



North Carolina Court of Appeals

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No. 21-439

JOHANNA M. JONES,
Plaintiff,

v.

CEDRIC LEE JONES,
Defendant.

ORDER

The following order was entered:

On 19 May 2021, Defendant-appellant Cedric Jones, gave notice of appeal to this Court from an order denying his motion to set aside the Plaintiff-appellee's voluntary dismissal and for leave to file a counterclaim. Defendant-appellant filed a record on appeal on 17 June 2021 and an opening brief on 13 September 2021. Defendant-appellant's brief provides insight to his arguments; however, the facts confirm that the relief sought is from an interlocutory order and warrant dismissal of the appeal.

'Generally, there is no right of immediate appeal from interlocutory order and judgments.' *Goldston v. Am. Motors Corp.*, 326 N.C. 723, 725, 392 S.E.2d 735, 736 (1990). '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). '[W]hen an appeal is interlocutory, the appellant must include in its statement of grounds for appellate review 'sufficient facts and argument to support appellate review on the ground that the challenged order affects a substantial right.'" *Johnson v. Lucas*, 168 N.C. App. 515, 518, 608 S.E.2d 336, 338 (quoting N.C.R. App. P. 28(b)(4)), *aff'd per curiam*, 360 N.C. 53, 619 S.E.2d 502 (2005).

'[T]he denial of a Rule 60(b) Motion is in the nature of an interlocutory order because plaintiff's voluntary dismissal, resulted in there being no pending action. Thus, defendants are not parties aggrieved by the denial of the 60(b) motion.' *Troy v. Tucker*, 126 N.C. App. 213, 215, 484 S.E.2d 98, 99 (1997). 'Furthermore, relief from a voluntary dismissal is not available pursuant to Rule 60(b), because no relief is sought from an order, judgment, or proceeding as contemplated by the Rule.' *Id.*

Defendant-appellant argues that the trial court's denial of his motions is a final order because defendant had brought an action for equitable distribution himself. Defendant lists nine actions that he asserts reflect a claim having been made by him for equitable distribution. '[I]f a person entitled to equitable distribution does not specifically apply for it by cross-action or by a separate action prior to the judgment of absolute divorce, the divorce judgment destroys that person's statutory right to equitable distribution.' *Lutz v. Lutz*, 101 N.C. App. 298, 301, 399 S.E.2d 385, 387, *disc. rev. denied*, 328 N.C. 732, 303, S.E.2d 871 (1991). Here, defendant did not file a cross-claim, a separate claim, respond to plaintiff's action for equitable distribution, or file any motions in the matter. Defendant did not bring a claim for equitable distribution in his own right. All actions cited by defendant are instead characterized as responses to plaintiff's equitable distribution claim and do not constitute defendant bringing an independent and separate claim. Defendant

also argues the Equitable Distribution Inventory Affidavit he filed as part of plaintiff's action was sufficient to support an independent claim for equitable distribution. Once again this is best characterized as defendant responding or taking part in his defense to plaintiff's action, not the filing of an independent claim.

Defendant also argues that he is an aggrieved party. However, our precedent from Troy clearly states that when filing a Rule 60(b) motion in response to a voluntary dismissal pursuant to N.C. R. Civ. P. 41(a)(1), 'defendants are not parties aggrieved by the denial of the 60(b) motion.' 126 N.C. App. at 215, 484 S.E.2d 99.

Defendant next asserts plaintiff is equitably estopped from denying his claim for equitable distribution. Defendant failed to make an equitable estoppel argument before the trial court, nor does he raise the issue of equitable estoppel in his Appellate Brief. Thus, we do not consider this argument. See N.C.R. App. P. 10 (a)(1), 28(b)(6).


Finally, defendant requests that if we are not persuaded by his arguments, we invoke Rule 2 or our power of certiorari to hear his appeal. These are extraordinary measures and deny this request.

Based upon the reasoning above we deem this appeal to be from and interlocutory order, grant the Plaintiff's motion to dismiss, and dismiss Defendant's appeal. Appeal dismissed. Appellant to pay costs.

And it is considered and adjudged further, that the Appellant, Cedric Lee Jones, do pay the costs of the appeal in this Court incurred, to wit, the sum of Sixty Three Dollars and 25/100 (\$63.25), and execution issue therefor.

By order of the Court this the 7th of June 2022.

WITNESS my hand and official seal this the 7th day of June 2022.



Eugene H. Soar
Clerk, North Carolina Court of Appeals

Copy to:
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Mrs. Michelle D. Connell, Attorney at Law, For Jones, Johanna M.
Hon. William W. Baggs, Clerk of District Court