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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-39

Filed 20 August 2024

Henderson County, No. 22-CVS-527

2120 ARLINGTON PLACE TRUST DATED 10/28/21, Plaintiff,

v.

JEFFREY JONES and RACHEL HOLBERT, Defendants.

Appeal by Defendants from order entered 1 September 2023 by Judge Lisa C. Bell in Henderson County Superior Court. Heard in the Court of Appeals 14 May 2024.

Roberson Haworth & Reese, P.L.L.C., by Alan B. Powell, Zachary W. Green, and Andrew D. Irby, for Plaintiff-Appellee.

Jeffrey Jones and Rachel Holbert, pro se Defendants-Appellants.

GRIFFIN, Judge.

Defendants Jeffrey Jones and Rachel Holbert appeal from the trial court's order granting summary judgment to Plaintiff 2120 Arlington Place Trust. Defendants argue the trial court lacked subject matter jurisdiction and erred in granting summary judgment. Additionally, Defendants raise the defenses of

improper venue, failure to join a necessary party, and lack of personal jurisdiction. We affirm the trial court's judgment.

I. Factual and Procedural Background

In 2021, Holbert sold her property, 2120 Arlington Place in Hendersonville, to Plaintiff. The sale of the property closed on 30 November 2021, and a general warranty deed was issued and recorded with the Register of Deeds on 7 December 2021. Holbert is listed on the deed as the grantor and her notarized signature is contained within. Holbert received payment on the date the deed was recorded, 7 December 2021.

After the sale was complete, Plaintiff sought to evict holdover tenant Jones on 4 March 2022. Plaintiff initiated summary ejectment proceedings in Magistrate Court in Henderson County, North Carolina. On 29 March 2022, the Magistrate Court entered judgment for Plaintiff granting summary ejectment. On 5 April 2022, Jones filed notice of appeal and transferred the matter to district court. On 3 May 2022, Jones hired an attorney and filed a Motion to Amend Defendants' Answer, Motion to Join a Necessary Party, and Motion to Continue Trial.

The district court entered an order on 2 June 2022 allowing Defendant's Amended Answer and joined Holbert as party-defendant. On 5 July 2022, Defendants filed a joint counterclaim. On 11 November 2022, the matter was transferred to Superior Court by consent of all parties. At this point, the parties exchanged written discovery and Plaintiff deposed both Defendants.

On 5 July 2023, Defendants’ attorney filed a Motion to Withdraw as Counsel for both Defendants, on the ground that Defendants failed to uphold their contractual obligations to counsel. On 11 July 2023, Plaintiff moved for summary judgment and the imposition of sanctions pursuant to Rule 37.

The trial court granted Defendants’ attorney’s Motion to Withdraw as Counsel on 24 July 2023 and heard the other motions at that time. On 5 September 2024, the trial court entered an order granting Plaintiff’s Rule 37 Motion and striking Defendants’ Answers, Affirmative Defenses, and Counterclaim in their entirety. On the same date, the trial court entered an order granting summary judgment in favor of Plaintiff.

Defendants timely appealed from the entry of summary judgment.

II. Analysis

Defendants contend the trial court lacked subject matter jurisdiction because the deed was invalid, Plaintiff lacked standing, and there was no landlord and tenant relationship. Defendants further contend that venue was improper, the trial court lacked personal jurisdiction, and Plaintiff failed to join a necessary party. Lastly, Defendants contend the trial court erred in granting summary judgment in favor of Plaintiff.

We review issues of summary judgment de novo. *Forbis v. Neal*, 361 N.C. 519, 524, 649 S.E.2d 382, 385 (2007). Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with

affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to judgment as a matter of law.” N.C. R. Civ. P. 56(c). “A genuine issue is one that can be maintained by substantial evidence.” *Value Health Sols., Inc. v. Pharm. Rsch. Assocs, Inc.*, 385 N.C. 250, 267, 891 S.E.2d 100, 114 (2023). In considering a motion for summary judgment, “the Court must view the evidence in the light most favorable to the non-moving party.” *Id.*

Before reaching the merits of Defendants’ arguments, we must clarify the impact of the trial court’s sanctions against Defendants on their appeal. Rule 37 of the North Carolina Rules of Civil Procedure exists as a mechanism by which the trial court can “prevent or eliminate dilatory tactics on the part of unscrupulous attorneys or litigants.” *Essex Grp., Inc. v. Express Wire Servs., Inc.*, 157 N.C. App. 360, 363, 578 S.E.2d 705, 707 (2003) (internal citations omitted). The trial court has the express authority to impose sanctions on a party who disregards discovery requests. *Green v. Maness*, 69 N.C. App 292, 299, 316 S.E.2d 917, 922 (1984). Pursuant to Rule 37(b)(2)(c), this includes striking the pleadings of the non-compliant party, in part or whole. *Bumgarner v. Reneau*, 332 N.C. 624, 630, 422 S.E.2d 686, 689 (1992).

Defendants did not notice appeal from the trial court’s order striking their pleadings as a Rule 37 sanction. The sanctions are therefore not properly before us on review. However, the sanctions do need to be addressed to clarify their origin. The trial court found Defendants repeatedly “failed to respond to discovery in good faith” and “intentionally provided false responses to discovery requests and omitted

material information and documents in their responses.” As a result, the trial court sanctioned Defendants and struck their pleadings in their entirety.

A. Subject Matter Jurisdiction

Defendants contend the trial court lacked subject matter jurisdiction because the deed was invalid and Plaintiff lacked standing. Additionally, Defendants argue the trial court did not have subject matter jurisdiction over the summary ejectment proceeding because Jones and Plaintiff never entered a landlord-tenant relationship. We disagree.

Defendants did not raise lack of subject matter jurisdiction prior to this appeal. Nonetheless, a party may challenge subject matter jurisdiction at any time, “even for the first time on appeal.” *Gurganus v. Gurganus*, 252 N.C. App 1, 4, 796 S.E.2d 811, 814 (2017) (internal citations omitted). We review such issues of subject matter jurisdiction de novo. *In re Cornblum*, 220 N.C. App 100, 102, 727 S.E.2d 338, 340 (2012) (internal marks and citations omitted).

1. Deed Validity

Defendants argue that the deed is invalid because it was transferred to a trust without a named trustee. In support of this contention, Defendants cite multiple cases from other jurisdictions; however, those cases are not binding on this Court and are irrelevant given clear statutory language to the contrary. For example, Defendants cite an Ohio Court of Appeals case, *Thompson v. McVey*, where the court held that the deed was invalid because it failed to transfer title to a trustee and only

transferred title to the trust itself. *Thompson v. McVey*, 2006-Ohio-7036, 2006 WL 3833975, at *2 (Ohio Ct. App. Dec. 28, 2006).

Defendants are correct that in North Carolina “the creation of a trust must involve a conveyance of property and before property can be said to be held in trust by the trustee, the trustee must have legal title.” *In re Estate of Washburn*, 158 N.C. App. 457, 462, 581 S.E.2d 148, 151 (2003). However, North Carolina law also provides that a deed that conveys property to a trust is also “deemed to be a transfer to the trustee or trustees of that trust.” N.C. Gen. Stat. § 39-6.7(a) (2023). Therefore, the deed at issue in this case, which conveyed real property to the trust, also transferred the property to the trustees. Accordingly, the deed is valid.

2. Standing

Defendants also argue Plaintiff lacks standing because a trust cannot sue or be sued. We disagree.

“Standing is a necessary prerequisite to a court’s proper exercise of subject matter jurisdiction.” *Myers v. Baldwin*, 205 N.C. App. 696, 698, 698 S.E.2d 108, 109 (2010) (internal marks and citations omitted). Given that standing is an aspect of subject matter jurisdiction, issues concerning standing “may be raised for the first time on appeal.” *Id.* (Internal marks and citations omitted). Generally, the North Carolina Constitution provides standing to those who suffer harm. *See Mangum v. Raleigh Bd. of Adjustment*, 363 N.C. 640, 642, 669 S.E.2d 279, 281–82 (2008). The basic premise of standing is “whether the party seeking relief has alleged such a

personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.” *Id.* at 642, 669 S.E.2d at 282 (internal marks and citations omitted). Our Supreme Court has held that “legal entities other than natural persons may have standing.” *Willowmere Cmty. Ass’n, Inc. v. City of Charlotte*, 370 N.C. 553, 557, 809 S.E.2d 558, 561, (2018) (internal marks and citations omitted). Previously, our Court has recognized that a trust is a legal entity capable of suing and being sued. *See Goodwin, by and through Hales v. Four Cnty. Elec. Tr., Inc.*, 251 N.C. App. 69, 74, 795 S.E.2d 590, 594 (2016) (“[T]he Membership Co-Op and the Non-Profit Trust are two separate, distinct legal entities.”).

Defendants again cite multiple cases from other jurisdictions which hold that a trust is not capable of suing or being sued and thus cannot have standing. These cases are not relevant to our analysis, and directly conflict with our established law. Defendants do not challenge any specific element of standing but rather contend that trusts cannot have standing at all. As we have previously held, a trust is a legal entity that can be party to a legal action in North Carolina. Accordingly, we hold that Plaintiff has standing.

3. Landlord-Tenant Relationship

Defendants’ last subject matter jurisdiction argument contends the trial court did not have subject matter jurisdiction over the summary ejectment proceeding

because Plaintiff and Jones did not share a landlord-tenant relationship. Defendants concede that a landlord-tenant relationship existed between Holbert and Jones, but argue that no similar relationship existed between Jones and Plaintiff. We disagree.

Subject matter jurisdiction for summary ejectment is determined by section 42-26 of the North Carolina General Statutes, which restricts this remedy to situations where there is a landlord-tenant relationship. N.C. Gen. Stat. § 42-26 (2023). The plaintiff need not allege the relationship of landlord and tenant between the parties as a jurisdictional matter, however it must be shown to exist before the remedy may be granted properly. *Chandler v. Cleveland Sav. and Loan Ass’n*, 24 N.C. App. 455, 459, 211 S.E.2d 484, 488 (1975).

Our Courts have consistently held that when land is conveyed subject to a valid and continuing lease, “the right to collect the rents thereafter accruing[,]” passes to the purchaser. *Pearce v. Gay*, 263 N.C. 449, 451, 139 S.E.2d 567, 569 (1965); *Strickland v. Lawrence*, 176 N.C. App. 656, 665–66, 627 S.E.2d 301, 307 (2006). The conveyance does not have to refer explicitly to the lease, as a conveyance of land subject to a lease is done so “subject to the rights of the tenant.” *Perkins v. Langdon*, 231 N.C. 386, 389, 57 S.E.2d 407, 409 (1950). A conveyance includes “[a] transfer of title to real property by deed or devise or other instrument transferring title to real property.” N.C. Gen. Stat. § 41-55(1) (2023). “When title passes, lessee ceases to hold under the grantor. He then becomes a tenant of grantee, and his possession is grantee’s possession.” *Strickland*, 176 N.C. App. at 665–66, 627 S.E.2d at 307.

Defendants concede a landlord and tenant relationship existed between them prior to the conveyance. Thus, when the conveyance of land to Plaintiff occurred, the rights and responsibilities of the landlord transferred as well. Plaintiff stepped into Holbert's position as landlord and assumed Holbert's role in the landlord-tenant relationship with Jones. Accordingly, the trial court properly exercised subject matter jurisdiction over the summary ejectment proceedings.

B. Frivolous Arguments

Defendants argue the trial court lacked personal jurisdiction over Holbert, that the venue was improper, and that Plaintiff failed to join a necessary party. We disagree. Each of these defenses are waivable and may not be raised for the first time on appeal. *See Slattery v. Appy City, LLC*, 385 N.C. 726, 731, 898 S.E.2d 700, 705 (2024) (holding personal jurisdiction is waived as a defense when a defendant makes a general appearance without objecting); *Nello L. Teer Co. v. Hitchcock Corp.*, 235 N.C. 741, 743–44, 71 S.E.2d 54, 55–56 (1952) (holding venue is not jurisdictional and may be waived as a defense if not raised timely); *M.E. v. T.J.*, 380 N.C. 539, 563–64, 869 S.E.2d 624, 639–40 (2022) (holding necessary joinder of parties was not preserved for review where it was never raised at the trial court, and reversing prior precedent to the extent it held otherwise). As a result of the trial court's sanction to strike Defendants' pleadings, including its affirmative defenses, the record in this case does not show that Defendants raised any of these defenses before the trial court. Accordingly, they are waived and not suitable for review by this Court for the first

time.

Additionally, Defendants argue summary judgment was improper and Plaintiff engaged in self-help eviction. Rule 10 of the North Carolina Rules of Appellate Procedure provides that an issue is only preserved for appellate review if it was presented to the trial court in some manner. *See Higgins v. Simmons*, 324 N.C. 100, 103, 376 S.E.2d 449, 452 (1989) (“Because a contention not made in the court below may not be raised for the first time on appeal . . . the bank’s contention was not properly presented to the Court of Appeals for review.”); *Plemmer v. Matthewson*, 281 N.C. 722, 725, 190 S.E.2d 204, 206 (1972) (citations omitted) (explaining that arguments not made below may not be raised for the first time on appeal). As discussed before, Defendants’ answer and counterclaims were stricken in their entirety via the Rule 37 Sanctions. Defendants did not appeal the Rule 37 Sanctions and they are not before this Court. Therefore, the issue of whether Plaintiff engaged in self-help eviction is not eligible for appellate review. Defendants make no further proper arguments regarding summary judgment. Taking all pleadings and evidence in the light most favorable to Defendants, the undisputed facts show Plaintiff was entitled to summary judgment.

III. Conclusion

We hold the trial court had proper subject matter jurisdiction and did not err by granting Plaintiff’s motion for summary judgment.

AFFIRMED.

Opinion of the Court

Judges MURPHY and GORE concur.

Report per Rule 30(e).