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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-684

Filed 07 March 2023

Guilford County, No. 18CVD5582

SHASTA D. STALEY, Plaintiff,

v.

WATERBURY ASSOCIATION, INC.,
WAKE BRIDGE AT WATERBURY
ASSOCIATION, INC., et al., Defendants.

Appeal by plaintiff from orders and judgments entered 12 March 2021 (the “March Order”) and 28 December 2021 (the “December Order”), respectively, by Judge William B. Davis in Guilford County District Court. Heard in the Court of Appeals 25 January 2023.

Shasta D. Staley, pro se, for plaintiff-appellant.

Higgins Benjamin, PLLC, by Margaret M. Chase, for defendants-appellees.

FLOOD, Judge.

Shasta D. Staley (“Plaintiff”) appeals from the March Order that (1) denied her Motion for Leave to Further Amend Complaint; (2) denied her Motion to Show Cause; (3) denied her claims for injunctive relief, trespass, and breach of contract; (4) granted

Wake Bridge at Waterbury Association, Inc.’s (“Defendant HOA”) request for a permanent injunction; and (5) granted Defendant HOA’s request for declaratory judgment. Plaintiff further appeals from the December Order and Judgment that denied her Rule 59 Motion for Reconsideration and granted Defendants’ attorney’s fees.

I. Factual and Procedural Background

In February 2016, Plaintiff purchased a four-acre wooded lot (the “Property”) in a planned development called Wake Bridge at Waterbury (the “Development”), which operates under the purview of Defendant HOA. Defendant HOA is governed by a Board of Directors, of which Robert Conklin (“Defendant Conklin”), Anthony Williams (“Defendant Williams”), and Gary McFarland (“Defendant McFarland”) are members. Upon purchasing the Property, Plaintiff hired a general contractor to build a home in accordance with the Declaration of Covenants, Conditions, and Restrictions (the “Declaration”) for the Development. As required by the Declaration, Plaintiff submitted her landscape design and construction plans to Defendant HOA’s Architectural Control Committee (the “ACC”), and after some back-and-forth, both parties agreed in relevant part that (1) all exterior windows would have “muntins”—vertical and horizontal grids within the window, and (2) the ACC would have the right to inspect the construction site on Mondays between 12:00 p.m. and 12:30 p.m.

During its regularly scheduled inspection of Plaintiff’s home, the ACC observed the Property’s windows lacked the required muntins and notified Plaintiff that

Defendant HOA would conduct a hearing on 23 May 2018 regarding her noncompliance with the Declaration. At the hearing, Defendant HOA found Plaintiff was in violation of the Declaration provision requiring muntins on all exterior windows. On 29 May 2018, Plaintiff filed an initial complaint seeking injunctive relief and damages against Defendant HOA and each individual member of Defendant HOA's Board. Two days later, on 31 May 2018, attorney Margaret Chase, who acted as counsel for all Defendants throughout these actions, wrote Plaintiff a letter directing her to correct the violation by installing muntins on each window. On 30 June 2018, Plaintiff emailed Defendant HOA notifying them that no HOA representative was allowed on the Property, and that should one enter, she would consider them trespassers.

On 2 July 2018, each named Defendant filed a Motion to Dismiss for failure to state a claim under Rule 12(b)(6); answers; and, as for Defendant HOA, a counterclaim seeking declaratory and injunctive relief. Plaintiff then filed a motion to amend her complaint with an attached proposed Amended Complaint which included claims for injunctive relief, breach of fiduciary duty, constructive fraud, unfair and deceptive trade practices, breach of contract, and trespass. By Order entered 31 December 2018, Judge Jonathan Kreider granted Plaintiff's motion to amend and ordered that Plaintiff's Amended Complaint would be deemed filed as of 18 December 2018 and would be considered the operative pleading in evaluating Defendants' motions to dismiss. Further, Judge Kreider's order granted in part and

denied in part Defendants' Rule 12(b)(6) motions to dismiss, leaving in relevant part, Plaintiff's only remaining causes of action: (1) injunctive relief as to Defendant HOA; (2) breach of contract as to Defendant HOA; and (3) an award of nominal damages for trespass against Defendant Williams, Defendant McFarland, and Defendant Conklin.

On 28 September 2018, Judge Mark Cummings granted Defendant HOA a temporary restraining order, prohibiting Plaintiff from obstructing or interfering with "Defendant Wake Bridge at Waterbury Association, Inc.'s weekly limited inspection of the external portion of the home," and further provided that such inspection "will occur on Sundays between 4:00 p.m. and 4:30 p.m. with or without [Plaintiff]."

On 16 December 2019, Plaintiff filed a Motion to Show Cause alleging Defendant Conklin and Defendant Williams trespassed on the Property outside the court-ordered times for inspection.

On 29 October 2020, Plaintiff filed a Motion for Leave to Further Amend the initial complaint that Judge Kreider deemed filed as of 18 December 2018. Plaintiff's second Amended Complaint included a claim for negligent infliction of emotional distress and alleged acts of trespassing on her property.

At trial, the court denied Plaintiff's Motion for Leave to Further Amend. On 11 February 2021, at the close of Plaintiff's presentation, Defendants made a motion to dismiss under Rule 41(b), which the trial court granted. On 12 March 2021, the

trial court entered the March Order denying Plaintiff's Motion to Show Cause and claims for injunctive relief. Additionally, the March Order granted Defendant HOA's request for a permanent injunction and declaratory judgment.

On 22 March 2021, Plaintiff filed a Motion for Reconsideration Under Rule 59, and on 7 April 2021, Defendants filed a Motion for Attorney's Fees. These motions were heard on 3 December 2021 before Judge Davis, who entered the December Order on 22 December 2021 denying Plaintiff's Rule 59 motion and granting Defendants' Motion for Attorney's Fees. Plaintiff made a timely motion for relief from the March Order under Rule 59 of the North Carolina Rules of Civil Procedure, thus tolling the time to file a notice of appeal. Accordingly, on 21 January 2022, Plaintiff appealed from both the March Order and the December Order.

II. Jurisdiction

"[A]ny party entitled by law to appeal from a judgment or order of a superior or district court rendered in a civil action or special proceeding may take appeal by filing notice of appeal" within thirty days after entry of judgment. N.C.R. App. P. 3. If a motion is timely made by "any party for relief under [Rule 59], the thirty day period for taking appeal is tolled as to all parties until entry of an order disposing of the motion and then runs as to each party from the date of entry of the order" N.C.R. App. P. 3(c)(3).

Here, because Plaintiff timely made a Rule 59 Motion for Reconsideration, the period of appealing the March Order was tolled at least thirty days following the entry

of the December Order denying Plaintiff's Rule 59 motion. *See Akshar Distrib. Co. v. Smoky's Mart. Inc.*, 269 N.C. App 111, 117, 837 S.E.2d 621, 626 (2020). For that reason, Plaintiff's claims were timely brought, and this Court has jurisdiction to review.

III. Analysis

Several issues appear before the Court, each stemming from either the March Order or the December Order. For the sake of continuity and clarity, analysis of these issues will be taken chronologically.

A. Motion for Leave to Further Amend Complaint

The first issue before the Court is whether the trial court erred when it denied Plaintiff's 29 October 2020 Motion for Leave to Further Amend Complaint. Given that this motion was made two-and-a-half years after Plaintiff had initiated this action, the complaint had already been amended once nearly two years prior, and the amended complaint was filed on the eve of trial, we conclude the trial court did not abuse its discretion in denying the motion.

A trial court's denial of a request for leave to amend a plaintiff's complaint is reviewed under abuse of discretion. *JPMorgan Chase Bank, Nat'l Ass'n v. Browning*, 230 N.C. App. 537, 541, 750 S.E.2d 555, 559 (2013). The North Carolina Rules of Civil Procedure provide that a party may amend their pleading once as a matter of course, and any additional amendments may be made "by leave of court." N.C. R. Civ. P. 15(a). Further, a court has the discretion to grant leave for additional

amendments “when justice so requires.” *Id.* “If the trial court articulates a clear reason for denying the motion to amend, then our review ends. Acceptable reasons for which a motion to amend may be denied are ‘undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies, undue prejudice and futility of the amendment.’” *JPMorgan Chase Bank, Nat’l Ass’n*, 230 N.C. App. at 541, 750 S.E.2d at 559 (internal quotation omitted).

On 18 December 2018, by consent of Defendants, Plaintiff was granted a motion to amend her initial complaint. Nearly two years later, on 29 October 2020, Plaintiff filed her Motion for Leave to Further Amend Complaint. In the proposed second Amended Complaint, Plaintiff included a new cause of action for negligent infliction of emotional distress, alleging she suffered “severe mental and emotional distress, depression, anxiety, stress, loss of sleep, and loss of the use and enjoyment” of her property as a result of Defendant HOA enforcing the Declaration requirements. In denying Plaintiff’s motion, the trial court found “Plaintiff’s motion to amend, filed more than two years after the action was commenced and after the Plaintiff had already amended her complaint once . . . would materially prejudice” Defendants, causing undue delay.

Considering Plaintiff’s motion was made long after discovery was finished, witnesses had been scheduled, and trial preparation had been completed, the trial court correctly concluded that Defendants would have been materially prejudiced. *See JPMorgan Chase Bank, Nat’l Ass’n*, 230 N.C. App. 537, 750 S.E.2d 555. For these

reasons we conclude the trial court did not abuse its discretion in denying Plaintiff's Motion for Leave to Further Amend Complaint. *Id.* at 541, 750 S.E.2d at 559.

B. The March Order

The next set of issues before the Court arises from the March Order, which denied both Plaintiff's Motion to Show Cause and her claims for injunctive relief, breach of contract, and nominal damages related to an alleged trespass. The March Order further granted Defendant HOA's requests for a permanent injunction and declaratory relief. On appeal, Plaintiff narrows the scope of her causes of action to two separate and distinct events: an incident of alleged trespass occurring on 12 December 2019, and a second alleged incident of trespass, occurring on an unknown date. Plaintiff argues these two separate instances of alleged trespass are evidence Defendant HOA breached the contract created by the Declaration. Upon a thorough review of the record, we disagree.

The trial court's conclusions of law are reviewed by this Court *de novo*. *State v. Biber*, 365 N.C. 162, 168, 712 S.E.2d 874, 878 (2011) (stating all conclusions of law are subject to full review) (citations omitted). A judge may render a judgment "against [a] plaintiff not only because his proof has failed in some essential aspect to make out a case but also on the basis of facts as he may then determine them to be from the evidence then before him." *Lumbee River Elec. Membership Corp. v. City of Fayetteville*, 309 N.C. 726, 741, 309 S.E.2d 209, 218 (1983) (citations omitted). Additionally, arguments made by counsel are not considered evidence. *Basmas v.*

Wells Fargo Bank Nat'l Ass'n, 236 N.C. App. 508, 513, 763 S.E.2d 536, 539 (2014) (stating “it is axiomatic that the arguments of counsel are not evidence”) (internal quotations omitted). The burden of proof to support a Motion to Show Cause is on the aggrieved party. N.C. Gen. Stat. § 5A-23(a1) (2021).

Finally, pertinent to the facts of this case, Article V section 2 of the Declaration gives the ACC the authority to “regulate the external design, appearance, use and location of initial construction” Per the Preliminary Injunction issued on 14 January 2019, Plaintiff was required to make her lot available for weekly inspections on Sundays from 4:00 p.m. to 4:30 p.m., and neither Defendant HOA nor Defendant Conklin or Defendant Williams were restrained from taking any particular actions.

1. The Alleged 12 December 2019 Incident

Plaintiff asserts she personally witnessed Defendant Conklin and Defendant Williams driving on her property in a silver Nissan outside of the court-ordered hours, and she was able to capture an image of them doing so. At trial, the court considered a zoomed-in image of the ear of one of the passengers in the silver Nissan and compared that image to the ear of Defendant Williams, who was present in the courtroom. On cross-examination, Plaintiff conceded it was difficult to draw a comparison between the ear seen in the image and Defendant Williams’ ear, stating, it is “not like it’s elf ears. . . [i]t’s an ear.” Plaintiff further conceded she knew neither Defendant Williams nor Defendant Conklin drove a Nissan.

2. The Undated Alleged Incident

In support of her Motion to Show Cause, Plaintiff asserts counsel for Defendant Conklin and Defendant Williams inadvertently admitted they trespassed on Plaintiff's property, thus placing them in breach of the contract created by the Declaration and in contempt of the Preliminary Injunction. The only evidence Plaintiff puts forth in support of her assertion is a statement made during trial by counsel for Defendants. The statement read in part: "they walked in to take a look at the status of construction." Taken in context, counsel was explaining Defendant Conklin and Defendant Williams looked inside Plaintiff's home in order to determine whether to grant her an extension of time to complete construction.

Upon our review of the Record, we agree with the trial court and conclude Plaintiff's Motion to Show Cause fails as a matter of law because the Preliminary Injunction did not restrain Defendants from taking any particular actions, such as looking inside Plaintiff's home to assess the progress of construction. Even if it did, however, the only proof Plaintiff puts forth is a singular statement made by Defendants' counsel, which is not proper evidence. *See Basmis*, 236 N.C. App. at 513, 763 S.E.2d at 539. We further conclude Plaintiff failed to present any evidence that would establish either her right to injunctive relief or her claims of breach of contract and trespass; therefore, Plaintiff failed to meet her burden of proof to support her Motion to Show Cause. *See* N.C. Gen. Stat. § 5A-23(a1). Given Plaintiff's failure to support the essential elements of her claims, we affirm the trial court's denial of

Plaintiff's motion and claims. Accordingly, we also affirm the trial court's granting of Defendant HOA's request for a permanent injunction and declaratory relief.

C. The December Order

On appeal, Plaintiff argues the trial court erred when it entered the December Order denying her Rule 59 Motion for Reconsideration and granting Defendants' Motion for Attorney's Fees. We disagree.

A new trial may be granted to any party if they can demonstrate an error in law occurred or "newly discovered evidence material for the party making the motion which [s]he could not, with reasonable diligence, have discovered and produced at trial[.]" N.C. R. Civ. P. 59(a)(4), (8). "[A]n appellate court should not disturb a discretionary Rule 59 order unless it is reasonably convinced by the cold record that the trial judge's ruling probably amounted to a substantial miscarriage of justice." *Worthington v. Bynum*, 305 N.C. 478, 487, 290 S.E.2d 599, 605 (1982). Further, a trial court may award attorney's fees to a "prevailing party if the court finds there was a complete absence of a justiciable issue of either law or fact raised by the losing party in any pleading." N.C. Gen. Stat. § 6-21.5 (2021); see *Sunamerica Fin. Corp. v. Bonham*, 328 N.C. 254, 259, 400 S.E.2d 435, 439 (1991). "The presence or absence of justiciable issues in the pleadings is . . . a question of law that this Court reviews *de novo*." *Wayne St. Mobile Home Park, LLC v. N. Brunswick Sanitary Dist.*, 213 N.C. App. 554, 561, 713 S.E.2d 748, 753 (2011) (quoting *Free Spirit Aviation v. Rutherford Airport*, 206 N.C. App. 192, 197, 696 S.E.2d 559, 563 (2010)).

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Opinion of the Court

On appeal, Plaintiff puts forth a litany of arguments she claims prove the trial court made a clear error when it denied her Rule 59 motion. These arguments include assertions that the trial court: failed to acknowledge prima facie evidence of Defendants breaching the contract; mistook material facts about the security camera footage; erred in dismissing her motion for leave to further amend on the basis of causing an undue delay; and erred when it did not deem the Declaration “ambiguous and unenforceable” due to the varying definitions of what constitutes a “muntin.” Additionally, Plaintiff claims the trial court erred when it refused to consider newly discovered evidence in the form of medical records, video footage, and a letter “from the window companies showing muntins no longer exist.”

For the reasons discussed above, we conclude the trial court did not make an error in law when it dismissed Plaintiff’s claims for breach of contract, trespass, or her Motion for Leave to Further Amend Complaint. This conclusion leaves us with the remaining question of whether Plaintiff’s newly discovered evidence warranted a new trial. *See* N.C. R. Civ. P. 59(a). While in her brief Plaintiff asserts she had newly discovered evidence, she admitted during the 3 December 2021 hearing that these facts were “something that could have been available at the time of the trial.” Because this evidence was available to Plaintiff at the time of trial, we conclude the trial court correctly found an absence of a justiciable issue and did not err when it denied Plaintiff’s Rule 59 motion or when it granted Defendants’ Motion for Attorney’s fees. *See Sunamerica Fin. Corp.*, 328 N.C. at 259, 400 S.E.2d at 439.

IV. Conclusion

We conclude the trial court did not err when it denied Plaintiff's motions and claims for relief, nor did it err when it granted Defendants' motion for attorney's fees.

AFFIRMED.

Judges DILLON and MURPHY concur.

Report per Rule 30(e).