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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-514

Filed 19 December 2023

Craven County, No. 21 CVS 294

LEE W. BETTIS, JR. and KELLY MARIE BETTIS, Plaintiffs-Appellees,

v.

CANDLE GRAHAM WEISS, STEPHEN DIPIERO, CLYDE SWINDELL, and PATTI WALSH, Defendants-Appellants.

Appeal by Defendants-Appellants from order entered 3 January 2023 by Judge Thomas Wilson in Superior Court, Craven County. Heard in the Court of Appeals 14 November 2023.

Buckmiller, Boyette & Frost, PLLC, by Matthew W. Buckmiller, for plaintiffs-appellees.

Perry, Perry & Perry, PLLC, by Josiah J. Corrigan, and Kenneth D. Perkins admitted pro hac vice, for defendants-appellants.

ARROWOOD, Judge.

Defendants-Appellants (“defendants”) appeal from order entered pursuant to North Carolina Rule of Civil Procedure 56 dismissing defendants’ counterclaims. For the following reasons, we dismiss the appeal.

I. Background

In 2019, Lee Bettis and Kelly Bettis (“plaintiffs”) purchased property in the Riverview subdivision in New Bern, North Carolina, which borders the Neuse River. Previous to plaintiffs’ purchase, defendants had purchased property in the subdivision and lived on that property for various periods of time. Defendants’ properties do not border the Neuse River. In 2020, plaintiffs built “a series of fences” that defendants assert “prohibit[] access to and the view of the Neuse River” and thus violate defendants’ right-of-way to an easement area established by plat and prescription.

On 26 February 2021, plaintiffs filed a complaint in Craven County, District Court, alleging that defendants used an unmanned aircraft system to photograph plaintiffs’ property and disseminated the resulting photograph in violation of N.C.G.S. § 15A-300.1(e). The complaint also alleged defendants committed the tort of malicious intrusion, entitling plaintiffs to punitive damages. Defendants filed their answers, defenses, and counterclaims to plaintiffs’ complaint on 30 April 2021.

On 10 January 2022, plaintiffs filed a motion for summary judgment as to the easement by plat issue pursuant to defendants’ counterclaims, and the trial court granted plaintiffs’ motion for partial summary judgment on 12 October 2022. Plaintiffs filed a motion for summary judgment as to defendants’ remaining claims on 8 December 2022, and the trial court granted the motion by order on 3 January 2023, dismissing defendants’ remaining counterclaims.

Plaintiffs voluntarily dismissed their claims for tort of malicious intrusion and punitive damages as to all defendants on 1 February 2022. On 27 June 2022, plaintiffs voluntarily dismissed their remaining claims except for the claim against defendant Clyde Swindell for allegedly violating § 15A-300.1(e). Because of this unresolved claim, plaintiffs and defendants both agree the trial court’s order granting plaintiffs summary judgment is interlocutory. Defendants entered a notice of appeal on 27 January 2023.

II. Discussion

On appeal, defendants contend the trial court erred in granting plaintiffs’ motion for summary judgment by failing (1) to apply settled North Carolina law regarding easements by plat and (2) to consider defendants’ deposition testimony, which created questions of material fact regarding defendants’ prescriptive easement claim.

Moreover, defendants contend that—although the trial court’s 3 January 2023 order is interlocutory—their appeal is proper because the trial court’s “ruling affects substantial rights of the [d]efendants as described in N.C. Gen. Stat. §§ 1-277, 7A-27(d)(1) [sic], in that all of the [d]efendants’ [c]ounterclaims in the case have been effectively denied and discharged by virtue of [the trial court’s order], putting [d]efendants out of court on their [c]ounterclaims.”

“An order or judgment is interlocutory if it is made during the pendency of an action and does not dispose of the case but requires further action by the trial court

in order to finally determine the entire controversy.” *N.C. Dept. of Transp. v. Page*, 119 N.C. App. 730, 733 (1995) (citation omitted). “Generally, there is no right of immediate appeal from interlocutory orders and judgments.” *Sharpe v. Worland*, 351 N.C. 159, 161 (1999) (citations omitted). This rule is “designed to prevent fragmentary and premature appeals that unnecessarily delay the administration of justice and to ensure that the trial divisions fully and finally dispose of the case before an appeal can be heard.” *Bailey v. Gooding*, 301 N.C. 205, 209 (1980) (citations omitted).

Only two circumstances exist where an interlocutory order may be appealed:

- (1) if the order is final as to some but not all of the claims or parties and the trial court certifies there is no just reason to delay the appeal pursuant to N.C.R. Civ. P. 54(b) or
- (2) if the trial court’s decision deprives the appellant of a substantial right which would be lost absent immediate review.

Turner v. Norfolk S. Corp., 137 N.C. App. 138, 141 (2000) (cleaned up). Under either of these circumstances, “it is the appellant’s burden to present appropriate grounds for this Court’s acceptance of an interlocutory appeal and our Court’s responsibility to review those grounds.” *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 379 (1994).

Here, plaintiffs’ 26 February 2021 complaint alleged that defendants violated N.C.G.S § 15A-300.1(e) by “us[ing] an unmanned aircraft system to photograph [p]laintiffs’ dwelling, real property and curtilage, for the purpose of publishing and

otherwise disseminating the photograph.” Plaintiffs further alleged that defendants committed the tort of malicious intrusion and punitive damages. On 1 February 2022, plaintiffs voluntarily dismissed their claims for tort of malicious intrusion and punitive damages against all defendants. Then, on 27 June 2022, plaintiffs voluntarily dismissed the remaining of their claims without prejudice against all defendants with the exception of defendant Clyde Swindell.¹

Although the trial court’s 3 January 2023 order dismissed all of defendants’ remaining claims, it did not dispose of plaintiffs’ remaining claims. Therefore, as defendants concede, the trial court’s order is interlocutory. *See Veazey v. Durham*, 231 N.C. 357, 361–62 (1950) (“A final judgment is one which disposes of the cause as to all the parties, leaving nothing to be judicially determined between them in the trial court.” (citations omitted)). Additionally, the record does not contain a Rule 54(b) certification; therefore, to obtain immediate appellate review, defendants must demonstrate that a substantial right will be affected and “will work an injury to [them] if not corrected before an appeal from the final judgment.” *Id.* at 362 (citations omitted).

“Our courts have held that an appeal from an interlocutory order involving access to an easement ordinarily does not implicate a substantial right.” *McColl v. Anderson*, 152 N.C. App. 191, 193 (2002) (citing *Pruitt v. Williams*, 288 N.C. 368

¹ The claim against defendant Clyde Swindell for violation of § 15A-300.1(e) thus remains unresolved.

(1975); *Miller v. Swann Plantation Dev. Co.*, 101 N.C. App. 394, 399 (1991)). In *Miller*, this Court “failed to see how defendants’ claimed right to hold title to the property free from an encumbrance would clearly be lost or irremediably adversely affected if the order was not reviewed before final judgment.” 101 N.C. App. 394, 396 (1991) (cleaned up). This Court further noted in *Miller* that “the record contained no allegations that plaintiff planned to alter or damage the easement, which was the only possible lasting harm this Court envisioned might occur by waiting,” and that “any damage to the easement resulting from plaintiff’s use during the period could be rectified later by monetary damages if necessary.” *Id.* (cleaned up).

Further, in *Snyder v. First Union Nat. Bank of Fla.*, plaintiffs alleged “that they were entitled to an easement and right of way over [particular] roads and streets . . . and that defendants ha[d] wrongfully blocked their access and use of these roads.” 122 N.C. App. 101, 104 (1996). Citing *Miller*, the *Snyder* Court dismissed defendants’ appeal as being interlocutory because “any possible alteration of the . . . area by plaintiffs . . . would not affect a substantial right.” *Id.* at 104.

Here, under established precedent, defendants’ perceived rights in access to the alleged easement area and view of the Neuse River are not substantial. Further, defendants fail to demonstrate how their claims have been “effectively denied and discharged” by the trial court’s orders. In fact, other than the conclusory statement that the trial court’s ruling affected a substantial right because their counterclaims

were “effectively denied and discharged” by the trial court’s order, defendants present no legal basis for why the order affects a substantial right. Defendants’ statement is thus insufficient as “[i]t is not the duty of this Court to construct arguments for or find support for [defendants’] right to appeal from an interlocutory order[.]” *Jeffreys*, 115 N.C. App. at 380 (citation omitted); *see also Hoke Cnty. Bd. of Educ. v. State*, 198 N.C. App. 274, 277–78 (2009) (“[A]ppellants must present more than a bare assertion that the order affects a substantial right; they must demonstrate *why* the order affects a substantial right.” (alteration in original) (citation omitted)); N.C.R. App. P. 28(b)(4) (“When an appeal is interlocutory, the statement must contain sufficient facts and argument to support appellate review on the ground that the challenged order affects a substantial right.”).

Lastly, the record does not contain any allegations that plaintiffs “plan[] to alter or damage” defendants’ alleged easement area. *Miller*, 101 N.C. App. at 396. “[A]ny damage . . . resulting from plaintiff[s]’ use [of the area] during this period can [also] be rectified later by monetary damages if necessary.” *Id.* Accordingly, assuming *arguendo* this Court had the authority to rule on this motion, the trial court’s order is interlocutory, and the appeal must be dismissed.

III. Conclusion

For the foregoing reasons, this appeal is dismissed.

DISMISSED.

Judges WOOD and THOMPSON concur.

BETTIS V. WEISS

Opinion of the Court

Report per Rule 30(e).