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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-804

Filed: 1 December 2020

Guilford County, No. 17 CVS 4138

JOYCE WILLIAMS, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF
RUTH HEDGECK-JONES, Plaintiff,

v.

MARYFIELD, INC. d/b/a PENNYBYRN AT MARYFIELD, Defendant.

Appeal by plaintiff from orders entered 14 January 2019 by Judge Susan E. Bray in Guilford County Superior Court. Heard in the Court of Appeals 12 August 2020.

Pangia Law Group, by Amanda C. Dure and Joseph L. Anderson, for plaintiff-appellant.

Teague, Rotenstreich, Stanaland, Fox & Holt, PLLC, by Stephen G. Teague and Lyn K. Broom, for defendant-appellee.

DIETZ, Judge.

Plaintiff Joyce Williams appeals the dismissal of her complaint for medical malpractice and related claims. Before filing, Williams had the malpractice claim reviewed by an expert. She also included a Rule 9(j) certification in the complaint. But the certification mistakenly omitted some words required by Rule 9(j).

Opinion of the Court

Defendant Maryfield, Inc. moved for judgment on the pleadings, arguing that the strict language of Rule 9(j) compelled dismissal of the malpractice claim because of the missing words in the certification. At the hearing on Maryfield's motion, Williams moved for leave to amend the complaint, both orally and in writing. The trial court granted the motion for judgment on the pleadings without expressly addressing the pending motion to amend.

As explained below, we cannot engage in meaningful appellate review of the denial of the motion for leave to amend because, on this record, we cannot assess whether that implicit denial was within the court's sound discretion. We therefore vacate the dismissal of the medical malpractice claim, and the corresponding order awarding costs, and remand for further proceedings on that claim. We affirm the remaining portions of the challenged orders.

Facts and Procedural History

Ruth Hedgecock-Jones was a resident of Pennybyrn at Maryfield, an assisted-living facility operated by Defendant Maryfield, Inc. When Hedgecock-Jones moved into the facility, she was assessed as a high risk for falls. Hedgecock-Jones later suffered from several falls while residing at the facility.

On 10 February 2016, after two previous falls, Hedgecock-Jones fell again while attempting to get out of bed to use the restroom. She passed away several days

Opinion of the Court

later. The medical examiner concluded that the cause of death was a subdural hematoma resulting from a fall.

Plaintiff Joyce Williams, as the representative of Hedgecock-Jones's estate, sued Maryfield for medical malpractice and ordinary negligence. Maryfield later moved for judgment on the pleadings and summary judgment. Among many other arguments, Maryfield asserted that the Rule 9(j) certification in the complaint was defective because it did not include some of the wording required by the rule.

At the hearing on Maryfield's motions, Williams moved to amend the complaint to add the missing language to the Rule 9(j) certification. At the conclusion of the hearing, the trial court announced that it would grant both of Maryfield's motions and dismiss all of Williams's claims with prejudice. The trial court later entered written orders consistent with that oral pronouncement. The trial court's orders did not reference the pending motion to amend. Williams timely appealed both orders.

Analysis

The two orders from which Williams appealed—one for judgment on the pleadings and one for summary judgment—addressed a number of claims and legal theories. On appeal, Williams focuses entirely on the dismissal of the medical malpractice claim and we therefore limit our analysis to that claim. As explained below, we are unable to engage in meaningful appellate review of that portion of the trial court's order and therefore remand for further proceedings.

Opinion of the Court

The court granted judgment on the pleadings on the medical malpractice claim because Williams failed to comply with Rule 9(j) of the Rules of Civil Procedure. “Rule 9(j) is a special pleading requirement for medical malpractice actions.” *Kennedy v. DeAngelo*, 264 N.C. App. 65, 68, 825 S.E.2d 15, 17 (2019). The rule “serves as a gatekeeper, enacted by the legislature, to prevent frivolous malpractice claims by requiring expert review before filing of the action.” *Id.* at 68, 825 S.E.2d at 17–18.

The portion of Rule 9(j) relevant to this appeal provides that a medical malpractice claim “shall be dismissed” unless the complaint “specifically asserts that the medical care and all medical records pertaining to the alleged negligence” were reviewed by someone “who is reasonably expected to qualify as an expert witness.” N.C. Gen. Stat. § 1A-1, Rule 9(j). The key phrase for this appeal is “pertaining to the alleged negligence.” In the complaint, Williams omitted that phrase from the Rule 9(j) certification.

Ordinarily, this sort of technical pleading error might be excusable but, because of the particular language chosen by the legislature in Rule 9(j), failing to use the specific words contained in the rule generally is fatal. *Thigpen v. Ngo*, 355 N.C. 198, 201–02, 558 S.E.2d 162, 165 (2002). This is so because the rule compels dismissal unless the complaint “specifically asserts” all the necessary language. *Id.*

Still, our Supreme Court has carved out a key exception: “a plaintiff in a medical malpractice action may file an amended complaint under Rule 15(a) to cure

Opinion of the Court

a defect in a Rule 9(j) certification when the expert review and certification occurred before the filing of the original complaint.” *Vaughan v. Mashburn*, 371 N.C. 428, 441, 817 S.E.2d 370, 379 (2018). In *Vaughan*, the Supreme Court explained that, so long as the necessary expert review occurred before filing, the goal of Rule 9(j) is satisfied and the claim need not be dismissed “on the basis of mere technicalities.” *Id.*

So, in a case like this one, the plaintiff can attempt to cure a wording defect in the Rule 9(j) certification by seeking leave of court to amend the certification to insert the missing words. *Id.* Leave to amend in this circumstance “is addressed to the discretion of the trial court” but “shall be freely given when justice so requires.” *Id.* at 433, 817 S.E.2d at 374.

With these principles in mind, we turn to the trial court’s ruling. At the hearing on Maryfield’s motion for judgment on the pleadings and motion for summary judgment, Williams moved to amend the complaint to add missing words to the Rule 9(j) certification. Williams explained that the motion (which was both an oral motion and an accompanying written motion) was “pursuant to North Carolina Rule of Procedure 15(a) and the recent Supreme Court of North Carolina holding in *Vaughan v. Mashburn* so that the complaint can conform to the exact language.” At the conclusion of the hearing, the trial court announced that it would grant the motion for judgment on the pleadings. The court did not address the motion to amend. The trial court’s written order granting the motion for judgment on the pleadings likewise

made no reference to the motion to amend.

On appeal, Maryfield contends that any arguments concerning the motion to amend are waived both because Williams failed to secure a ruling on that motion from the trial court and because Williams did not reference the motion to amend in the notice of appeal. We are not persuaded by either of these arguments.

First, with respect to securing a ruling on the motion, when a trial court rules in a way that necessarily indicates it rejected a litigant's argument, that "satisfies the preservation requirement of Rule 10(a)(1) of the North Carolina Rules of Appellate Procedure in that [the litigant] raised and obtained a ruling (albeit implicit rather than explicit) on the issue now raised before our Court." *State v. Smith*, 267 N.C. App. 364, 367, 832 S.E.2d 921, 925 (2019). Here, the trial court entered judgment on the pleadings with respect to the medical malpractice claim. The only theory that would have permitted that ruling was the determination that the Rule 9(j) certification was defective.¹ This, in turn, necessarily means that the trial court rejected Williams's request to amend that certification to add the missing words. Accordingly, we conclude that the trial court's decision not to permit Williams to amend the complaint properly is before this Court under Rule 10 of the Rules of Appellate Procedure.

¹ There were many other issues raised at this hearing (which also covered the pending motion for summary judgment) but all of those other issues involved "matters outside the pleadings" that would have converted any Rule 12(c) arguments into Rule 56 ones. *See Horne v. Town of Blowing Rock*, 223 N.C. App. 26, 30, 732 S.E.2d 614, 617 (2012).

Opinion of the Court

Next, with respect to the failure to reference the motion to amend in the notice of appeal, litigants need not reference individual interlocutory rulings when appealing a final judgment. *Wells v. Wells*, 132 N.C. App. 401, 405–06, 512 S.E.2d 468, 471 (1999). To be sure, this Court has held that “the better practice without doubt would be to designate each order appealed from in an appellant’s notice of appeal.” *Id.* at 405, 512 S.E.2d at 471. But, “where the intent to appeal an intermediate interlocutory order is quite clear from the record, such order may be reviewed upon appeal of a final judgment notwithstanding failure of said order to be specifically mentioned in the notice of appeal.” *Id.* at 405–06, 512 S.E.2d at 471 (citations omitted).

Again, as mentioned above, the only basis to enter judgment on the pleadings with respect to the medical malpractice claim was the missing language in the Rule 9(j) certification, which Williams sought to cure with the motion to amend. Thus, it is clear from the record that Williams intended to appeal that portion of the trial court’s ruling. We therefore hold that the denial of the motion to amend is properly before this Court on appeal.

Having determined that the issue is preserved for appellate review, we turn to whether the trial court abused its discretion by denying the motion to amend. In general, a trial court need not expressly state that it is exercising its discretion in order to do so. “When the trial court gives no reason for a ruling that must be

Opinion of the Court

discretionary, we presume on appeal that the court exercised its discretion.” *State v. Starr*, 365 N.C. 314, 318, 718 S.E.2d 362, 365 (2011). But here, the trial court did not expressly deny the motion to amend—the court did so by implication when it granted the motion for judgment on the pleadings without ever mentioning the motion to amend. We therefore cannot apply the presumption because it is possible that the trial court never actually ruled on the motion to amend in the court’s discretion, but instead rejected it essentially as moot after ruling on the motion for judgment on the pleadings. *State v. Barrow*, 350 N.C. 640, 647–48, 517 S.E.2d 374, 378–79 (1999). Accordingly, we vacate and remand the portion of the court’s order granting judgment on the pleadings with respect to the medical malpractice claim. This ensures that the trial court has the opportunity, in the exercise of its sound discretion, to rule on the motion to amend and, in turn, permits this Court to engage in meaningful appellate review of that discretionary decision.

Because the trial court granted the motion for judgment on the pleadings and dismissed the medical malpractice claim with prejudice on that basis, the trial court had no reason to evaluate that claim on the separate motion for summary judgment. We thus decline to address the parties’ arguments concerning whether the malpractice claim presents genuine issues of material fact and whether Williams’s expert was qualified to testify. We leave it to the trial court on remand, should the court permit Williams to amend the complaint, to determine “whether there are other

Opinion of the Court

grounds on which to rule in this case as a matter of law, or whether the case must proceed to trial.” *Copeland v. Amward Homes of N.C., Inc.*, __ N.C. App. __, __, 837 S.E.2d 903, 909 (2020). We also vacate the trial court’s award of costs, which is impacted by the remand of the medical malpractice claim. Finally, the two orders that are the subject of the notice of appeal resolved a number of other legal claims not challenged in Williams’s appellate briefing. We affirm those portions of the trial court’s orders.

Conclusion

We vacate the trial court’s dismissal of the medical malpractice claim under Rule 12(c), and vacate the corresponding order awarding costs, and remand for further proceedings with respect to the medical malpractice claim. We affirm the remainder of the challenged orders.

AFFIRMED IN PART; VACATED AND REMANDED IN PART.

Judges BERGER and ARROWOOD concur.

Report per Rule 30(e).