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NO. COA10-942

NORTH CAROLINA COURT OF APPEALS

Filed: 1 March 2011

JANE WARD as ADMINISTRATOR
OF THE ESTATE OF HELEN
VIRGINIA MOORE and in her
INDIVIDUAL CAPACITY,
Plaintiffs,

v.

Rowan County
No. 09-CVS-1078

DEAL CARE INN, INC., HELEN
G. DEAL, WAYNE DEAL,
GEORGETTE ORMSBY, TONY
JOHNSON and HARRIS
ENTERPRISES of NC, Inc.
d/b/a DEAL CARE INN,
Defendants.

Appeal by plaintiff from orders entered 6 April 2010 by Judge Ted Royster in Rowan County Superior Court. Heard in the Court of Appeals 27 January 2011.

Wallace and Graham, P.A., by Mona Lisa Wallace, John Hughes, and Cathy Williams, for plaintiff appellant.

Hartsell & Williams, P.A., by Christy E. Wilhelm, for defendant appellees.

McCULLOUGH, Judge.

Plaintiff Jane Ward, as administrator of the estate of Helen Moore and in her individual capacity ("plaintiff"), appeals the trial court's order denying her motion to amend the complaint and the order dismissing her claims against defendants Deal Care Inn,

Inc. ("DCI") and Helen G. Deal ("Ms. Deal") while granting judgment on the pleadings in favor of DCI and Ms. Deal. DCI and Ms. Deal move to dismiss plaintiff's appeal, arguing that it is interlocutory. We agree and dismiss the appeal.

I. Background

Plaintiff filed this wrongful death action on 2 April 2009, against defendants DCI, Ms. Deal, Wayne Deal ("Mr. Deal"), Georgette Ormsby ("Ormsby"), Tony Johnson ("Johnson"), and Harris Enterprises of NC, Inc., d/b/a/ Deal Care Inn ("Harris Enterprises"). In her complaint, plaintiff alleged that her mother, Helen Virginia Moore ("Ms. Moore"), died as a result of defendants' negligence and/or medical malpractice and asserted several claims against defendants including negligence, wrongful death, breach of contract, and medical malpractice.

Ms. Moore was a resident at the Deal Care Inn, a licensed adult care home in Shelby, North Carolina, from July 2003 until May 2007. The Deal Care Inn was owned by DCI until 1 April 2007, when the business was sold to Harris Enterprises. Plaintiff contends that Mr. and Ms. Deal are agents of DCI, and Johnson and Ormsby are agents of Harris Enterprises.

In the complaint, plaintiff claims that beginning on 16 April 2007, an employee of Deal Care Inn noticed possible pressure ulcers on Ms. Moore's foot, but failed to obtain adequate medical care for her. As a result of sepsis caused by the pressure ulcers, Ms. Moore passed away on 17 May 2007.

Ormsby, Johnson, and Harris Enterprises filed an Answer on 18 May 2009. DCI, Ms. Deal, and the Estate of Mr. Deal filed an Answer and Counterclaim on 1 June 2009, which included a motion to dismiss, pursuant to N.C. Gen. Stat. § 1A-1, Rule 12(b)(6), for failure to state a claim upon which relief can be granted, and a motion for judgment on the pleadings, pursuant to N.C. Gen. Stat. § 1A-1, Rule 12(c), on the grounds that "[n]o actionable conduct or incidence of injury, damage, or loss occurred or have been alleged to have occurred prior to April 16, 2007[,]” after DCI sold the Deal Care Inn to Harris Enterprises. Plaintiff filed a reply to the counterclaim on 3 June 2009.

On 6 July 2009, plaintiff filed a motion to amend the complaint and attached a proposed amended complaint to the motion. The proposed amended complaint added allegations that prior to 1 April 2007, Ms. Moore had an existing untreated pressure sore and that defendants failed to provide her with adequate food, water, and medication, causing her to be more susceptible to developing pressure sores.

On 22 March 2010, the trial court held a hearing on plaintiff's motion to amend the complaint, as well as the motion to dismiss and the motion for judgment on the pleadings filed by DCI and Ms. Deal. On 6 April 2010, the trial court entered an order denying plaintiff's motion to amend the complaint on the ground that the motion was futile and outside the statute of limitations. Also on 6 April 2010, the trial court dismissed all claims against the Estate of Mr. Deal and entered an order dismissing plaintiffs'

claims against DCI and Ms. Deal, pursuant to Rule 12(b)(6) while granting judgment on the pleadings, pursuant to Rule 12(c), because "no actionable conduct or incidence of injury, damage, or loss occurred or have been alleged to have occurred prior to April 1, 2007." Plaintiff does not challenge the dismissal of all claims against the Estate of Mr. Deal. On 29 April 2010, plaintiff filed notices of appeal to the trial court's order denying her motion to amend the complaint and the order dismissing plaintiff's claims against DCI and Ms. Deal and granting judgment on the pleadings in favor of DCI and Ms. Deal.

II. Analysis

"An interlocutory order is one made during the pendency of an action, which does not dispose of the case, but leaves it for further action by the trial court in order to settle and determine the entire controversy." *Veazey v. Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950). The orders from which plaintiff appeals are interlocutory, as such orders do not resolve plaintiff's claims against Harris Enterprises, Ormsby, and Johnson. See *Jarrell v. Coastal Emergency Services of the Carolinas*, 121 N.C. App. 198, 199, 464 S.E.2d 720, 722 (1995) (holding that orders which do not dispose of the action as to all parties are interlocutory).

Generally, there is no right to appeal from an interlocutory order. *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 379, 444 S.E.2d 252, 253 (1994). "The reason for this rule is to prevent fragmentary, premature and unnecessary appeals by permitting the trial court to bring the case to final judgment

before it is presented to the appellate courts." *Fraser v. Di Santi*, 75 N.C. App. 654, 655, 331 S.E.2d 217, 218, *disc. review denied*, 315 N.C. 183, 337 S.E.2d 856, 856-57 (1985).

There are two significant exceptions to this rule. First, an interlocutory order is immediately appealable when the trial court enters a final judgment as to one or more but fewer than all of the claims or parties and the trial court certifies in the judgment that there is no just reason to delay the appeal. See N.C. Gen. Stat. § 1A-1, Rule 54(b) (2009). Second, an interlocutory order may be immediately appealed if the order deprives the appellant of a substantial right which would be lost if not reviewed prior to final judgment. *Southern Uniform Rentals v. Iowa Nat'l Mutual Ins. Co.*, 90 N.C. App. 738, 740, 370 S.E.2d 76, 78 (1988).

Plaintiff has the burden of showing this Court that the interlocutory orders deprive her of a substantial right. *Jeffreys*, 115 N.C. App. at 380, 444 S.E.2d at 254. The determination of whether a substantial right is involved in the appeal depends on whether that right is "one which will clearly be lost or irretrievably adversely affected if the order is not reviewable before final judgment.'" *Turner v. Norfolk S. Corp.*, 137 N.C. App. 138, 142, 526 S.E.2d 666, 670 (2000) (quoting *Blackwelder v. Dept. of Human Resources*, 60 N.C. App. 331, 335, 299 S.E.2d 777, 780 (1983)).

Plaintiff claims that a trial against DCI and Ms. Deal will involve the same issues and evidence as a trial against Harris Enterprises, Ormsby, and Johnson. Plaintiff argues that separate

trials for defendants could result in inconsistent verdicts on factual issues. We do not agree.

The right to avoid the possibility of two trials on the same issues can be a substantial right. *Green v. Duke Power Co.*, 305 N.C. 603, 608, 290 S.E.2d 593, 596 (1982). An interference with a plaintiff's right to avoid facing the possibility of two trials may be an interference with a substantial right if "the same issues are present in both trials, creating the possibility that a party will be prejudiced by different juries in separate trials rendering inconsistent verdicts on the same factual issue." *Id.*

However, if there are no factual issues common to the claims determined and the claims remaining, no substantial right is affected. *Jarrell*, 121 N.C. App. at 200, 464 S.E.2d at 722. Even taking every allegation in the complaint as true, DCI and Ms. Deal ceased all involvement with the Deal Care Inn and the care of Ms. Moore on 1 April 2007. In the present case, the claims against DCI and Ms. Deal involve the care of Ms. Moore before 1 April 2007, while the claims against Harris Enterprises, Ormsby, and Johnson concern the care of Ms. Moore after 1 April 2007. Because there was no simultaneous action of responsibility on behalf of DCI and Harris Enterprises, there are no overlapping factual issues, and no risk of inconsistent verdicts. Therefore, no substantial right is affected.

III. Conclusion

For the above-mentioned reasons, we dismiss plaintiff's appeal as interlocutory.

Appeal dismissed.

Judges GEER and STEPHENS concur.

Report per Rule 30(e).