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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-278

Filed 6 February 2024

Graham County, No. 20 CVS 130

REID GOLDSBY MILLER, Plaintiff,

v.

EASTERN BAND OF CHEROKEE INDIANS and/or other affiliated governmental entities and/or other affiliated private entities; WESTRIDGE RANCH, LLC; WALTER WILLIAM ELLSWORTH, III; RICHARD G. SNEED; ALAN B. ENSLEY; THE TRIBAL COUNCIL OF THE EASTERN BAND OF CHEROKEE INDIANS; THE BUSINESS COMMITTEE OF THE EASTERN BAND OF CHEROKEE INDIANS; JOHN DOES 1-15 (fictitious names as identity is unknown); JANE DOES 1-15 (fictitious names as identity is unknown), Defendants.

Appeal by Plaintiff from order entered 6 January 2021 by Judge William H. Coward in Graham County Superior Court. Heard in the Court of Appeals 9 January 2024.

*Reid Goldsby Miller, pro se, for Plaintiff-Appellant.*

*Van Winkle, Buck, Wall, Starnes and Davis, P.A., by Dale A. Curriden, Marie Claire O'Leary Smith and Jonathan H. Dunlap, for Defendants-Appellees.*

WOOD, Judge.

Plaintiff Reid Goldsby Miller ("Plaintiff") appeals, for a second time, from an order dismissing a complaint against the Eastern Band of Cherokee Indians ("EBCI"),

the individual Tribal Defendants, and the Business Committee of the EBCI (collectively, the “Tribal Defendants”) with prejudice. For the reasons stated herein, we dismiss Plaintiff’s appeal.

### **I. Factual and Procedural Background**

This Court previously outlined the relevant facts of this case in *Miller v. E. Band of Cherokee Indians*, 281 N.C. App. 494, 867 S.E.2d 263 (2022) (hereinafter “*Miller I*”) (unpublished) as follows:

In 1977, Plaintiff began purchasing real property in Graham County. By 1985, Plaintiff had acquired the property at issue in this appeal (the “Subject Property”). The Subject Property is comprised of multiple parcels of real property, totaling 682.19 acres. Title of the Subject Property was transferred to Plaintiff with an established access road (the “Bird Road Easement”) in the form of a 30-foot-wide deeded easement through property held by the federal government in trust for possessory interest holders, Solomon Bird, Minnie Bird, William Bird, and Ella Mae Bird (collectively, the “Bird family”). The Subject Property qualifies “for present-use value, under forestry classification.”

In 1992, Plaintiff and her husband were granted an easement for a right-of-way (the “Teesateskie Easement”) by the federal government and EBCI. The Teesateskie Easement provided Plaintiff with an alternative way to access the Subject Property and provided a trucking route for “bulking out spring water.” In 2012, Plaintiff developed a timber plan for the Subject Property, in which she and her family began clearing trees and brush from the property. Around this time, Plaintiff was also negotiating with a bottling company to “supply[] them with spring water” from a spring located on the Subject Property. To prepare for the use of the spring by the bottling company,

Plaintiff began cutting back vegetation, grading and applying gravel, and repairing an area on the Bird Road Easement.

In 2013, the Graham County Tax Assessor became concerned that Plaintiff was not complying with the present-use value program. The tax assessor conducted a statutory audit, and “determined that the subject property was no longer eligible to be appraised, assessed, and taxed as provided in N.C. Gen. Stat. § 105-277.2 through N.C. Gen. Stat. § 105-277.7.” Further, the Graham County Tax Collector’s Office (the “Tax Collector”) notified Plaintiff that her property taxes for the 2011-2012 tax years were past due and attached a lien on the Subject Property.

Plaintiff listed the Subject Property for sale in June 201[2] for the amount of \$6,250,000.00. Plaintiff asserts that she listed the Subject Property for sale out of “extreme duress” and fear that the Tax Collector would foreclose on the Subject Property. In February 2013, Plaintiff lowered the price of the Subject Property to \$2,635,000.00. Plaintiff alleges in her complaint that she lowered the price of the Subject Property because of “local opposition” to preparations for the commercial use of the spring, “duress” from the EBCI and its tribal council, and her belief that the Tax Collector was “looking to foreclose on” the Subject Property. Meanwhile, Plaintiff continued to prepare the property and related easements for her prospective contract with the bottling company. In August 2013, Plaintiff received an offer to purchase the Subject Property from Walter Ellsworth (“Ellsworth”) for \$2,515,000.00. Plaintiff accepted Ellsworth’s offer to purchase the Subject Property, and according to her, she did so out “of extreme duress.” In September 2013, Plaintiff and Ellsworth renegotiated the purchase agreement for the Subject Property, and a new contract was executed. Ellsworth wanted to renegotiate the purchase agreement so that his limited liability company, Westridge Ranch, LLC (“Westridge”) could purchase the Subject Property. Westridge purchased the Subject Property for the amount of \$2,673,000.00.

While Plaintiff and Ellsworth were negotiating the sale of the Subject Property, the Tax Collector moved to foreclose on the Subject Property, finding that the purchase agreement was not a disqualifying event under the present-use value program. Plaintiff appealed “with the Graham County Board of Equalization and Review, which temporarily stopped the foreclosure process.” Thereafter, in February 2014, Ellsworth notified Plaintiff that, “due to financial delays . . . he would not be able to continue in the Purchase Agreement.”

Plaintiff and Ellsworth renegotiated the purchase agreement several times. Ultimately, Plaintiff sold the property for \$2,673,000.00 and transferred title to the Subject Property to Westridge on December 22, 2016. On August 15, 2019, Westridge sold the Subject Property to EBCI.

In August 2020, Plaintiff, acting *pro se*, filed the instant action, asserting the following causes of action: “Action in Rem Against Subject Property,” for Plaintiff to recover title to the Subject Property; “Declaratory Judgment”; unfair and deceptive trade practices; civil conspiracy; piercing the corporate veil; and unjust enrichment. Plaintiff also sought an injunction. EBCI and the individual tribal members named in Plaintiff’s civil action (hereinafter, the “Tribal Defendants”), moved to dismiss Plaintiff’s complaint on the basis of sovereign immunity on October 23, 2020. The trial court granted the Tribal Defendants’ motion to dismiss on January 6, 2021. Plaintiff timely filed a written notice of appeal on January 19, 2021.

*Id.*

In *Miller I*, this Court dismissed Plaintiff’s appeal as interlocutory because Plaintiff’s claims against Westridge and Ellsworth (collectively “Westridge Defendants”) were still pending in the lower court. *Id.* After this Court dismissed her appeal, Plaintiff and Westridge Defendants filed mutual voluntary dismissals

without prejudice of their claims and counterclaims against each other in the trial court. Thus, the voluntary dismissals left no active claims in the trial court. Plaintiff filed a second notice of appeal on 18 January 2023, again appealing the 24 December 2020 Order dismissing claims against Tribal Defendants.

## **II. Appellate Jurisdiction**

Plaintiff attempts to raise several issues on appeal; however, there are only two issues properly on appeal. First, Plaintiff contends the trial court erred in finding the Tribal Defendants are entitled to the defense of sovereign immunity and dismissing this matter. Second, Plaintiff contends she would be entitled to contract rescission under a theory of duress and restitution of the Subject Property.

As a preliminary matter, however, we first address Tribal Defendants' motion to dismiss Plaintiff's appeal as moot. According to Tribal Defendants, this Court is unable to render a valid judgment on Plaintiff's claim for restitution of the property because by voluntarily dismissing her claims against Westridge Defendants she dismissed the parties necessary to establish her requested remedy. Tribal Defendants argue that "[w]ithout a valid remedy, the issue of sovereign immunity becomes academic, and Plaintiff's claim is moot." We agree. Thus, Tribal Defendants' motion to dismiss Plaintiff's appeal is granted.

Plaintiff sold the Subject Property to Westridge Defendants, who in turn, sold the property to EBCI. In an attempt to gain restitution of the Subject Property, Plaintiff seeks to rescind two separate contracts, specifically the contract between

Plaintiff and Westridge Defendants and the subsequent contract between Westridge Defendants and EBCI. However, Plaintiff dismissed her claims against Westridge Defendants, effectively nullifying any claims against Westridge Defendants. “The effect of a judgment of voluntary dismissal is to leave the plaintiff exactly where he or she was before the action commenced,” it is as if “the suit had never been filed.” *Hous. Auth. of Wilmington v. Sparks Eng’g, PLLC*, 212 N.C. App. 184, 187, 711 S.E.2d 180, 182 (2011) (cleaned up). Because Plaintiff voluntarily dismissed her claims against Westridge Defendants, the remedy sought is unavailable. “It is not possible” to rescind a contract with a party that is not presently before the Court. *Moore Printing, Inc. v. Automated Print Sols., LLC*, 216 N.C. App. 549, 556, 718 S.E.2d 167, 172 (2011).

Tribal Defendants argue, “Westridge Defendants are necessary parties to this action because they have a substantial interest in the outcome of Plaintiff’s claims of rescission.” We agree Westridge Defendants are a “necessary party” as they are “so vitally interested in the controversy that a valid judgment cannot be rendered in the action completely and finally determining the controversy without [their] presence.” *Id.* If this Court were to rescind the contract between Westridge Defendants and EBCI, Westridge Defendants may incur liability as EBCI would likely “seek to recoup the funds it paid” to Westridge Defendants for the Subject Property. Similarly, if this Court were to rescind the property transfer from Plaintiff to Westridge Defendants, Westridge Defendants “would have every interest in seeking to recoup the funds it

paid Plaintiff for the Subject Property.” However, Westridge Defendants have no means to contest Plaintiff’s claims as they are not parties to this current appeal having been voluntarily dismissed from this action by Plaintiff.

In order to protect the vital interests of a necessary party to a controversy, “[a]n adjudication that extinguishes property rights without giving the property owner an opportunity to be heard cannot yield a ‘valid judgment.’” *Karner v. Roy White Flowers, Inc.*, 351 N.C. 433, 440, 527 S.E.2d 40, 44 (2000) (citations omitted). Because Westridge Defendants are necessary parties to Plaintiff’s claims for restitution of the Subject Property and Plaintiff dismissed the necessary parties prior to her current appeal, this Court is unable to render a valid judgment on this issue. *Id.* Thus, Plaintiff’s arguments concerning sovereign immunity are entirely academic because such a determination “cannot have any practical effect on the existing controversy.” *In re Hackley*, 212 N.C. App. 596, 599, 713 S.E.2d 119, 121 (2011) (citation omitted). Because we cannot render a valid judgment in this case on Plaintiff’s second issue on appeal, a determination on the first issue of sovereign immunity is moot. Plaintiff’s appeal is dismissed.

### **III. Conclusion**

For the foregoing reasons, we dismiss Plaintiff’s appeal as moot. It is so ordered.

DISMISSED.

Judges FLOOD and STADING concur.

MILLER V. E. BAND OF CHEROKEE INDIANS

*Opinion of the Court*

Report per Rule 30(e).