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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-513

Filed 19 December 2023

Wake County, No. 22CVS129

JOEL ROBERTSON, Plaintiff,

v.

ZAXBY'S OF KNIGHTDALE, Defendant.

Appeal by plaintiff from order entered 8 February 2023 by Judge Keith Gregory in Wake County Superior Court. Heard in the Court of Appeals 20 November 2023.

*Joel Robertson, pro se plaintiff-appellant.*

*Tharrington Smith LLP, by Kristopher B. Gardner, for defendant-appellee.*

PER CURIAM.

Plaintiff, Joel Robertson, appeals the order granting defendant's 12(b)(6) motion to dismiss with prejudice. Plaintiff brought a defamation action against defendant for a police report that charged plaintiff with breaking and entering, which was later expunged. Upon review of the record and the briefs, we affirm.

Plaintiff appeals of right pursuant to N.C.G.S. § 7A-27(b)(1). We review an order granting a 12(b)(6) motion de novo. *Holton v. Holton*, 258 N.C. App. 408, 416

(2018). “The scope of our review is whether, as a matter of law, the allegations of the complaint, treated as true, are sufficient to state a claim upon which relief may be granted under some legal theory.” *Id.* (cleaned up).

Plaintiff argues defendant was improperly represented by AT Foods, Inc. d/b/a Zaxby's despite plaintiff naming defendant “Zaxby's of Knightdale” in the lawsuit. For this reason, plaintiff argues that any argument raised by AT Foods, Inc. d/b/a Zaxby's should not be considered on appeal. Plaintiff fails to legally support this argument; therefore, this argument is abandoned pursuant to N.C.R. App. P. 28(b)(6). Plaintiff fails to legally support or provide any substantive argument for his assertion that the trial court erred by granting the 12(b)(6) motion to dismiss for failure to state a claim upon which relief may be granted. Consequently, this issue is abandoned pursuant to N.C.R. App. P. 28(b)(6). Furthermore, plaintiff fails to legally support the argument that the trial court erred by denying plaintiff's “Opposing Motion to Dismiss & Motion for Summary Judgment.” Accordingly, this issue is also abandoned pursuant to N.C.R. App. P. 28(b)(6). Finally, plaintiff failed to preserve his fraud claim. *See* N.C.R. App. P. 10(a)(1).

In summary, because plaintiff fails to carry his burden and demonstrate any error by the trial court, we affirm.

AFFIRMED.

Panel consisting of:

ROBERTSON V. ZAXBY'S OF KNIGHTDALE

*Opinion of the Court*

Judges DILLON, MURPHY, and GORE.

Report per Rule 30(e).