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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-901

Filed 15 August 2023

Mecklenburg County, No. 19 CVS 16593

JAMES CHANDLER ABBOTT, et al., Plaintiffs,

v.

MICHAEL C. ABERNATHY, et al., Defendants.

Appeal by defendants Rodney and Lynne Worthington from order entered 2 May 2022 by Judge Karen Eady-Williams in Mecklenburg County Superior Court. Heard in the Court of Appeals 11 April 2023.

Rosenwood, Rose & Litwak, PLLC, by Erik M. Rosenwood, for plaintiffs-appellees.

Arnold & Smith, PLLC, by Paul A. Tharp, for defendants-appellants Rodney and Lynne Worthington.

ZACHARY, Judge.

Defendants Rodney and Lynne Worthington appeal from the trial court's order denying their motion for injunctive relief and their motion pursuant to Rule 60(b) of the North Carolina Rules of Civil Procedure to set aside the entry of default and default judgment rendered against a number of the other defendants in this action.

After careful review, we affirm.

Background

A full recitation of the underlying facts in this case can be found in this Court’s prior opinion in *Abbott v. Abernathy (Abbott I)*, ___ N.C. App. ___, 884 S.E.2d 56, *temporary stay allowed*, 384 N.C. 188, 884 S.E.2d 44 (2023); we recite below only those facts necessary for our disposition of this appeal.

“On 23 August 2019, a small group of Park Crossing homeowners filed a complaint in Mecklenburg County Superior Court against the Worthingtons and several other owners of Park Crossing development property burdened by” four pedestrian easements that connected the development to Little Sugar Creek Greenway in Charlotte. *Abbott I*, ___ N.C. App. at ___, 884 S.E.2d at 61. “The complainants sought, *inter alia*, a declaratory judgment ‘in their favor as to the enforceability’ of the easements, as well as injunctive relief to prevent the Worthingtons and other defendants ‘from constructing any further obstacles, traps, obstructions, fences, and the like’ restricting access to the easements.” *Id.*

On 18 December 2019, some of the original defendants filed a Rule 12(b)(7) motion to dismiss, asserting that the original plaintiffs had failed to add all of the necessary parties to this action by neglecting to include all Park Crossing homeowners as parties. *Id.* The trial court entered an order on 4 February 2020 denying the motion but concluding that “all record owners of lots within Park Crossing are ‘necessary parties’ to this litigation pursuant to Rule 19 of the North

Carolina Rules of Civil Procedure.” *Id.* at ___, 884 S.E.2d at 61–62. The trial court then “stayed the action and granted the original plaintiffs leave to amend their complaint to join the necessary parties.” *Id.* at ___, 884 S.E.2d at 62.

Thereafter, the original plaintiffs sent each Park Crossing homeowner a package containing “a copy of the trial court’s order, a letter from the original plaintiffs’ counsel, and a ‘Lot Owner Preference Form.’ The Lot Owner Preference Form allowed each owner to choose to take part in the action either as a plaintiff, a defendant, or a non-participating defendant (a ‘default defendant’).” *Id.* Homeowners who chose not to participate in the action “were served with a copy of the lawsuit and named as default defendants.” *Id.* The original plaintiffs’ counsel submitted affidavits averring that they had served those who chose not to participate in the litigation by certified mail, restricted delivery, return receipt requested. However, numerous certified mail return receipts did not contain the signatures of those to be served. For example, some return receipts were not completed, and on some others the phrase “COVID-19” occupied the signature section, in accordance with the USPS’s certified mail policy during the COVID-19 pandemic.

Ultimately, “[a]pproximately 350 Park Crossing owners chose to participate as plaintiffs, while roughly 470 others were joined as default defendants in the suit. None of the owners chose to join the action as defendants.” *Id.* The original and newly added plaintiffs (collectively, “Plaintiffs”) filed an amended complaint on 8 June 2020. *Id.*

On 8 July 2021, Plaintiffs filed a motion for entry of default and judgment by default against the default defendants. *Id.* On 31 August 2021, the trial court heard Plaintiffs’ motion, which was wholly uncontested by any party, and entered default and default judgment against the default defendants. *Id.* Notable to the instant appeal, although the Worthingtons and their counsel were present at the 31 August 2021 hearing, they did not object to the entry of default or default judgment at the hearing, despite the trial court’s explicit invitation to do so; nor did they object when the default and default judgment were entered on 8 September 2021.

On 17 February 2022, while *Abbott I* was pending in this Court, the Worthingtons filed a motion for injunctive relief¹ and a motion pursuant to Rule 60(b) of the North Carolina Rules of Civil Procedure to set aside the entry of default and default judgment rendered against the default defendants. The Worthingtons argued, *inter alia*, that the entry of default and default judgment were void because Plaintiffs had failed to properly serve all of the default defendants.

The matter came on for hearing in Mecklenburg County Superior Court on 6 April 2022. On 2 May 2022, the trial court entered an order denying the Worthingtons’ motions; specifically, the trial court denied the Worthingtons’ Rule 60(b) motion to set aside the entry of default and default judgment on the ground that

¹ The Worthingtons’ motion for injunctive relief was filed contemporaneously with their motion to set aside entry of default. The trial court denied the Worthingtons’ motions “in their entirety.” On appeal, the Worthingtons do not challenge the denial of their motion for injunctive relief. Therefore, we will not address it further in this opinion.

they lack standing to seek relief from default entered against other defendants. The Worthingtons timely filed written notice of appeal from that order, although not from the underlying default judgment. On 6 December 2022, the Worthingtons petitioned this Court to issue its writ of certiorari to review the default judgment.

Discussion

On appeal, the Worthingtons contend that “the trial court erred when it denied [their] motion pursuant to N.C. Gen. Stat. § 1A-1, Rule 60 on the grounds that [they] lacked standing” to challenge the entry of default and default judgment rendered against the default defendants in this action. The Worthingtons posit that “despite not being defaulted themselves, [they] have a sufficient stake in the outcome of the action against other default[] defendants” to have standing to seek relief, in that the default judgment ultimately “affects their land.” We disagree.

Rule 55 of the North Carolina Rules of Civil Procedure governs entry of default and default judgment. Subsection (a) allows for entry of default when “a party against whom a judgment for affirmative relief is sought has failed to plead or is otherwise subject to default judgment as provided by” the North Carolina Rules of Civil Procedure or by statute “and that fact is made to appear by affidavit, motion of attorney for the plaintiff, or otherwise[.]” N.C. Gen. Stat. § 1A-1, Rule 55(a) (2021). Once default has been entered against a nonresponsive defendant pursuant to Rule 55(a), the plaintiff may then move for judgment by default pursuant to Rule 55(b). *Id.* § 1A-1, Rule 55(b).

However, the North Carolina Rules of Civil Procedure also provide that a court may set aside entry of default and default judgment in certain circumstances. Rule 55(d) provides that “[f]or good cause shown the court may set aside an entry of default, and, if a judgment by default has been entered, the judge may set it aside in accordance with Rule 60(b).” *Id.* § 1A-1, Rule 55(d).

Rule 60(b) provides for “relief from judgment or order” for one of six reasons including:

- (1) Mistake, inadvertence, surprise, or excusable neglect;
- (2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (4) The judgment is void;
- (5) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
- (6) Any other reason justifying relief from the operation of the judgment.

Id. § 1A-1, Rule 60(b)(1)–(6).

“[T]his Court’s review of the trial court’s Rule 60(b) ruling is limited to determining whether the trial court abused its discretion.” *Barton v. Sutton*, 152 N.C. App. 706, 709, 568 S.E.2d 264, 266 (2002) (citations and internal quotation marks omitted). “Abuse of discretion is shown when the court’s decision is manifestly

unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *Brown v. Foremost Affiliated Ins. Servs., Inc.*, 158 N.C. App. 727, 732, 582 S.E.2d 335, 339 (2003) (citation and internal quotation marks omitted). Thus, “[t]his Court seldom has found an abuse of discretion by the trial court in failing to set aside a default judgment.” *Bailey v. Gooding*, 60 N.C. App. 459, 466, 299 S.E.2d 267, 271 (1983).

By contrast, “[w]hether a party has standing to maintain an action implicates a court’s subject[-]matter jurisdiction and may be raised at any time, even on appeal.” *Fort v. Cty. of Cumberland*, 218 N.C. App. 401, 404, 721 S.E.2d 350, 353 (citation and internal quotation marks omitted), *disc. review denied*, 366 N.C. 401, 735 S.E.2d 180 (2012). “In our determination of whether a party has standing, we utilize a de novo review” *Id.* (italics omitted) (citation and internal quotation marks omitted). “Standing refers to whether a party has a sufficient stake in an otherwise justiciable controversy so as to properly seek adjudication of a matter[.]” *Cherry Cmty. Org. v. City of Charlotte*, 257 N.C. App. 579, 582, 809 S.E.2d 397, 400 (citations, internal quotation marks, and brackets omitted), *disc. review denied*, 371 N.C. 114, 812 S.E.2d 850 (2018). The party invoking jurisdiction bears the burden of establishing standing. *Id.*

Here, the Worthingtons state that their “theory of standing is the same as Plaintiffs’ theory, such that if the Worthingtons lack standing, Plaintiffs’ action should be dismissed.” At the Rule 60 motion hearing, the Worthingtons explained

that “[i]f you look at the Motion to Set Aside Default that was filed by the Worthingtons” and “compare the averments regarding standing to those that are in [P]laintiffs’ Complaint and Amended Complaint, it’s the same standing that any of the parties to this action have[.]” We disagree.

As discussed at length in *Abbott I*, as homeowners in the Park Crossing development, Plaintiffs had standing to bring their original action for the purpose of enforcing pedestrian access to the easements²:

[T]he Easement at issue is an appurtenant easement[.] Plaintiffs had standing to bring this action to enforce their rights to use it. The developer of Park Crossing dedicated the Easement as part of a network of paths designed to “link the development without the necessity of pedestrian activity along the vehicular roadways.” As such, the Easement was “dedicated to the use of lot owners in the development[.]” creating a “right in the nature of an easement appurtenant” for all who live there.

Abbott I, ___ N.C. App. ___, 884 S.E.2d at 67.

By contrast, as the trial court explained at the Rule 60 hearing, the court could not “find standing in this case for the Worthingtons to bring this [motion to set aside default], as they are not in default. There’s been no entry of default or default judgment entered on their behalf. Therefore, there’s nothing for the [c]ourt to address as to . . . this particular party, [the Worthingtons].” Thus, the trial court denied the Worthingtons’ Rule 60(b) motion.

² The first appeal concerned Plaintiffs’ rights to enforce pedestrian access to four easements, only one of which affected the Worthingtons’ property.

Contrary to the Worthingtons’ contentions otherwise, it is evident that in pursuing this action, Plaintiffs have at all times asserted *their own rights*; whereas here, by moving to set aside the default judgment entered against the non-objecting default defendants—a class to which the Worthingtons do not belong—the Worthingtons impermissibly attempted to assert a *third-party’s rights*. Plaintiffs’ stake as homeowners seeking to enforce their rights to pedestrian access to community easements is sufficient to give them standing to pursue this action. Despite the Worthingtons’ claims to the contrary, they do not present the same stake in their attempt to set aside the default judgment entered against the default defendants.

Nor have the Worthingtons been hindered in their defense of Plaintiffs’ action by the default of other defendants. Where there is more than one defendant, default of a non-responding defendant does “not make any admissions on behalf of [the remaining defendants], bar any of their defenses or claims, or prejudice their rights.” *Little v. Barson Fin. Servs. Corp.*, 138 N.C. App. 700, 703, 531 S.E.2d 889, 891, *disc. review denied*, ___ N.C. ___, 545 S.E.2d 440 (2000). The non-defaulting defendants “should have . . . the opportunity to present their defense” to Plaintiffs’ action. *Id.* Here, the Worthingtons had ample opportunity to defend against Plaintiffs’ claims, although they were ultimately unsuccessful on the merits.

We note again that at the time the default judgment was entered against the default defendants, the Worthingtons did not challenge the default judgment entry,

despite the trial court's invitation to do so. Under these circumstances, the decision of the trial court to deny the Worthingtons' Rule 60(b) motion is not "manifestly unsupported by reason or . . . so arbitrary that it could not have been the result of a reasoned decision." *Brown*, 158 N.C. App. at 732, 582 S.E.2d at 339 (citation omitted). Accordingly, the Worthingtons lack standing to pursue this Rule 60(b) motion, and we affirm the trial court's order.

Conclusion

For the foregoing reasons, we conclude that the trial court did not abuse its discretion in denying the Worthingtons' Rule 60(b) motion.

AFFIRMED.

Judges MURPHY and CARPENTER concur.

Report per Rule 30(e).