NO. COA01-1315

NORTH CAROLINA COURT OF APPEALS

Filed: 5 November 2002

JEANETTE K. WILLIAMS,
Plaintiff-appellee,

v. Bladen County
No. 00 CVS 165

YOLANDA M. MCDOWELL,
Defendant-appellant.

Appeal by defendant from judgment entered 23 July 2001 by Judge James F. Ammons, Jr., in Bladen County Superior Court. Heard in the Court of Appeals 14 August 2002.

Moore & Maynard Law Firm, by K. Robert Davis and Alan I. Maynard, for plaintiff-appellee.

Walker, Clark, Allen, Herrin & Morano, LLP, by Gay P. Stanley, for defendant-appellant.

BRYANT, Judge.

Defendant appeals from an order granting plaintiff's motion for judgment notwithstanding the verdict [JNOV] on the issue of proximate cause and for a new trial on the issue of damages.

Plaintiff, Jeanette K. Williams, and defendant, Yolanda M. McDowell, were involved in an automobile accident on 21 May 1999 in Elizabethtown in Bladen County, North Carolina. Plaintiff alleged in her complaint that she was injured when defendant struck her car while plaintiff stopped to make a turn into a parking space. Defendant admitted that she failed to reduce her speed and that

this failure proximately caused the accident. However, defendant denied that plaintiff suffered severe injuries as a result of defendant's negligence.

At trial, the jury was asked to determine: 1) whether plaintiff was injured as a result of defendant's negligence; and, if so, 2) the amount of plaintiff's damages. The jury found that plaintiff was not injured by the negligence of defendant. Plaintiff filed a motion for JNOV on the issue of proximate cause, and requested a new trial to determine damages. The trial court granted plaintiff's motion. Defendant appealed.

Defendant argues that the trial court erred in setting aside the jury's verdict and entering JNOV on the issue of proximate cause. Before reaching this issue, we first determine whether this appeal is from an interlocutory order, and, as such, improperly before this Court.

> Generally, there is no right to appeal from an interlocutory order. "'An order or judgment is interlocutory if it is made during the pendency of an action and does not dispose of the case but requires further action by the trial court in order to finally determine the entire controversy.'"

Darroch v. Lea, 150 N.C. App. 156, 158, 563 S.E.2d 219, 221 (2002) (citations omitted).

> The purpose of this rule is "to prevent fragmentary and premature appeals that unnecessarily delay the administration of justice and to ensure that the trial divisions fully and finally dispose of the case before an appeal can be heard." As we have noted, "[t]here is no more effective way to procrastinate the administration of justice than that of bringing cases to an appellate

> court piecemeal through the medium of successive appeals from intermediate orders."

Sharpe v. Worland, 351 N.C. 159, 161, 522 S.E.2d 577, 578-79 (1999) (alteration in original) (citations omitted) (quoting *Veazey v. City of Durham*, 231 N.C. 357, 363, 57 S.E.2d 377, 382 (1950)), *temporary stay allowed sub nom., Sharpe v. Community Hosp.*, 355 N.C. 215, 559 S.E.2d 794 (2002). However, "[a]n appeal from an interlocutory order may be taken under two circumstances: 1) the order is final as to some but not all the parties and there is no just reason to delay the appeal; or 2) the order deprives the appellant of a substantial right that would be lost unless immediately reviewed." *Darroch*, 150 N.C. App. at 158, 563 S.E.2d at 221. "A substantial right is 'one which will clearly be lost or irremediably adversely affected if the order is not reviewable before final judgment.'" *Id.* (quoting *Turner v. Norfolk S. Corp.*, 137 N.C. App. 138, 142, 526 S.E.2d 666, 670 (2000)). The substantial right test "is satisfied when overlapping issues of fact between decided claims and those remaining create the possibility of inconsistent verdicts from separate trials." *CBP Resources, Inc. v. Mountaire Farms of N.C.*, 134 N.C. App. 169, 172, 517 S.E.2d 151, 154 (1999) (citing *Green v. Duke Power Co.*, 305 N.C. 603, 290 S.E.2d 593 (1982)).

There is no such danger here. The issue left to be decided at the new trial is that of damages because the jury did not previously reach the issue. Defendant cites to *Bowden v. Latta*, 337 N.C. 794, 448 S.E.2d 503 (1994), in support of her argument that a substantial right is affected. In *Bowden*, the jury

considered issues of negligence on the part of defendants, contributory negligence on the part of the plaintiff, gross negligence on the part of one of the defendants, and the amount of damages to be awarded the plaintiff. The jury found that the defendant was negligent but not grossly negligent, and that the plaintiff was negligent and therefore should not recover damages. The plaintiff filed a motion for JNOV and for a new trial as to damages. The trial court set aside the verdict as to the plaintiff's contributory negligence, granted the plaintiff's motion for JNOV as to contributory negligence, and granted a new trial as to damages. On appeal, this Court held that the appeal was from an interlocutory order and that no substantial right was affected. Our Supreme Court reversed, stating that there was a danger that plaintiff would have to litigate three times:

> Plaintiffs have already completed one trial, and if this appeal is not allowed, they will undergo a second trial on defendant's counterclaim. Then, if plaintiffs' exceptions are meritorious, they will undergo a *third* trial to relitigate plaintiffs' original action because the second trial will not include the issues of the extent and amount of plaintiffs' injuries or property damages.

Id. at 796, 448 S.E.2d at 505 (quoting *LaFalce v. Wolcott*, 76 N.C. App. 565, 569-70, 334 S.E.2d 236, 239 (1985)). Such is not the case here.

In the instant case, the issue was not one of contributory negligence on the part of plaintiff; rather, the issue was one of proximate cause. Assuming the parties litigate the issue of damages and, on appeal, this Court finds that the trial court erred

in granting plaintiff's motion for JNOV, there is no danger of inconsistent verdicts or re-litigating the same issues because the jury found no proximate cause in the first place. In other words, there will be no second trial on the issue of liability.

Based on the foregoing, this appeal is dismissed as interlocutory.

DISMISSED.

Judges McGEE and McCULLOUGH concur.

Report per Rule 30(e).