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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-347

Filed: 16 April 2019

Mitchell County, No. 16-CVS-229

MICHAEL STACY BUCHANAN, Plaintiff,

v.

NORTH CAROLINA FARM BUREAU MUTUAL INSURANCE COMPANY, INC.,
Defendant.

Appeal by plaintiff from orders entered 8 December 2017 by Judge Mark E. Powell in Mitchell County Superior Court. Heard in the Court of Appeals 20 September 2018.

Charlie A. Hunt, Jr. for plaintiff-appellant.

Baucom, Claytor, Benton, Morgan & Wood, P.A., by Clay A. Campbell, for defendant-appellee.

BERGER, Judge.

Michael Stacy Buchanan (“Plaintiff”) appeals from the trial court’s orders granting partial summary judgment to North Carolina Farm Bureau Mutual Insurance Company, Inc. (“Defendant”) on Plaintiff’s claim for unfair and deceptive trade practices; denying Plaintiff’s motion to stay the trial court proceedings; and

dismissing Plaintiff's appeal of an order terminating the stay and compelling an appraisal. We dismiss Plaintiff's interlocutory appeal for the reasons discussed herein.

Factual and Procedural Background

As a result of fire damage to Plaintiff's home, Plaintiff filed an insurance claim with Defendant. Unsatisfied with Defendant's compensation offer, Plaintiff filed suit alleging Defendant had breached the insurance contract between the parties and violated the Unfair and Deceptive Trade Practices Act. Defendant filed its answer, which included a motion to stay the action pending an appraisal process to resolve the dispute regarding the amount owed under the policy for Plaintiff's loss.

The trial court granted Defendant's motion to stay "pending completion of the appraisal process as called for by the policy" in an order filed March 2, 2017 ("Order Granting Defendant's Motion to Stay and Compel Appraisal"). On May 30, 2017, Plaintiff filed a motion to terminate the Order Granting Defendant's Motion to Stay and Compel Appraisal. In an order, the trial court denied Plaintiff's motion to terminate and required an appraisal to be submitted to the court by August 28, 2017 (Order Denying Plaintiff's Motion to Terminate Stay).

On October 2, 2017, Plaintiff appealed the two orders ("Plaintiff's Appeal of Stay Orders") and also filed a motion to stay the actions "pending the appeal of the interlocutory orders of the Court." ("Plaintiff's Motion to Stay Proceedings").

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On October 10, 2017, Defendant filed (1) a motion for summary judgment on all Plaintiff's claims, and (2) a motion to dismiss Plaintiff's Appeal of Stay Orders. On December 8, 2017, the trial court entered three separate orders. The first denied Plaintiff's Motion to Stay Proceedings. The second dismissed Plaintiff's appeal. The third denied Defendant's motion for summary judgment as to the breach of contract claim, but granted summary judgement for the remaining claims. Plaintiff appeals all three interlocutory orders, and contends that each affects a substantial right. We disagree and dismiss Plaintiff's appeal.

Analysis

"Generally, there is no right of immediate appeal from interlocutory orders and judgments." *Goldston v. Am. Motors Corp.*, 326 N.C. 723, 725, 392 S.E.2d 735, 736 (1990). "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. City of Durham*, 231 N.C. 357, 361-62, 57 S.E.2d 377, 381 (1950) (citations omitted).

"A grant of partial summary judgment, because it does not completely dispose of the case, is an interlocutory order from which there is ordinarily no right of appeal." *Curl v. Am. Multimedia, Inc.*, 187 N.C. App. 649, 652, 654 S.E.2d 76, 78-79 (2007)

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(citation and quotation marks omitted). In addition, we generally “do not recognize a right to immediate appeal from an interlocutory order denying a stay of litigation.” *Neusoft Med. Sys., USA, Inc. v. Neu Sys, LLC*, 242 N.C. App. 102, 108, 774 S.E.2d 851, 856 (2015) (citing *Howerton v. Grace Hosp., Inc.*, 124 N.C. App. 199, 201-02, 476 S.E.2d 440, 442-43 (1996)).

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 . . . 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) (citations omitted).

When arguing that a challenged order affects a substantial right, “the appellant must include in its statement of grounds for appellate review ‘sufficient facts and argument to support appellate review on the ground that the challenged order affects a substantial right.’ ” *Johnson v. Lucas*, 168 N.C. App. 515, 518, 608 S.E.2d 336, 338 (2005) (quoting N.C.R. App. P. 28(b)(4)). “The appellants must present more than a bare assertion that the order affects a substantial right; they must demonstrate *why* the order affects a substantial right.” *Hoke Cnty. Bd. of Educ. v. State*, 198 N.C. App. 274, 277-78, 679 S.E.2d 512, 516 (2009) (citation omitted). “Essentially a two-part test has developed—the right itself must be substantial and

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the deprivation of that substantial right must potentially work injury . . . if not corrected before appeal from final judgment.” *Goldston*, 326 N.C. at 726, 392 S.E.2d at 736 (1990).

Plaintiff first contends that granting partial summary judgment affects his substantial right to avoid holding two separate trials on the dismissed claims because of the possibility of inconsistent verdicts. We disagree.

A substantial right is one which will clearly be lost or irremediably adversely affected if the order is not reviewable before final judgment. *The right to immediate appeal is reserved for those cases in which the normal course of procedure is inadequate to protect the substantial right affected by the order sought to be appealed.* Our courts have generally taken a restrictive view of the substantial right exception. The burden is on the appealing party to establish that a substantial right will be affected.

Turner v. Norfolk S. Corp., 137 N.C. App. 138, 142, 526 S.E.2d 666, 670 (2000) (emphasis added) (citations and quotation marks omitted).

Although avoiding two trials is not *per se* a substantial right,

the right to avoid the possibility of two trials *on the same issues* can be a substantial right. Ordinarily the possibility of undergoing a second trial affects a substantial right only when the same issues are present in both trials, creating the possibility that a party will be prejudiced by different juries in separate trials rendering inconsistent verdicts on the same factual issue.

Id. (emphasis added) (citation and quotation marks omitted). “In other words, not only must the same issues be present in both trials, but it must be shown that a

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possibility of inconsistent verdicts may result before a substantial right is affected.” *Moose v. Nissan of Statesville, Inc.*, 115 N.C. App. 423, 426, 444 S.E.2d 694, 697 (1994).

In the present case, Plaintiff’s appeal is interlocutory because Plaintiff’s contract claim remains pending before the trial court. Plaintiff argues that granting summary judgment as to his unfair and deceptive trade practices claim affects his substantial right to avoid the possibility of two trials on the same issues. Plaintiff contends that both claims involve the same evidence needed to award damages, specifically treble damages for the unfair and deceptive trade practices claim. However, Plaintiff’s argument that two separate trials will cause inconsistent verdicts is misplaced. If Plaintiff prevails on his breach of contract claim at trial, and subsequently prevails on appeal from the dismissal of his unfair and deceptive trade practices claim, the base amount of damages will already be established. If Plaintiff does not prevail on his breach of contract claim, he can appeal all of these issues together. In short, “[t]his appeal does not involve possible inconsistent jury verdicts, much less an inconsistent *decision* on the merits.” *Smith v. Polsky*, ___ N.C. App. ___, ___, 796 S.E.2d 354, 361 (2017) (citations and quotation marks omitted). Accordingly, we dismiss Plaintiff’s interlocutory appeal because Plaintiff fails to assert how “the normal course of procedure is inadequate to protect the substantial right affected by the order sought to be appealed.” *Turner*, 137 N.C. App. at 142, 526 S.E.2d at 670.

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Plaintiff also argues that the trial court erred in (1) denying his Motion to Stay Proceedings, and (2) dismissing his Appeal of the Stay Orders. We disagree.

“[T]here is no more effective way to procrastinate the administration of justice than that of bringing cases to an appellate court piecemeal through the medium of successive appeals from intermediate orders.” *Moose*, 115 N.C. App. at 430, 444 S.E.2d at 699 (citation and quotation marks). Moreover, “[i]t is not the duty of this Court to construct arguments for or find support for an appellant’s right to appeal; the appellant must provide sufficient facts and argument to support appellate review on the ground that the challenged order affects a substantial right.” *Dewey Wright Well & Pump Co. v. Worlock*, 243 N.C. App. 666, 669, 778 S.E.2d 98, 100-01 (2015).

Here, Plaintiff does not assert in his brief that dismissing his Motion to Stay Proceedings and his Appeal of the Stay Orders affects a substantial right. Plaintiff merely makes a bare assertion that this was error and prejudicial, which is not enough when appealing an interlocutory order. Because Plaintiff has failed to “provide sufficient facts and argument” to demonstrate “that the challenged order affects a substantial right,” *Id.*, we dismiss this argument.

Conclusion

For the reasons stated above, we dismiss Plaintiff’s appeal.

DISMISSED.

Judges TYSON and INMAN concur.

BUCHANAN V. N.C. FARM BUREAU MUT. INS. CO.

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Report per Rule 30(e).