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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-65

No. COA21-381

Filed 1 February 2022

Wake County, No. 20 CVD 8897

DENNIS DAVID BOSSIAN, Plaintiff,

v.

ANDREW PAUL CHICA, KIMBERLY ANN BOSSIAN, Defendants.

Appeal by plaintiff from order entered 17 February 2021 by Judge Ned Mangum in Wake County District Court. Heard in the Court of Appeals 11 January 2022.

John M. Kirby for plaintiff-appellant.

Tharrington Smith, LLP, by Jeffrey R. Russell, Alice C. Stubbs, and Casey C. Fidler, for defendants-appellees.

ARROWOOD, Judge.

¶ 1

Dennis David Bossian (“father”) appeals from an order granting Kimberly Ann Bossian (“mother”) and Andrew Paul Chica (“defendant Chica”; together with mother, “defendants”) a motion to dismiss, thus dismissing father’s complaint, and allowing defendants’ motion for Rule 11 sanctions. On appeal, father contends the trial court erred in dismissing his complaint and in imposing Rule 11 sanctions. For the

following reasons, we dismiss father’s appeal as interlocutory.

I. Background

¶ 2 Father and mother were married on 22 August 1998 and had two children, “J.J.” and “J.D.”¹ “On or about” 1 August 2013, mother filed for divorce from father.

¶ 3 On 12 February 2015, the trial court entered an order granting mother primary physical custody of the children, while granting father, who lived in Rhode Island, visitation during the children’s Spring Break holiday and for two weeks during the summer.

¶ 4 On 22 February 2016, father and mother agreed to allow J.D., at J.D.’s request, to move to Rhode Island and live with father. Accordingly, J.D. moved to Rhode Island in July 2016 and lived there for approximately two years. In June 2018, J.D. flew to North Carolina to stay with mother, who lived with defendant Chica and J.J. Thereafter, J.D. never returned to Rhode Island.

¶ 5 On 11 March 2020, mother filed a motion for order to show cause and, in the alternative, a motion for contempt, in which mother alleged father had “willfully refused to make any child support payments since January of 2016[,]” had “willfully refused to pay his half of the children’s unreimbursed medical expenses[,]” and had “willfully refused to pay the \$1,800 distributive award” resulting from the sale of the

¹ Pseudonyms are used for ease of reading and to protect the privacy of the then minor children.

former marital residence. On 1 May 2020, the trial court entered an order to appear and show cause against father.

¶ 6

The matter came on for hearing on 25 August 2020; father failed to appear. Then, on 18 September 2020, the trial court held father in contempt “for having willfully violated the [trial] [c]ourt’s Orders[,]” stating he “may purge his contempt . . . by paying [mother] child support arrears[,] . . . past due medical expenses[,]” and “the distributive award in the total amount of \$1,800”; were he not to comply, father would face arrest. Additionally, the trial court found that, although its “Order was never modified[] and no motion to modify custody or child support was filed by either party[,]” both father and mother agreed and confirmed that J.D. “resided with [father] from July of 2016 through June 19, 2018” and that, “[i]n June of 2018, [J.D.] returned to [mother]’s physical custody.”

¶ 7

On 11 August 2020, father, acting *pro se*, filed a complaint against defendants for “tortious interference with parental rights[,]” libel per se, and “tortious interference with contract[,]” Specifically, father alleged defendants “knowingly, willfully, intentionally, and with reckless disregard . . . induced [J.D.] to leave his home state of Rhode Island and take up residence in North Carolina[,]” resulting in “the loss of the society and companionship” of J.D. for father. Father also alleged that mother published false statements when she “signed a verified complaint” alleging father had “willfully refused to make any child support payments since January of

2016[.]” which, he argued, “would tend to impeach his reputation and credibility as a licensed attorney[.]”² Lastly, father alleged defendant Chica had “willfully, intentionally, maliciously and without a proper societal motive[] interfered with the contractual ‘consent agreement’ entered into between” father and mother that allowed J.D.’s return to Rhode Island in 2016.

¶ 8

On 19 November 2020, defendants filed an answer and counterclaims for intentional infliction of emotional distress and “punitive damages related to intentional infliction of emotional distress[.]” Therein, defendants also made three motions: a motion for “gatekeeper order” to “prevent [father]’s abuse of the judicial process[.]” alleging that father “has a history of filing frivolous pleadings against” mother; a motion for Rule 11 sanctions, alleging that father had “filed this cause of action for the purpose of harassing the [d]efendants[.]” since, they contend, “there is no binding and enforceable contract in existence” with which defendant Chica could have tortiously interfered; and a motion to dismiss pursuant to North Carolina Rules of Civil Procedure Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

¶ 9

The matter came on for trial on 11 February 2021 in Wake County District Court, Judge Mangum presiding. By order entered 17 February 2021, the trial court

² Father is an attorney licensed in the states of Massachusetts and Rhode Island.

granted defendants’ motion to dismiss father’s complaint for failure “to allege facts sufficient to state his claims for relief,” thus dismissing father’s complaint, and granted defendants’ motion for Rule 11 sanctions, finding father’s complaint was “not verified, not well grounded in fact, not warranted by existing [l]aw, and is done to harass” defendants. The trial court then reserved “the right to consider [d]efendant[s]’ request for a Gate Keeper Order for any new filings of [father] against [d]efendants in Wake County Court”

¶ 10 Father, through appellate counsel, gave notice of appeal on 16 March 2021.

II. Discussion

¶ 11 Father argues the trial court erred in dismissing his claim for alienation of affections of his child and tortious interference with contract, and in imposing Rule 11 sanctions. We first address the interlocutory nature of this appeal.

¶ 12 “‘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).

¶ 13 Father concedes, in a footnote, that he appeals from an interlocutory order. However, father argues, because defendants’ counterclaim “is based on an argument that [father]’s case was frivolous” and “[w]hether [father]’s claim was meritorious or

frivolous is at issue in the [trial court]’s Order[.]” the order “affects a substantial right . . . [d]ue to the possibility of inconsistent verdicts[.]” Thus, father claims, he is “entitled to appeal from the ruling.” Thereafter, father cites generally to other opinions in which our appellate courts found interlocutory orders affected a substantial right by way of a risk of inconsistent verdicts; father does not draw any specific comparisons therefrom to the case at bar.

¶ 14 This is the full extent of father’s argument in favor of his immediate appeal. Not only is this argument severely lacking in substance, but it also hinges entirely on the unlikely event that the trial court, after dismissing father’s complaint, would conclude that the complaint is actually meritorious.

¶ 15 We conclude father has failed to show that 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). Accordingly, we dismiss this appeal as interlocutory.

III. Conclusion

¶ 16 For the foregoing reasons, we dismiss father’s appeal.

DISMISSED.

Judges HAMPSON and CARPENTER concur.

Report per Rule 30(e).