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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-570
No. COA17-813

Filed: 7 August 2018

Pitt County, No. 13-CVD-398

HUNTER F. GRODNER, Plaintiff,

v.

ANDRZEJ GRODNER, Defendant.

Appeal by Defendant from orders entered 12 January 2017 and 5 June 2017 by Judge G. Galen Braddy in District Court, Pitt County. Heard in the Court of Appeals 5 March 2018.

Jeffrey L. Miller for Plaintiff-Appellee.

Andrzej Grodner (now Andrew Grodner), pro se, for Defendant-Appellant.

McGEE, Chief Judge.

Andrzej Grodner ("Defendant") appeals from order entered 12 January 2017 denying Defendant's motion for reconsideration and relief from a 9 January 2015 child custody and support order. Defendant also appeals from order entered 5 June 2017 staying further proceedings in the trial court pending disposition of Defendant's appeal from the 12 January 2017 order. The appeals were consolidated for hearing

before this Court. For the reasons discussed below, we affirm the trial court's 12 January 2017 order denying Defendant relief from the child custody and support order, and we dismiss Defendant's appeal from the 5 June 2017 entry of stay.

I. Factual and Procedural Background

Defendant, a Polish-born American citizen, and Hunter Grodner ("Plaintiff") were married in June 2010. Plaintiff and Defendant (collectively, "the parties") have one minor child ("the child"), born 3 August 2011. The parties separated in February 2013 and were divorced by judgment entered on or about 15 May 2014.

Plaintiff filed a complaint on or about 25 February 2013 requesting custody of the child, child support, post-separation support, alimony, equitable distribution, and attorney's fees from Defendant. Following a hearing on 25-26 August 2014, the trial court entered an order ("the custody order") on 9 January 2015 that awarded primary physical custody of the child to Plaintiff, with the parties having joint legal custody. The trial court also established the parties' visitation schedule and Defendant's child support obligations. The trial court included the following provision in the decretal portion of the custody order:

> [] [D]efendant shall not seek nor shall he be permitted to have any passport for the minor child. [] [P]laintiff is the parent and party who shall have the sole authority and decision-making with regard to any applications for a passport for the minor child, and in the event a passport is issued to or for the child, [Plaintiff] shall have the exclusive authority with regard to all matters concerning the passport and any foreign travel by the child. At no time

> shall [] [D]efendant remove the minor child from the continental United States except with the express written authority of this [c]ourt. [] [D]efendant shall surrender his passport(s) to the [c]lerk and [Defendant] will have to make an application to this [c]ourt in the event he has any travel plans that require a passport.

Defendant did not appeal the custody order, but Defendant's counsel filed a motion on 30 January 2015 seeking "reconsideration and relief [from] that portion of [the custody order] . . . grant[ing] the parties joint legal custody of the [] child with [] Plaintiff having the final decision-making authority." Nearly one year later, on 22 December 2015, Defendant filed a *pro se* "Amended Motion for Reconsideration and Relief" ("Rule 60 motion") seeking "reconsideration and relief of portions of [the custody order] . . . regarding clerical errors in (1) awarding Plaintiff[] final decision-making authority, (2) surrendering Defendant's U.S. and Polish passports, (3) Plaintiff's claim for attorney['s] fees, (4) [c]hild [s]upport payment, [and] (5) various [f]indings of [f]act." Defendant asserted two bases for relief from the passport restrictions that were included in the 9 January 2015 custody order. Defendant first argued Plaintiff never "made any request regarding Defendant's passports[,]" and that the first draft of the custody order "did not include any provisions regarding Defendant's passports." Defendant contended his own attorney subsequently "requested inclusion of [the] provisions regarding Defendant's passports[,]" without Defendant's knowledge or consent. Defendant argued that, pursuant to N.C. Gen. Stat. § 1A-1, Rule 60(b)(1), counsel's request, and the ultimate entry of an order

containing the passport restrictions, "constitute[d] excusable neglect because [counsel] did not let [Defendant] provide any input into [counsel's] comments submitted to [the trial court]." Defendant has not raised this issue on appeal. *See* N.C.R. App. P. 28(b)(6) (providing in part that "[i]ssues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned.").

Defendant also argued in his Rule 60 motion that the trial court's requirement that he surrender his passports and thereafter apply to the court for their return constituted "an error based on lack of jurisdiction over subject matter because state courts can neither hold U.S. passports nor decide when they are released to an individual" and, further, the "[c]ourt [lacked] the authority to order surrender of [Defendant's] Polish passport[.]" Defendant contended he was entitled to relief from the passport restrictions "pursuant to [N.C. Gen. Stat. § 1A-1,] . . . Rule 60(b)(4) related to void [judgments] due to lack of jurisdiction over subject matter."

At a 14 December 2016 hearing on Defendant's Rule 60 motion, Defendant addressed the passport restrictions as follows:

> So the second issue I want to raise is the [] [custody] order issued on January 9th, 201[5], . . . has a provision to . . . request [] [D]efendant to have his passport in [the] custody of the . . . courts. And the argument here is that, under Rule 60, . . . 60[(b)(4)], this is where it's applicable . . . that, 'Local court does not have [] jurisdiction over any passports. The local court can request' . . . it's [an] agency that issues a passport to take away, but it doesn't have the

> right to actually hold it. And that's what has happened [here], which means that the [trial] court did not have jurisdiction to do this. So the relief sought here is to stricken [sic] it from the . . . order because it's an error in jurisdiction. . . . [The] local court did not have jurisdiction to rule upon not only [an] American passport which is . . . a federal [] document, . . . governed by the [] State Department, and [a] Polish passport, which is actually property of Poland[.]

Defendant further asserted "there was not a single finding[] of fact in the [custody] order related to [Defendant's] individual passport[s]. . . [or] related to the child's passport." Defendant

> submit[ted] . . . that the [trial] [c]ourt [did not] have [] jurisdiction over [Defendant's] individual passport, only [the] child's passport[,] because with the child custody hearing, it was not [a] hearing about . . . [] [D]efendant. So, by this virtue, there was no jurisdiction . . . that the [trial] [c]ourt could rule upon this.

Plaintiff's counsel argued the passport restrictions were "reasonable, rational limits" that the trial court had authority to impose in order to "prevent [Defendant] from using [his] passports to travel with the child [outside the United States]." Counsel further argued that, even if the passport restrictions in the custody order reflected errors of law, Defendant was required to appeal the order rather than seek relief under Rule 60. After hearing arguments from the parties related to Defendant's passports, the trial court stated:

> I feel and am confident that the [passport] provisions I put in [the custody order] were warranted under existing law. [] [A]nd so, I am going to continue to allow [Defendant]

> access to use his passports personally, [] as long as it's [] through the application and made [] for his personal travel, just so it does not apply to the child traveling with him.

At the conclusion of the hearing, the trial court indicated it would correct certain clerical errors in the custody order but would deny Defendant's motion for reconsideration and relief with respect to "the remaining . . . grounds under Rule 60," including the restrictions on Defendant's passports.

Prior to the entry of the trial court's order denying Defendant's Rule 60 motion, Defendant filed an "Application for Passport" on 22 December 2016, stating that "pursuant to [the] [c]hild [c]ustody [o]rder from January 9, 2015, [Defendant] [was applying] to [the] [c]ourt for [the] return of his passports because he plan[ned] to travel to Poland in [the] year 2017."

The trial court's order denying Defendant's Rule 60 motion was entered on 12 January 2017. The trial court's findings of fact included the following finding regarding Defendant's claim for relief from the passport restrictions in the custody order:

> [D]efendant's second claim for relief seeks to address [the trial] [c]ourt's [o]rder imposing limitations on [] [D]efendant's passports, requiring him to deposit them with the [c]lerk and to apply to [the trial] [c]ourt in the event he planned some travel which required he have access to and use of [the passports]. Defendant has Polish citizenship and he is originally from Poland. He is now apparently a citizen of [the United States]. His mother is a Polish resident and citizen. [] [D]efendant engaged in secretive and concerning behaviors involving untrue

> statements to [P]laintiff about his travel and about his mother. The evidence gave rise to a legitimate concern with regard to [D]efendant's activities and intentions with regard to the minor child and his travel with the child. Defendant did not appeal the [custody] [o]rder. He now appears to assert the evidence was insufficient at trial and that [the trial] [c]ourt committed legal error in its [custody] [o]rder regarding the limitations imposed on his use of his passports. The [trial] [c]ourt finds [Defendant's] arguments are without merit, and the argument concerns issues that are not properly subject to Rule 60 review. There was no excusable neglect with regard to the entry of the passport restrictions. [The trial] [c]ourt had subject matter jurisdiction and authority to protect and preserve the best interest of the minor child by orders that assured the child was not abducted or kidnapped and removed from this country by [D]efendant or his mother who had Polish connections and who had engaged in concerning behaviors. The [custody] [o]rder is not void. Defendant did not appeal the [custody order], and he has delayed almost one year in raising the issue [of the passport restrictions]. The [Rule 60] motion has not been made within a reasonable time, and it raises a matter that [D]efendant should have appealed if he desired to have reconsideration or relief. [] [D]efendant's second claim for relief is without merit and should be denied.

Defendant filed a notice of appeal from the 12 January 2017 order on 10 February 2017, at which time Defendant's "Application for Passport" was still pending.

In Defendant's appeal from the denial of his Rule 60 motion, his proposed issues on appeal included the following issues related specifically to the passport restrictions:

> 10. The [trial] [c]ourt erred in asserting that it ha[d] jurisdiction to impose any limitations on [Defendant's] [U.S.] passport, such as to order him to surrender it to the

[c]lerk of [c]ourt, because [a] [U.S.] passport is property issued by the federal government which has exclusive regulatory authority over it and therefore that portion of the order is void ab initio.

11. The [trial] [c]ourt erred in asserting that the issue of [a] [U.S.] passport is not subject to Rule 60 because Rule 60(4) [sic] specifically allows [a party] to ask for relief from judg[]ment if the judg[]ment is void and it is indeed void in this case since [the trial] [c]ourt lacks jurisdiction to rule on [] Defendant's [U.S.] passport.

12. The [trial] [c]ourt erred in upholding limitations on Defendant's [U.S.] passport because it violates the Supremacy Clause of [the] United States Constitution by invading the province of the [U.S.] [g]overnment by taking property that can only be issued by the [U.S.] [g]overnment (Defendant's passport) and where only [the] [U.S.] [g]overnment has exclusive regulatory authority over it.

13. The [trial] [c]ourt erred in asserting that it ha[d] jurisdiction to impose any limitations on [] Defendant's Polish passport, such as to order him to surrender it to the [c]lerk of [c]ourt, because [a] Polish passport is issued by [the] [g]overnment of Poland and the [g]overnment of Poland has exclusive authority over it, and the [trial court] has not done its due diligence by neither recognizing, nor even attempting to address U.S. Code Title 28, Part IV, Chapter 97, § 1605 [entitled] "General exceptions to the jurisdictional immunity of [a] foreign state" which regulate jurisdictional issues related to [a] foreign state.

14. The [trial] [c]ourt erred in asserting that the issue of [Defendant's] Polish passport is not subject to Rule 60 because Rule 60[b](4) specifically allows [a party]to ask for relief from [a] judg[]ment if the judg[]ment is void and it is indeed void in this case since [the trial] [c]ourt lack[ed] jurisdiction to rule on [] Defendant's Polish passport.

15. The [trial] [c]ourt erred in upholding limitations on

> Defendant's passports because there is not a single finding of fact nor conclusion of law in the child custody order or in the order denying reconsideration of the child custody order, and there is nothing in the record in any proceeding in this cause related to the best interest of the minor child that would support [the] imposition of any limitations on Defendant's passports.
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> 16. The [trial] [c]ourt erred in upholding limitations on Defendant's passports because such limitations violate the due process clauses and equal protection provisions of both the United States and North Carolina Constitutions, and both the federal and North Carolina laws prohibiting discrimination based [on] national origin since the only justification for [the trial] [c]ourt's ruling was that [] Defendant is [a] Polish-born naturalized U.S. citizen whose parents are Polish nationals, and who in [the trial] [c]ourt's view had engaged in concerning behaviors.
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> 17. The [trial] [c]ourt erred in determining that Defendant's arguments regarding jurisdiction [over] Defendant's passport[s] lack merit because the [c]ourt did not provide any statute or case law to support[] its own position and thus it could not compare Defendant's argument to any alternative argument and thus determine whether his argument has merit or not.
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> 18. The [trial] [c]ourt erred in determining that there [was] no excusable neglect with regard to the entry of the passport restrictions because the [c]ourt did not deny that Defendant's own attorney at the time of drafting and entering of the child custody order was the primary reason why those provisions [appeared] in the final version of the custody order against the wishes of [] Defendant.

Plaintiff's counsel filed a motion on 11 April 2017 arguing the trial court lacked subject matter jurisdiction to consider Defendant's passport application in light of Defendant's pending appeal from the order denying his Rule 60 motion. Plaintiff

contended that Defendant's proposed issues on appeal "assert[ed] constitutional issues regarding the denial of his [Rule 60 motion] as concerns [] his passport[s][,] . . . thereby purporting to create issues affecting a substantial right." Plaintiff also argued that Defendant's appeal from the denial of his Rule 60 motion "divested [the trial court] of jurisdiction" to hear and determine the matter of Defendant's passport application. Plaintiff asked the trial court to stay any further proceedings "pending a mandate from [this Court]" in Defendant's appeal from the order denying his Rule 60 motion.

The trial court held a hearing on 19 April 2017 regarding Defendant's passport application and a separate motion filed by Defendant seeking access to certain sealed medical records. After hearing arguments of counsel, the trial court concluded Defendant's passport application raised "issues . . . [that were] directly addressed by [Defendant's] appeal [from the order denying his Rule 60 motion][,]" and that the court "[did not] have the power to rule on [the passport matter] until [the Court of Appeals] issue[d] a decision or otherwise let go of [Defendant's] appeal." The trial court entered an order on 5 June 2017 stating it was "without authority and jurisdiction to hear and determine [D]efendant's pending [m]otion[] related to his passport[s]" and staying "any determination by [the trial] [c]ourt" pending disposition of Defendant's outstanding appeal. Defendant appeals.

II. Defendant's Rule 60 Motion
(COA No.17-570)

A. *Standard of Review*

A Rule 60(b) motion "is addressed to the sound discretion of the trial court, and will be disturbed on appeal only upon a showing of an abuse of discretion. The trial court's findings of fact are conclusive on appeal if there is any competent evidence in the record to support them." *Brown v. Cavit Sciences, Inc.*, 230 N.C. App. 460, 463, 749 S.E.2d 904, 907 (2013) (citation omitted). "An abuse of discretion occurs when the trial court's ruling is so arbitrary that it could not have been the result of a reasoned decision." *Chicora Country Club, Inc. v. Town of Erwin*, 128 N.C. App. 101, 109, 493 S.E.2d 797, 802 (1997) (citation and internal quotation marks omitted).

B. *Analysis*

In his Rule 60 motion, filed 22 December 2015, Defendant sought "reconsideration and relief of portions of [the trial court's] [9 January 2015 custody order] *regarding clerical errors* in (1) awarding Plaintiff[] final decision-making authority, (2) surrendering Defendant's U.S. and Polish passports, (3) Plaintiff's claim for attorney['s] fees, (4) [c]hild [s]upport payment, [and] (5) various [f]indings of [f]act." (emphasis added). On appeal, Defendant challenges the trial court's denial of relief from provisions in the custody order related to his passports only.

In denying Defendant's Rule 60 motion, the trial court found that "[m]uch of [] [D]efendant's motion [sought] to use Rule 60 for relief that should have been sought

by appellate review and which is not appropriate for Rule 60 relief." With respect to the passport restrictions, the trial court further found:

> [D]efendant's second claim for relief seeks to address [the trial] [c]ourt's [o]rder imposing limitations on [] [D]efendant's passports, requiring him to deposit them with the [c]lerk and to apply to [the trial] [c]ourt in the event he planned some travel which required [that] he have access to and use of [the passports]. . . . . [] [D]efendant engaged in secretive and concerning behaviors involving untrue statements to [P]laintiff about his travel . . . [.] The evidence gave rise to a legitimate concern with regard to [D]efendant's activities and intentions with regard to . . . his travel with the child. Defendant did not appeal the [custody] [o]rder. He now appears to assert . . . this [c]ourt committed legal error in its [o]rder regarding the limitations imposed on his use of his passports. The [c]ourt finds his arguments are without merit, and the argument concerns issues that are not properly subject to Rule 60 review. There was no excusable neglect with regard to the entry of the passport restrictions. This [c]ourt had subject matter jurisdiction and authority to protect and preserve the best interest of the minor child by orders that assured the child was not abducted or kidnapped and removed from this country by [D]efendant . . . who had Polish connections and who had engaged in concerning behaviors. The [o]rder is not void. Defendant did not appeal the ruling, and he has delayed almost one year in raising the issue. The [Rule 60] motion has not been made within a reasonable time, and it raises a matter that [D]efendant should have appealed if he desired to have reconsideration or relief. [] [D]efendant's [] claim for relief is without merit and should be denied.

On appeal, Defendant makes various arguments regarding the passport restrictions in the custody order and the trial court's authority to impose the restrictions and order Defendant to surrender his passports. Defendant contends the

restrictions violated his constitutional right to travel; violated state and federal law; exceeded the statutory authority of the trial court in making child custody determinations; and deprived Defendant of certain due process rights. As noted above, however, the only bases for relief from the passport restrictions asserted in Defendant's Rule 60 motion were (1) excusable neglect, pursuant to Rule 60(b)(1); and (2) voidness, pursuant to Rule 60(b)(4).

N.C. Gen. Stat. § 1A-1, Rule 60(b)(4) (2017) provides: "On motion and upon such terms as are just, the [trial] court may relieve a party . . . from a final judgment, order, or proceeding [if] . . .[t]he judgment is void[.]" "[A] Rule 60(b)(4) motion is only proper where a judgment is 'void' as that term is defined by the law." *Barton v. Sutton*, 152 N.C. App. 706, 708, 568 S.E.2d 264, 265 (2002) (citation and quotation marks omitted).

> Our case law makes clear . . . that [a] judgment will not be deemed void merely for an error in law, fact, or procedure. A judgment is void *only when the issuing court ha[d] no jurisdiction over the parties or subject matter in question or ha[d] no authority to render the judgment entered*.

State v. Santifort, ___ N.C. App. ___, ___, 809 S.E.2d 213, 219 (2017) (citation and internal quotation marks omitted) (emphasis added); *see also Windham Dist. Co. v. Davis*, 72 N.C. App. 179, 181, 323 S.E.2d 506, 508 (1984) ("An erroneous judgment is one rendered according to the course and practice of the court but contrary to the law or upon a mistaken view of the law. A void judgment has semblance of a valid

judgment, but lacks some essential element such as jurisdiction[.]" (citation omitted)). It follows that, in the present case, Defendant was entitled to relief from the passport restrictions under Rule 60(b)(4) only if the trial court lacked jurisdiction over the parties or subject matter or lacked authority to enter the custody order. *See Hillard v. Hillard*, 223 N.C. App. 20, 22, 733 S.E.2d 176, 178-79 (2012).

Here, although Defendant cited Rule 60(b)(4) in the portion of his Rule 60 motion seeking relief from the passport restrictions in the custody order, "[i]t is clear from the wording of his motion that [he] was asserting [] error[s] of law . . . as his basis for relief." *See Town of Sylva v. Gibson*, 51 N.C. App. 545, 548, 277 S.E.2d 115, 117 (1981). Specifically, Defendant argued in his Rule 60 motion that (1) federal law "does not give authority to any other entity [than the United States] Department of State to impose any restrictions regarding [a] U.S. passport[;]" and (2) federal law required the trial court to "demonstrate [an] appropriate exception to the general immunity of [the] Polish state from the jurisdiction of United States courts" before ordering Defendant to surrender his Polish passport.[1] "A motion pursuant to Rule 60 cannot be used as a substitute for an appeal of the underlying order to correct errors of law." *Morehead v. Wall*, 224 N.C. App. 588, 592, 736 S.E.2d 798, 801 (2012) (citation omitted). Thus, to the extent Defendant's Rule 60 motion asserted errors of

[1] Similarly, at the hearing on his Rule 60 motion, Defendant argued the trial court lacked authority (which Defendant referred to as "jurisdiction") "to actually hold [his passports] because an American passport "[is] a federal [] document governed by the . . . State Department, and [a] Polish passport . . . is actually [the] property of Poland[.]"

law in the custody order, including with respect to the passport restrictions therein, the trial court properly denied the motion. *See Windham*, 72 N.C. App. at 182, 323 S.E.2d at 509 (holding trial court did not abuse its discretion in denying defendant's Rule 60(b)(4) motion, where defendant "confused what constitutes an erroneous judgment with a void one. To have obtained relief from [the] alleged errors of law, the defendant should have appealed directly from the . . . judgment. . . . Even if errors of law could be found in the judgment, the judgment [was] not void because the trial court had jurisdiction and the authority to enter it.").

Whether a trial court's order contained errors of law is not the same question as whether the trial court had authority to enter the order. "Subject matter jurisdiction is the power to hear and determine cases *of the general class to which the action in question belongs*." *Musarra v. Bock*, 200 N.C. App. 780, 783, 684 S.E.2d 741, 744 (2009) (citation omitted) (emphasis added). "Subject matter jurisdiction . . . is conferred upon the courts by either the North Carolina Constitution or by statute." *Mosler v. Druid Hills Land Co.*, 199 N.C. App. 293, 295, 681 S.E.2d 456, 458 (2009) (citations omitted) (alteration in original). "It is well-established that the issue of a court's jurisdiction over a matter may be raised at any time, even for the first time on appeal or by a court *sua sponte*." *State v. Webber*, 190 N.C. App. 649, 650, 660 S.E.2d 621, 622 (2008).

In the present case, Defendant does not appear to dispute that the trial court in fact had jurisdiction over the parties and subject matter, or that the court was authorized to enter a custody order. *See also* N.C. Gen. Stat. § 7A-244 (2017) ("The district court division is the proper division without regard to the amount in controversy, for the trial of civil actions and proceedings for . . . child custody[.]"); N.C. Gen. Stat. § 50-13.5(c)(2) (2017) ("The courts of this State shall have jurisdiction to enter orders providing for the custody of a minor child under the provisions of [N.C. Gen. Stat. §§] 50A-201, 50A-202, and 50A-204."). Because the custody order was not void as a matter of law, Defendant was not entitled to the relief available under Rule 60(b)(4). We therefore affirm the trial court's order denying Defendant's motion for relief.

III. Defendant's Passport Application (COA No. 17-813)

Defendant also appeals the portion of the trial court's 5 June 2017 order finding that Defendant's appeal from the denial of his Rule 60 motion "divest[ed] [the] [c]ourt of authority and subject matter jurisdiction to hear and determine [] [D]efendant's pending [m]otion[] regarding his passport[s][.]"

Appealability

We must first determine whether Defendant's appeal is properly before this Court. *See, e.g.*, *Progress Energy Carolinas, Inc. v. Strickland*, 181 N.C. App. 610, 612, 640 S.E.2d 856, 858 (2007). Plaintiff contends the 5 June 2017 order was

interlocutory. We agree. "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. City of Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950). In the present case, the 5 June 2017 order staying further proceedings in the trial court was interlocutory because it was "not a final determination of or resolution to the controversy." *See Southern Uniform Rentals v. Iowa Nat'l Mutual Ins. Co.*, 90 N.C. App. 738, 740, 370 S.E.2d 76, 78 (1988). The order explicitly stayed "*any determination by [the trial] [c]ourt*" regarding the return of Defendant's passports, "[p]ending a determination [by this Court of Defendant's] appeal" from the order denying his Rule 60 motion. (emphasis added). Entry of the stay clearly "require[d] further action by the trial court." *See Helms v. Griffin*, 64 N.C. App. 189, 191, 306 S.E.2d 530, 532 (1983); *see also Blackwelder v. Dept. of Human Res.*, 60 N.C. App. 331, 333, 299 S.E.2d 777, 779 (1983) ("A ruling is interlocutory in nature if it does not determine the issues but directs some further proceeding preliminary to a final decree.").

"Generally, there is no right to appeal from an interlocutory order." *Flitt v. Flitt*, 149 N.C. App. 475, 477, 561 S.E.2d 511, 513 (2002) (citations omitted).

> Nonetheless, in two instances a party is <u>permitted</u> to appeal interlocutory orders[.] First, a party is permitted to appeal from an interlocutory order 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. Second, a party is permitted to appeal from an interlocutory order 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. *Under either of these two 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 v. Raleigh Oaks Joint Venture, 115 N.C. App. 377, 379, 444 S.E.2d 252, 253 (1994) (citations and internal quotation marks omitted) (first emphasis in original). "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. Mortgage Information Services, Inc.*, 212 N.C. App. 73, 77, 711 S.E.2d 185, 189 (2011) (citation omitted); *see also Johnson v. Lucas*, 168 N.C. App. 515, 518, 608 S.E.2d 336, 338 (2005) ("It is the appellant's burden to present appropriate grounds for this Court's acceptance of an interlocutory appeal, . . . *and not the duty of this Court to construct arguments for or find support for [an] appellant's right to appeal*[.]" (citation and quotation marks omitted) (alterations in original) (emphasis added)).

In this case, the trial court did not certify its 5 June 2017 order for immediate review pursuant to N.C. Gen. Stat. § 1A-1, Rule 54(b) (2017). The order is therefore reviewable only if Defendant presented to this Court "sufficient facts and argument to support appellate review on the ground that the challenged order affect[ed] a substantial right." *Mosqueda v. Mosqueda*, 218 N.C. App. 142, 146, 721 S.E.2d 755,

758 (2012) (citation and quotation marks omitted); *see also Hanesbrands Inc. v. Fowler*, 369 N.C. 216, 219, 794 S.E.2d 497, 499 (2016) (noting that "in appeals from interlocutory orders, the North Carolina Rules of Appellate Procedure require that the appellant's brief contain a statement of the grounds for appellate review, which must allege sufficient facts and argument to support appellate review on the ground that the challenged order affects a substantial right." (citing N.C.R. App. P. 28(b)(4) (internal quotation marks omitted)). Our Supreme Court has defined a "substantial right" as "a legal right affecting or involving a matter of substance as distinguished from matters of form[;] a right materially affecting those interests which a [person] is entitled to have preserved and protected by law[;] a material right." *Sharpe v. Worland*, 351 N.C. 159, 162, 522 S.E.2d 577, 579 (1999) (citation and quotation marks omitted). "Moreover, the determination of whether a substantial right is involved in [an] appeal depends on whether that right is one which will be lost or irremediably and adversely affected if the order is not reviewed before final judgment." *Southern Uniform Rentals*, 90 N.C. App. at 740, 370 S.E.2d at 78 (citation omitted).

Defendant has not argued that the trial court's decision to stay further proceedings on his passport application affected a substantial right. Defendant submits that this is "[not] a typical interlocutory appeal because the custody [o]rder was final[.]"[2] Defendant further asserts that "the general rule that appeals, even

[2] We again observe that Defendant did not appeal the 9 January 2015 custody order.

interlocutory appeals involving a substantial right, work to deprive the trial court of jurisdiction, do[es] not apply [in this case]." According to Defendant, his appeal from the denial of his Rule 60 motion did not prevent the trial court from determining whether to return his passports because his passport application "[did] not embrace jurisdiction[,]" and "no decision by this Court [in Defendant's appeal from the denial of his Rule 60 motion] could possibly be affected by [the trial court] hearing [Defendant's] application for the return of his passports." *See* N.C. Gen. Stat. § 1-294 (2017) (providing in part that "[w]hen an appeal is perfected as provided by this Article it stays all further proceedings in the court below upon the judgment appealed from, or upon the matter embraced therein, . . . ; *but the court below may proceed upon any other matter included in the action and not affected by the judgment appealed from*." (emphasis added)).

Defendant's arguments are misplaced. His arguments on appeal concern the merits of the trial court's finding, in its 5 June 2017 order, that it was "without authority and jurisdiction to hear and determine [D]efendant's pending [m]otion[] related to his passport[s][.]" However, whether an order or judgment is interlocutory and, if so, whether it affects a substantial right are "jurisdictional threshold question[s]." *See Pentecostal Pilgrims and Strangers Corp. v. Connor*, 202 N.C. App. 128, 128, 688 S.E.2d 81, 81 (2010); *see also Duval v. OM Hospitality, LLC*, 186 N.C. App. 390, 392, 651 S.E.2d 261, 263 (2007) (noting that "whether an appeal is

interlocutory presents a jurisdictional issue, and this Court has an obligation to address the issue *sua sponte*." (citation, quotation marks, and brackets omitted)). "It is well[-]established . . . that if an appealing party has no right of appeal, an appellate court on its own motion should dismiss the appeal." *Bailey v. Gooding*, 301 N.C. 205, 208, 270 S.E.2d 431, 433 (1980) (citations omitted). This Court has thus "decline[d] to address the propriety of [a] . . . stay order[]" where the appealing party "ha[d] no right of appeal from that interlocutory order." *See Danna v. Danna*, 88 N.C. App. 680, 683, 364 S.E.2d 694, 696 (1988).

Even assuming *arguendo* that certain statements in Defendant's appellate brief could be construed as identifying a substantial right – *e.g.*, Defendant's purported "right to travel abroad" – an appellant "must present more than a bare assertion that [an] order affects a substantial right; [he] must demonstrate *why* the order affects a substantial right." *Hoke Cty. Bd. of Educ. v. State*, 198 N.C. App. 274, 277-78, 679 S.E.2d 512, 516 (2009) (citation omitted) (emphasis in original); *see also Turner v. Norfolk Southern Corp.*, 137 N.C. App. 138, 142, 526 S.E.2d 666, 670 (2000) ("Our courts have generally taken a restrictive view of the substantial right exception."). Here, Defendant's passing references to his "constitutional right to [international] travel" do not amount to an argument that the right "will clearly be lost or irremediably adversely affected if the order is not reviewable before final judgment." *Turner*, 137 N.C. App. at 142, 526 S.E.2d at 670 (citation and quotation

marks omitted). To the contrary, Defendant argues that, "though true," the claim that withholding Defendant's passports affected a substantial right "has nothing to do with [the trial court's] [] conclusion that [it] lacked authority to [consider] the application [for the return of his passports]." Again, Defendant challenges the substantive propriety of the 5 June 2017 order without first "identif[ying] a specific 'material right' that [he] would lose if the order is not reviewed before final judgment [or] explain[ing] how the order . . . would 'work injury' to [him] if not immediately reviewed." *Hanesbrands*, 369 N.C. at 220, 794 S.E.2d 497, 500 (citation omitted).

Because Defendant has failed to show why or how the trial court's interlocutory order "will work an injury to him if not corrected before an appeal from the final [determination][,]" *see Godley Auction Co., Inc. v. Myers*, 40 N.C. App. 570, 574, 253 S.E.2d 362, 365 (1979) (citation and quotation marks omitted), we dismiss Defendant's appeal from the 5 June 2017 order staying a determination by the trial court on Defendant's application for the return of his passports.

IV. Conclusion

The trial court did not abuse its discretion in denying Defendant's Rule 60 motion for relief from the 9 January 2015 custody order on the basis that the custody order was void. The trial court's 5 June 2017 order staying further proceedings pending disposition of Defendant's existing appeal was interlocutory, and Defendant has failed to demonstrate the order affected a substantial right. Accordingly, we

affirm the trial court's 12 January 2017 order denying Defendant's Rule 60 motion and dismiss Defendant's appeal from the 5 June 2017 order entering a stay.

AFFIRMED IN PART; DISMISSED IN PART.

Judge CALABRIA concurs.

Judge MURPHY concurs in COA17-570 in part and concurs in result only in part and concurs in COA17-813, by separate opinion.

Report per Rule 30(e).

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.

Nos. COA17-570 and 17-813 – *Grodner v. Grodner*

MURPHY, Judge, concurs in part in 17-570 as it relates to the passports issued by the United States of America and concurs in result only as it relates to the passports issued by the Republic of Poland; and concurs in 17-813.

While not artfully argued by the *pro se* Defendant, if the passport issued by the Republic of Poland is in fact the property of a foreign sovereign nation, then the Foreign Sovereign Immunities Act, 28 U.S.C. § 1604, would bar our exercise of jurisdiction:

> Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter.

28 U.S.C. § 1604 (2012).

As held by the United States Supreme Court, unless there is an exception created by Congress, there is no jurisdiction in our state courts to exercise authority over the property of a foreign sovereign nation. *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 489, 103 S. Ct. 1962, 1969 (1983). Congress has not created an exception which would apply in this situation. 28 U.S.C. §§ 1605 and 1607 (2012).

The desire of the District Court to act when faced with the potential for a parent to flee with a child is in the best interests of justice. However, exercising jurisdiction over the property of a foreign sovereign nation is not within the

jurisdiction of state courts. The reasoning of *Verlinden* is sound and reflects the need for a unified federal voice when dealing with matters of foreign policy, even if the interests of justice and state policy would require otherwise.

While our courts may not exercise jurisdiction over the property of a foreign sovereign nation unless authorized by Congress or international agreement, Defendant has not presented any argument based on the record or international law as to ownership of the passport by the Republic of Poland. Based on the limited record and arguments before us, "[I] would decline to upset the ruling of the trial court on this record." *Sanchez v. Cobblestone Homeowners Ass'n of Clayton, Inc.*, ___ N.C. ___, ___, 811 S.E.2d 144, 144 (2018).