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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-663

No. COA21-42

Filed 7 December 2021

Wake County, No. 17 CVD 6558

EDWIN R. ADDISON, Plaintiff,

v.

KATHERYN B. MANNING, Defendant.

Wake County, No. 16 CVD 11994

KATHERYN B. MANNING, Plaintiff,

v.

EDWIN R. ADDISON, Defendant.

Appeal by Edwin R. Addison from order entered 23 July 2020 by Judge Debra Sasser in Wake County District Court. Heard in the Court of Appeals 3 November 2021.

Rik Lovett & Associates, by S. Thomas Currin, II, for appellant.

The Lea/Schultz Law Firm, P.C., by James W. Lea, III, for appellee.

ARROWOOD, Judge.

¶ 1 Edwin R. Addison ("appellant") appeals from the trial court's order denying his

motion for summary judgment, and granting in part and denying in part Katheryn B. Manning's ("Manning") motion for summary judgment. Appellant argues the trial court erred in so doing, and also argues the order, though interlocutory, affects a substantial right. For the following reasons, we dismiss appellant's appeal.

I. Background

¶ 2 Appellant and Manning (collectively, the "parties") were married on 9 July 1983, entered a Separation Agreement on 12 June 2006, and divorced on 3 August 2007.

¶ 3 On 19 September 2013, appellant filed a complaint against Manning in the United States District Court for the Eastern District of North Carolina, seeking a declaratory judgment, restitution, and relief from the Separation Agreement. In his complaint, appellant asserted claims of: fraud in inducement and unconscionable contract, mutual mistake, impossibility of performance, detrimental reliance and laches, bankruptcy discharge and violation of said discharge,[1] impracticality of performance, fraud and deceit by suppression of facts, unclean hands and frustration of purpose, unjust enrichment, and unconscionability.

¶ 4 On 17 December 2013, Manning filed a complaint against appellant in the New Hanover County District Court, seeking a temporary restraining order, preliminary

[1] Appellant would later dismiss the bankruptcy discharge claim.

injunction, alimony and spousal support, punitive damages, attorney's fees, and specific performance on the grounds of breach of contract. Manning's complaint was removed to the United States District Court for the Eastern District of North Carolina on 27 December 2013 and consolidated with appellant's case on 6 March 2014.

¶ 5 The two consolidated cases were remanded to the New Hanover County Superior Court on 4 September 2015 and ultimately transferred to the Wake County District Court on 21 September 2016. The parties' respective "issues, causes of action, and files" were again consolidated on 2 July 2018 by order of the Wake County District Court "for the purpose of trial and other proceedings had in this matter."

¶ 6 On 9 March 2020, appellant "move[d] for summary judgment in his favor on Manning's claim (in her complaint in the 16 CVD 11994 action) that [appellant] is in breach of contract with respect to Article II, § C, ¶ 5 of the parties' June 12, 2006, Separation Agreement." On 17 March 2020, Manning filed her own Motion for Summary Judgment "on all claims" in appellant's complaint. Both motions came on for hearing before the Wake County District Court on 11 June 2020, Judge Sasser presiding.

¶ 7 On 23 July 2020, the trial court entered an order denying appellant's motion for summary judgment. In the same order, the trial court granted in part and denied in part Manning's motion for summary judgment.

¶ 8 Specifically, the trial court granted summary judgment "in Manning's favor

on" the "claims/affirmative defenses of" appellant on mutual mistake, impossibility of performance, bankruptcy and violation of said discharge, impracticality of performance, frustration of performance, detrimental reliance, laches, and unclean hands, thus dismissing them.

¶ 9 The trial court denied Manning's motion for summary judgment as to appellant's "claim for recission/affirmative defenses as to Manning's breach of contract actions" on the grounds of fraud in the inducement, unconscionability, and fraud and deceit by suppression of facts, thus leaving these issues to be litigated.

¶ 10 Additionally, "[i]n the event the contract is not rescinded based on [appellant]'s remaining claims[,]" the court granted partial summary judgment "as it relates to Manning's breach of contract claim involving [appellant's] CRUT obligation" and as to her claims for attorney's fees, and denied summary judgment as to Manning's claim for punitive damages, her breach of contract claim "regarding [appellant]'s contractual alimony obligation[,]" and as to her "request for specific performance of the contract."

¶ 11 The order did not provide certification for appeal pursuant to North Carolina Rules of Civil Procedure Rule 54(b). Appellant filed written notice of appeal on 14 August 2020.

II. Discussion

¶ 12 Appellant contends the trial court erred in denying his motion for summary

judgment, and in granting in part summary judgment in Manning's favor. We first address the interlocutory nature of this appeal.

¶ 13 " '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.' " *Hanesbrands Inc. v. Fowler*, 369 N.C. 216, 218, 794 S.E.2d 497, 499 (2016) (quoting *Veazey v. City of Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950)).

> Review of an interlocutory ruling is proper if the trial court certifies the case for appeal pursuant to North Carolina Rules of Civil Procedure Rule 54(b), or if the ruling deprives the appellant of a substantial right that will be lost absent immediate review. "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."
>
> Our Supreme Court has determined that a "substantial right is 'a legal right affecting or involving a matter of substance as distinguished from matters of form: a right materially affecting those interests which [one] is entitled to have preserved and protected by law: a material right.' "
>
> The inconsistent verdicts doctrine is a subset of the substantial rights doctrine and is "often misunderstood." An appellant is required to show "that the same factual issues are present in both trials *and* that [appellants] will be prejudiced by the possibility that inconsistent verdicts may result." Avoiding separate trials on different issues does not affect a substantial right. Additionally, "[t]he mere fact that claims arise from a single event, transaction, or occurrence does not, without more, necessitate a conclusion that inconsistent verdicts may occur unless all

> of the affected claims are considered in a single proceeding."
>
> "*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 appellant's right to appeal[.]" "Where the appellant fails to carry the burden of making such a showing to the court, the appeal will be dismissed."

Greenbrier Place, LLC v. Baldwin Design Consultants, P.A., 2021-NCCOA-584, ¶¶ 10-13 (citations omitted; alterations in original; final emphasis added).

¶ 14 Appellant concedes that he appeals from an interlocutory order but argues the trial court's order affects a substantial right, the basis of which, he contends, "is the avoidance of two trials" "rendering inconsistent verdicts on the same factual issue." This, however, in appellant's own words, is a "scenario that *could* occur in this case." (Emphasis added.) Specifically, appellant hinges his entire argument on the possibility that,

> [i]f his fraud or unconscionability claims are denied, [he] could be adjudged to be in breach of a valid agreement in the first trial (based on the claims currently pending before the trial court), only to have the second trial (after appeal, remand, and reinstatement of some or all of his claims/defenses) determine that the contract was never formed in the first place (due to mutual mistake, which has currently been dismissed) and/or that [appellant] is relieved from the obligation of the contract (through, for example, impossibility, impracticability, unconscionably [sic], laches).

¶ 15 In other words, appellant claims the trial court's order affects a substantial

right if, and only if, the following sequence of events occurs: 1) his fraud or unconscionability claims are denied, 2) he decides to appeal that decision, 3) the appeal is heard, 4) the appeal results in a remand reinstating any or all of his claims, and 5) the trial court finds, on remand, that the Separation Agreement was never formed "and/or" appellant is relieved from his contractual obligations.

¶ 16 Appellant has not shown the trial court's order "deprives [him] of a substantial right which would be jeopardized absent a review prior to a final determination on the merits." *See Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 380, 444 S.E.2d 252, 254 (1994) (citation omitted). Rather, appellant has argued that a substantial right of his may be affected if a highly specific set of circumstances were to occur. Thus, appellant has failed to show that this appeal is properly before us on the merits.[2] *See id.*

III. Conclusion

¶ 17 For the foregoing reasons, we dismiss appellant's appeal.

DISMISSED.

Judges TYSON and ZACHARY concur.

Report per Rule 30(e).

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[2] Appellant, in the alternative, has also petitioned this Court to issue its discretionary *Writ of Certiorari* pursuant to Rule 21 of our Rules of Appellate Procedure to review the trial court's order. In our discretion, we deny appellant's Petition.