NO. COA01-314

NORTH CAROLINA COURT OF APPEALS

Filed: 2 April 2002

CLARANN MANNING ANDERSON,
MOTHER OF KIANEE LATOYE MANNING
AND TIRO JERROD MANNING; AND
JANIE LEE CASTLE, GUARDIAN AD
LITEM FOR KIANEE LATOYE MANNING
AND TIRO JERROD MANNING,
Plaintiffs,

v. Durham County
No. 00 CVD 2322

RECIL THAXTON SMITH,
Defendant.

Appeal by plaintiff from judgment entered 12 December 2000 by Judge R. G. Chaney in Durham County District Court. Heard in the Court of Appeals 9 January 2002.

Curtis C. Coleman, III, for plaintiffs.

Haywood, Denny & Miller, L.L.P., by Robert E. Levin, for defendant.

BIGGS, Judge.

Clarann Manning Anderson (plaintiff) appeals from an order dismissing her action for recovery of medical expenses incurred by her minor children arising out of an automobile accident. Recil Thaxton Smith (defendant) filed a motion to dismiss which the trial court granted. For the reasons herein, we reverse the trial court.

The evidence tended to show the following: Plaintiff and defendant were in an automobile accident on 16 February 1995, with

each driving their respective vehicles. Plaintiff and her minor children, who were passengers in her vehicle, sustained personal injuries which required medical care.

On 5 December 1997, plaintiff filed an action against defendant, seeking compensation for personal injuries and medical expenses. In this action (filed as 97 CVS 4986), plaintiff filed a separate claim seeking reimbursement for her children's medical expenses. The children's guardian ad litem (GAL), also sought compensation for their personal injuries; however, she did not seek reimbursement for their medical expenses.

On 16 August 1999, before the jury trial on plaintiff's claim for personal injuries began, plaintiff took a voluntary dismissal, without prejudice, of her claim for reimbursement of her children's medical expenses pursuant to Rule 41(a) of the North Carolina Rules of Civil Procedure. In addition, the GAL voluntarily dismissed the children's personal injury claims against defendant. The jury trial on plaintiff's remaining claims against defendant was thereafter conducted, and on 18 August 1999, the jury returned a verdict awarding her $10,000.00 for personal injuries.

On 12 June 2000, the GAL re-filed the children's personal injury action against defendant, filed as 00 CVS 2322. Plaintiff's claim as mother seeking reimbursement for the children's medical expenses was also included in this action.

Defendant filed a motion to dismiss plaintiff's claim for reimbursement of her children's medical expenses pursuant to Rule 8(c) of the North Carolina Rules of Civil Procedure, on the ground

that this claim was barred by the earlier trial. The trial court granted defendant's motion to dismiss. The trial court's order, however, did not affect the minor children's claims for personal injuries, which are now pending in a separate action. From this order, plaintiff gave notice of appeal on 8 January 2001.

Plaintiff, in her sole assignment of error, contends that the trial court erred in granting defendant's motion to dismiss pursuant to Rule 8(c) of the North Carolina Rules of Civil Procedure. Specifically, plaintiff argues that she is not barred under the doctrine of *res judicata* from bringing a claim for reimbursement for the children's medical expenses, although her claim for personal injury arising out of the same accident has been tried. We agree.

As a general rule, the doctrine of *res judicata* provides that:

> A final judgment rendered by a court of competent jurisdiction, on the merits, is conclusive as to the rights of the parties and their privies, and as to them constitutes an absolute bar to a subsequent action involving the same claim, demand, and cause of action.

Gaither Corporation v. Skinner, 241 N.C. 532, 535, 85 S.E.2d 909, 911 (1955).

While it is true that under the doctrine of *res judicata* "a judgment is conclusive as to all issues raised by the pleadings," the judgment is not conclusive as to issues not raised by the pleadings that serve as the basis for the judgment. *Bockweg v. Anderson,* 333 N.C. 486, 492, 428 S.E.2d 157, 161-62 (1993) (citation omitted). In *Hicks v. Koutro*, 249 N.C. 61, 105 S.E.2d

196 (1958), our Supreme Court held that where a party raises issues in the pleadings, it cannot, even with the consent of the opposing party, try those issues in a piecemeal fashion. However, if certain issues are not raised by the pleadings, parties may try those issues separately. *Bockweg,* 333 N.C. at 492, 428 S.E.2d at 162 (citations omitted). Further, the doctrine of *res judicata* extends, not only to matters actually determined, but also to other matters which in the exercise of due diligence could have been presented for determination in the prior action. *Gaither,* 241 N.C. at 535-36, 85 S.E.2d at 911 (citations omitted).

Defendant maintains that plaintiff's claim for reimbursement of the medical expenses of her children should have been presented in plaintiff's earlier action for her own personal injury, and, thus, is now barred under the doctrine of *res judicata*.

In North Carolina, two independent causes of action arise when unemancipated minors are injured through the negligence of another: (1) a claim on behalf of the child for her losses caused by the injury, and (2) a claim by the parent for loss of services during the child's minority and for medical expenses to treat the injury. *Brown v. Lyons,* 93 N.C. App. 453, 458, 378 S.E.2d 243, 246 (1989) (citations omitted). The parents' right of action is based upon their duty to care for and maintain their children. *Flippin v. Jarrell,* 301 N.C. 108, 270 S.E.2d 482 (1980), *reh'g denied,* 301 N.C. 727, 274 S.E.2d 228 (1981) (citation omitted).

The common law rule against claim-splitting is based on the general rule that all damages incurred as the result of a *single*

wrong must be recovered in one lawsuit. *Bockweg,* 333 N.C. at 492, 428 S.E.2d at 161 (1993) (citation omitted). However, where a plaintiff has suffered multiple wrongs at the hands of a defendant, a plaintiff may normally bring successive actions, or, at his option, may join several claims together in one lawsuit. *Id.;* N.C.R. Civ. P. 18(a) (1999).

In the case *sub judice*, plaintiff initially brought an action seeking recovery for (1) personal injuries, pain and suffering, and medical expenses; and (2) medical expenses incurred by her minor children. Before this action went to trial, plaintiff filed notice of voluntary dismissal without prejudice of the claim regarding the medical expenses of her children. The dismissed claim, which is now the subject of this action, was no longer a part of the action that was adjudicated in plaintiff's favor.

It is well settled that "[a] Rule 41 (a) dismissal strips the trial court of authority to enter further orders in the case . . . ." *Walker Frames v. Shively,* 123 N.C. App. 643, 646, 473 S.E.2d 776, 778 (1996). "The effect of a judgment of voluntary [dismissal] is to leave the plaintiff exactly where he [or she] was before the action was commenced." *Brisson v. Santoriello, M.D., P.A.*, 351 N.C. 589, 593, 528 S.E.2d 568, 570 (2000) (citation omitted). After a plaintiff takes a Rule 41(a) dismissal, "[t]here is nothing the defendant can do to fan the ashes of that action into life[,] and the court has no role to play." *Id.* (citation omitted). Plaintiff, however, is not precluded from later refiling her claim so long as it is within the one-year time limit

established by Rule 41(a). *Georgia-Pacific Corp. v. Bondurant,* 81 N.C. App. 362, 344 S.E.2d 302 (1986)(a plaintiff has one year to refile a claim that he or she has voluntarily dismissed). Once refiled, the case must be considered on its merits without reference to the disposition of the prior action. *See generally, Thompkins v. Log Systems, Inc.,* 96 N.C. App. 333, 385 S.E.2d 545 (1989), *disc. review denied*, 326 N.C. 366, 389 S.E.2d 819 (1990).

We conclude, therefore, that in the case *sub judice,* the judgment in the first action was not a final judgment on the merits of the dismissed claim, and thus does not bar the current action. The only issue presented by the pleadings in the prior action was plaintiff's claim based on her personal injuries, pain and suffering, and personal medical expenses. Moreover, the plaintiff's claim for her own injury is separate and distinct from her claim for reimbursement for injury to her children.

Accordingly, we hold that plaintiff's present action is not barred by the final judgment in the prior action because the claim now presented was neither part of the initial action, nor was plaintiff required to raise such claim. Thus, the doctrine of *res judicata* is inapplicable. We, therefore, reverse the trial court's order granting defendant's motion to dismiss.

Reversed.

Judges WALKER and MCGEE concur.

Report per Rule 30(e).