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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-536

Filed 07 February 2023

Wake County, No. 21 CVD 3464

MARGUERITE GROOMS, Plaintiff,

v.

JASON GROOMS, Defendant.

Appeal by defendant from order entered 20 April 2022 by Judge Ned W. Mangum in Wake County District Court. Heard in the Court of Appeals 10 January 2023.

Marguerite Grooms, pro se, for plaintiff-appellee.

Levy Law Offices, by Joshua N. Levy, for defendant-appellant.

ARROWOOD, Judge.

Jason Grooms (“defendant”) appeals from an order denying his motion for summary judgment for sole legal custody. On appeal, defendant argues the court’s order denying his motion is regarding “permanent custody,” and therefore appealable. For the following reasons, we dismiss defendant’s appeal as interlocutory.

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I. Background

Defendant and Marguerite Grooms (“plaintiff”) (collectively “the parties”) were married on 5 August 2011. The parties had two children together, born 23 April 2014 and 13 June 2016. The parties separated on 19 May 2020.

Plaintiff filed a complaint requesting “joint temporary and permanent physical and legal custody” of both children on 11 March 2021. On 12 April 2021, defendant filed an answer, asserting multiple counterclaims. Specifically, defendant argued plaintiff’s behavior and drug use placed their children at risk of injury and it would be in the best interest of the children for defendant to be granted temporary and permanent custody of the parties’ children.

A hearing was held regarding temporary custody of the children on 28 April 2021 in Wake County District Court, Judge Anna Worley presiding. On 8 May 2021, Judge Worley filed an order regarding temporary custody, granting plaintiff and defendant “temporary joint legal custody” of the children, granting defendant “temporary primary physical custody” of the children, and granting plaintiff “temporary secondary physical custody[.]” The order was “closed without prejudice.”

Thereafter, defendant filed “Requests for Admission, Interrogatories, and Requests for Production of Documents[.]” requesting an answer from plaintiff within thirty days of the filing date, 18 June 2021. On 13 August 2021, defendant filed a motion for summary judgment, asserting that plaintiff failed to respond to his

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18 June 2021 request, thereby admitting to all allegations, and arguing that there was “no genuine issue of material fact concerning the best interests of the minor children.” Specifically, defendant sought “summary judgment on his counterclaim for sole legal custody” and “summary judgment against the [p]laintiff’s . . . claim for joint legal custody of the minor children[.]” On that same day, defendant filed a motion to compel plaintiff to respond to his initial request.

Plaintiff, through counsel, filed her “First Set of Interrogatories to Defendant” and “First Set of Requests for Production of Documents” on 22 October 2021. Thereafter, plaintiff’s attorney requested, with plaintiff’s consent, a motion to withdraw as the attorney of record. Plaintiff continued *pro se*.

On 20 April 2022, after a hearing regarding the matter, Judge Mangum entered an order denying defendant’s motion for summary judgment, finding there were “genuine issues of material fact.” Plaintiff filed a notice of appeal regarding Judge Mangum’s order on 6 May 2022.

II. Discussion

On appeal, defendant contends the trial court erred by denying his motion for summary judgment on his counterclaim for sole legal custody. Specifically, defendant argues that under Rule 36 and Rule 56 of the North Carolina Rules of Civil Procedure, he “conclusively” established a basis for the award of sole custody and the denial of his motion is regarding permanent custody and therefore appealable. Defendant

further argues the trial court committed “reversible error” by not identifying “which facts were established, and which facts were disputed when it denied [defendant’s] motion[.]” However, before addressing the merits of these contentions, we must first consider whether defendant’s appeal is interlocutory.

“An order is either ‘interlocutory or the final determination of the rights of the parties.’” *Hamilton v. Mortg. Info. Servs., Inc.*, 212 N.C. App. 73, 76, 711 S.E.2d 185, 188 (2011) (quoting N.C. Gen. Stat. § 1A-1, Rule 54(a)). “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.” *Veazey v. City of Durham*, 231 N.C. 357, 361-62, 57 S.E.2d 377, 381 (1950) (citation omitted). Conversely, “[a]n 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.” *Id.* at 362, 57 S.E.2d at 381 (citation omitted).

“As a general rule, the denial of a motion for summary judgment is a nonappealable interlocutory order.” *Nw. Fin. Grp., Inc. v. Cty. of Gaston*, 110 N.C. App. 531, 535, 430 S.E.2d 689, 692, *disc. review denied*, 334 N.C. 621, 435 S.E.2d 337 (1993) (citation omitted). However, “an interlocutory order may be appealed immediately . . . if (i) the trial court certifies the case for immediate appeal pursuant to N.C. [Gen. Stat.] § 1A-1, Rule 54(b), or (ii) the order ‘affects a substantial right of the appellant that would be lost without immediate review.’” *McIntyre v. McIntyre*, 175 N.C. App. 558, 562, 623 S.E.2d 828, 831 (2006) (citation omitted).

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When an appellant is appealing an interlocutory order, their statement of the grounds for appellate review “must contain sufficient facts and argument to support appellate review on the ground that the challenged order affects a substantial right.” N.C.R. App. P. 28(4) (2023). Here, defendant does not argue that the denial of his motion for summary judgment affects a substantial right, but rather argues that the denial of his motion is “a decision regarding permanent custody that is appealable[.]” Defendant is mistaken.

Normally, “a temporary child custody order is interlocutory and does not affect any substantial right . . . which cannot be protected by timely appeal from the trial court’s ultimate disposition . . . on the merits.” Temporary custody orders resolve the issue of a party’s right to custody pending the resolution of a claim for permanent custody. The trial court’s mere designation of an order as “temporary” is not sufficient to make the order interlocutory and nonappealable.

Brewer v. Brewer, 139 N.C. App. 222, 227-28, 533 S.E.2d 541, 546 (2000) (citations omitted). However, a custody order is temporary if “(1) it is entered without prejudice to either party[;] (2) it states a clear and specific reconvening time in the order and the time interval between the two hearings was reasonably brief; or (3) the order does not determine all the issues.” *Senner v. Senner*, 161 N.C. App. 78, 81, 587 S.E.2d 675, 677 (2003) (citations omitted).

Here, defendant’s motion for summary judgment is interlocutory. Our precedent is clear that denial of a motion for summary judgment is generally interlocutory, and therefore nonappealable, unless the order affects a substantial

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right or is certified for immediate appeal. *McIntyre*, 175 N.C. App. at 562, 623 S.E.2d at 831. Neither is applicable here, nor does defendant argue that either exception applies. Furthermore, defendant's contention that denial of his motion is regarding "permanent custody" is without merit since nothing in the record indicates a final custody order has been issued. The only order in the record is the one "Regarding Temporary Custody" issued by Judge Worley in May 2021 that was "closed without prejudice[.]" and is thus considered temporary under our case law. *See Senner*, 161 N.C. App. at 81, 587 S.E.2d at 677.

Defendant did not argue that his appeal affects a substantial right and has therefore failed to present any grounds for this Court to accept his interlocutory appeal. Accordingly, we dismiss defendant's appeal and do not reach the merits of his arguments.

III. Conclusion

For the foregoing reasons, we dismiss defendant's appeal as interlocutory.

DISMISSED.

Judges WOOD and GORE concur.

Report per Rule 30(e).