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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 24-338

Filed 17 December 2024

Wake County, No. 23 CVS 004186-910

MICHAEL B. SOSNA, Plaintiff,

v.

MICHAEL CAUSEY, COMMISSIONER OF NORTH CAROLINA DEPARTMENT
OF INSURANCE, Defendant.

Appeal by plaintiff from judgment entered 18 December 2023 by Judge John
W. Smith in Superior Court, Wake County. Heard in the Court of Appeals
6 November 2024.

Michael B. Sosna, pro se, for plaintiff-appellant.

*Attorney General Joshua Stein, by Special Deputy Attorney General M. Denise
Stanford and Assistant Attorney General Kristin K. Mullins, for defendant-
appellee.*

ARROWOOD, Judge.

Michael Sosna (“plaintiff”) appeals the denial of his Rule 60(b) motion, and the
trial court’s denial of testimony at the Rule 60(b) hearing. For the following reasons,
we affirm the trial court’s order and find no abuse of discretion.

I. Factual Background

On 28 February 2023, plaintiff filed a complaint against the North Carolina Department of Insurance (“DOI”), challenging their rate hikes.¹ Plaintiff had taken out a life insurance policy with General Electric Capital Assurance Company (predecessor to Genworth) in 2005 with an annual premium of \$3,118.49. Genworth applied for a series of a premium rate increases beginning in 2015, resulting in a notice to plaintiff on 3 December 2022 that his premium would increase to \$6,056.57 the following February. Plaintiff alleged that the DOI violated their own requirements, violated North Carolina law, and engaged in excessive and unfairly discriminatory rate hikes. Defendant filed a motion to dismiss on 21 April 2023, claiming sovereign immunity. In an affidavit, Ted Hamby, a deputy commissioner of the DOI, stated that “[a]t no time between 2019 and the present did [plaintiff] request that the Commissioner permit him to intervene in the Commissioner’s consideration and approval of any rate filings.” Defendant’s motion to dismiss was granted on 13 July 2023; plaintiff initially appealed the order to this Court, then withdrew his appeal.

On 1 September 2023, plaintiff filed a motion for relief under Rule 60(b)(3) and (6) with the Wake County Superior Court, on the grounds of fraud and error of law,

¹ The name of the defendant was later amended Michael Causey, Commissioner of Insurance (hereinafter “defendant”).

and subpoenaed A. John Hoomani (“Mr. Hoomani”) of the DOI. This motion was denied 12 December 2023, and plaintiff gave notice of appeal 16 January 2024.

II. Discussion

Plaintiff argues the trial court abused its discretion in two respects: by denying his motion for relief and by denying his offer of testimonial evidence of a subpoenaed witness. We consider each argument in turn.

A. 60(b) Motion for Relief

The standard of review for the denial of 60(b) motion is abuse of discretion. *Davis v. Davis*, 360 N.C. 518, 523 (2006) (citation omitted). “Abuse of discretion means manifestly unsupported by reason or so arbitrary that it could not have been the result of a reasoned decision.” *State v. Bagley*, 183 N.C. App. 514, 524 (2007) (cleaned up).

Rule 60 permits relief from a judgement or order under certain circumstances, including fraud or “[a]ny other reason justifying relief from the operation of the judgment.” N.C.G.S. § 1A-1, Rule 60(b)(3), (6). “To obtain relief under Rule 60(b)(3), the moving party must 1) have a meritorious defense, 2) that he was prevented from presenting prior to judgment, 3) because of fraud, misrepresentation or misconduct by the adverse party.’” *Milton M. Croom Charitable Remainder Unitrust v. Hedrick*, 188 N.C. App. 262, 268 (2008) (quoting 2 G. Gray Wilson, *North Carolina Civil Procedure* § 60–8, at 60–22 (3d ed. 2007)). To succeed on a Rule(b)(6) motion, “the movant must show that (1) extraordinary circumstances exist and that (2) ‘justice

demands' such relief." *Goodwin v. Cashwell*, 102 N.C. App. 275, 278 (1991) (quoting *Vaglio v. Town & Campus Int'l, Inc.*, 71 N.C. App. 250, 255 (1984)).

Plaintiff contends that defendant misrepresented the possibility of intervention in the rate revisions, and that such intervention is actually impossible. Part of his basis for this belief is a statement made to him by Mr. Hoomani on 11 August 2023. Mr. Hoomani told plaintiff, "There is no mechanism for policyholders to upload documents on SERFF." SERFF is the online system used by insurance agencies and the DOI to communicate, negotiate, and approve matters such as premium rate applications. Plaintiff states that since there is no mechanism for uploading documents to SERFF, intervention is impossible. Assuming intervention was impossible, the case law justifying the motion to dismiss, such as *Dare County v. N.C. Dept. of Ins.*, 207 N.C. App 600 (2010), would not apply, constituting an error of law that would justify setting aside the motion to dismiss.²

Plaintiff's argument is fatally flawed, however, by his basic assumption that his inability to upload documents to SERFF meant that intervention was impossible. Ted Hamby, in his sworn affidavit, indicated that intervention in the consideration of rate filings should occur through a request to the Commissioner. This is supported by a statement made by the trial judge during the 60(b) hearing: "Well, filing in the

² Plaintiff also contends that proceedings on SERFF do not qualify as a "deliberative process of an administrative proceeding under the APA" He states that the first time a policy holder learns of a premium increase could be more than a year after a decision is made; however, he provides no evidence that a premium decision could not be overturned after intervention.

electronic system is not the only way to intervene.” Further, plaintiff has made no arguments supporting his contention that intervention is impossible without direct access to SERFF. He has not documented or otherwise presented any attempts at intervention other than his attempts to directly access the SERFF system.

Plaintiff’s failure to substantiate his claim that intervention is impossible ultimately dooms his overall conclusion. Plaintiff argues that N.C.G.S. § 58-2-75 provides him an avenue for review of the rate filings, even though he never intervened, since it provides that any order of the Commissioner of Insurance shall be reviewed by the Superior Court of Wake County. However, our decision in *Dare County* made clear that N.C.G.S. § 58-2-75 is controlled by the Administrative Procedure Act. *Dare County*, 207 N.C. at 615. Thus, an agency decision is only reviewable if it is final, and if a party has failed to intervene, an agency action is not an agency decision as applied to that party. *Id.* at 614–16. Plaintiff attempts to sidestep the caselaw by arguing that review of the rate filings cannot fall under the APA because intervention is impossible, which is the very argument he has failed to substantiate.

Plaintiff has failed to prove fraud, failed to prove any extraordinary circumstances, and we find that the trial court did not abuse its discretion in denying his 60(b) motion.

B. Denial of Subpoenaed Witness Testimony

“[I]t is within the trial court’s discretion as to whether it will consider affidavits, oral testimony, or both in motion hearings.” *Lemon v. Combs*, 164 N.C. App. 615, 619 (2004) (citation omitted). We only find abuse of discretion when the trial court’s decision was manifestly unreasonable. *State v. Bagley*, 183 N.C. App. 514, 524 (2007) (cleaned up).

The testimony that plaintiff was seeking to introduce was from Mr. Hoomani, who had told plaintiff that it was impossible for policyholders to upload documents to SERFF. At the hearing, however, the court made it clear that it had already taken this fact into consideration by telling plaintiff that SERFF was not the only method of intervention. The testimony from Mr. Hoomani would have been cumulative and would not have provided the court with any additional information it would need to rule on the motion. Therefore, we find that the trial court did not abuse its discretion by denying the testimony.

III. Conclusion

For the foregoing reasons, we affirm the order of the trial court.

AFFIRMED.

Judges COLLINS and HAMPSON concur.

Report per Rule 30(e).