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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-617

Filed 18 April 2023

Lincoln County, No. 16 CVD 619

PATTI G. HAGER, Executrix of the Estate of Billy M. Hager, Plaintiff,

v.

CHRISTOPHER M. BUCHANAN, Defendant.

Appeal by Defendant from Order entered 13 August 2021 by Judge Micah J. Sanderson in Lincoln County District Court. Heard in the Court of Appeals 8 February 2023.

Knox, Brotherton, Knox & Godfrey, by Allen C. Brotherton, for plaintiff-appellee.

Sigmon, Clark, Mackie, Hanvey & Ferrell, P.A., by Andrew J. Howell, for defendant-appellant.

HAMPSON, Judge.

Factual and Procedural Background

Christopher M. Buchanan (Defendant) appeals from the trial court's Order entered 13 August 2021 enforcing a Settlement Agreement between Defendant and Billy Monroe Hager (Decedent). The Record before us tends to reflect the following:

On 18 September 2011, Defendant and Decedent entered into an “Agreement for Repayment of Short Term Loan and Use of Property” (Installment Agreement). The Installment Agreement was an installment sales contract in which Defendant agreed to make monthly payments of \$1,575.00 to Decedent for the purchase of real property (Subject Property). On 26 May 2016, Decedent filed a Verified Complaint alleging Defendant breached the Installment Agreement by failing to make the required monthly payments as of March 2015. Decedent requested the trial court grant him possession of the property, remove Defendant from the property, and award Decedent damages in excess of \$25,000.00. On 29 July 2016, Defendant filed an Answer and Counterclaim alleging Decedent breached the Installment Agreement by refusing to accept installment payments tendered by Defendant.

On 10 January 2017, Decedent filed a Motion for Summary Judgment and a supporting Affidavit. In his Affidavit, Decedent claimed Defendant failed to render payments pursuant to the Installment Agreement, resulting in a sum of \$80,857.03. Defendant filed an Affidavit in Opposition to Decedent’s Motion for Summary Judgment, contending Decedent refused Defendant’s installment payments, beginning in March 2015. The trial court denied Decedent’s Motion for Summary Judgment without written order. On or about 28 August 2017, Decedent filed a second Motion for Summary Judgment. Decedent passed away on 3 April 2018. Decedent’s wife, Patti H. Hager (Plaintiff), as Executrix of his Estate, was substituted as Plaintiff in this matter. The trial court heard Decedent’s second Motion for

Summary Judgment and entered an Order on 23 October 2018 denying the Motion.

In November 2019, the parties entered into a Settlement Agreement, which called for the sale of the Subject Property to Defendant for \$70,500.00, with a closing date of 1 December 2019. The Settlement Agreement permitted Defendant a reasonable time to close but provided for payment of an additional \$1,500.00 per month in fair market rental value beginning 1 December 2019 until closing. The Settlement Agreement was signed by both parties.

On 2 October 2020, Plaintiff filed a Motion to Enforce the Settlement Agreement, alleging Defendant failed to make payments as required under the Agreement and has failed to perform within a reasonable time. Plaintiff also filed an Affidavit in Support of the Motion to Enforce the Settlement Agreement, contending Defendant owed \$90,000.00 under the Settlement Agreement as of 1 January 2021. Defendant did not submit any evidence in opposition to Plaintiff's Motion to Enforce the Settlement Agreement. The trial court heard the Motion to Enforce the Settlement Agreement on 2 March 2021, and the presiding judge took the matter under advisement. The Record before us does not include a written order as to the trial court's ruling on the Motion to Enforce the Settlement Agreement. However, on 16 April 2021, Plaintiff filed a Motion for Reconsideration. The trial court heard Plaintiff's Motion for Reconsideration on 2 July 2021. Following the hearing, on 13 August 2021, the trial court entered an Order Enforcing the Settlement Agreement. Defendant timely filed Notice of Appeal on 23 September 2021.

Issue

The dispositive issue on appeal is whether the trial court erred in entering its Order granting Plaintiff's Motion to Enforce the Settlement Agreement.

Analysis

Defendant contends the trial court erred in granting Plaintiff's Motion for Reconsideration and Motion to Enforce the Settlement Agreement. We disagree.

A "motion to reconsider the prior order of the court was addressed solely to the discretion of the court and is not reviewable unless there has been an abuse of discretion." *Leonard v. Johns-Manville Sales Corp.*, 57 N.C. App. 553, 555, 291 S.E.2d 828, 829 (1982). No such abuse appears on the Record before us.

A motion to enforce a settlement agreement is treated as a motion for summary judgment for purposes of appellate review. *Hardin v. KCS Int'l, Inc.*, 199 N.C. App. 687, 695, 682 S.E.2d 726, 733 (2009) (citation omitted). "Our standard of review of an appeal from summary judgment is de novo[.]" *In re Will of Jones*, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008). Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." N.C. Gen. Stat. § 1A-1, Rule 56(c) (2021).

The moving party bears "the burden of demonstrating the lack of any triable issue of fact and entitlement to judgment as a matter of law." *Hardin*, 199 N.C. App.

at 695, 682 S.E.2d at 733 (citation omitted). “If the moving party satisfies its burden of proof, then the burden shifts to the non-moving party to ‘set forth *specific facts* showing that there is a genuine issue for trial.’” *Lowe v. Bradford*, 305 N.C. 366, 369-70, 289 S.E.2d 363, 366 (1982) (quoting N.C. Gen. Stat. § 1A-1, Rule 56(e) (2021) (emphasis added)). “On appeal, this Court must review the entire record, viewing the evidence in the light most favorable to the non-moving party.” *Williams v. Habul*, 219 N.C. App. 281, 289, 724 S.E.2d 104, 109 (2012) (citing *Collingwood v. G.E. Real Estate Equities*, 324 N.C. 63, 66, 376 S.E.2d 425, 427 (1989)). However, “[t]he non-[moving party may not rest upon the mere allegations of his pleadings.” *Lowe*, 305 N.C. at 370, 289 S.E.2d at 366 (quotation marks omitted).

As an initial matter, Defendant takes issue with the trial court’s Findings of Fact. However, this argument is without merit:

[O]rdinarily, findings of fact and conclusions of law are not required in the determination of a motion for summary judgment, and if these are made, they are disregarded on appeal. However, such findings and conclusions do not render a summary judgment void or voidable and may be helpful, if the facts are not at issue and support the judgment.

Carmichael v. Lively, 235 N.C. App. 222, 228, 762 S.E.2d 283, 287 (2014) (citations and quotation marks omitted).

In the case *sub judice*, Defendant failed to submit any evidence in response to Plaintiff’s Motion to Enforce the Settlement Agreement. Instead, in his briefing to this Court, Defendant attempts to solely rely on counsel’s argument at trial.

However, “[i]t is axiomatic that the arguments of counsel are not evidence.” *State v. Bare*, 197 N.C. App. 461, 476, 677 S.E.2d 518, 529 (2009) (citation and quotation marks omitted); *see also Harter v. Eggleston*, 272 N.C. App. 579, 584, 847 S.E.2d 444, 448 (2020) (“It is long established that the arguments of counsel are not evidence.” (citation and quotation marks omitted)). Thus, on the Record before us, Defendant has not forecast any evidence of any genuine issue of material fact. Therefore, the trial court did not err in granting Plaintiff’s Motion to Enforce the Settlement Agreement. Consequently, we affirm the trial court’s Order enforcing the Settlement Agreement.

Conclusion

Accordingly, for the foregoing reasons, we affirm the trial court’s Order to Enforce the Settlement Agreement.

AFFIRMED.

Judges MURPHY and STADING concur.

Report per Rule 30(e).