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NO. COA14-834
NORTH CAROLINA COURT OF APPEALS

Filed: 31 December 2014

JAMES B. DAWKINS,

Plaintiff,

v.

Wake County
No. 13 CVS 7633

SANTANA R. CRUZ,
CRUZ BROTHERS CONCRETE, INC.

Defendants.

Appeal by defendants from order entered 13 March 2014 by Judge Donald W. Stephens in Wake County Superior Court. Heard in the Court of Appeals 3 December 2014.

The Messick Law Firm, by William C. Messick, for plaintiff-appellee.

HEDRICK GARDNER KINCHELOE & GAROFALO, LLP, by Lindsey L. Smith and John S. Byrd, for defendants-appellants.

ELMORE, Judge.

Defendants appeal from an order granting plaintiff's motion to amend his complaint and allowing plaintiff's claim to relate back to the complaint's original filing date. Because

defendants appeal from an interlocutory order that does not affect a substantial right, we dismiss the appeal.

I. Facts

Richard Dawkins (plaintiff) filed a complaint alleging personal injuries resulting from defendants' negligence. When the complaint was originally filed on 30 May 2013, plaintiff's name was listed as "James B. Dawkins" instead of "Richard Dawkins." On 23 January 2014, plaintiff filed a motion to amend the complaint to substitute plaintiff's name on the complaint from "James B. Dawkins" to "Richard Dawkins." The trial court entered an order (the order) granting plaintiff's motion to amend and related Richard Dawkins' claim back to the complaint's original filing date. Defendants appeal from the order. Plaintiff filed a motion to dismiss the appeal, arguing that the order is interlocutory and does not affect a substantial right.

II. Analysis

We address plaintiff's motion to dismiss the appeal. For the following reasons, we dismiss defendants' appeal.

"Generally, there is no right of immediate appeal from interlocutory orders and judgments." *Goldston v. Am. Motors Corp.*, 326 N.C. 723, 725, 392 S.E.2d 735, 736 (1990). An order is interlocutory if it "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. City of Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950) (citations omitted).

Immediate appeal of an interlocutory order is available, in relevant part, when the order "affects a substantial right." *Sharpe v. Worland*, 351 N.C. 159, 162, 522 S.E.2d 577, 579 (1999) (citations and internal quotation marks omitted). The "[a]voidance of trial is not a substantial right entitling a party to immediate appellate review." *Anderson v. Atl. Cas. Ins. Co.*, 134 N.C. App. 724, 727, 518 S.E.2d 786, 789 (1999). Moreover, under circumstances similar to the case at bar, this Court has previously held that an order allowing a motion to amend a complaint does not affect a substantial right. *Estate of Spell v. Ghanem*, 175 N.C. App. 191, 195, 622 S.E.2d 725, 728 (2005).

The order in this case is clearly interlocutory since it does not resolve plaintiff's negligence claim. Thus, the dispositive issue is whether the order affects a substantial right.

The crux of defendants' argument is that because the order allowed Richard Dawkins' claim to relate back to the filing date

of the original complaint, defendants would be forced to incur the costs of trial despite having a valid statute of limitations defense. As previously stated, however, merely avoiding a trial is not a substantial right. Moreover, should defendants properly preserve their statute of limitations argument for appellate review, they will not lose their right to bring forth that argument on appeal after the trial court enters a final judgment.

Accordingly, we dismiss defendants' appeal. See *id.* at 192-95, 622 S.E.2d at 727-29 (dismissing appeal and rejecting the defendant's substantial rights' argument that "without immediate review [of the interlocutory order], it will lose the right to avoid trial altogether by . . . raising the statute of limitations as an affirmative defense" and "it will lose forever the 'right' to avoid the expense and inconvenience of a trial").

III. Conclusion

In sum, we dismiss defendants' appeal because they have failed to establish that the order affects a substantial right.

Dismissed.

Judges DAVIS and DIETZ concur.

Report per Rule 30(e).

