IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-45

No. COA21-206

Filed 18 January 2022

Graham County, No. 20-CVS-130

REID GOLDSBY MILLER, Plaintiff,

v.

EASTERN BAND OF CHEROKEE INDIANS and/or other affiliated governmental entities and/or other affiliated private entities; WESTRIDGE RANCH, LLC; WALTER WILLIAM ELLSWORTH, III; RICHARD G. SNEED; ALAN B. ENSLEY; THE TRIBAL COUNCIL OF THE EASTERN BAND OF CHEROKEE INDIANS; THE BUSINESS COMMITTEE OF THE EASTERN BAND OF CHEROKEE INDIANS; JOHN DOES 1-15 (fictitious names as identity is unknown); JANE DOES 1-15 (fictitious names as identity is unknown), Defendants.

Appeal by Plaintiff from Order entered 6 January 2021 by Judge William H. Coward in Graham County Superior Court. Heard in the Court of Appeals 14 December 2021.

Reid Goldsby Miller, pro se.

Van Winkle, Buck, Wall, Starnes and Davis, P.A., by Dale A. Curriden and Marie Claire O'Leary Smith, for Defendant-Appellees.

WOOD, Judge.

¶ 1 Plaintiff Reid Goldsby Miller ("Plaintiff") appeals from an order dismissing her complaint against the Eastern Band of Cherokee Indians ("EBCI"), the individual

tribal defendants, and the Business Committee of the EBCI[1] (the "Tribal Defendants") with prejudice. On appeal, Plaintiff contends that the trial court erred in dismissing her complaint because Defendant EBCI does not have sovereign immunity in this case. After careful review of the record and applicable law, we dismiss Plaintiff's appeal as interlocutory.

I. Factual and Procedural Background

¶ 2 In 1977, Plaintiff began purchasing real property in Graham County. By 1985, Plaintiff had acquired the property at issue in this appeal (the "Subject Property"). The Subject Property is comprised of multiple parcels of real property, totaling 682.19 acres. Title of the Subject Property was transferred to Plaintiff with an established access road (the "Bird Road Easement") in the form of a 30-foot-wide deeded easement through property held by the federal government in trust for possessory interest holders, Solomon Bird, Minnie Bird, William Bird, and Ella Mae Bird (collectively, the "Bird family"). The Subject Property qualifies "for present-use value, under forestry classification."

¶ 3 In 1992, Plaintiff and her husband were granted an easement for a right-of-way (the "Teesateskie Easement") by the federal government and EBCI. The

[1] Defendant Richard Sneed is the Principal Chief of the EBCI and was named in this action in his official capacity. Defendant Alan Ensley is the Vice Chief of the EBCI and was named in this action in his official capacity.

Teesateskie Easement provided Plaintiff with an alternative way to access the Subject Property and provided a trucking route for "bulking out spring water." In 2012, Plaintiff developed a timber plan for the Subject Property, in which she and her family began clearing trees and brush from the property. Around this time, Plaintiff was also negotiating with a bottling company to "supply[] them with spring water" from a spring located on the Subject Property. To prepare for the use of the spring by the bottling company, Plaintiff began cutting back vegetation, grading and applying gravel, and repairing an area on the Bird Road Easement.

¶ 4 In 2013, the Graham County Tax Assessor became concerned that Plaintiff was not complying with the present-use value program. The tax assessor conducted a statutory audit, and "determined that the subject property was no longer eligible to be appraised, assessed, and taxed as provided in N.C. Gen. Stat. § 105-277.2 through N.C. Gen. Stat. § 105-277.7." Further, the Graham County Tax Collector's Office (the "Tax Collector") notified Plaintiff that her property taxes for the 2011-2012 tax years were past due and attached a lien on the Subject Property.

¶ 5 Plaintiff listed the Subject Property for sale in June 2018 for the amount of $6,250,000.00. Plaintiff asserts that she listed the Subject Property for sale out of "extreme duress" and fear that the Tax Collector would foreclose on the Subject Property. In February 2013, Plaintiff lowered the price of the Subject Property to $2,635,000.00. Plaintiff alleges in her complaint that she lowered the price of the

Subject Property because of "local opposition" to preparations for the commercial use of the spring, "duress" from the EBCI and its tribal council, and her belief that the Tax Collector was "looking to foreclose on" the Subject Property. Meanwhile, Plaintiff continued to prepare the property and related easements for her prospective contract with the bottling company. In August 2013, Plaintiff received an offer to purchase the Subject Property from Walter Ellsworth ("Ellsworth") for $2,515,000.00. Plaintiff accepted Ellsworth's offer to purchase the Subject Property, and according to her, she did so out "of extreme duress." In September 2013, Plaintiff and Ellsworth renegotiated the purchase agreement for the Subject Property, and a new contract was executed. Ellsworth wanted to renegotiate the purchase agreement so that his limited liability company, Westridge Ranch, LLC ("Westridge") could purchase the Subject Property. Westridge purchased the Subject Property for the amount of $2,673,000.00.

¶ 6 While Plaintiff and Ellsworth were negotiating the sale of the Subject Property, the Tax Collector moved to foreclose on the Subject Property, finding that the purchase agreement was not a disqualifying event under the present-use value program. Plaintiff appealed "with the Graham County Board of Equalization and Review, which temporarily stopped the foreclosure process." Thereafter, in February 2014, Ellsworth notified Plaintiff that, "due to financial delays . . . he would not be able to continue in the Purchase Agreement."

¶ 7 Plaintiff and Ellsworth renegotiated the purchase agreement several times. Ultimately, Plaintiff sold the property for $2,673,000.00 and transferred title to the Subject Property to Westridge on December 22, 2016. On August 15, 2019, Westridge sold the Subject Property to EBCI.

¶ 8 In August 2020, Plaintiff, acting *pro se*, filed the instant action, asserting the following causes of action: "Action in Rem Against Subject Property," for Plaintiff to recover title to the Subject Property; "Declaratory Judgment"; unfair and deceptive trade practices; civil conspiracy; piercing the corporate veil; and unjust enrichment. Plaintiff also sought an injunction. EBCI and the individual tribal members named in Plaintiff's civil action (hereinafter, the "Tribal Defendants"), moved to dismiss Plaintiff's complaint on the basis of sovereign immunity on October 23, 2020. The trial court granted the Tribal Defendants' motion to dismiss on January 6, 2021. Plaintiff timely filed a written notice of appeal on January 19, 2021.

II. Discussion

¶ 9 As a preliminary matter, we note that Plaintiff's appeal is interlocutory. *See Pentecostal Pilgrims & Strangers Corp. v. Connor*, 202 N.C. App. 128, 131, 688 S.E.2d 81, 83 (2010) (citation omitted). "A judgment is either interlocutory or the final determination of the rights of the parties." N.C. Gen. Stat. § 1A-1, Rule 54(a); *see also Veazey v. Durham*, 231 N.C. 357, 361, 57 S.E.2d 377, 381 (1950); *Integon Nat. Ins. Co. v. Villafranco*, 228 N.C. App. 390, 392, 745 S.E.2d 922, 924-25 (2013)

(citations omitted). "Generally, there is no right of immediate appeal from interlocutory orders and judgments." *Connor*, 202 N.C. App. at 132, 688 S.E.2d at 84 (citation omitted).

¶ 10 "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." *Feltman v. City of Wilson*, 238 N.C. App. 246, 249, 767 S.E.2d 615, 618 (2014) (quoting *Duval v. OM Hospitality, LLC*, 186 N.C. App. 390, 392, 651 S.E.2d 261, 263 (2007) (citation omitted)). An order is an interlocutory order if it does not settle all issues in the case but rather "directs some further proceeding preliminary to the final decree." *Id.* (quoting *Heavner v. Heavner*, 73 N.C. App. 331, 332, 326 S.E.2d 78, 80, *disc. rev. denied*, 313 N.C. 601, 330 S.E.2d 610 (1985)); *see also Lee v. Baxter*, 147 N.C. App. 517, 519, 556 S.E.2d 36, 37 (2001) (citation omitted). "[W]hether an appeal is interlocutory presents a jurisdictional issue." *Akers v. City of Mt. Airy*, 175 N.C. App. 777, 778, 625 S.E.2d 145, 146 (2006) (citation omitted); *see also Feltman*, 238 N.C. App. at 249, 767 S.E.2d at 618 (citation omitted).

¶ 11 "As a matter of course, our Court does not review interlocutory orders." *R.C. Koonts & Sons, Inc. v. First Nat'l Bank*, 266 N.C. App. 76, 79-80, 830 S.E.2d 690, 693 (2019) (citing *Williams v. City of Jacksonville Police Dep't*, 165 N.C. App. 587, 589, 599 S.E.2d 422, 426 (2004)); *see also Turner v. Norfolk Southern Corp.*, 137 N.C. App. 138, 141, 526 S.E.2d 666, 669 (2000) (citations omitted). "If, however, the trial court's

decision deprives *the appellant* of a substantial right which would be lost absent immediate review, we may review the appeal under N.C. Gen. Stat. §§ 1-277(a) and 7A-27(d)(1). *Id.* at 80, 830 S.E.2d at 693 (citation omitted and emphasis added); *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 379, 444 S.E.2d 252, 253 (1994) (citation omitted); *GLYK & Assocs. v. Winston-Salem Southbound Ry. Co.*, 55 N.C. App. 165, 167-68, 285 S.E.2d 277, 278-79 (1981) (examining whether the appellant demonstrated that it would be "deprived of any substantial right" absent immediate review); *Villafranco*, 228 N.C. App. at 392, 745 S.E.2d at 925 (citation omitted); *N.C. Consumers Power, Inc. v. Duke Power Co.*, 285 N.C. 434, 438, 206 S.E.2d 178, 181 (1974) (citation omitted); *Turner*, 137 N.C. App. at 141, 526 S.E.2d at 669 (citations omitted). 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 a [party] is entitled to have preserved and protected by law: a material right." *Meyers v. Mutton*, 155 N.C. App. 213, 216, 574 S.E.2d 73, 76 (2002) (citation omitted); *Lee*, 147 N.C. App. at 519, 556 S.E.2d at 37 (quoting *Blackwelder v. Dep't of Hum. Resources*, 60 N.C. App. 331, 335, 299 S.E.2d 777, 780 (1983)).

¶ 12 "Our courts have generally taken a restrictive view of the substantial right exception." *Turner*, 137 N.C. App. at 142, 526 S.E.2d at 670 (citing *Blackwelder*, 60 N.C. App. at 334, 299 S.E.2d at 780). The appealing party has the burden to

demonstrate the appropriate grounds for this Court's acceptance of an interlocutory appeal. *Id.* (citation omitted); *Jeffreys*, 115 N.C. App. at 379, 444 S.E.2d at 253. "It 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*, 115 N.C. App. at 380, 444 S.E.2d at 354. "As a result, if the appellant's opening brief fails to explain why the challenged order affects a substantial right, we must dismiss the appeal for lack of appellate jurisdiction." *Denney v. Wardson Construction Inc.*, 264 N.C. App. 15, 17, 824 S.E.2d 436, 438 (2019) (citing *Larsen v. Black Diamond French Truffles, Inc.*, 241 N.C. App. 74, 79, 772 S.E.2d 93, 96 (2015)).

¶ 13 Plaintiff contends that her appeal affects a substantial right "insomuch as a federally recognized Indian tribe is expanding Indian country by its sole authority, ignoring Congress and 25 U.S.C. § 465, which Congress has provided as the sole mechanism for the expansion of Indian country." Plaintiff further contends that, by purchasing the Subject Property, "EBCI has removed immovable real property from the jurisdiction and protections of the State of North Carolina, which directly affects the rights and privileges that exist for citizens of the state that might have an interest in the said immovable real property." However, Plaintiff provides no case law or statutory authority, and we have found none, to support her contention that this appeal affects a substantial right.

¶ 14 We are not persuaded that Plaintiff would lose the opportunity to make this

argument absent immediate appellate review. *See Waters v. Qualified Personnel, Inc.*, 294 N.C. 200, 208, 240 S.E.2d 338, 344 (1978) (where the appellant's "rights . . . are fully and adequately protected by an exception to the order which may then be assigned as error on appeal should final judgment in the case ultimately go against it," the appeal should be dismissed as interlocutory). Plaintiff voluntarily sold the Subject Property to Westridge and Ellsworth in 2016 and does not currently have an ownership interest in the Subject Property. Although Plaintiff claims that the property was sold under duress, the parties to whom the property was sold, Westridge and Ellsworth, are the remaining named Defendants before the trial court. Plaintiff still has the ability to pursue the claims she has filed against them before the lower court. Because Plaintiff advances no argument as to how a substantial right of her own would be lost absent immediate review, we dismiss her appeal as interlocutory.

III. Conclusion

¶ 15 After careful review of the record and applicable law, we dismiss Plaintiff's appeal as interlocutory. It is so ordered.

DISMISSED.

Judges ZACHARY and GRIFFIN concur.

Report per Rule 30(e).