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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-321

No. COA21-542

Filed 3 May 2022

Catawba County, No. 20-CVD-1275

CAMERON MAIWALD, Plaintiff,

v.

KRISTEN MAIWALD, Defendant.

Appeal by plaintiff from orders entered 9 April 2020 by Judge Andrea C. Plyler in Catawba County District Court. Heard in the Court of Appeals 5 April 2022.

The Nesmith Firm, PLLC, by Erica R. Nesmith, for plaintiff-appellant.

Sigmon, Clark, Mackie, Hanvey & Ferrell, P.A., by J. Scott Hanvey, for defendant-appellee.

GORE, Judge.

I. Background

¶ 1 Plaintiff Cameron Maiwald and defendant Kristen Maiwald were married on 19 March 2016. During their marriage, one child was born on 1 June 2019.

¶ 2 Defendant is employed as a Senior Deputy Register of Deeds at the Iredell County Register of Deeds Office. Plaintiff is employed at Maiwald Underground, LLC, a North Carolina Limited Liability Company, which was formed during the parties'

marriage. Plaintiff owns 100% of the membership interest in Maiwald Underground, LLC.

¶ 3

The parties separated sometime in January 2020 and have lived continuously apart since. On 14 May 2020, plaintiff filed a Complaint for Equitable Distribution, Child Custody, Child Support, Attorney's Fees and Motion for Temporary Custody. Plaintiff filed an Amended Complaint on 19 May 2020. After receiving an Extension of Time to Answer or Otherwise Plead, defendant filed an Answer and Counterclaim and Motion for the Appointment of Business Appraiser on 6 August 2020. As part of her counterclaim, defendant sought child custody, child support, alimony, post-separation support, attorney's fees, and equitable distribution. In her Motion for the Appointment of Business Appraiser, defendant alleged that plaintiff's ownership interests in Maiwald Underground, LLC is marital property and subject to equitable distribution. Defendant asked the trial court to appoint an expert witness appraiser, pursuant to Rule 706 of the North Carolina Rules of Evidence and N.C. Gen. Stat. § 50-21, for the purpose of equitable distribution, to determine the value of Maiwald Underground, LLC. Plaintiff answered defendant's Counterclaim on 2 September 2020.

¶ 4

Plaintiff filed an Equitable Distribution Affidavit on 17 August 2020. In this affidavit, plaintiff listed Maiwald Underground, LLC as separate property belonging to him. On 16 September 2020, defendant filed her Equitable Distribution Affidavit.

¶ 5 On 2 September 2020, plaintiff filed an Objection to Appointment of Business Appraiser. In his objection, plaintiff contends there is no basis for evaluation of Maiwald Underground, LLC, because the business entity is separate property.

¶ 6 On 28 September 2020, defendant's Motion for Appointment of Business Appraiser came on for hearing in Catawba County District Court. Following oral arguments, Judge Amy Walker orally granted defendant's motion. Plaintiff was to initially bear the full cost of the business appraiser. Following the hearing, on 5 February 2021, plaintiff filed a Motion for Reconsideration of Pending Order, arguing that since the hearing, there was an intervening development which affects his ability to bear the cost of the business appraiser and warrants reconsideration. Plaintiff's Motion for Reconsideration of Pending Order was heard on 29 March 2021, by Judge Andrea C. Plyler. Judge Plyler denied plaintiff's motion. Before the entry of Judge Plyler's order, plaintiff filed Notice of Objection to Proposed Order Denying Motion for Reconsideration of Pending Order. Judge Plyler's Order Denying Motion for Reconsideration of Pending Order was entered on 9 April 2021, concluding that plaintiff failed to produce sufficient evidence or reasons to justify reconsideration of the court's prior ruling.

¶ 7 Additionally, on 9 April 2021, an Order for Appointment of Independent Expert Appraiser was entered. The findings of fact in this Order include findings that there has been no evidence entered to show Maiwald Underground LLC is not marital

property and that the appointment of an expert appraiser is necessary to accomplish an equitable distribution. The Order appointed George B. Hawkins as an independent appraiser. The Order requires plaintiff to initially pay the fees and costs of the expert appraiser, however, the Order expressly states that at the equitable distribution hearing, “the Court may ultimately assess these fees and costs of George B. Hawkins to either the Plaintiff or the Defendant, in the Court’s discretion.” At the time this Order was entered, the trial court had held a hearing on and entered an Order Granting Post-Separation Support and Granting Child Support. However, the trial court has yet to hold a hearing or enter an order on the issue of equitable distribution.

¶ 8 Plaintiff filed timely notice of appeal on 15 April 2021.

II. Interlocutory Appeal

¶ 9 Plaintiff admits that this appeal is interlocutory and generally would not be immediately appealable. Plaintiff argues that this Court has jurisdiction over the present appeal as the appeal regards an issue of substantial right.

¶ 10 “Generally, there is no right of immediate appeal from interlocutory orders and judgments.” *Goldston v. Am. Motors Corp.*, 326 N.C. 725, 725, 392 S.E.2d 735, 736 (1990). “An interlocutory order is one made during the pendency of an action, which does not dispose of the case, but leaves for further action by the trial court in order to settle and determine the entire controversy.” *Veazey v. City of Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950) (citations omitted).

¶ 11 There are at least two instances where immediate review of an interlocutory order or judgment is available. “First, immediate review is available when the trial court enters a final judgment as to one or more, but fewer than all, claims or parties and certifies there is no just reason for delay. . . . Second, immediate appeal is available from an interlocutory order or judgment which affects a substantial right.” *Sharpe v. Worland*, 351 N.C. 159, 161-62, 522 S.E.2d 577, 579 (1999) (citation and quotation marks omitted). “[T]he appellant has the burden of showing this Court that the order deprives the appellant of a substantial right which would be jeopardized absent a review prior to a final determination on the merits.” *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 380, 444 S.E.2d 252, 254 (1994) (citation omitted). “The appellant[] must present more than a bare assertion that the order affects a substantial right; they must demonstrate *why* the order affects a substantial right.” *Hoke Cnty. Bd. of Educ. v. State*, 198 N.C. App. 274, 277-78, 679 S.E.2d 512, 516 (2009) (emphasis in original).

¶ 12 “Admittedly the ‘substantial right test’ for appealability of interlocutory orders is more easily stated than applied. It is usually necessary to resolve the question in each case by considering the particular facts of that case and the procedural context in which the order from which appeal is sought was entered.” *Waters v. Qualified Pers., Inc.*, 294 N.C. 200, 208, 240 S.E.2d 338, 343 (1978). “Essentially a two-part test has developed – the right itself must be substantial and the deprivation of that

substantial right must potentially work injury to plaintiff if not corrected before appeal from final judgment.” *Goldston*, 326 N.C. at 726, 392 S.E.2d at 736 (citation omitted). “Our courts have generally taken a restrictive view of the substantial right exception.” *Turner v. Norfolk S. Corp.*, 137 N.C App. 138, 142, 526 S.E.2d 666, 670 (2000) (citation omitted).

¶ 13 In the present appeal, plaintiff stipulates that the trial court has not certified that the issue is ripe for immediate appeal under Rule 54(b) of the North Carolina Rules of Civil Procedure. Thus, for this Court to review the interlocutory judgment plaintiff must demonstrate that the judgment impacts a substantial right. Plaintiff argues that the trial court’s order affects a substantial right because the order requires plaintiff to pay a substantial monetary amount for the appointed expert’s retainer. Alternatively, plaintiff argues that the order affects a substantial right because he could potentially be held in contempt and imprisoned if he is unable to pay the ordered amount.

¶ 14 This Court generally holds orders which are not final or are temporary in nature do not affect a substantial right. *See Steadman v. Steadman*, 148 N.C. App. 713, 714, 559 S.E.2d 291, 292 (2002) (dismissing appeal as interlocutory when the trial court had yet to determine the precise amount of money due plaintiff); *Watts v. Slough*, 163 N.C. App. 69, 72, 592 S.E.2d 274, 277 (2004) (dismissing appeal as interlocutory when trial court reserved for “a later hearing” the amount to be awarded

in costs and attorney's fees); *State ex rel. Comm'r of Ins. v. N.C. Rate Bureau*, 102 N.C. App. 809, 811, 403 S.E.2d 597, 599 (1991) (dismissing appeal as interlocutory when trial court's order temporarily froze the distribution of funds while the proper recipients were determined); *but see Beasley v. Beasley*, 259 N.C. App. 735, 742, 816 S.E.2d 866, 872-73 (2018) (allowing appellate review of an interlocutory order awarding attorney's fees as affecting a substantial right when the order for attorney's fees pertained to final awards of child support, child custody, and post-separation claims despite the fact that the issue of equitable distribution remained pending in the case). Here, the trial court's order requires plaintiff to pay initial fees for the expert witness, but explicitly retains the final apportionment of fees to be determined at the equitable distribution hearing. "It has been held that an order which completely disposes of one of several issues in a lawsuit affects a substantial right." *Case v. Case*, 73 N.C. App. 76, 78-79, 325 S.E.2d 661, 663, *disc. rev. denied*, 313 N.C. 597, 330 S.E.2d 606 (1985) (citations omitted). The inverse to this statement of law must also be true; an order which does not completely dispose of an issue does not affect a substantial right. In the instant matter, the trial court's order only temporarily apportioned the complete burden of the expert witness's fees to plaintiff. The plain language of the trial court's order indicates that the final apportionment of fees will be evaluated at the equitable distribution hearing and will be factored into the trial court's equitable distribution order. Thus, we conclude that the trial court's

order is temporary in nature and does not affect a substantial right.

III. Conclusion

¶ 15 The trial court's order is interlocutory and neither of the exceptions allowing immediate review of an interlocutory order apply to the present matter. Thus, we dismiss plaintiff's appeal as interlocutory.

DISMISSED.

Judges MURPHY and GRIFFIN concur.

Report per Rule 30(e).