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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-956

Filed: 4 June 2019

Macon County, No. 17 CVS 121

PANGEA CAPITAL MANAGEMENT, LLC, Plaintiff,

v.

JOHN R. LAKIAN, Defendant.

Appeal by Defendant from order entered 31 May 2018 by Judge Richard K. Walker in Macon County District Court. Heard in the Court of Appeals 13 March 2019.

*Ridenour & Goss, P.A., by Eric Ridenour and Kelly Langteau-Ball, for Plaintiff-Appellee.*

*Collins & Hensley, P.A., by Ward M. Collins, for Defendant-Appellant.*

INMAN, Judge.

Defendant John R. Lakian (“Defendant”) appeals from an order denying his motion to claim exemptions entered by the District Court of Macon County following an appeal by Plaintiff Pangea Capital Management, LLC, (“Plaintiff”) from an order designating exempt property entered by the Clerk of Superior Court of Macon County. Defendant contends that the trial court: (1) lacked jurisdiction to hear Plaintiff’s

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appeal from the clerk due to a defect in Plaintiff's notice of appeal; (2) erred in concluding he is a non-resident and is therefore not entitled to the claimed exemptions; and (3) erred in concluding his motion to designate exempt property was untimely filed. After careful review, we affirm trial court's order.

**I. FACTUAL AND PROCEDURAL HISTORY**

In January of 2016, Plaintiff secured an arbitration award in excess of fourteen million dollars against Defendant in New York. On the same day the arbitration award was rendered, Defendant recorded a deed with the Macon County Register of Deeds transferring his interest in a home in Highlands, North Carolina, (the "Highlands Property") to himself and Diane Lamm as co-trustees of Eagle Ridge Living Trust (the "Trust"). On 21 November 2016, the United States District Court for the Southern District of New York confirmed the arbitration award between the parties and entered a judgment for \$14,452,193.22; Plaintiff domesticated that judgment against Defendant in the Superior Court of Macon County on 28 February 2017 through a notice of filing of a foreign judgment.

Plaintiff filed a separate action in superior court on 20 March 2017 seeking to void the transfer of the Highlands Property to the Trust. As part of that suit, Defendant testified at a deposition on 11 January 2018 that the Highlands Property was his only residence, although he acknowledged that his driver's license listed a registered address in New York. On 19 February 2018, the superior court awarded

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partial summary judgment for Plaintiff and voided the transfer to the Trust, allowing Plaintiff to secure a judgment lien on the Highlands Property against Defendant. That same day, Defendant was incarcerated in a federal penitentiary in New Jersey on a 55-month sentence. Plaintiff sought to collect on its fourteen million dollar judgment through issuance of a writ of execution on 27 February 2018. One month earlier, Plaintiff had served Defendant with notice of his right to have exemptions designated.

Defendant, once more the record owner of the Highlands Property and 64 days after being served with the notice of right to have exemptions designated, filed a motion with the Clerk of Superior Court of Macon County to designate the Highlands Property exempt as his homestead. The clerk granted the motion on 9 April 2018.

Plaintiff filed a notice of appeal from the clerk's order to the superior court on 12 April 2018; however, pursuant to Section 1C-1603 of our General Statutes, "[a]ppeal from a designation of exempt property by the clerk is to the district court judge." N.C. Gen. Stat. § 1C-1603(e)(12) (2017). Realizing its mistake, Plaintiff filed an amended notice of appeal to the District Court of Macon County on 8 May 2018, outside the ten-day appeal period prescribed by law. *See id.* ("A party has 10 days from the date of entry of an order [designating exempt property] to appeal."); N.C. Gen. Stat. § 1-301.1(b) (2017) ("A party aggrieved by an order or judgment entered by

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the clerk may, within 10 days of entry of the order or judgment, appeal to the appropriate court for a trial or hearing de novo.”).

The district court heard Plaintiff’s appeal *de novo* on 23 May 2018. By order entered 31 May 2018, that court reversed the clerk’s order and denied Defendant’s motion, concluding that: (1) Defendant’s motion was untimely; and (2) Defendant failed to establish residency in North Carolina and therefore could not claim the homestead exemption. Defendant appeals.

**II. ANALYSIS**

Defendant argues that the district court was without jurisdiction to hear the appeal from the clerk’s order because Plaintiff failed to perfect its appeal to the district court as required by Subsections 1C-1603(e)(12) and 1-301.1(b). Defendant also contends the trial court erroneously concluded that he was a non-resident incapable of claiming a homestead exemption and that he waived that exemption by filing an untimely motion to designate exemptions. Reviewing the relevant case law, we hold that Plaintiff’s designation of the wrong court in its notice of appeal did not deprive the district court, as the proper court, from exercising its jurisdiction over the appeal from the clerk’s order. We also hold that the district court did not err in concluding that Defendant failed to establish residency. We therefore affirm the trial court’s order without addressing whether Defendant’s motion to designate exemptions was timely.

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*A. Standards of Review*

Whether the trial court possessed subject matter jurisdiction to enter its ruling below is an issue we review *de novo*. *Watson v. Brinkley*, 211 N.C. App. 190, 192, 712 S.E.2d 186, 188 (2011). In undertaking that analysis, we “examine the case anew as if there had never been a trial court ruling.” *Id.* (citation omitted).

When reviewing a trial court’s order on a motion to claim exemptions, we must determine whether the trial court’s findings of fact are supported by competent evidence; those “findings of fact are conclusive on appeal if there is evidence to support them even though there may be evidence to the contrary.” *First Union Nat’l. Bank v. Rolfe*, 90 N.C. App. 85, 88, 367 S.E.2d 367, 369 (1988) (citation omitted). Conclusions of law reached by the trial court are reviewed *de novo*. *Farm Bureau Mut. Ins. Co. v. Cully’s Motorcross Park, Inc.*, 366 N.C. 505, 512, 742 S.E.2d 781, 786 (2013).

*B. District Court Jurisdiction Over Plaintiff’s Appeal from the Clerk*

Our district courts possess jurisdiction to hear appeals from orders designating exemptions entered by clerks of superior court. *See, e.g.*, N.C. Gen. Stat. §§ 1-301.1, 7A-251, and 1C-1603(e)(12) (2017). In this case, the district court heard just such an appeal. But Defendant challenges the district court’s jurisdiction based on Plaintiff’s mistake in designating the wrong court in its initial notice of appeal from the clerk’s order, and he argues that the mistake precluded the proper court from exercising its

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jurisdiction over that appeal once presented to it.<sup>1</sup> Defendant argues that the requirements found in Sections 1-301.1 and 1C-1603(e)(12) are jurisdictional, so that Plaintiff's failure to notice its appeal to the district court was fatal to that court's exercise of jurisdiction. Assuming *arguendo* that those requirements are jurisdictional, we conclude that Plaintiff's mistake in this case did not deprive the district court of jurisdiction.

This Court's treatment of similar defects in notices of appeal governed by the North Carolina Rules of Appellate Procedure is instructive. In *Stephenson v. Bartlett*, 177 N.C. App. 239, 628 S.E.2d 442 (2006), plaintiffs were denied attorney fees by the trial court and filed a " 'notice of appeal to the Supreme Court of North Carolina' " rather than to this Court. 177 N.C. App. at 240, 628 S.E.2d at 443. Despite this error, the case proceeded to oral argument before this Court, where we raised *sua sponte* the issue of whether the plaintiffs' notice deprived us of jurisdiction. *Id.* at 241, 628 S.E.2d at 443. The plaintiffs responded to our questioning by expressly "claim[ing] their mistaken notice of appeal was sufficient to confer jurisdiction on this Court under Rule 3(d)" of the North Carolina Rules of Appellate Procedure. *Id.* That argument prevailed. *Id.* at 243, 628 S.E.2d at 445. Although we recognized that the notice of appeal requirements in Rule 3 are jurisdictional, we also noted that notices

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<sup>1</sup> The parties discuss at length the concurrent civil jurisdiction of the district and superior courts and whether the district court's jurisdiction to hear an appeal from a clerk's order on a motion to claim exemptions is exclusive. We need not resolve that question, as the superior court did not hear Plaintiff's appeal.

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of appeal are subject to liberal construction in determining whether they suffice to confer jurisdiction, and a technically deficient notice of appeal may still confer jurisdiction on the appellate court where the intent to appeal “can be fairly inferred from the notice.” *Id.* at 241, 628 S.E.2d at 443-44 (internal quotation marks and emphasis omitted) (citing *Von Ramm v. Von Ramm*, 99 N.C. App. 153, 156-57, 392 S.E.2d 422, 424 (1990)). We also observed that “if a party technically fails to comply with procedural requirements in filing papers with the court, the court may determine that the party complied with the rule if the party accomplishes the functional equivalent of the requirement.” *Id.* (internal quotation marks and emphasis omitted) (citing *Von Ramm*, 99 N.C. App. at 156-57, 392 S.E.2d at 424). Because the plaintiffs’ intent to appeal could be fairly inferred from their defective notice and there was no indication that the defendants were misled, we assumed jurisdiction over the appeal. *Id.* at 243, 638 S.E.2d at 444-45.

Similarly, in *Phelps Staffing, LLC v. S.C. Phelps, Inc.*, 217 N.C. App. 403, 720 S.E.2d 785 (2011), the plaintiff filed a timely notice of appeal with this Court but the notice failed to identify the court to which its appeal was taken. 217 N.C. App. at 409, 720 S.E.2d at 790. We noted that “this defect [wa]s obvious, as [the p]laintiff’s notice of appeal d[id] not designate *any* court as the proper venue for its appeal[.]” but nonetheless held that, when liberally construed, the plaintiff’s defective notice was not fatal to our exercise of jurisdiction, as the intent to appeal to this Court could

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be fairly inferred. *Id.* at 410, 720 S.E.2d at 791. That doctrine of fair inference, we said, “ensures that a violation of Rule 3(d) results in dismissal only where the appellee is prejudiced by the appellant’s mistake.” *Id.*

Consistent with *Stephenson* and *Phelps Staffing*, this Court has continued to apply the fair inference doctrine to hear other cases in which the failure to designate the proper court pursuant to Rule 3(d) did not mislead or prejudice the appellee. *See, e.g., State v. Williams*, 235 N.C. App. 201, 203-04, 761 S.E.2d 662, 664 (2014), *appeal dismissed, disc. rev. denied*, 368 N.C. 241, 768 S.E.2d 857 (2015) (holding the failure to name this Court in the notice of appeal did not deprive us of jurisdiction under the fair inference doctrine); *Bradley v. Cumberland County*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 822 S.E.2d 416, 420 (2018) (holding that, under *Phelps Staffing* and the fair inference doctrine, the failure to designate this Court in the notice of appeal was not sufficient in and of itself to dismiss the appeal).

Given that “[t]he provisions of Rule 3 are jurisdictional,” *Bailey v. State*, 353 N.C. 142, 156, 540 S.E.2d 313, 322 (2000) (citation omitted), but defects in designating the court to which the appeal is taken do not deprive the proper court from exercising jurisdiction where the intent to appeal can be fairly inferred without prejudice to the appellee, *Stephenson*, 177 N.C. App. at 243, 628 S.E.2d at 444-45, we conclude the defect identified by Defendant, even if in technical noncompliance with jurisdictional requirements present in Subsections 1-301.1(b) and 1C-1603(e)(12), did



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not deprive the district court of jurisdiction. Applying the fair inference doctrine, Plaintiff's intent to appeal the clerk's order was clear, and the record does not indicate that Defendant was misled or prejudiced by the mistake. Although Defendant raised the same jurisdictional argument presented here before the district court, he at no point indicated that he was misled, unaware of Plaintiff's intent to appeal, or otherwise prejudiced by Plaintiff's technical oversight. Nor do the underlying procedural facts in the record demonstrate any prejudice; because the matter was heard *de novo* before the district court, Defendant could present to the district court all of the same issues and arguments which he presented before the clerk. Defendant's counsel appears to have been well prepared for the district court hearing, submitting an outline of his arguments to the district court with pertinent deposition testimony, case law, and statutes attached. Finally, Defendant did not suffer any undue delay, as the hearing before the district court occurred on 23 May 2018, one week before the appeal was originally calendared before the superior court. The district court did not err in exercising jurisdiction over Plaintiff's appeal, as Plaintiff's intent to appeal under the timely-filed-but-technically-defective notice of appeal can be fairly inferred and there is no indication that Defendant was misled or prejudiced by the technical defect.

*C. Defendant's Residency*

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Defendant also argues that the trial court erred in concluding he was not a resident of North Carolina entitled to the statutory homestead exemption. *See* N.C. Gen. Stat. § 1C-1601(a)(1) (2017) (allowing a judgment debtor to claim an exemption of up to \$35,000 in “real property that the debtor . . . uses as a residence”); *see also Rolfe*, 90 N.C. App. at 89, 367 S.E.2d at 369 (holding a judgment debtor was not entitled to claim exemptions under Subsection 1C-1601(a) or the North Carolina Constitution where trial court properly concluded she was not a resident of North Carolina). Defendant’s argument hinges entirely on an assertion that, although he was incarcerated at a federal penitentiary in New Jersey at the time he filed the motion to claim exemptions, he was nonetheless a resident of North Carolina because he intended to return to the Highlands Property. He also asserts that “the trial court’s findings demonstrate [that] intent[.]” We disagree with Defendant and affirm the trial court’s order concluding that he is not a resident for exemption purposes.

“As a general rule, in an action or proceeding to enforce or establish an exemption right the burden is on him who seeks to enforce or establish it.” *Williams v. Sossoman’s Funeral Home, Inc.*, 248 N.C. 524, 528, 103 S.E.2d 714, 717 (1958) (citation and internal quotation marks omitted). In satisfying that burden, the party seeking an exemption from execution must show residency *at the time the motion to claim exemptions was filed*. *Rolfe*, 90 N.C. App. at 87-88, 367 S.E.2d at 368. That burden is not satisfied, however, by a generalized intention to return at some

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unspecified time. *See, e.g., Munds v. Cassidey*, 98 N.C. 558, 565-66, 4 S.E. 355, 356 (1887) (holding a judgment debtor was not a resident entitled to the homestead exemption even upon a finding that the absent debtor had an intent to return to North Carolina, as “[t]he person must be a resident, actual and not constructive, to be entitled to the exemption”); *Rolfe*, 90 N.C. App. at 88-89, 367 S.E.2d at 369 (reviewing case law establishing the insufficiency of a generalized intent to return to show residency for exemption purposes).

In its unchallenged findings of fact, the trial court found that Defendant: (1) was a resident of New York in September of 2017; (2) testified in January of 2018 that he resided at the Highlands Property, although his driver’s license at the time listed New York as his residence; (3) was incarcerated as a resident ward of the United States government in a federal penitentiary in New Jersey on 19 February 2018; and (4) filed his motion to claim exemptions on 16 March 2018. Those unchallenged findings establish that Defendant was not located or living in North Carolina at the time he filed his motion to claim exemptions, and they do not amount—contrary to Defendant’s contention—to a finding that he had an intent to return to the Highlands Property upon his release from federal prison. Indeed, the trial court could not have made such a finding, as Defendant offered no evidence

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disclosing any intent, generalized or otherwise, to return to the Highlands Property.<sup>2</sup> The trial court did not err in concluding he was not a resident, and we affirm the trial court's denial of Defendant's motion to claim the Highlands Property exempt.

**III. CONCLUSION**

For the foregoing reasons, we hold the district court possessed jurisdiction to hear Plaintiff's appeal from the clerk's order on Defendant's motion to claim exemptions and affirm its denial of that motion.

AFFIRMED.

Judges STROUD and ZACHARY concur.

Report per Rule 30(e).

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<sup>2</sup> Defendant argues that his deposition testimony is evidence of a future definite intention to return to North Carolina at the time he filed his motion to claim exemptions, pointing to his testimony that the Highlands Property was his residence as of 11 January 2018. However, Defendant's testimony indicates no such future intention on its face, and he did not introduce an affidavit or other evidence showing such an intention at the district court hearing. *See, e.g., In re Foster*, 348 B.R. 58, 60 (Bankr. E.D.N.C. 2006) (holding the evidence demonstrated residency and ability to claim homestead exemption under North Carolina law when, "[w]hile [the judgment debtor's] declared intention [was] not sufficient to establish that the property will be used as her residence in the future, the debtor also testified that she pa[id] property taxes, store[d] her personalty in the house, and live[d] in temporary housing in the form of a camper.").