On 19 October 2012, Decca USA terminated Plasman’s employment. Three days later, Plasman filed the present action in Catawba County Superior Court against Decca USA and several affiliated entities and individuals

Opinion of the Court

(collectively “Decca”). On 24 October 2012, the lawsuit was designated a mandatory complex business case and assigned to the North Carolina Business Court.

Decca removed the case to federal court, and on 27 February 2013 the Honorable Richard L. Voorhees entered a preliminary injunction barring Plasman from taking any further actions on Bolier’s behalf. The order also put in place various safeguards with respect to Plasman’s rights as a minority owner of Bolier during the pendency of the litigation, and it further ordered Plasman to pay back Decca for any funds improperly diverted by him. Plasman never attempted to appeal Judge Voorhees’ order.

Upon remand to the business court, Plasman filed a motion to modify the preliminary injunction. On 26 May 2015, the Honorable Louis A. Bledsoe, III denied Plasman’s motion and directed him to pay back the diverted funds as required by Judge Voorhees’ order. On 25 June 2015, Plasman appealed Judge Bledsoe’s 26 May 2015 order to this Court. In *Plasman I*, we dismissed Plasman’s interlocutory appeal based on his failure to demonstrate the loss of a substantial right absent an immediate appeal. *Id.* at ___, 792 S.E.2d at 873.

On 22 September 2015, Decca filed a motion to have Plasman held in contempt for violation of Judge Bledsoe’s 26 May 2015 order. After conducting a show cause hearing, Judge Bledsoe entered an order on 26 February 2016 holding Plasman in civil contempt for failing to comply with the 26 May 2015 order. Plasman appealed

Opinion of the Court

that ruling, and this Court affirmed Judge Bledsoe's order in an opinion issued on 16 May 2017. *Plasman II*, __ N.C. App. at __, 800 S.E.2d at 776.

On 15 July 2016, Judge Bledsoe entered an order in which he ruled that his prior order staying discovery was still in effect, and Plasman appealed once again. On 11 May 2017, this Court entered an order dismissing the appeal.

Decca subsequently filed a motion to modify the preliminary injunction that remained in effect. In this motion, it alleged that Plasman had used Decca member meetings to "improperly seek information and discovery . . . and harass Decca USA's and Bolier's employees." On 19 September 2016, Judge Bledsoe issued an order amending the preliminary injunction, in pertinent part, "to allow Plasman to provide his input at [Decca] member meetings by telephone." The order further provided a procedure for Plasman to request from Decca additional documents that he believed he was entitled to receive. Plasman filed a notice of appeal from the 19 September 2016 order.

Analysis

Decca has moved to dismiss this appeal on the ground that it is an impermissible interlocutory appeal. Therefore, we must determine whether we possess jurisdiction over this case.

"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." *Duval*

Opinion of the Court

v. OM Hospitality, LLC, 186 N.C. App. 390, 392, 651 S.E.2d 261, 263 (2007) (citation omitted). Conversely, an order or judgment is interlocutory if it does not settle all of the issues in the case but rather “directs some further proceeding preliminary to the final decree.” *Heavner v. Heavner*, 73 N.C. App. 331, 332, 326 S.E.2d 78, 80, *disc. review denied*, 313 N.C. 601, 330 S.E.2d 610 (1985) (citation omitted).

“Generally, there is no right of immediate appeal from interlocutory orders and judgments.” *Paradigm Consultants, Ltd. v. Builders Mut. Ins. Co.*, 228 N.C. App. 314, 317, 745 S.E.2d 69, 72 (2013) (citation and quotation marks omitted). The prohibition against interlocutory appeals “prevents fragmentary, premature and unnecessary appeals by permitting the trial court to bring the case to final judgment before it is presented to the appellate courts.” *Russell v. State Farm Ins. Co.*, 136 N.C. App. 798, 800, 526 S.E.2d 494, 496 (2000) (citation and brackets omitted).

However, there are two avenues by which a party may immediately appeal an interlocutory order or judgment. First, if the order or judgment is final as to some but not all of the claims or parties, and the trial court certifies the case for appeal pursuant to N.C. Gen. Stat. § 1A-1, Rule 54(b), an immediate appeal will lie. Second, an appeal is permitted under N.C. Gen. Stat. §§ 1-277(a) and 7A-27(d)(1) if the trial court’s decision deprives the appellant of a substantial right which would be lost absent immediate review.

N.C. Dep’t of Transp. v. Page, 119 N.C. App. 730, 734, 460 S.E.2d 332, 334 (1995) (internal citations omitted).

Opinion of the Court

Judge Bledsoe's 19 September 2016 order does not contain a certification under Rule 54(b). Therefore, Plasman's appeal is proper only if he can demonstrate a substantial right that would be lost absent an immediate appeal. *See Embler v. Embler*, 143 N.C. App. 162, 166, 545 S.E.2d 259, 262 (2001) ("The burden is on the appellant to establish that a substantial right will be affected unless he is allowed immediate appeal from an interlocutory order." (citation omitted)).

Our Supreme Court has stated that "the 'substantial right' test for appealability of interlocutory orders is more easily stated than applied." *Waters v. Qualified Personnel, Inc.*, 294 N.C. 200, 208, 240 S.E.2d 338, 343 (1978). As a result, the extent to which an interlocutory order affects a substantial right must be determined on a case-by-case basis. *McCallum v. N.C. Coop. Extension Serv.*, 142 N.C. App. 48, 50, 542 S.E.2d 227, 231 (citation omitted), *appeal dismissed and disc. review denied*, 353 N.C. 452, 548 S.E.2d 527 (2001). "Our courts have generally taken a restrictive view of the substantial right exception." *Turner v. Norfolk S. Corp.*, 137 N.C. App. 138, 142, 526 S.E.2d 666, 670 (2000) (citation omitted).

In the present case, Plasman contends that Judge Bledsoe's 19 September 2016 order adversely affected his substantial rights by (1) permitting him to participate in Decca's biannual member meetings only telephonically rather than in person; and (2) denying him the right to "material information necessary for Plasman to provide management input" into Decca's affairs. We disagree.

Opinion of the Court

First, Plasman has not shown how being limited to telephonic participation in Decca member meetings will adversely affect his rights as a minority shareholder. While Plasman may prefer to attend the Decca member meetings in person, his inability to do so by virtue of Judge Bledsoe's order — without more — does not affect a substantial right. It was incumbent upon Plasman to demonstrate *why* telephonic participation in these meetings is inadequate to ensure that his rights as a minority shareholder will be protected. He has failed to do so.

Second, Plasman contends that Judge Bledsoe's order served to deny him access to information to which he is entitled. However, the record does not support this assertion.

In the 19 September 2016 order, Judge Bledsoe expressly directed Plasman to submit a revised request by 23 September 2016 for any documents that he believed he was entitled to receive after which time the parties were ordered to “confer in good faith to resolve any remaining disagreements.” The order further provided that in the event the parties were unable to reach an agreement, Judge Bledsoe would hear their arguments on this issue on 3 November 2016. However, rather than submitting a revised request for documents as Judge Bledsoe had directed, Plasman instead filed a notice of appeal from the 19 September order.

Thus, the trial court provided Plasman with a mechanism through which he had the opportunity to demonstrate his entitlement to the specific information he was

Opinion of the Court

seeking, but he did not avail himself of this process. Therefore, because the order from which he is appealing does not actually contain a determination by Judge Bledsoe as to which documents he is entitled to obtain from Decca, Plasman has once again failed to demonstrate a substantial right that would be lost absent an immediate appeal.

Conclusion

For the reasons stated above, Plasman's appeal is dismissed.

DISMISSED.

Judges ZACHARY and BERGER concur.

Report per Rule 30(e).