IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1043

Filed 6 August 2024

Jackson County, No. 18 CVS 775

ADVENTURE TRAIL OF CHEROKEE, INC.,
A North Carolina Corporation, Plaintiff,

v.

RUTH A. OWENS AND WILLIAM FREDRICK OWENS, Defendants.

Appeal by Defendant William Fredrick Owens from judgment entered 2 June 2023 by Judge Bradley B. Letts in Jackson County Superior Court. Heard in the Court of Appeals 3 April 2024.

*Mark L. Hayes for the defendant-appellant.*

*Shira Hedgepeth for the plaintiff-appellee.*

STADING, Judge.

This matter was considered by a prior panel of this Court. *See Adventure Trail of Cherokee v. Owens*, 287 N.C. App. 217, 880 S.E.2d 785 (2022) (unpublished). Previously, Defendant appealed from an order and judgment concluding that a lease agreement between Plaintiff Adventure Trail of Cherokee, Inc., and Defendant's mother, Ruth A. Owens, terminated upon her April 2019 death, granting Defendant

no rights in the lease. *Id*. Upon review, this Court held that one trial court judge "had no authority to overrule [another trial court judge's] order," and "vacate[d] [the subsequent] order and judgment for lack of subject matter jurisdiction." *Id.* Following that decision, the matter was remanded to the Jackson County Superior Court for further proceedings. The present appeal concerns the orders and judgment entered on remand.

## I. Background

On 1 October 2005, Defendant's mother ("Ms. Owens") entered into a lease agreement with Plaintiff, which owns and operates Adventure Trail Campground. Ms. Owens, the lessee, entered into the lease with Plaintiff, the lessor, for the purpose of placing and living in her manufactured home on the campground. In 2006, Defendant moved into Ms. Owens' home.

The relevant terms of the lease between Ms. Owens and Plaintiff are as follows: the leasehold period is defined as "for the life of the Lessees or the survivor of the Lessee"; that "Lessees are expected to continue assisting the Lessor, as physically able, in maintaining the campground;" and that "Lessees agree that they and all guests shall abide by whatever rules apply to all guests or Lessees of the campground." The lease does not provide for a penalty in the event of noncompliance with the foregoing provisions.

On 13 December 2018, Plaintiff filed a complaint against Ms. Owens and Defendant, alleging breach of contract and requesting declaratory judgment. The

complaint alleged that Ms. Owens and Defendant breached the lease, and as a result, no longer had property rights. Specifically, Plaintiff alleged that Ms. Owens missed rent payments. Plaintiff also alleged that Plaintiff and Defendant ceased helping with the continued maintenance of the campground beginning in 2015. Plaintiff further alleged that Defendant failed to adhere to campground rules by driving above the speed limit and drinking alcohol with guests on the premises. Ms. Owens and Defendant filed an answer, raising counterclaims for breach of contract and unfair and deceptive trade practices. Their answer specifically alleged that Plaintiff "had unilaterally changed the campground rules, departing from a mutual understanding and practice that had existed for many years." In 2019, while the case was still pending, Ms. Owens passed away.

On 2 July 2019, Plaintiff moved for declaratory judgment and summary judgment, arguing that the lease between Ms. Owens and Plaintiff was not valid as to Defendant. Judge Letts denied both motions on 17 July 2019. Two years later, on 19 March 2021, Plaintiff filed an amended complaint, adding a request for compensatory damages. Thereafter, Plaintiff also filed a notice of voluntary dismissal as to Ms. Owens in light of her passing.

On 24 January 2022, a hearing on pretrial motions commenced before Judge Daniel Kuehnert. On 8 February 2022, Judge Kuehnert entered an order and judgment, concluding that "Defendant William Owens was not a Lessee or third-party beneficiary of the lease agreement." Defendant appealed on 3 March 2022. Upon

review by another panel from this Court, Judge Kuehnert's order and judgment was vacated. *See Adventure Trail of Cherokee v. Owens*, 287 N.C. App. 217, 880 S.E.2d 785 (2022).

Following this Court's decision, Plaintiff filed a motion for judgment on the pleadings with the trial court on 30 January 2023; the motion was denied. The matter came before the trial court on 28 February 2023 following the parties' waiver of a jury trial. After the bench trial, Judge Letts entered a judgment on 17 March 2023, concluding that the phrase "survivor of the lease" was a scrivener's error, and that Defendant had no rights under the lease. Defendant filed a notice of appeal on the same day.

On 24 March 2023, Defendant filed two motions under Rules 52 and 59 concerning Judge Letts' judgment. Defendant's motions argued that "Judge Letts could not reverse his denial of the order on summary judgment," and that "even Judge Letts himself could not enter a new order effectively overturning his earlier order." That same day, Plaintiff moved to amend the 24 March 2023 judgment. On 2 June 2023, Judge Letts entered an order concerning Defendant's Rule 52 motion and amended the judgment to correct errors in the findings of fact. But Judge Letts denied Defendant's Rule 59 motion.

## II. Jurisdiction

This Court has jurisdiction to consider Defendant's appeal under N.C. Gen. Stat. § 7A-27(b)(1) (2023).

## III. Analysis

Defendant presents two issues on appeal: (1) whether the trial court erred by revisiting a settled question of law, and (2) whether the trial court erred in its interpretation of the plain meaning of the lease. For the reasons below, we hold that the trial court did not err with respect to either issue submitted.

### A. Standard of Review

Under North Carolina law, "[t]he standard of review from a bench trial is whether there exists competent evidence to support the trial court's findings of fact and whether the findings support the conclusions of law and ensuing judgment." *Gribble v. Bostian*, 279 N.C. App. 17, 20, 864 S.E.2d 370, 373 (2021) (citation omitted). "Findings of fact by the trial court in a non-jury trial are conclusive on appeal if there is evidence to support those findings. . . . A trial court's conclusions of law, however, are reviewable *de novo*." *Hinnant v. Philips*, 184 N.C. App. 241, 245, 645 S.E.2d 867, 870 (2007) (internal citations and quotations omitted). "Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *Craig v. New Hanover Cnty. Bd. of Educ.*, 363 N.C. 334, 337, 678 S.E.2d 351, 354 (2009) (citation omitted).

### B. Settled Question of Law

Defendant contends that the trial court reversibly erred by revisiting a question of law that was previously determined at summary judgment. Defendant

argues that "once a superior court judge has settled a question of law, no superior court judge can revisit that question." In so arguing, Defendant cites *Calloway v. Ford Motor Co.*, 281 N.C. 496, 189 S.E.2d 484 (1972) and *Carr v. Great Lakes Carbon Corp.*, 49 N.C. App. 631, 272 S.E.2d 374 (1980) ("Ordinarily, one superior court judge may not overrule the judgment of another superior court judge previously made in the same case on the same legal issue."). Yet, *Calloway* and *Carr* are readily distinguishable from the matter *sub judice;* in those cases, two different judges issued separate rulings on the same motion as a matter of law, and so the rulings contravened one another. *See, e.g., Calloway*, 281 N.C. at 505, 189 S.E.2d at 490 (holding that "[w]hen one Superior Court judge, in the exercise of his discretion, has made an order denying a motion to amend, absent changed conditions, another Superior Court judge may not thereafter allow the motion"); *see also Carr*, 49 N.C. App. at 635, 272 S.E.2d at 377 (noting that a subsequent summary judgment motion by one judge—following an initial denial by a different judge—may be determined only if the second motion "presents legal issues that are different from those raised in the prior motion").

Here, Judge Letts did not revisit or overturn his previous decision on Plaintiff's motion for summary judgment from 2019. Rather, he merely referenced his former denial of summary judgment from 2019 to ensure an understanding of the procedural background on the record. In doing so, Judge Letts explained what this Court found after appellate review, why he denied the motion back in 2019, and how it impacted

the procedural context of the bench trial being heard on remand. Thus, Judge Letts did not rule differently or change the 2019 summary judgment order, he rendered a final judgment following a bench trial on the merits.

Defendant further contends that Judge Letts' judgment contravenes his former decision on the motion for summary judgment because "it reached the opposite result and [found] that [Defendant] had no rights under the lease." However, "the denial of a motion for summary judgment is not reviewable during appeal from a final judgment rendered in trial on the merits." *Harris v. Walden*, 314 N.C. 284, 286, 333 S.E.2d 254, 256 (1985). The issue proposed by Defendant would require this Court to impermissibly compare the merits of the denial of summary judgment to the merits of the final judgment awarded. *See id.* (citations omitted) ("In order to avoid [] an anomalous result, we hold that the denial of a motion for summary judgment is not reviewable during appeal from a final judgment rendered in a trial on the merits."). Since this appeal derives from a final judgment following a trial on the merits, review of the summary judgment order as Defendant requests is impermissible.

### C. Interpretation of the Lease

Defendant next contends that the trial court erred when interpreting the lease. The paragraph in dispute states "[t]he term of this Lease shall be for the life of the lessees or the survivor of the Lessee or as long as the Lessees or the surviving lessee continues to maintain the residence as their primary residence. . . ." Defendant argues that the amended judgment errs because: (1) the phrase "survivor of the lease"

has a plain meaning different than that determined by the trial court; (2) the use of parol evidence was improper in light of a plain meaning being available; and (3) the phrase "survivor of the lease" was not a scrivener's error.

Under North Carolina law, "whether the language of a contract is ambiguous is a question of law" that is reviewed *de novo* on appeal. *Gay v. Saber Healthcare Grp., L.L.C.*, 271 N.C. App. 1, 5, 842 S.E.2d 635, 639 (2020) (citation omitted). "In construing the terms of a contract, courts must give ordinary words their ordinary meanings." *T.M.C.S., Inc. v. Marco Contrs., Inc.*, 244 N.C. App. 330, 341, 780 S.E.2d 588, 597 (2015) (internal citation and quotation omitted). With respect to the plain meaning of terms:

> Where the language of a contract is plain and unambiguous, the construction of the agreement is a matter of law; and the court may not ignore or delete any of its provisions, nor insert words into it, but must construe the contract as written, in the light of the undisputed evidence as to the custom, usage, and meaning of its terms. . . . If the plain language of a contract is clear, the intention of the parties is inferred from the words of the contract.

*State v. Philip Morris USA, Inc.*, 193 N.C. App. 1, 12-13, 666 S.E.2d 783, 791 (2008) (internal citations and quotation marks omitted). However, "[a]n ambiguity exists where the language of a contract is fairly and reasonably susceptible to either of the constructions asserted by the parties." *Gay*, 271 N.C. App. at 7, 842 S.E.2d at 640. If an ambiguity presents itself, "the courts construe [the] contract in a manner that

gives effect to all of its provisions, if . . . reasonably able to do so." *Johnston Cnty. v. R.N. Rouse & Co.*, 331 N.C. 88, 94, 414 S.E.2d 30, 34 (1992).

As for Defendant's first argument, the phrase "survivor of the Lessee" does not have a plain meaning when viewing the lease's terms in totality—rather, it is ambiguous. Here, the trial court concluded that the phrase "survivor of the Lessee" was "inconsistent with all other language in the Lease Agreement." Among the competent evidence relied upon by the trial court to reach its conclusion that a plain meaning could not be discerned, included: the survivor language "occurs only once within the three-page body" of the lease; the survivor language was not defined; and there was no express provision noting that Defendant was a "Lessee" or "surviving Lessee," nor any implied language. Although the terms "survivor" and "lessee" in isolation may have an ordinary meaning, when viewed in totality of the lease, one could discern more than one reasonable interpretation of the provision. *Gay*, 271 N.C. App. at 7, 842 S.E.2d at 640. Thus, there is competent evidence to support the trial court's findings and conclusion that a plain meaning could not be ascertained.

Defendant next contends that the trial court erred by using parol evidence in light of a plain meaning being available for the phrase "survivor of the Lessee." Given that our analysis concludes that no plain meaning of the phrase can be deduced, our review solely looks to whether the evidence used contradicted any terms of the lease. Under North Carolina law, "[t]he parol evidence rule prohibits the admission of parol evidence to vary, add to, or contradict" language within a contract, however,

"an ambiguous term may be explained or construed with the aid of parol evidence." *Drake v. Hance*, 195 N.C. App. 588, 591, 673 S.E.2d 411, 413 (2009) (citations and internal quotation marks omitted). "The purpose of the parol evidence rule is to give legal effect to the intention of parties to make their written contract a complete expression of their agreement." *Garrison v. Garrison*, 71 N.C. App. 618, 620, 322 S.E.2d 824, 825 (1984). Here, the trial court faced resolving an ambiguity in light of no ordinary meaning being available for the phrase "survivor of the Lessee." Thus, parol evidence was used to discern the phrase's meaning by looking to the purpose of the lease, the parties' respective situations at the time of its execution, and their intent.

The trial court received testimony from Gary Kirby, the attorney who assisted the landlord by "preparing a form lease for use by renters at Adventure Trail." The record reflects that Mr. Kirby assisted with drafting a lease agreement "for Robert and Joanna Brinson['s] . . . lease at Adventure Trail." Mr. Kirby explained that "the term surviving lessee [was included] in this initial lease agreement with the Brinsons since there were two persons entering the lease as lessees." After completing a draft of the Brinson lease, Mr. Kirby testified that he gave the document to the landlord who "then made changes and edits to the lease document." He added that the "only way a party could be added to the lease . . . was with an amendment . . . [which] the [Defendant's] lease did not have." The trial court concluded that this testimony was "consistent with the terms contained in the Lease Agreement" and that "there [was]

no material variance in the language between the draft lease agreement created by Mr. Kirby and the Lease Agreement in this case." Mr. Kirby's testimony does not alter or change the presence of the term "survivor," but explains its purpose. In light of this evidence from Mr. Kirby, coupled with the lease language, the trial court properly held that the phrase was a scrivener's error and the lease terminated upon the death of Ms. Owens.

Defendant lastly contends that under the third-party beneficiary doctrine, a "survivor can demand the benefit of the lease . . . even though . . . not a signing party of the original lease." To support this assertion, Defendant relies on *Century 21 v. Davis*, 104 N.C. App. 119, 408 S.E.2d 196 (1991). In *Century 21*, this Court determined whether a real estate broker had rights as a third-party beneficiary to recover commissions owed under a land purchase option contract. *Id.* at 120, 408 S.E.2d at 196. In its analysis, the Court noted that "where a contract between two parties is intended for the benefit of a third party, the latter may maintain an action in contract for its breach." *Id.* at 122, 408 S.E.2d at 198. But in that case, the brokers were "expressly designated by name in the Option to Purchase to receive the benefit of a sales commission." *Id.* at 123, 408 S.E.2d at 198. The matter *sub judice* is distinguishable from *Century 21* because here, Defendant's name was never listed on the lease, he never signed the lease, and he was not a party to the lease. Although the broker in *Century 21* did not physically sign the document, the express designation by name created "a right to enforce the defendant's promise." *Id.* Thus,

Defendant's reliance on *Century 21* is inapplicable as the lease agreement between Plaintiff and Ms. Owens was not intended for the benefit of Defendant when it was created. Rather, the evidence demonstrates that it was intended for the benefit of Ms. Owens to place and live in her manufactured home on Plaintiff's property.

After review, we conclude that the trial court did not err in its interpretation of the plain meaning of the lease because no ordinary meaning could be ascertained for the phrase "survivor of the Lessee." Moreover, given the ambiguity of the term, the trial court properly used parol evidence to help discern the parties' intentions. Still, Defendant disputes that the provision was a scrivener's error as there is "nothing incongruous, obvious, self-apparent, or easily reconcilable about the alleged . . . error." *Brown v. Middleton*, 86 N.C. App. 63, 68, 356 S.E.2d 386, 388 (1987). However, the fact that a single lessee signed a contract referencing multiple lessees is "incongruous" and "obvious" error.

## IV. Conclusion

As for both issues submitted on appeal, we find Defendant's contentions without merit and discern no error by the trial court. We therefore affirm the judgment of the trial court.

AFFIRMED.

Chief Judge DILLON and Judge COLLINS concur.

Report per Rule 30(e).