An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-508

No. COA21-590

Filed 19 July 2022

Durham County, No. 21 CVS 1500

MARTIN SEARCY, Plaintiff,

v.

TASHAN THORNTON, AKANKE MASON-HOGANS, CHLOE EMEHEL, CHRISTIAN GARCIA, JANAI YARD, NATE' STOWE, and MARIA SHOBANDE, Defendants.

Appeal by Plaintiff from order entered 3 June 2021 by Judge Orlando Hudson, Jr., in Durham County Superior Court. Heard in the Court of Appeals 7 June 2022.

Asheville Legal, by Annabelle M. Chambers and Jake A. Snider, for Plaintiff-Appellant.

Sherrill and Emehel, PA, by Johneric C. Emehel and W. Terry Sherrill, for Defendant-Appellee Chloe Emehel.

INMAN, Judge.

¶ 1 Plaintiff-Appellant Martin Searcy ("Mr. Searcy") appeals from an order dismissing his defamation claim against Defendant-Appellant Chloe Emehel ("Ms. Emehel") for failure to state a claim. Because Mr. Searcy has not met his burden of demonstrating grounds for accepting his interlocutory appeal, we dismiss.

I. FACTUAL AND PROCEDURAL HISTORY

¶ 2 In December 2019, Frances Kendrick ("Ms. Kendrick") accused Mr. Searcy, her then classmate at North Carolina Agricultural and Technical State University (the "University"), of sexually assaulting her by kissing her neck and touching her butt while she was asleep. Plaintiff denied the allegation. After Ms. Kendrick reported the alleged assault to University Police, the Title IX Office conducted an investigation and, on 3 June 2020, held an administrative student conduct hearing. The University ultimately determined Mr. Searcy had not violated the Student Conduct Regulations, including the "Student Sexual Misconduct Policy," or committed assault or battery. Ms. Kendrick's appeal of the Title IX decision was denied.

¶ 3 After the Title IX decision, Ms. Kendrick released a written statement expressing her dissatisfaction with the University and the Title IX proceedings. She did not identify Mr. Searcy in the statement but instead referred to him as "her friend" and "sexual abuser." Several students at the University shared Ms. Kendrick's statement on social media platforms, and many of their posts named Mr. Searcy as the alleged sexual assailant.

¶ 4 Ms. Emehel was one of the individuals who wrote about Mr. Searcy and the alleged sexual assault. Although she was a high school student at the time, Ms. Emehel was enrolled with the University for the next academic year and was a member of a private group chat called the "Cheatham-White Scholars." She sent the

following message to the group:

> not tryna bash but you but yeah maybe you could put something of substance in that message and then consider sending it to Wellman, the honors program, whoever. and also, i don't have a clue why you all seem to be so scared to say his name. the assailant's name was Martin Searcy. MARTIN FUCKING SEARCY. and i don't give a fuck that he's in this chat and sees that we're talking about him, and i was hoping that you all didn't either. he needs to know that we know what that the fuck he did and that we will not condone or tolerate his behavior, especially since he's a CW and we should be keeping each other accountable. Martin Searcy needs to know that we are coming for him and will bring this girl to justice. @Martin Searcy should be fucking scared because we shouldn't let him get away with this. he needs to know that we won't just "let boys be boys" anymore. but if we're working together i'm looking forward to seeing what we as CW scholars come up with in terms of making a plan of action.

Mr. Searcy was a member of the group chat and the message was visible to all members.

¶ 5 On 20 January 2021, Mr. Searcy sued Ms. Emehel, Tashan Thornton, Akanke Mason-Hogans, Christian Garcia, Janai Yard, Nat'e Stowe, and Mariah Shobande ("Ms. Shobande"), alleging defamation for various social media posts, statements, and messages about Mr. Searcy and the alleged sexual assault.

¶ 6 On 25 March 2021, Ms. Shobande filed a motion to dismiss pursuant to North Carolina Rule of Civil Procedure 12(b)(6) for failure to state a claim. After a hearing, the trial court granted her motion. On 5 April 2021, Ms. Emehel filed her answer

and motion to dismiss. The trial court conducted a hearing and granted her motion to dismiss pursuant to Rule 12(b)(6) on 3 June 2021, concluding the Complaint failed to state a claim upon which relief could be granted. In its order, the trial court reasoned Ms. Emehel's statement was protected speech, "cannot reasonably be interpreted as asserting actual facts," was an expression of opinion in support of the alleged victim, and the Complaint "discloses facts that necessarily defeat the claim." Mr. Searcy appeals only the trial court's order granting Ms. Emehel's motion to dismiss.

II. APPELLATE JURISDICTION

¶ 7 Mr. Searcy acknowledges that the trial court's order was interlocutory at the time he filed his appeal because his claims against the other defendants remained outstanding. But he declares in his brief, without pointing to any support in the appellate record, that "all other defendants and claims have been resolved" subsequent to his notice of appeal from the trial court's order dismissing his claim against Ms. Emehel, so the order is a "final, immediately appealable judgment."

¶ 8 While the record discloses the trial court also granted Ms. Shobande's motion to dismiss on 18 May 2021, it does not contain the disposition of Mr. Searcy's claims against the remaining defendants. The supplement to the record includes several of the defendants' motions to dismiss or for judgment on the pleadings but no corresponding trial court orders on those motions. We cannot rely on Mr. Searcy's

blanket assertion in his brief that his other claims, including against Ms. Shobande, are resolved. Our review on appeal is limited to the record before us. N.C. R. App. P. 9(a) (2022) ("In appeals from the trial division of the General Court of Justice, review is solely upon the record on appeal. . . . Parties may cite any of these items in their briefs and arguments before the appellate courts.").

¶ 9 Mr. Searcy also contends interlocutory review would be appropriate pursuant to N.C. Gen. Stat. §§ 1-277, 7A-27(b)(3)(a) (2021), because the order affects his substantial right "to avoid the possibility of two trials on the same issues[.]" *Davidson v. Knauff Ins. Agency*, 93 N.C. App. 20, 25, 376 S.E.2d 488, 491 (1989) (quotation marks and citation omitted). This contention directly contradicts Mr. Searcy's representation to this Court that all of his claims against the other defendants have been resolved. Taking his assertion at face value, it would not be possible for two trials to proceed on the same issues.

¶ 10 Mr. Searcy has not established this Court's jurisdiction over his interlocutory appeal, so we must dismiss. *See Hanesbrands Inc. v. Fowler*, 369 N.C. 216, 218, 794 S.E.2d 497, 499 (2016) ("It is the appellant's burden to present appropriate grounds for 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."); *see also* N.C. R. App. P. 28(b)(4) (2022) ("When an appeal is

interlocutory, the statement must contain sufficient facts and argument to support appellate review on the ground that the challenged order affects a substantial right.”).

III. CONCLUSION

¶ 11 Because Mr. Searcy has failed to meet his burden of establishing grounds for accepting his interlocutory appeal and because we cannot discern the resolution of Mr. Searcy’s claims against the remaining defendants upon the appellate record, we dismiss this appeal.

DISMISSED.

Judges HAMPSON and GRIFFIN concur.

Report per Rule 30(e).