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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-666

Filed 16 April 2024

Mecklenburg County, No. 21 CVS 13457

D.D., Plaintiff,

v.

SHL HEALTH FOUR, INC., d/b/a
MASSAGE ENVY-MATTHEWS,
TORSTEN A. SCHERMER, and
RAHEIM SPEIGHT, Defendants.

Appeal by Plaintiff from order entered 13 February 2023 by Judge Eric L. Levinson in Mecklenburg County Superior Court. Heard in the Court of Appeals 10 January 2024.

Edwards Beightol, LLC, by J. Bryan Boyd, for Plaintiff-Appellant.

Thurman, Wilson, Boutwell & Galvin, P.A, by John D. Boutwell, Van Hoy, Reutlinger, Adams & Pierce, PLLC, by C. Grainger Pierce, Jr., & Arnold & Smith, PLLC, by Ronnie D. Crisco, Jr. for Defendants-Appellees.

CARPENTER, Judge.

D.D. (“Plaintiff”) appeals from the trial court’s order denying her motion for relief under Rule 60(b). On appeal, Plaintiff argues the trial court abused its discretion by denying her Rule 60(b) motion. After careful review, we disagree with

Plaintiff and affirm the trial court's order.

I. Factual & Procedural Background

On 10 October 2020, Plaintiff and others filed a complaint, under case number 20 CVS 5678, against SHL Health Four, Inc. and others (“Defendants”) in Mecklenburg County Superior Court. On 12 July 2021, the trial court severed the matter, separating “each individual plaintiff’s cause of action.” More specifically, the trial court ordered Plaintiff to file, within thirty days, “a Second Amended Complaint based on the same exact factual allegations and same exact causes of action.” The trial court continued: “The clerk of court shall then create a new civil action with a separate case number for these claims”

On 12 August 2021, Plaintiff filed a new complaint under a new case number, 21 CVS 13457. But as ordered by the trial court, Plaintiff should have filed the complaint under the original case number—20 CVS 5678. Recognizing his mistake, Plaintiff’s counsel¹ contacted Defendants’ counsel, who consented to a voluntary dismissal of the incorrectly filed claims docketed at 21 CVS 13457.

On 8 September 2021, Plaintiff refiled her complaint under the original case number, 20 CVS 5678. On 4 October 2021, Plaintiff filed a notice of dismissal, styled “Notice of Voluntary Dismissal with Prejudice,” concerning the action docketed at 21

¹ Plaintiff is not represented by her trial-court counsel on appeal. Appellate counsel is not associated with trial counsel or trial counsel’s law firm.

CVS 13457. On 17 November 2021, Defendants filed a motion to dismiss the complaint filed in case number 20 CVS 5678 because of Plaintiff's dismissal with prejudice of the same claims in case number 21 CVS 13457.

On 18 January 2022, Plaintiff filed a Rule 60(b) motion, seeking relief from her dismissal with prejudice. In support of the motion, Plaintiff's counsel submitted his own affidavit. In his affidavit, Plaintiff's counsel averred that "[a]t no time did I express any opinion or legal reasoning that these incorrectly filed matters must have been dismissed with prejudice." On the other hand, Defendants' counsel filed an affidavit, averring that Plaintiff's counsel believed he had "no choice" but to dismiss with prejudice. Defendants' counsel further asserted that Plaintiff's counsel explained his legal reasoning for filing dismissals with prejudice, as opposed to without prejudice.

On 13 February 2023, the trial court denied Plaintiff's Rule 60(b) motion. The trial court reasoned that the "filing of the Voluntary Dismissal With Prejudice, including without limitation the taking of such dismissal 'with prejudice,' was an intentional, deliberate, volitional, and willful decision of the Plaintiff's counsel at the time" The trial court also found that, "[m]ore likely than not, Plaintiff's counsel did not appreciate the res judicata impact of the filing of the Voluntary Dismissal With Prejudice."

Concerning the competing affidavits, the trial court found Plaintiff's counsel "made material untruthful statements to the Court in connection with the Motion, in

an attempt to obtain relief sought under Rule 60, and in an attempt to salvage the claims from res judicata concerns.” The trial court found Defendants’ counsel’s affidavit, however, to be “accurate, and the Court accept[ed] the content thereof as true.” On 8 March 2023, Plaintiff filed written notice of appeal.

II. Jurisdiction

This Court has jurisdiction under N.C. Gen. Stat. § 7A-27(b)(1) (2023).

III. Issue

The issue is whether the trial court abused its discretion by denying Plaintiff relief under Rule 60(b).

IV. Conclusion

For the reasons detailed in *T.H. v. SHL Health Two, Inc.*, No. 23-665, ___ N.C. App. ___, ___ S.E.2d ___ (2024), filed concurrently with this opinion, we hold that the trial court did not err by denying Plaintiff’s Rule 60(b) motion. We therefore affirm the trial court’s order.

AFFIRMED.

Chief Judge DILLON and Judge MURPHY concur.

Report per Rule 30(e).