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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 23-907

Filed 4 June 2024

Nash County, No. 15 CVS 1134

FRED COHEN, Executor of the Estate of DENNIS ALAN O'NEAL, Deceased, and
FRED COHEN, Executor of the Estate of DEBRA DEE O'NEAL, Deceased, Plaintiffs,

v.

CONTINENTAL AEROSPACE TECHNOLOGIES, INC. (f/k/a CONTINENTAL
MOTORS, INC.); and AIRCRAFT ACCESSORIES OF OKLAHOMA, INC.,
Defendants.

Appeal by Plaintiffs from Order entered by Judge James L. Gale in Nash
County Superior Court. Heard in the Court of Appeals 5 March 2024.

*Poyner Spruill LLP, by N. Cosmo Zinkow and Andrew H. Erteschik, for
Plaintiffs-Appellants.*

*Williams Mullen, by Alexander M. Gormley, and Cunningham Swaim, LLP, by
Ross Cunningham and Steven D. Sanfelippo, admitted Pro Hac Vice, for
Defendant-Appellee Continental Aerospace Technologies, Inc.*

HAMPSON, Judge.

Factual and Procedural Background

Plaintiffs appeal from the trial court's Order granting summary judgment to

Defendant Continental Aerospace Technologies, Inc., based on the statute of repose.¹ The Record on Appeal reveals the following:

On 31 March 2013, Dennis and Debra O'Neal were flying in their Lancair LC42-550FG airplane (the aircraft), traveling from Wilkes County Airport in North Wilkesboro to Warren Field Airport in Washington. The O'Neals were licensed and experienced pilots; Debra piloted the aircraft. After climbing to 5,000 feet, at 12:46 p.m. Debra declared an emergency and reported low fuel pressure and engine failure. She reported smoke in the cockpit and that the engine was barely producing power. At 12:50 p.m. the aircraft made a forced landing and collided with trees and terrain, killing Dennis and Debra.

Data from the accident revealed that the engine failure was caused by a faulty engine starter adapter: the adapter's oil plug became dislodged during flight, releasing engine oil. The aircraft's engine starter adapter had been replaced shortly before the crash, on 11 February 2013.

On 13 March 2015, the executor of the O'Neal estate filed suit, asserting claims against several defendants. While the Complaint addresses additional related entities, it asserts claims against three distinct defendants: Continental Motors, Inc.²

¹ Following the filing of the Notice of Appeal, Jan Weiss substituted for Fred Cohen as personal representative for both the O'Neal estates.

² Plaintiffs originally named Teledyne Technologies, Inc., as a defendant based on allegations that Continental and Teledyne were alter ego corporations, but voluntarily dismissed Teledyne upon finding no shared liability.

(Continental), the manufacturer of the engine, Aircraft Accessories of Oklahoma (Aircraft Accessories), which overhauled the engine starter adapter and sold it prior to installation, and Air Care Aviation Services (Air Care), the maintenance company that installed the starter adapter. The Complaint asserted claims for product liability, negligence, breach of warranty, and negligent representation, among others.

Evidence in the Record reveals the history of the aircraft's engine and the faulty starter adapter. Continental originally manufactured the engine on 29 March 2002 and sold it to Lancair International, the manufacturer of the aircraft. Lancair installed the engine in the aircraft, which the O'Neals acquired in 2010. In January 2013, they noticed a problem with their engine starter adapter and brought it to Air Care for maintenance. On 11 February 2013, Air Care replaced the engine starter adapter with an overhauled adapter it had purchased from Aircraft Accessories on 29 January 2013. Aircraft Accessories had performed an overhaul on this adapter in January 2013, using a 2011 maintenance and overhaul manual published by Continental. The resulting engine failure and crash occurred the month after the overhauled adapter was installed, on 31 March 2013.

Aircraft Accessories moved to dismiss for lack of personal jurisdiction. The trial court denied this motion, and this Court affirmed that denial in a previous decision. *Cohen v. Continental Motors, Inc.*, 253 N.C. App. 407, 799 S.E.2d 72, 2017 WL 1632643 (N.C. App. 2017) (unpublished). Continental likewise moved to dismiss for lack of personal jurisdiction, and we reversed the trial court's grant of that motion.

Cohen v. Continental Motors, Inc., 279 N.C. App. 123, 864 S.E.2d 816 (2021).

On 15 September 2022, Continental moved for summary judgment, arguing that all of Plaintiff's claims against it were barred by the statute of repose. The trial court granted this motion on 2 June 2023. On 30 June 2023, Plaintiffs filed written notice of appeal.

Issue

On appeal, Plaintiffs argue that the statute of repose should run from Continental's distribution of an allegedly defective manual used to repair the aircraft, rather than from its manufacture of the engine. However, Plaintiffs have not shown that the order they appeal from is a final judgment disposing of the cause to all parties and we therefore address the question of our appellate jurisdiction.

Analysis

An order granting summary judgment "is either interlocutory or the final determination of the rights of the parties." N.C. Gen. Stat. § 1A-1, Rule 54(a) (2023). "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. An interlocutory order is one made during the pendency of an action, which does not dispose of the case, but leaves it for further action by the trial court in order to settle and determine the entire controversy." *Veazey v. City of Durham*, 231 N.C. 357, 361-62, 57 S.E.2d 377, 381 (1950) (citations omitted). "Orders which do not dispose of the action as to all parties are interlocutory." *Jarrell v. Coastal Emergency Servs. of the Carolinas*,

Inc., 121 N.C. App. 198, 199, 464 S.E.2d 720, 722 (1995). There is no general right to appeal from interlocutory orders. *Id.* (citing N.C. Gen. Stat. § 1A-1, Rule 54(b)). “The reason for this rule is to prevent fragmentary, premature and unnecessary appeals by permitting the trial court to bring the case to final judgment before it is presented to the appellate courts.” *Fraser v. Di Santi*, 75 N.C. App. 654, 655, 331 S.E.2d 217, 218 (1985).

The Record does not reflect that Plaintiffs’ claims against all defendants have been disposed of by the trial court. The Complaint effectively addresses three defendants: Continental, the manufacturer of the engine, Aircraft Accessories, the provider of the engine starter adapter, and Air Care, the installer of the adapter. The trial court’s Order granting Continental’s motion for summary judgment, which is the subject of this appeal, addresses only Plaintiffs’ claims against Continental and includes in its caption Aircraft Accessories as a defendant. The Record contains no copies of orders, judgments, or other filings showing the resolution of Plaintiff’s claims against Aircraft Accessories or Air Care. Neither Plaintiffs’ Statement of the Case nor any other portion of Plaintiffs’ briefing indicates that these claims were resolved.

The only indications before us that Plaintiff’s claims against the non-Continental defendants have been resolved are inconclusive. First, the certificate of service for Plaintiffs’ notice of appeal lists each attorney involved in the case and includes the parenthetical “(dismissed)” following the names and addresses of the

attorneys for Air Care and Aircraft Accessories. Second, the trial court's 12 March 2020 order allowing Continental's motion to dismiss for lack of personal jurisdiction, which we reversed, *Cohen v. Continental Motors, Inc.*, 279 N.C. App. 123, 864 S.E.2d 816, also refers to Air Care as a "former Defendant." Neither of these is a statement to this Court that those claims were resolved or a court filing resolving those claims. Where the record does not indicate the disposition of the plaintiff's claims against all defendants, the appeal is subject to dismissal. *Huffman v. Gulf Oil Corp.*, 26 N.C. App. 376, 380, 216 S.E.2d 383, 385-86 (1975).

Nor does the resolution of Plaintiffs' claims against Continental implicitly resolve the related claims against other defendants. The Complaint asserts combined claims against the defendants—for example, Counts I through IV assert claims of strict liability, negligence, breach of warranty, and negligent misrepresentation against both Continental and Aircraft Accessories. However, the trial court granted summary judgment for Continental based on the six-year statute of repose under the Products Liability Act, N.C. Gen. Stat. § 1-50(6) (2007),³ holding that any claims against Continental could stem only from the original manufacture and sale of the engine in 2002. The statute of repose would not foreclose claims against Aircraft Accessories based on its overhaul and sale of the defective part or Air Care based on

³ N.C. Gen. Stat. § 1-50(a)(6), setting a six-year statute of repose for products liability claims, was repealed in 2009 and replaced with N.C. Gen. Stat. § 1-46.1, extending the time to file a claim to twelve years for causes of action accruing on or after 1 October 2009.

its installation of the part, both of which occurred the month before the accident. Because the Record does not reflect all of Plaintiffs' claims are resolved, Plaintiffs' appeal appears to be interlocutory.

Whether an appeal is interlocutory or stemming from a final judgment, an appellant's brief must contain "a statement of the grounds for appellate review." N.C. R. App. P. 28(b)(4). This rule is a nonjurisdictional rule that "normally should not lead to dismissal of the appeal." *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co., Inc.*, 362 N.C. 191, 198, 657 S.E.2d 361, 365 (2008). However, "when an appeal is interlocutory, Rule 28(b)(4) is not a 'nonjurisdictional' rule." *Larsen v. Black Diamond French Truffles, Inc.*, 241 N.C. App. 74, 77, 772 S.E.2d 93, 96 (2015). To establish appellate jurisdiction in an interlocutory case, the appellant must show that the order was certified for appeal by the trial court under Rule 54(b) of our Rules of Civil Procedure or that the appeal affects a substantial right. *Id.*

Here, the order was not certified by the trial court and Plaintiffs' statement of grounds for appellate review simply recites: "This is an appeal from a final judgment of a superior court. This Court therefore has appellate jurisdiction under N.C. Gen. Stat. § 7A-27(b)(1)." Plaintiff does not acknowledge that the order being appealed from does not appear to be final, much less argue that it deprives Plaintiff of a substantial right permitting an interlocutory appeal. "[I]t is the appellant's burden to present appropriate grounds for this Court's acceptance of an interlocutory appeal[.]" *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 379, 444 S.E.2d

252, 253 (1994). “It is not the duty of this Court to construct arguments for or find support for appellant’s right to appeal from an interlocutory order[.]” *Id.* at 380, 444 S.E.2d at 254. Because Plaintiffs have failed to establish this appeal is not interlocutory and have made no argument that the order affected a substantial right, we must dismiss the appeal for lack of appellate jurisdiction. *Bradley v. Cumberland Cnty.*, 262 N.C. App. 376, 382, 822 S.E.2d 416, 421 (2018) (citing *State v. Phillips*, 149 N.C. App. 310, 313-14, 560 S.E.2d 852, 855 (2002)) (“[I]t is [the appellant’s] burden to produce a record establishing the jurisdiction of the court from which appeal is taken, and his failure to do so subjects th[e] appeal to dismissal.”).

Conclusion

For the foregoing reasons we dismiss this appeal without prejudice to Plaintiffs timely taking an appeal upon the entry of final judgment or, alternatively, to the extent the right to appeal has been lost, by filing a Petition for Writ of Certiorari with this Court to obtain appellate review upon a Record establishing the jurisdiction of this Court.

APPEAL DISMISSED WITHOUT PREJUDICE.

Judges GRIFFIN and STADING concur.

Report per Rule 30(e).