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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-73

Filed 05 July 2023

Mitchell County, No. 22 CVS 77

EDDIE FOXX AND MARY HONEYCUTT, Petitioners, Plaintiffs,

v.

DONALD STREET, ET AL., Respondents, Defendants.

Appeal by plaintiffs from order entered 12 August 2022 by Judge Gregory R. Hayes in Mitchell County Superior Court. Heard in the Court of Appeals 24 May 2023.

Plaintiffs-appellants Eddie Foxx and Mary Honeycutt, pro se.

Womble Bond Dickinson (U.S.) LLP, by Sean F. Perrin, for defendants-appellees.

ZACHARY, Judge.

This appeal is one of three presently before this Court arising from the same underlying matter. *See Foxx v. Street*, ___ N.C. App. ___, ___ S.E.2d ___, No. COA23-71 (July 5, 2023) (unpublished); *Walsh v. Street*, ___ N.C. App. ___, ___ S.E.2d ___, No. COA23-72 (July 5, 2023) (unpublished). In each case, relatives of the late Gregory Allen Foxx (collectively, “Plaintiffs”) filed petitions for the removal of Mitchell County

Sheriff Donald Street (“Sheriff Street”)¹ from office pursuant to N.C. Gen. Stat. § 128-16(1)–(3) (2021), and subsequently filed amended complaints raising additional claims against Sheriff Street as well as Lieutenant Rickey Wiseman, Detective Cecil Hobson, Jr.,² and Detective Stacey Hughes of the Mitchell County Sheriff’s Office (collectively, “Defendants”).³ In the case at bar, Plaintiffs Eddie Foxx and Mary Honeycutt, the parents of Gregory Allen Foxx, appeal from the trial court’s order granting Defendants’ amended motion to dismiss and denying Plaintiffs’ motion for entry of default.

Gregory Allen Foxx died on 20 August 2020. His death was ultimately determined to be a suicide, although Plaintiffs disagree with this finding. Instead, Plaintiffs allege the existence of a conspiracy involving Defendants and others—including the individual that they suspect committed the potential homicide—to “defraud[] Gregory Allen Foxx, . . . Plaintiff[s], and the Foxx family of a proper, unbiased, and thorough death scene investigation,” among other contentions.

On 2 May 2022, Plaintiffs served Sheriff Street with a letter of intent to file a claim against his surety bond. Plaintiffs contended, *inter alia*, that Sheriff Street was

¹ The caption of the order from which appeal was taken only names Sheriff Street as a defendant, and omits the other defendants.

² Plaintiff occasionally spelled Detective Hobson’s last name as “Hopson” in the Amended Complaint.

³ Additionally, Plaintiffs named Western Surety Company/CNA Surety and its employee Paul Bruflat as defendants in the Amended Complaint pursuant to N.C. Gen. Stat. § 58-76-5, and also named as defendants “JOHN DOES; MARY DOES; others un-named, and others as yet unknown.”

subject to removal from office pursuant to N.C. Gen. Stat. § 128-16(1)–(3) on the grounds of “willful or habitual neglect to perform the duties of his office[,]” “willful misconduct or maladministration in office[,]” and “corruption.” On 16 May 2022, Plaintiffs filed a petition for the removal of Sheriff Street from office (“the Petition”) pursuant to N.C. Gen. Stat. § 128-16(1)–(3).

On 3 June 2022, Sheriff Street filed a motion to dismiss, asserting that the trial court “lack[ed] jurisdiction to review the Petition” pursuant to N.C. Gen. Stat. § 128-17. On 10 June 2022, Plaintiffs filed a response and brief in opposition to Sheriff Street’s motion to dismiss. Additionally, before the motion to dismiss came on for hearing, Plaintiffs filed an amended complaint (the “Amended Complaint”) on 15 June 2022.

In the Amended Complaint, Plaintiffs advanced a raft of constitutional and statutory claims against Defendants. Among the claims and relief sought, Plaintiffs again requested that the trial court remove Sheriff Street from office, but notably did not invoke N.C. Gen. Stat. § 128-16’s grounds for removal to support this request. Instead, Plaintiffs requested that the trial court “remove . . . Defendants from office and prevent them from holding future law enforcement positions pertaining to the public trust, for alleged violations of their Constitutional oath(s)” pursuant to N.C. Gen. Stat. §§ 11-7 and -11, as provided by Art. VI, § 7 and Art. VII, § 2 of the Constitution of North Carolina.

On 1 July 2022, Defendants filed a motion to dismiss the Amended Complaint.

Defendants again relied upon N.C. Gen. Stat. § 128-17 in part, together with Rules 12(b)(1), (2), and (6) of the North Carolina Rules of Civil Procedure to the extent that the trial court considered the Amended Complaint as an amended complaint rather than an amended removal petition. Plaintiffs filed a response and brief in opposition to the motion on 11 July 2022. Plaintiffs argued, *inter alia*, that Defendants’ reference to N.C. Gen. Stat. § 128-17 in their motion to dismiss was a “fraudulent misrepresentation” and “irrelevant” as that statute was “not cited in Plaintiff[s] cause of action.”

On 22 July 2022, Plaintiffs filed a motion for entry of default, asserting, *inter alia*, that Defendants failed to file a responsive pleading. Plaintiffs also repeated their arguments concerning Defendants’ reference to section 128-17 in their motion to dismiss the Amended Complaint.

Defendants’ motion to dismiss the Amended Complaint and Plaintiffs’ motion for entry of default came on for hearing on 8 August 2022. In an order entered on 12 August 2022, the trial court granted Defendants’ motion to dismiss and denied Plaintiffs’ motion for entry of default. The trial court supplied two bases for granting Defendants’ motion to dismiss. First, the court observed that it “lack[ed] jurisdiction over the Amended Complaint insofar as Plaintiffs seek to remove Mitchell County Sheriff Donald Street pursuant to [N.C. Gen. Stat.] § 128-17.” And second, the trial court granted the motion pursuant to Rules 12(b)(1), (2), and (6).

Plaintiffs timely filed joint notice of appeal from the trial court’s similar orders

FOXX V. STREET

Opinion of the Court

in each of their respective cases. As in each of the related appeals being considered simultaneously with the present case, Plaintiffs argue that the trial court erred by granting Defendants' motion to dismiss because the court (1) "bas[ed] its decision on" N.C. Gen. Stat. § 128-17; and (2) acted in violation of Plaintiffs' right to due process and "to have a final determination on the merits of the case." For the reasons stated in *Foxx*, No. COA23-71 (July 5, 2023), we affirm the trial court's order.

AFFIRMED.

Judges TYSON and STADING concur.

Report per Rule 30(e).