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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-458

Filed 07 February 2023

Guilford County, No. 20CVD6667

JORDAN CONSULTANTS, ASLA, P.A., Plaintiff,

v.

TRINITY CONSULTING AND DEVELOPMENT, LLC AND TRINITY CONSULTING AND DEVELOPMENT LLC d/b/a TRINITY FUNDING AND CONSULTING, LLC, Defendants.

Appeal by plaintiff from order entered 21 February 2022 by Judge Ashley Watlington-Simms in Guilford County District Court. Heard in the Court of Appeals 15 November 2022.

Perry Legal Services, PLLC, by Maria T. Perry, for plaintiff-appellant.

W. Allan Blackwell Law, PLLC, by W. Allan Blackwell, and Pinto Coates Kyre & Bowers, PLLC, by Britney Michelle Millisor and Jon Ward, for defendants-appellees.

GORE, Judge.

Plaintiff Jordan Consultants seeks appeal of an interlocutory order denying plaintiff's motion for summary judgment. Plaintiff filed motions for summary judgment as to all claims and counterclaims, and the trial court granted summary judgment on the slander of title claim, but denied summary judgment on all other

claims, determining there were genuine issues of material dispute that should be submitted to a jury. Plaintiff seeks review claiming it has a substantial right that will be lost or irreparably harmed if this Court does not allow interlocutory appeal. Conversely, defendants move to dismiss plaintiff's appeal claiming there is no right to interlocutory appeal. Upon review of the parties' briefs and the record as it stands, we grant defendants' motion for dismissal.

I.

Plaintiff and defendants entered into a contractual agreement for plaintiff to provide "landscape architectural and civil engineering services" at defendants' property in Greensboro, North Carolina. Defendants claim plaintiff did not fulfill its obligations under the contract, while plaintiff claims it did fulfill its obligations. After defendants refused to pay certain invoices, plaintiff filed a mechanic's lien and notice of lis pendens. Plaintiff filed a complaint on 24 August 2020 for breach of contract, lien enforcement, and quantum meruit claims against defendants. Defendants raised the following counterclaims against plaintiff: breach of contract and/or moneys owed, slander of title, and unfair and deceptive trade practices ("UDTP"). In response, plaintiff filed a motion to dismiss and motion for summary judgment on all of defendants' counterclaims.

The parties engaged in discovery and on 10 December 2021, plaintiff filed another motion for summary judgment on all its claims. On 15 February 2022, the trial court heard arguments on plaintiff's pending motions. The trial court entered

an order on 21 February 2022 granting summary judgment for the slander of title counterclaim and denying plaintiff's motions as to all other claims and counterclaims. On 23 March 2022, plaintiff timely filed a notice of appeal from the interlocutory order. Plaintiff seeks interlocutory appeal of the denied claims and counterclaims, including the UDTP claim.

II.

Our Courts have stated the general rule for an interlocutory appeal many times—that an appeal from an interlocutory order is not ripe for appellate review. *Dep't of Transp. v. Rowe*, 351 N.C. 172, 174, 521 S.E.2d 707, 709 (1999); *Goldston v. Am. Motors Corp.*, 326 N.C. 723, 725, 392 S.E.2d 735, 736 (1990); *Liggett Group, Inc. v. Sunas*, 113 N.C. App. 19, 23, 437 S.E.2d 674, 677 (1993). However, there are two main exceptions carved out of this general rule. *Hudson-Cole Dev. Corp. v. Beemer*, 132 N.C. App. 341, 344, 511 S.E.2d 309, 311 (1999). (1) “[W]here the order represents a final judgment as to one or more but fewer than all of the claims or parties’ and the trial court certifies in the judgment that there is no just reason to delay the appeal,” or (2) “where delaying the appeal will irreparably impair a substantial right of the party.” *Id.* (quotation marks and citations omitted). “Denial of summary judgment is interlocutory in nature and not appealable under [Section] 1-277 . . . , unless a substantial right of one of the parties would be affected if the appeal were not heard prior to final judgment.” *Equitable Leasing Corp. v. Myers*, 46 N.C. App. 162, 164, 265 S.E.2d 240, 242 (1980).

It is this Court's duty to dismiss an interlocutory appeal "as fragmentary and premature unless the order affects some substantial right" *Hanesbrands Inc. v. Fowler*, 369 N.C. 216, 218, 794 S.E.2d 497, 499 (2016) (citation omitted). The party seeking review holds the burden to show it has a substantial right to immediate review. *Id.* (citations omitted). Further, "the North Carolina Rules of Appellate Procedure require that the appellant's brief contain a statement of the grounds for appellate review, which must allege sufficient facts and argument to support appellate review on the ground that the challenged order affects a substantial right." *Id.* at 219, 794 S.E.2d at 499 (quoting N.C.R. App. P. 28(b)(4)) (quotation marks omitted). The party seeking review must provide "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).

A.

Plaintiff admits it is seeking review of an interlocutory order, but asserts it has a substantial right under Section 1-277. N.C. Gen. Stat. § 1-277 (2021). Plaintiff first argues it has a substantial right to a jury trial and cites multiple appellate cases as grounds for the constitutional right to a jury trial. Specifically, it cites to *Lancaster v. Harold K. Jordan and Co.*, stating, "The right to a jury trial accrues only when there is a genuine issue of fact to be decided at trial." 243 N.C. App. 74, 83, 776 S.E.2d 345, 352 (2015) (citation omitted). Additionally, plaintiff cites to *Mathias v. Brumsey*,

in support of its substantial right to a jury trial. 27 N.C. App. 558, 560, 219 S.E.2d 646, 647 (1975) (“The right to a jury trial is a substantial right of great significance.”). However, plaintiff claims the *denial* of its motions for summary judgment on the remaining claims are its deprivation.

In plaintiff’s opinion, only genuine issues of material fact should be submitted to a jury. While the rule for summary judgment does require only “genuine issue[s] as to any material fact” to proceed to a jury trial, plaintiff appears to be seeking a backdoor approach to having this Court review the trial court’s denial of summary judgment. N.C. R. Civ. P. 56(c). Such an argument is confusing, and it lacks legal support. The denial of summary judgment provides plaintiff with the right to a jury trial on the remaining claims. Plaintiff has not met its burden to show a substantial right will be lost if this Court does not review the interlocutory order.

B.

Plaintiff also seeks interlocutory appeal of the UDTP statutory claim arguing it is immune under the learned profession exemption. The Unfair and Deceptive Trade Practices Act (“UDTPA”) includes a carve out within the statute to prevent actions of this type against “a member of a learned profession.” N.C. Gen. Stat. § 75-1.1(b) (2021). To qualify for the exemption, the party claiming the exemption must prove (1) “the person or entity performing the alleged act [is] a member of a learned profession”; and (2) “the conduct in question [is] a rendering of professional services.” *Sykes v. Health Network Sols., Inc.*, 372 N.C. 326, 334, 828 S.E.2d 467, 472 (2019)

(citation omitted). The term “learned profession[] [is] characterized by the need of unusual learning, the existence of confidential relations, the adherence to a standard of ethics higher than that of the market place, and in a profession like that of medicine by intimate and delicate personal ministrations.” *Cameron v. New Hanover Mem’l Hosp., Inc.*, 58 N.C. App. 414, 445, 293 S.E.2d 901, 920 (1982) (internal quotation marks and citation omitted).

Plaintiff fails to cite any authority proving it is a learned professional. Plaintiff refers to case law dealing with legal professionals exempt under the learned profession carve out and to statutes promulgated for landscape architects. Plaintiff states it is entitled to this exemption as a matter of law but fails to cite to any law to support this. Further, plaintiff cites to *Wallace v. Jarvis* as support for when statutory immunity is applicable. 119 N.C. App. 582, 459 S.E.2d 44 (1995). In *Wallace*, the defendant, who had the burden to show he had a substantial right, relied on a case involving sovereign immunity. *Id.* at 584, 459 S.E.2d at 46. This Court distinguished the sovereign immunity case from the defendant because he was claiming statutory immunity, and the defendant had to first satisfy the requirements of the statute to claim immunity. *Id.* at 585, 459 S.E.2d at 46–47.

Similarly, in the present case, plaintiff has not proved it meets the requirements of the learned profession statutory exemption. Nor is there evidence on the record this challenge was presented to the trial court. Plaintiff broadly asserts it is immune from the UDTPA yet fails to substantiate this claim. To indisputably

show such a case requires plaintiff to ground its claim in law. Plaintiff fails to do so, and by failing to prove its exemption from the statute, plaintiff falls short of relying on immunity for its substantial right to appeal an interlocutory order. *But see Topping v. Meyers*, 270 N.C. App. 613, 617, 842 S.E.2d 95, 99 (2020) (discussing when immunity from suit is a substantial right such that an interlocutory appeal is proper).

Finally, plaintiff's reference to various statutes that require a certification for landscape architects and specify requirements and limitations within the occupation do not prove landscape architects are learned professionals. *See* N.C. Gen. Stat. §§ 89A-1, 89A-2, 55B-2(6) (2022). The "burden of proof" is upon the party claiming exemption under Section 75.1-1. § 75.1-1(d). Specifically, plaintiff cites to § 55B-2(6) as proof a landscape architect is a "professional service" provider. It would appear plaintiff relies on this statute along with the statutes specific to the landscape architect as legal grounds to qualify as a learned profession and be exempted. By relying on these statutes and going no further, plaintiff fails to carry its burden of proving it qualifies for the learned profession exemption, and further that it has a substantial right which would grant this Court jurisdiction to review an interlocutory denial of summary judgment. Accordingly, we grant defendant's motion to dismiss the interlocutory order.

III.

For the foregoing reasons, we grant defendant's motion to dismiss the interlocutory appeal.

DISMISSED.

Chief Judge STROUD and Judge DILLON concur.

Report per Rule 30(e).