

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA09-1325

NORTH CAROLINA COURT OF APPEALS

Filed: 17 August 2010

BLEVINS WORKSHOP, Inc.,
d/b/a BLEVINS BUILDING SUPPLY,
Plaintiff,

v.

Alleghany County
No. 08 CVD 153

NAASON WILLIAMS and
THERESA DOTSON,
Defendants.

Appeal by Plaintiff from a judgment entered 19 May 2009 by Judge Mitchell McLean in Alleghany County District Court. Heard in the Court of Appeals 24 February 2010.

McElwee Law Firm, PLLC, by Robert P. Laney, for Plaintiff.

Kilby & Hurley, by John T. Kilby, for Defendants.

BEASLEY, Judge.

Plaintiff appeals from an order in which the trial court concluded that Plaintiff failed to bring its action within the applicable statute of limitations. Because the trial court erroneously found that Plaintiff's action on a judgment was not filed within the statute of limitations, we reverse, and remand for a new trial.

On 22 June 1998, Plaintiff, Blevins Workshop, Inc., obtained a consent judgment against Defendants, Naason Williams and Theresa Dotson, for \$4,623.80. The consent judgment also provided for a

10% annual interest rate to be applied retroactively from 1 July 1997 and attorney's fees in the amount of \$693.57. Defendants failed to comply with the consent judgment. On 8 May 2008, Plaintiff filed suit against Defendants in Alleghany County small claims court. Plaintiff sought \$4923.80 "on an account" in the small claims suit. Following a hearing on 18 June 2008, the small claims court found "that the plaintiff has proved [its] case by the greater weight of the evidence." Accordingly, the small claims court entered judgment in favor of Plaintiff for the principal amount of \$4,923.80.

On 26 June 2008, Defendants filed notice of appeal to the district court. Following a motion, the district court granted Plaintiff leave to file an amended complaint. In the amended complaint filed 17 November 2008, Plaintiff alleged that the purpose of the action was to "obtain a judgment and to extend the time to execute on the judgment based upon a prior judgment." The complaint also stated that the purpose of the small claims suit was to "obtain a new judgment." In the district court action Plaintiffs sought to recover \$9,016 with an 8% interest rate from the date of the new judgement and \$1,352 in attorney's fees.

On 19 May 2009, the district court entered judgment in favor of Defendants. After making several findings of fact, the trial court concluded:

- 1) That the action brought by the Plaintiffs in Alleghany Small Claims Court was not properly an action to obtain a judgment on a previously existing judgment and to extend the time to execute on said prior judgment and; in fact, for jurisdictional reasons, could not

have been such an action in Small Claims Court.

2) That the amended Complaint filed in November of 2008, which was designated as an action to obtain a judgment on a prior judgment was not filed until after the 10 year statutes of limitations for bringing such a claim and because the original action in Small Claims Court was not an action to obtain a judgment on a prior judgment the amended pleadings could not relate back to that filing date.

3) That the action as stated in the amended pleadings is barred by the applicable statutes of limitations (N.C.G.S. 1-47, 1-234 and 1-306), which makes that action subject to dismissal pursuant to a 12 (b) 6 motion.

Plaintiff filed notice of appeal to this court on 10 June 2009. Plaintiff raises five assignments of error which it brings before this court in five arguments. Plaintiff's assignments of error and arguments on appeal will be addressed cumulatively below.

Generally, actions on prior judgments cannot be enforced after ten years. See N.C. Gen. Stat. § 1-47(1) (2009) (actions upon judgments have a ten-year statute of limitations); N.C. Gen. Stat. § 1-306 (2009) (a judgment which requires the payment of money cannot be enforced by execution more than ten years after the date the original judgment was rendered); N.C. Gen. Stat. § 1-234 (2009) (a judgment can act as a lien against real property for ten years). To collect on a prior judgment, a new action must commence before the expiration of the statute of limitations. Addressing this issue, our Court explained that:

there is no procedure now recognized in this State by which a judgment may be "renewed." . . . [T]he only procedure now recognized by which the owner of a judgment may obtain a new judgment for the amount owing thereon is by an independent action on the prior judgment, which independent civil action must be commenced and prosecuted as in the case of any other civil action brought to recover judgment on a debt.

Investment Co. v. Toler, 32 N.C. App. 461, 462-63, 232 S.E.2d 717, 718 (1977) (citing *Reid v. Bristol*, 241 N.C. 699, 86 S.E.2d 417 (1955)).

Here, Plaintiff filed a small claims suit against Defendants, seeking \$4,923.80 "on an account." In its complaint, Plaintiff did not seek to recover the entire amount due, but instead sought an amount within the jurisdictional limits of small claims court. See N.C. Gen. Stat. § 7A-210(1) (2009) (explaining that the amount in controversy for a small claims action cannot exceed \$5,000). Since the Plaintiff's action was to recover on a prior monetary debt, it was properly brought in small claims court. See N.C. Gen. Stat. § 7A-210(2) (2009) (explaining that a small claims court has jurisdiction in a case if "[t]he only principal relief prayed is monetary."). Because Plaintiff's cause of action was an action "on an account" and not an action on a prior judgment, Plaintiff was seeking monetary relief within the jurisdictional limits of small claims court. Given the cursory nature of the pleadings in the small claims court, it was not necessary that the complaint specify the basis of the debt, only that the debt existed and the amount sought. N.C. Gen. Stat. § 7A-216 explains that a complaint in a

small claims action is sufficient if it "enables a person of common understanding to know what is meant."

Once Defendants appealed the small claims court decision to district court, the judge was permitted to allow "repleading or further pleading by some or all of the parties," including Plaintiff. N.C. Gen. Stat. § 7A-229 (2009). Plaintiff was permitted to amend its complaint to seek the full amount due, the jurisdictional limits of the magistrate's court no longer applicable. *See Don Setliff & Assocs. v. Subway Real Estate Corp.*, 178 N.C. App. 385, 387, 631 S.E.2d 526, 528 (2006) ("Section 7A-229 . . . gives discretion to the trial court whether, upon appeal to the district court for a trial *de novo*, to allow more pleadings beyond those filed in small claims court or to proceed in district court on the existing pleadings."), *aff'd per curiam*, 361 N.C. 586, 650 S.E.2d 593 (2007). We hold that the complaint in the small claims court was filed within 10 years of the original judgment, and was thus timely filed. Because the complaint in the small claims court was properly brought as an action in debt and not as an action for renewal of a judgment, the amended district court complaint related back to the original small claims court complaint, which was timely filed. *See Roper v. Thomas*, 60 N.C. App. 64, 68, 298 S.E.2d 424, 427 (1982) (holding that the trial judge may, in his discretion, allow a moving party to amend its pleading when the defending party has been given notice in the original action of the events alleged.).

Accordingly, we reverse the trial court's decision and remand for a new trial.¹

New Trial.

Judges BRYANT and STEELMAN concur.

Report per Rule 30(e).

¹ We note that Plaintiff's amended complaint seeks to recover interest upon the interest accrued under the original judgment. This is not permitted. *NCNB v. Robinson*, 80 N.C. App. 154, 157, 341 S.E.2d 364, 366 (1986).