IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-51

No. COA20-217

Filed 18 January 2022

Harnett County, No. 18 CVS 01980

WOODFOREST NATIONAL BANK, Plaintiff,

v.

EDWARDS BROTHERS MALLOY, INC., EDWARDS BROTHERS, INC., and MALLOY INCORPORATED, Defendants.

Appeal by proposed intervenor from order entered 4 October 2019 by Judge Gale M. Adams in Harnett County Superior Court. Heard in the Court of Appeals 9 September 2020.

Nexsen Pruet, PLLC, by Eric H. Biesecker, for proposed intervenor-appellant.

McGuireWoods LLP, by Tracy S. DeMarco, and The Dragich Law Firm PLLC, by David G. Dragich, January A. Dragich, and Amanda C. Vintevoghel, pro hac vice, for receiver-appellee.

MURPHY, Judge.

¶ 1 A nonparty appellant whose motion to intervene has been denied has a right to appeal the denial of the motion to intervene. However, when a nonparty appellant abandons its challenge to the denial of the motion to intervene, it is not bestowed with a separate right to appeal the resolution of other issues.

¶ 2 In accordance with Rule 28 of our Rules of Appellate Procedure, the nonparty appellant abandoned its argument regarding the denial of its motion to intervene by failing to provide authority to support its argument. In the absence of maintaining an appeal from the denial of a motion to intervene, nonparties generally have no right to appeal. The nonparty appellant has no other statutory right to appeal and we dismiss.

BACKGROUND

¶ 3 On 24 August 2018, Michigan's Washtenaw County Circuit Court entered a Receivership Order appointing Gene Kohut as the receiver over assets owned by Defendants that were subject to liens ("Michigan Order"). The Michigan Order granted Kohut "exclusive control over [the Receivership Assets, including] any and all real property," which purportedly granted Kohut exclusive control over Defendants' two parcels of property located in Harnett County, North Carolina ("Property").

¶ 4 On 5 September 2018, after the Michigan Order was entered, the Guilford County Superior Court entered a default judgment in the amount of $101,436.77, plus interest, against Defendants in favor of Appellant Carolina Container, LLC ("Carolina Container"). On 6 September 2018, Kohut notified Carolina Container of the Michigan Order. On 10 September 2018, Carolina Container's default judgment was transcribed to Harnett County, creating a judgment lien on the Property in

accordance with N.C.G.S. § 1-234. *See* N.C.G.S. § 1-234 (2019).[1]

¶ 5 On 12 October 2018, Kohut filed a *Notice of Filing Foreign Order Appointing Receiver* ("Notice of Filing") in Harnett County, and Kohut's attorney filed an affidavit stating the Michigan Order was final. In the Notice of Filing, Kohut sought enforcement of the Michigan Order in accordance with the Uniform Enforcement of Foreign Judgments Act. *See* N.C.G.S. § 1C-1704(b) (2019).

¶ 6 On 13 November 2018, in response to the Notice of Filing, Carolina Container filed a *Special Appearance and Notice of Grounds for Motion for Relief and Notice of Defenses* pursuant to N.C.G.S. § 1C-1705. In response, on 21 November 2018, Kohut filed a *Motion for Declaratory Judgment*.

¶ 7 On 8 November and 29 November 2018, Michigan's Washtenaw County Circuit Court entered two orders purporting to approve Kohut's motion to sell the Property free and clear of all liens in North Carolina.

¶ 8 In December 2018, Kohut sold one parcel of the Property to Praxan, LLC

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[1] N.C.G.S. § 1-234 states: "Upon the entry of a judgment under [N.C.G.S. §] 1A-1, Rule 58, affecting the title of real property, or directing in whole or in part the payment of money, the clerk of [S]uperior [C]ourt shall index and record the judgment on the judgment docket of the court of the county where the judgment was entered. The judgment may be docketed on the judgment docket of the court of any other county upon the filing with the clerk thereof of a transcript of the original docket. . . . The judgment is a lien on the real property in the county where the same is docketed of every person against whom any such judgment is rendered, and which he has at the time of the docketing thereof in the county in which such real property is situated, or which he acquires at any time thereafter, for 10 years from the date of the entry of the judgment under [N.C.G.S. §] 1A-1, Rule 58, in the county where the judgment was originally entered." *See* N.C.G.S. § 1-234 (2019).

("Praxan"), and sold the other parcel of the Property to Sudhafen, LLC ("Sudhafen"). Before closings on the Property, Kohut was on actual and record notice of Carolina Container's Default Judgment ("Default Judgment"). Due to the Default Judgment, in conjunction with the closings, Kohut voluntarily escrowed $145,633.00 with BB&T Insurance Services, Inc., doing business as Bridge Trust Title Group.

¶ 9 On 4 March 2019, in Harnett County, Judge Claire V. Hill dismissed Kohut's *Motion for Declaratory Judgment* and entered an *Order on Carolina Container's Notice of Defenses* determining that Carolina Container was a nonparty to the Michigan Order and not a judgment debtor ("Judge Hill Order"). On 24 June 2019, Kohut filed a *Motion for Order Authorizing Receiver to Disburse Escrowed Funds to Senior Lien Holder [Woodforest National Bank] and Release of [Carolina Container's] Judgment Liens* ("Kohut's Escrow Motion"). After Kohut's Escrow Motion, on 22 July 2019, Carolina Container filed a response to Kohut's Escrow Motion that included its notice of defenses and a counterclaim. That same day, Carolina Container also filed a motion to compel Kohut to provide discovery, a motion for Carolina Container to intervene, and a motion to join Praxan and Sudhafen as necessary parties.

¶ 10 On 4 October 2019, Judge Gale M. Adams entered an *Order Authorizing Receiver to Disburse Certain Escrowed Funds to Seinor [sic] Lien Holder [Woodforest National Bank] and Denying Carolina Container's Motion to Intervene* ("Judge Adams Order"). The Judge Adams Order denied the motion to intervene, allowed the

disbursement of the escrowed funds, and extinguished Carolina Container's liens, resolving all outstanding issues. On 1 November 2019, Carolina Container filed a notice of appeal of the Judge Adams Order.

ANALYSIS

¶ 11 Kohut argues Carolina Container lacks a right to appeal the Judge Adams Order. Although Carolina Container raises several arguments regarding purported errors below, we resolve this appeal based on Carolina Container's abandonment of the only issue it had a right to appeal and the lack of any other right to appeal, and we need not analyze any other argument raised.

¶ 12 "This Court has . . . recognized a non-party's right to appeal from an order denying the non-party's motion to intervene, despite the fact that the non-party is, by virtue of the appealed order, not a party to the case." *In re Duke Energy Corp.*, 234 N.C. App. 20, 29, 760 S.E.2d 740, 746, (2014). Here, Carolina Container appeals from the Judge Adams Order that in part denied its motion to intervene. Pursuant to our caselaw, to the extent that Carolina Container appeals the denial of its motion to intervene, there is a right to appeal. *Id.* However, in reviewing Carolina Container's brief, it has abandoned any argument regarding the denial of its motion to intervene along with such a right to appeal.

¶ 13 Although Carolina Container's opening brief discusses the denial of its motion to intervene as erroneous, it does not provide any legal authority to support its

argument, nor does it argue this is an issue of first impression. In an argument focused on the Judge Adams Order contradicting the Judge Hill Order, Carolina Container contends:

> There is no logical way Judge Adams could have extinguished the Judgment Liens and held that Carolina Container was not entitled to the escrowed funds consistently with Judge Hill's holdings and [Kohut's] arguments that Carolina Container is not a party and not a judgment debtor. *On the one hand, if Carolina Container is not a party and not a judgment debtor, then Judge Adams erred by extinguishing Carolina Container's Judgment Liens and denying Carolina Container relief under the escrow agreement without allowing Carolina Container to intervene.* On the other hand, if Carolina Container is a party and a judgment debtor, Judge Adams erred by contradicting Judge Hill's holdings. Either way, Judge Adams committed error, and her Order should be reversed.

(Emphasis added). Although the emphasized sentence contends it was error not to allow Carolina Container to intervene, the focus of this paragraph and section is on the inability of a Superior Court judge to overrule another Superior Court judge.[2] Further, Carolina Container's brief fails to provide any authority regarding motions to intervene to support the single-sentence argument alleging the trial court erred by

[2] We note the heading of this section of Defendant's argument is "Judge Adams' order contradicts Judge Hill's prior orders holding that Carolina Container is not a 'judgment debtor' under the Foreign Judgments Act," and the only citation to caselaw in this section is to support the proposition that "[o]ne Superior Court judge may not modify, overrule, or change the judgment of another Superior Court judge previously made in the same action." We also note that the Judge Hill Order did not concern the ability of Carolina Container to intervene.

denying the motion to intervene. Carolina Container's failure to provide any legal authority to support its argument regarding any alleged error in the denial of its motion to intervene renders the issue abandoned. *See K2HN Constr. NC, LLC v. Five D Contractors, Inc.*, 267 N.C. App. 207, 213, 832 S.E.2d 559, 564 (2019) ("This Court has routinely held an argument to be abandoned where an appellant presents argument without [supporting legal] authority and in contravention of [Rule 28(b)(6)]."); N.C. R. App. P. 28(b)(6) (2021) ("Issues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned. . . . The body of the argument and the statement of applicable standard(s) of review shall contain citations of the authorities upon which the appellant relies.").

¶ 14 In its reply brief, Carolina Container contends that the opening brief did challenge the denial of the motion to intervene in the above sentence and cites two cases as supporting authority for the proposition that it was erroneous to deny its motion to intervene. Assuming, *arguendo*, that this minimal appeal to authority would be sufficient to satisfy Rule 28(b), it comes too late to avoid abandonment of this issue. *See McLean v. Spaulding*, 273 N.C. App. 434, 441, 849 S.E.2d 73, 79 (2020) ("Under Rule 28(b)(6) of the North Carolina Rules of Appellate Procedure, where a party fails to assert a claim in its principal brief, it abandons that issue and cannot revive the issue *via* reply brief."), *disc. rev. denied*, 376 N.C. 900, 855 S.E.2d 279 (2021); N.C. R. App. P. 28(h) (2021) ("Any reply brief which an appellant elects to file

shall be limited to a concise rebuttal of arguments set out in the appellee's brief and shall not reiterate arguments set forth in the appellant's principal brief."). As a result, Carolina Container has abandoned any issue regarding error in failing to grant the motion to intervene, along with its right to appeal this issue. *See* N.C. R. App. P. 28(a) (2021) ("The scope of review on appeal is limited to issues so presented in the several briefs. Issues not presented and discussed in a party's brief are deemed abandoned."); N.C. R. App P. 28(b)(6) (2021) ("Issues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned."). We decline to invoke Rule 2 to address this issue. *See generally* N.C. R. App. P. 2 (2021).

¶ 15 As a result of Carolina Container's abandonment of its challenge to the trial court's denial of its motion to intervene, we must look elsewhere for a right to appeal. However, in *Bailey v. State* our Supreme Court found the Attorney General had no right to appeal because it was a nonparty, holding:

> In order to confer jurisdiction on the state's appellate courts, appellants of lower court orders must comply with the requirements of Rule 3 of the North Carolina Rules of Appellate Procedure. The provisions of Rule 3 are jurisdictional, and failure to follow the rule's prerequisites mandates dismissal of an appeal. In addition, the rules of the [North Carolina] Supreme Court that regulate appeals, such as Rule 3, are mandatory and must be observed. The rule may not be disregarded by the legislature, by the judge of a superior court, or by litigants or counsel.

> Rule 3 specifically designates that "any *party* entitled by law to appeal from a judgment or order of a superior or district court rendered in a civil action or special proceeding may take appeal." More specifically, only a party aggrieved may appeal a trial court order or judgment, and such a party is one whose rights have been directly or injuriously affected by the action of the court.
>
> *A careful reading of Rule 3 reveals that its various subsections afford no avenue of appeal to either entities or persons who are nonparties to a civil action. Therefore, as we have already determined that the Attorney General is not a party to the case sub judice, we can find no grounds on which to allow his appeal. Accordingly, as presented, it must be dismissed.*

Bailey v. State, 353 N.C. 142, 156, 540 S.E.2d 313, 322 (2000) (second emphasis added) (citations omitted) (quoting N.C. R. App. P. 3(a) (2000)). Although Carolina Container filed a motion to intervene, unlike the Attorney General in *Bailey*, our Supreme Court's reasoning and holding regarding nonparties and their right to appeal under Rule 3 in *Bailey* still controls due to Carolina Container's abandonment of any argument regarding the denial of its motion to intervene. Here, since Carolina Container has abandoned any challenge to the denial of its motion to intervene, we must dismiss Carolina Container's appeal for lack of a right to appeal as it is readily apparent, and Carolina Container does not contest, that it is a nonparty.

¶ 16 The Judge Hill Order found Carolina Container "is a non-party to the [Michigan Order]." As Carolina Container concedes, neither party appealed the Judge Hill Order at the time it was entered or challenged it on appeal here and this

finding remains binding as the law of the case. *See Wellons v. White*, 229 N.C. App. 164, 179, 748 S.E.2d 709, 720 (2013) (marks omitted) ("The law of the case doctrine provides that when a party fails to appeal [an] order, the decision below becomes the law of the case and cannot be challenged in subsequent proceedings in the same case."); N.C. R. App. P. 28(a) (2021) ("Issues not presented and discussed in a party's brief are deemed abandoned."). As a result, the binding finding that Carolina Container is a nonparty to this action precludes Carolina Container from having a right to appeal in the absence of a valid appeal from a motion to intervene, pursuant to *Bailey*. *See Bailey*, 353 N.C. at 156, 540 S.E.2d at 322.

¶ 17 Without a right to appeal the denial of its motion to intervene due to the abandonment of the issue on appeal, Carolina Container is a nonparty without a right to appeal and we must dismiss this appeal. *See id.*

CONCLUSION

¶ 18 Although Carolina Container filed a motion to intervene that could provide a right to appeal if the motion's denial was challenged, Carolina Container abandoned any such right to appeal by failing to provide an argument with supporting authority in its principal brief. Further, Carolina Container, as a nonparty, does not have a right to appeal pursuant to Rule 3. As a result, Carolina Container does not have a right to appeal this case and we dismiss the appeal.

DISMISSED.

Chief Judge STROUD and Judge COLLINS concur.

Report per Rule 30(e).