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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-706

Filed: 21 March 2017

Currituck County, No. 10-CVS-275

BETTY P. LEWIS, Plaintiff,

v.

ALLEN TOBY HEDGEPEETH, *et al.*, Defendant.

Appeal by defendant from order entered 13 January 2015 by Judge Marvin K. Blount, III in Currituck County Superior Court. Heard in the Court of Appeals 13 January 2016.

*Ward and Smith, P.A., by Eric J. Remington and Alexander C. Dale, for plaintiff-appellee.*

*Vandeventer Black LLP, by Norman W. Shearin and Ashley P. Holmes, for defendant-appellant.*

DIETZ, Judge.

Defendant Allen Hedgepeth appeals the trial court's denial of his motion to join necessary parties. This is yet another appeal in a long-running legal dispute that has made its way to this Court many times in the past half-decade. As explained below, this Court already held in a previous appeal that Hedgepeth's motion to join

necessary parties does not affect a substantial right and thus cannot be immediately appealed. We are bound by that ruling and therefore dismiss this appeal for lack of appellate jurisdiction.

### **Facts and Procedural History**

The factual and procedural history of this protracted legal dispute has been addressed repeatedly in appellate decisions from this Court and the U.S. Court of Appeals for the Fourth Circuit. *See Hedgepeth v. Parker's Landing Prop. Owners Ass'n*, 388 F. App'x 242 (4th Cir. 2010) (unpublished); *Hedgepeth v. Parker's Landing Prop. Owners Ass'n, Inc.*, \_\_ N.C. App. \_\_, 781 S.E.2d 822 (2016); *Hedgepeth v. Parker's Landing Prop. Owners Ass'n, Inc.*, 236 N.C. App. 56, 762 S.E.2d 865 (2014). We limit our recitation of the facts to those necessary to resolve this appeal.

The central issue in this action concerns the existence of a historical easement in favor of Hedgepeth across Lewis's property and whether that easement was extinguished by adverse possession or similar legal theories. Hedgepeth maintains that resolution of this issue impacts other neighboring landowners who may have rights to the historical easement. Thus, he repeatedly has attempted to join those parties in this action. *See Hedgepeth*, 236 N.C. App. at 63, 762 S.E.2d at 869 (discussing Hedgepeth's previous attempt to join these same parties as necessary parties in the trial court).

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Following remand from this Court in a previous appeal, Hedgepeth again moved to join necessary parties. On 13 January 2015, the trial court denied the motion. Hedgepeth timely appealed.

### **Analysis**

Before reaching the merits of any appeal, this Court must satisfy itself that it possesses appellate jurisdiction. “Ordinarily, this Court hears appeals only after entry of a final judgment that leaves nothing further to be done in the trial court.” *State v. Oakes*, \_\_ N.C. App. \_\_, \_\_, 771 S.E.2d 832, 834 (2015). Hedgepeth concedes that the trial court’s order is not a final judgment but argues that the Court has jurisdiction because the challenged order affects a substantial right. *See* N.C. Gen. Stat. § 7A–27(b)(3)(a). As explained below, Hedgepeth’s substantial right argument is barred by the law of the case doctrine, and thus we must dismiss this appeal.

As an initial matter, this Court repeatedly has held that “the denial of motions predicated on a plaintiff’s failure to join allegedly necessary parties does not affect a substantial right and is not immediately appealable.” *Smith v. Lake Bay E., LLC*, 228 N.C. App. 72, 75, 743 S.E.2d 684, 686 (2013) (collecting cases). Thus, even if this issue had not already been decided by a previous panel of this Court in the same case, Hedgepeth would face an uphill battle to persuade the Court that it has jurisdiction.

But we need not reach the merits of the appealability issue because this Court already has considered Hedgepeth’s substantial right argument and rejected it. In

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2012, Hedgepeth appealed from the trial court's consolidated order denying his motion to join necessary parties and denying his motion for summary judgment. Among other grounds in his appellate brief, Hedgepeth argued that the trial court erred by rejecting his request to join necessary parties. Hedgepeth devoted seven pages of his appellate brief to this argument.

In our opinion in that previous appeal, this Court acknowledged Hedgepeth's necessary parties argument but refused to address it. *Hedgepeth*, 236 N.C. App. 56 at 63, 762 S.E.2d at 869. The Court held that Hedgepeth's separate arguments concerning *res judicata* and collateral estoppel affected a substantial right and were immediately appealable. *Id.* at 66, 762 S.E.2d at 871. But the Court declined to address Hedgepeth's remaining arguments, including the joinder of necessary parties argument, because those issues were "interlocutory" and "not properly before us on appeal." *Id.* at 73, 762 S.E.2d at 875.

"[W]hen an appellate court passes on a question and remands the cause for further proceedings, the questions there settled become the law of the case, both in subsequent proceedings in the trial court and on subsequent appeal, provided the same facts and the same questions which were determined in the previous appeal are involved in the second appeal." *Hayes v. City of Wilmington*, 243 N.C. 525, 536, 91 S.E.2d 673, 681–82 (1956). Put another way, "one panel of the Court of Appeals may

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not overrule the decision of another panel on the same question in the same case.” *In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 36 (1989).

Thus, we are bound to reject Hedgepeth’s argument that the denial of his request to join necessary parties affects a substantial right because another panel of this Court already held that this denial does not affect a substantial right. Accordingly, we must dismiss this appeal for lack of jurisdiction.

We also deny Lewis’s motion for sanctions under Rule 34 of the Rules of Appellate Procedure. Although we find Hedgepeth’s arguments meritless, we do not believe the appeal was frivolous. *See* N.C. R. App. P. 34(a).

**Conclusion**

We dismiss this appeal for lack of appellate jurisdiction.

DISMISSED.

Judges ELMORE and STROUD concur.

Report per Rule 30(e).