

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

SUSAN RANDALL GOOD KNOTT, as)
Personal Representative of the Estate of)
WALTER R. GOOD, deceased,)
)
Appellant,)
v.)
)
FREDERICK M. GENUNG, II; ELIZABETH)
GENUNG TAYLOR; BARBARA INFANTE,)
WILSON & JOHNSON, P.A.; GEORGE A.)
WILSON; AND WILLIAM D. CLEMENTS,)
)
Appellees.)
_____)

Case No. 2D19-1924

Opinion filed June 10, 2020.

Appeal from the Circuit Court for Collier
County; Elizabeth V. Krier, Judge.

Michael J. Park of Park, Ossian, Barnaky &
Park, P.A., Clearwater, for Appellant.

Daniel M. Bachi of Sellers, Marion & Bachi,
P.A., West Palm Beach, for Appellees
Frederick M. Genung, II, and Elizabeth
Genung Taylor.

Michael J. Corso and Kyle C. Dudek, of
Henderson, Franklin, Starnes & Holt, P.A.,
Fort Myers, for Appellees Wilson &
Johnson, P.A.; George A. Wilson; and
William D. Clements.

No appearance for remaining Appellees.

LUCAS, Judge.

Susan Knott, as Personal Representative of the Estate of Walter R. Good, seeks review of a trial court order dismissing her multicount civil complaint. In its order, the trial court dismissed the entire complaint with prejudice as to Wilson & Johnson, P.A., George A. Wilson, and William D. Clements. As to Frederick Genung, II, and Elizabeth Taylor, the trial court dismissed count one of the complaint with prejudice but dismissed the remaining counts without prejudice and with leave to amend.

The order of dismissal as it relates to Frederick Genung, II, and Elizabeth Taylor is a nonfinal, nonappealable order because the claim in count one appears to be intertwined and interdependent with the claims set forth in the remaining counts of the complaint, which remain pending. See Gov't Emps. Ins. Co. v. Arreola, 231 So. 3d 508, 511 (Fla. 2d DCA 2017) (explaining that appellate courts must consider three factors under Florida Rule of Appellate Procedure 9.110(k) before reviewing a partial final judgment: (1) whether the adjudicated claim could have been maintained independently of the remaining claims; (2) whether the partial final judgment removed a party from the action; and (3) whether the claims could be "separately disposed of based on the same or different facts"); Kidwell v. Gen. Motors Corp., 975 So. 2d 503, 504 (Fla. 2d DCA 2007) (dismissing an appeal of "a nonfinal, nonappealable order because the dismissed claims are interrelated with additional claims that remain pending"); see also Nationstar Mortg., LLC v. Glisson, 286 So. 3d 942, 944 (Fla. 2d DCA 2019) (holding that an order dismissing a claim without prejudice is ordinarily not an adjudication on the merits (citing Drady v. Hillsborough Cty. Aviation Auth., 193 So. 2d 201, 205 (Fla. 2d DCA 1966))).

Accordingly, as to these appellees, we dismiss this appeal for lack of jurisdiction. See Kidwell, 975 So. 2d at 504.

The order as it relates to Wilson & Johnson, P.A., George A. Wilson, and William D. Clements, however, is final and appealable because no counts remain pending against these parties. We affirm the dismissal of count I with prejudice against these parties insofar as the substance of the plaintiff's claim in count I concerns a pending will contest, which is an issue that must be litigated in the probate court proceedings. See DeWitt v. Duce, 408 So. 2d 216, 218 (Fla. 1981).¹ But the remaining counts of the complaint should not have been dismissed with prejudice against these defendants without first affording the plaintiff an opportunity to amend those counts. See Strader v. Carpenters Crest Owners Ass'n, 968 So. 2d 621, 622 (Fla. 2d DCA 2007) ("Generally, a trial court must allow a litigant the opportunity to amend a complaint before dismissing its suit with prejudice unless it is clear that the pleading cannot be amended so as to state a cause of action." (quoting Albrecht v. Bd. of Trs. of Internal Improvement Tr. Fund, 481 So. 2d 555, 556 (Fla. 2d DCA 1986))); Kapley v. Borchers, 714 So. 2d 1217, 1218 (Fla. 2d DCA 1998) ("A dismissal with prejudice should not be ordered without giving the party offering the pleading an opportunity to amend unless it appears that the privilege to amend has been abused or it is clear that the pleading cannot be amended to state a cause of action.").

Affirmed in part, dismissed in part, reversed in part, and remanded.

NORTHCUTT and VILLANTI, JJ., Concur.

¹Our affirmance in this regard should not be read as any kind of determination or comment about the merits of count I; we simply hold that this count must proceed within the probate proceedings.