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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-112

No. COA20-329

Filed 6 April 2021

Guilford County, No. 18 CVD 7830

MATT LEWIS, Plaintiff,

v.

DORETTA HENDERSON LAWSON, Defendant.

Appeal by Plaintiff from order entered 21 January 2020 by Judge K. Michelle Fletcher in Guilford County District Court. Heard in the Court of Appeals 23 February 2021.

J. Clark Fischer for Plaintiff-Appellant.

Kirkman Attorneys at Law, by John W. Kirkman, Jr., and Adam W. Arthur, for Defendant-Appellee.

GRIFFIN, Judge.

¶ 1

Plaintiff Matt Lewis (“Plaintiff”) appeals from an order dismissing his claims against Defendant Doretta Henderson Lawson (“Defendant”) for libel and malicious prosecution. The order did not dispose of Defendant’s counterclaim for civil assault, and therefore was interlocutory in nature. Plaintiff has not demonstrated that the

order affected a substantial right, and the trial court did not certify the order for appeal pursuant to N.C. Gen. Stat. § 1A-1, Rule 54(b). Because we lack jurisdiction over Plaintiff's interlocutory appeal, we must dismiss.

I. Factual and Procedural Background

¶ 2 On 18 September 2018, Plaintiff filed a complaint against Defendant for libel and malicious prosecution. On 7 December 2018, Defendant filed an answer and a counterclaim of civil assault. Plaintiff filed an answer to the counterclaim on 27 December 2018.

¶ 3 On 23 October 2019, Defendant filed a motion for summary judgment, which was later narrowed to a motion for partial summary judgment. The motion was heard at the 17 January 2020 Civil Session of the Guilford County District Court before the Honorable K. Michelle Fletcher. On 21 January 2020, the trial court entered a written order granting summary judgment in favor of Defendant and dismissed all of Plaintiff's claims. The trial court did not decide the issue of Defendant's counterclaim against Plaintiff for civil assault.

¶ 4 Plaintiff filed Notice of Appeal on 11 February 2020. Plaintiff's appellant brief contained the following "Grounds for Appellate Review":

Plaintiff appeals from a final judgment of the District Court of Guilford County which dismissed all claims filed by Plaintiff against Defendant, and this Court has appellate jurisdiction pursuant to the provisions of N.C.G.S. 7A-27(b).

Since the District Court Order dismissed the entirety of Plaintiff's claims against Defendant, appeal is proper at this point notwithstanding the pendency of the unrelated counterclaim filed by Defendant for assault. *See generally, Kwan-Sa You v. Roe*, 97 N.C. App. 1, 387 S.E. 2d. 188 (1990).

¶ 5 On 4 August 2020, Defendant filed a Motion to Dismiss Appeal, arguing that Plaintiff's appeal was interlocutory and that Plaintiff failed to argue that the interlocutory order affects a substantial right.

II. Analysis

¶ 6 Defendant has moved to dismiss the appeal on the ground that it is an impermissible interlocutory appeal. We conclude that the appeal is interlocutory and does not affect a substantial right.

¶ 7 The trial court's order granting summary judgment is interlocutory because it did not address Defendant's counterclaim for civil assault, which remains pending. *See Veazey v. Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950) (citation omitted) ("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.").

¶ 8 "Generally, there is no right of immediate appeal from interlocutory orders and judgments." *Sharpe v. Worland*, 351 N.C. 159, 161, 522 S.E.2d 577, 578 (1999) (citations omitted). Immediate appeal is available when (1) "the trial court certifies

the case for appeal pursuant to N.C. Gen. Stat. § 1A-1, Rule 54(b),” or (2) “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) (citation omitted).

¶ 9 Here, the trial court’s 21 January 2020 order did not contain a certification pursuant to Rule 54(b). Therefore, Plaintiff’s appeal is proper only if he can demonstrate that the “decision deprive[d] [him] of a substantial right which would be lost absent immediate review.” *Id.*; see also *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)).

¶ 10 “[W]hen an appeal is interlocutory, 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 (quoting N.C. R. App. P. 28(b)(4)) (internal quotation marks omitted), *aff’d per curiam*, 360 N.C. 53, 619 S.E.2d 502 (2005). Plaintiff did not include the phrase “substantial right” in his appellate brief, let alone argue that the grant of summary judgment affects a substantial right. Instead, Plaintiff’s appellant brief classifies the trial court’s decision as “a final judgment” and cites N.C. Gen. Stat. § 7A-27(b) (which includes

appeals from final judgments) as the basis of appellate jurisdiction.

¶ 11 Plaintiff did acknowledge that Defendant’s counterclaim remains pending, and cited *You v. Roe*, 97 N.C. App. 1, 387 S.E.2d 188 (1990), in support of an argument that appeal is nonetheless proper. However, *You v. Roe* did not involve pending counterclaims. Plaintiff offers no explanation or argument as to why *You v. Roe* is applicable, and “[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.” *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 380, 444 S.E.2d 252, 254 (1994); *see also Viar v. N.C. Dep’t of Transp.*, 359 N.C. 400, 402, 610 S.E.2d 360, 361 (2005) (“It is not the role of the appellate courts . . . to create an appeal for an appellant.”).

¶ 12 Plaintiff cited only *You v. Roe* in support of an argument that the order affects a substantial right or that an immediate appeal is proper. “It is not the duty of [the appellate court] to supplement an appellant’s brief with legal authority or argument not contained therein.” *Goodson v. P.H. Glatfelter Co.*, 171 N.C. App. 596, 606, 615 S.E.2d 350, 358, *disc. review denied*, 360 N.C. 63, 623 S.E.2d 582 (2005).

¶ 13 Plaintiff has failed to demonstrate that the 21 January 2020 order affects a substantial right. We accordingly do not have jurisdiction over Plaintiff’s appeal. *See Hamilton v. Mortg. Info. Servs., Inc.*, 212 N.C. App. 73, 77, 711 S.E.2d 185, 189 (2011) (“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. (citing *Pasour v. Pierce*, 46 N.C. App. 636, 639, 265 S.E.2d 652, 653 (1980))).

¶ 14 Accordingly, Plaintiff's appeal must be dismissed.

III. Conclusion

¶ 15 For the foregoing reasons, we dismiss Plaintiff's appeal.

DISMISSED.

Chief Judge STROUD and Judge MURPHY concur.

Report per Rule 30(e).