IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-440

Filed 6 February 2024

Cumberland County, No. 18 CVS 7897

W.T. SANDERS, Plaintiff,

v.

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, Defendant.

Appeals by Plaintiff and Defendant from order entered 23 December 2021 by Judge Stephan R. Futrell in Cumberland County Superior Court. Heard in the Court of Appeals 30 November 2022.

Cranfill Sumner LLP, by George B. Autry, Jr., Stephanie H. Autry, and Jeremy H. Hopkins, for plaintiff-appellant/cross-appellee.

The Banks Law Firm, P.A., by Howard B. Rhodes; Teague, Campbell, Dennis & Gorham, L.L.P., by Matthew W. Skidmore, Jacob H. Wellman, and James M. Stanley, Jr.; and Attorney General Joshua H. Stein, by Special Deputy Attorney General Alexandra M. Hightower, for defendant-appellee/cross-appellant.

Pender & Coward P.C., by D. Rossen S. Greene, for International Right of Way Association, amicus curiae.

MURPHY, Judge.

Plaintiff W.T. Sanders and Defendant North Carolina Department of Transportation ("NCDOT") both appeal from an order of the trial court granting in

part and denying in part NCDOT's motion to dismiss Sanders's claims for damages caused by negative easements imposed at various times between 1992 and 2016 under the Map Act. The motion argued, in pertinent part, that Sanders's claims were barred by the applicable statute of limitations, North Carolina's eminent domain statutes, and the doctrine of res judicata. The trial court, while denying the motion as to affected property Sanders still owned as of the time of his complaint's filing, granted the motion in part on the basis that Sanders could not recover damages for negative easements on portions of the property that had since been acquired in fee by NCDOT. However, the trial court rejected the arguments that Sanders's claims were barred by statute of limitations or res judicata.

We affirm.

BACKGROUND

This case arises from an inverse condemnation claim by Plaintiff W.T. Sanders against Defendant NCDOT concerning the Map Act, a now-repealed statutory scheme that enabled the State to curtail land development in prospective highway corridors:

> In 1987 the General Assembly adopted the Roadway Corridor Official Map Act (Map Act). Act of Aug. 7, 1987, ch. 747, sec. 19, 1987 N.C. Sess. Laws 1520, 1538-43 (codified as amended at N.C.G.S. §§ 136-44.50 to -44.54 (2015)); *see also* N.C.G.S. §§ 105-277.9 to -277.9A, 160A-458.4 (2015). Under the Map Act, once NCDOT files a highway corridor map with the county register of deeds, the Act imposes certain restrictions upon property located within the corridor for an indefinite period of time. N.C.G.S. § 136-44.51. After a corridor map is filed, "no building permit shall be issued for any building or

> structure or part thereof located within the transportation corridor, nor shall approval of a subdivision, as defined in [N.C.G.S. §] 153A-335 and [N.C.G.S. §] 160A-376, be granted with respect to property within the transportation corridor." *Id.* § 136-44.51(a); *see also id.* § 153A-335(a) (2015) ("'[S]ubdivision' means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions are created for the purpose of sale or building development (whether immediate or future) and includes all division of land involving the dedication of a new street or a change in existing streets . . . ."); *id.* § 160A-376(a) (2015) (same). Recognizing the impact of these restrictions, the General Assembly also designated the property as a "special class" for *ad valorem* tax purposes, assessed at reduced rates of "twenty percent (20%) of the appraised value" for unimproved property, *id.* § 105-277.9, and "fifty percent (50%) of the appraised value" for improved property, *id.* § 105-277.9A. Despite the restrictions on improvement, development, and subdivision of the affected property, or the tax benefits provided, NCDOT is not obligated to build or complete the highway project.

Kirby v. N.C. Dep't of Transp., 368 N.C. 847, 848-49 (2016); *see also* N.C.G.S. §§ 136-44.50 to 44.54 (2018). Sanders seeks compensation for negative easements imposed on parcels of his property under the Map Act at various times between October 1992 and July 2016, portions of which were acquired in fee by NCDOT in December 2002 and August 2010.

On 29 October 1992, NCDOT recorded a corridor map pursuant to N.C.G.S. § 136-44.50 for the Fayetteville Outer Loop project, which covered 92.969 of the approximately 649.85 acres of vacant land owned by Sanders. Neither party contests that this recording effected a taking of a negative easement.

On 23 December 2002, NCDOT filed a complaint and declaration of taking in Cumberland County Superior Court and, as a result, acquired 9.280 acres of Sanders's property in fee simple and an additional 6.169 acres in easements. On 23 November 2004, NCDOT paid Sanders the sum of $192,630.00 as just compensation for the 2002 action in a consent judgment.

On 6 June 2006, NCDOT recorded another map for the Project. This effected a taking of an additional negative easement on 20.135 acres of Sanders's property that were not included in the 1992 corridor map.

On 5 August 2010, NCDOT filed another complaint and declaration of taking in Cumberland County Superior Court and, as a result, acquired an additional 101.763 acres of Sanders's property for the Project. As part of the 2010 action, NCDOT also acquired approximately 59.397 acres in fee simple and 0.829 acres in easements that were subject to the 1992 corridor map, and all of the acreage that was subject to the 2006 corridor map. On 1 November 2011, NCDOT paid Sanders the sum of $15,800,000.00 as just compensation for the 2010 action in a consent judgment. The consent judgment specified that

> the sum of . . . $15,800,000.00[] . . . is just compensation pursuant to Article 9, Chapter 136, of the North Carolina General Statutes for the taking of the hereinabove described interests and areas . . . for any and all damages caused by the acquisition and the construction of [NCDOT] Project I.D.# 34817.2.8 (U-2519CB), Cumberland County; and for the past and future use thereof by [NCDOT], its successors and assigns, for all purposes for which [NCDOT] is authorized by law to subject the same.

In 2016, the North Carolina General Assembly rescinded the 1992 and 2006 corridor maps pursuant to the Map Act; and, on 5 August 2016, NCDOT sent to the Cumberland County Register of Deeds a notice to remove Sanders's property from the 1992 and 2006 corridor maps.

Sanders filed a Complaint for Inverse Condemnation in 2018 in Cumberland County Superior Court, alleging that he was "entitled to just compensation for [NCDOT]'s taking and damaging of [his] property from [29 October 1992] until [11 July 2016]" pursuant to the Fifth Amendment to the U.S. Constitution and Article 1 § 19 of the North Carolina Constitution. NCDOT filed a motion to dismiss pursuant to Rules 12(b)(1), 12(b)(2), 12(b)(6), and 12(c) arguing, *inter alia*, that Sanders's claims were barred by statute of limitations, North Carolina's eminent domain statutes, and the doctrine of res judicata. On 13 October 2018, Sanders filed and was granted a motion for hearing pursuant to N.C.G.S. § 136-108 to determine all issues raised by the pleadings other than damages. On 28 December 2021, after hearing the parties' arguments, the trial court concluded as a matter of law that some, but not all, of Sanders's claims were subject to dismissal:

> 7. The parties stipulated herein that the use of the Map Act filing the corridor maps effectuated a taking of negative easements of [Sanders's] property, including his tract at issue herein.
>
> 8. [Sanders] could, but was not required to assert, in either the [2002 action] or the [2010 action], his claims for

damages arising from the negative easements created by [NCDOT's] filing of the corridor maps in 1992 or 2006 (or any amendment thereto).

. . . .

13. The unambiguous language of the 2004 Consent Judgment and the 2011 Consent Judgment delineated the nature and extent of the interests for which [NCDOT] paid [Sanders]. To the extent that [NCDOT] acquired fee simple interests, it acquired the entire "bundle of sticks" associated with ownership of the described property; and that "bundle" included any negative easements arising from the Map Act Corridor maps. To the extent that [NCDOT] acquired a less than fee simple interest, [Sanders] retained an ownership interest encumbered by the corridor maps.

14. As to the fee simple interests that [NCDOT] acquired through the [2002 action] or the [2010 action], [Sanders's] claims for just compensation of the property interests including negative easements were finally and completely resolved in those actions.

15. Negative easements are required to be described with sufficient particularity to satisfy the statute of frauds and to provide public notice to the public of the existence of those negative easements.

16. The 2004 and 2011 consent judgments do not contain that type of particularity, or any particularity whatsoever, with regard to the conveyance of any negative easements, except to the extent that they describe the conveyance of fee simple interests.

17. Except for the conveyance of the fee simple interests the 2004 and 2011 consent judgments are unambiguous in that they do not, by their plain terms, convey any negative

easements. With the exception as to the fee simple interests, the language of the consent judgments cannot be construed to bar [Sanders's] claim for just compensation for the encumbrance in the nature of the negative easements placed on his property by the filing of the 1992 and 2006 corridor maps.

18. Despite the fact that the language of the 2004 and 2011 consent judgments does not bar [Sanders's] claim for compensation for the restrictions in the nature of negative easements placed on his property by the filing of the 1992 and 2006 corridor maps, the [Sanders's] claim is barred, in part, with regard to the areas [NCDOT] acquired in 2010 because [NCDOT] acquired those areas in fee simple.

19. The area that remained outside the areas taken as fee simple, but within the 1992 corridor [map], is 28.041 acres. [Sanders's] claim for just compensation due for the taking of the negative easements in or over this 24.041 acres is not barred.

20. Except for the fee simple interests that [NCDOT] acquired in the 2002 and 2010 [actions], [Sanders's] claims for just compensation for the negative easements caused by [NCDOT's] filing of the Map Act corridor maps in 1992 or 2006 (or any amendments thereto) have not been finally or completely resolved.

21. The 2002 and 2010 [actions] involved the taking of different property interests . . . than the negative easements taken pursuant to the Map Act. The 2002 and 2010 [actions] also involved takings that occurred at different times than the taking of the negative easements in 1992 and 2006 pursuant to the Map Act.

22. . . . [The] Consent Judgments in [NCDOT's] 2002 and 2010 [actions] are *res judicata*, in bar of [Sanders's] inverse condemnation action, to the extent that [NCDOT] acquired

fee simple interests in [Sanders']s property; however, except as to those fee simple interests, the above-referenced Consent Judgments are not *res judicata*[.] . . .

23. . . . [NCDOT's] motion to dismiss on grounds of *res judicata* should be granted in part and denied in part, as follows: . . . granted to the extent that [NCDOT] acquired fee simple interests in the 2002 and 2010 [actions]. Except as specifically stated, [NCDOT's] motion to dismiss on *res judicata* grounds should be denied.

24. At the time this action was filed, the [Project] was not complete.

25. An inverse condemnation action shall be filed "within 24 months of the date of the taking of the affected property or interest therein or the completion of the project involving the taking, whichever shall occur later." [N.C.G.S. §] 136-111[.]

26. Because this action was filed before the completion of the subject project, [NCDOT's] motion to dismiss for failure to comply with the statute of limitations should be denied.

27. Because [Sanders] has been afforded an adequate statutory remedy for just compensation for the taking of his property, [NCDOT's] motion to dismiss [Sanders's] claims under the U.S. Constitution's Fifth Amendment or Art. I § 19 of the North Carolina Constitution should be granted.

28. Per the stipulation of the parties, the nature of the interest taken by [NCDOT] for which [Sanders] has not received just compensation is a negative easement.

29. Although the negative easements that rose from the recording of the 1992 and 2006 corridor maps had an indefinite duration when the maps were filed, they were

> not permanent. The recission of the corridor maps made the duration of the negative easements known and certain and converted the taking to a temporary one. []*First English Evangelical Lutheran Church of Glendale v. Los Angeles County*, 482 U.S. 304 . . . (1987). This case is distinguishable from *Chappell v. N.C. Dept. of Transp*[.], 374 N.C. 273 . . . (2020), because there was no evidence before the [c]ourt that the negative easements were of a temporary duration[.] . . .
>
> 30. . . . As to those areas encumbered by the 1992 corridor map, the duration of the taking began [29 October 1992] and continued until [11 July 2016]. As to those areas encumbered by the 2006 corridor map, the duration of the taking began on [6 June 2006] and continued until [11 July 2016].
>
> 31. The area affected by the taking for which [Sanders] has not received just compensation was the area described in the 1992 corridor map and the 2006 corridor map, less those fee simple areas taken in the [2002 action] and the [2010 action]; or 28.041 acres.
>
> 32. Sanders is entitled to proceed to a jury trial on the issue of just compensation for the taking of a negative easement in 28.041 acres on [29 October 1992] and for any damages within the contemplation of [N.C.G.S. §] 136-112.

Based on its conclusions of law, the trial court ordered:

> 1. [NCDOT's] Motion to Dismiss, pursuant to Rule 12(b)(6), [Sanders's] claims pursuant to the U.S. Constitution's Fifth Amendment or Art. I § 19 of the North Carolina Constitution is GRANTED.
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> 2. [NCDOT's] Motion to Dismiss, pursuant to Rule 12(b)(6), [Sanders's] claims pursuant to the defense of failure to file his claims within the applicable statute of limitations is DENIED.

> 3. [NCDOT's] Motion to Dismiss, pursuant to Rule 12 (b)(6), [Sanders's] claims pursuant to the defense of *res judicata* is GRANTED in part and DENIED in part as stated above, which is incorporated herein reference as if fully set out[.]
>
> 4. [NCDOT's] Motions to Dismiss pursuant to Rules 12(b)(1) and 12(c) are DENIED.
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> 5. A jury shall be empaneled to determine [Sanders's] just compensation[.] . . .
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> 6. [NCDOT] shall prepare a plat reflecting this [c]ourt's ruling within 45 days of entry of this Order.
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> 7. [NCDOT] is directed, pursuant to [N.C.G.S. §] 136-111 to deposit its estimate of just compensation for the taking within 45 days of the entry of this [c]ourt's Order.

Both parties timely appealed.

ANALYSIS

On appeal, Sanders argues the trial court erred in dismissing his claims arising from negative easements on parcels of property that had already been acquired in fee by NCDOT. NCDOT, meanwhile, argues, as it argued at trial, that Sanders's entire claim should have been dismissed because the claim was barred by statute of limitations and res judicata pursuant to the previously entered 2011 consent judgment. NCDOT also argues the trial court erred in ruling that the easement was temporary rather than indefinite.

For the reasons discussed below, reviewing the trial court's rulings on NCDOT's summary judgment motion de novo, *see Moody v. Able Outdoor, Inc.*, 169

N.C. App. 80, 83 (2005), we hold that the action was not barred by statute of limitations and the trial court properly ruled that res judicata did not bar Sanders's claims for compensation for the negative easements on properties not acquired in fee by NCDOT. The trial court also properly dismissed Sanders's claims for compensation for the negative easements on properties NCDOT had acquired in fee and properly categorized the easements as temporary.

A. Appellate Jurisdiction

At the threshold, however, we address whether this court has appellate jurisdiction, as this appeal is taken from an interlocutory order. Both parties here have argued that appellate jurisdiction is proper, notwithstanding the fact that, "[g]enerally, there is no right of immediate appeal from interlocutory orders and judgments." *Goldston v. Am. Motors Corp.*, 326 N.C. 723, 725 (1990). As an exception to this general rule, under N.C.G.S. § 1-277(a),

> [a]n appeal may be taken from every judicial order or determination of a judge of a [S]uperior or [D]istrict [C]ourt, upon or involving a matter of law or legal inference, whether made in or out of session, which affects a substantial right claimed in any action or proceeding; or which in effect determines the action, and prevents a judgment from which an appeal might be taken; or discontinues the action, or grants or refuses a new trial.

N.C.G.S. § 1-277(a) (2021). Here, both parties have specifically argued that appellate jurisdiction is proper by virtue of the trial court's order having affected a substantial right. Appellants bear the burden of establishing that an interlocutory order affects

a substantial right. *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 379 (1994); *see also* N.C. R. App. P. 28(b)(4) (2023).

We have said repeatedly that "[n]o hard and fast rules exist for determining which appeals affect a substantial right[,]" *Estrada v. Jaques*, 70 N.C. App. 627, 640 (1984); rather, "[w]hether an interlocutory appeal affects a substantial right is determined on a case by case basis." *McConnell v. McConnell*, 151 N.C. App. 622, 625 (2002). "Consequently, outside of a few exceptions such as sovereign immunity, the appellant cannot rely on citation to precedent to show that an order affects a substantial right. Instead, the appellant must explain, in the statement of the grounds for appellate review, why the facts of that particular case demonstrate that the challenged order affects a substantial right." *Doe v. City of Charlotte*, 273 N.C. App. 10, 22 (2020) (marks omitted). Moreover, "[a] substantial right is a legal right affecting or involving a matter of substance as distinguished from matters of form"; in other words, "a right materially affecting those interests which a man is entitled to have preserved and protected by law" or "a material right." *Schout v. Schout*, 140 N.C. App. 722, 725 (2000) (marks omitted) (quoting *Oestreicher v. Stores,* 290 N.C. 118, 130 (1976)).

Here, both parties have relied primarily on citation to precedent as the basis for their appellate jurisdiction arguments. Ordinarily, this would be insufficient. *Doe*, 273 N.C. App. at 22. However, in *North Carolina State Highway Commission v. Nuckles*, our Supreme Court held that, "should there be a fundamental error in the

judgment resolving [questions of title], ordinary prudence requires an immediate appeal[.]" *N.C. State Highway Comm'n v. Nuckles*, 271 N.C. 1, 14 (1967). This holding was reiterated in *Department of Transportation v. Rowe*, in which our Supreme Court, while disavowing that all interlocutory issues in condemnation cases affect a substantial right, emphasized that immediate appeal is proper with respect to orders evaluating "questions of title and area taken." *Dep't of Transp. v. Rowe*, 351 N.C. 172, 176 (1999). Issues of title and area taken in condemnation cases are therefore among the very limited number of issues where citation to precedent alone establishes the propriety of an appeal from an interlocutory order. *See id.*; *Doe*, 273 N.C. App. at 22.

B. Statute of Limitations

Having established that we have appellate jurisdiction, we first turn to NCDOT's arguments concerning the applicable statute of limitations in N.C.G.S. § 136-111. N.C.G.S. § 136-111, North Carolina's inverse condemnation statute, provides, in relevant part, that

> [a]ny person whose land or compensable interest therein has been taken by an intentional or unintentional act or omission of the Department of Transportation and no complaint and declaration of taking has been filed by said Department of Transportation may, within 24 months of the date of the taking of the affected property or interest therein or the completion of the project involving the taking, whichever shall occur later, file a complaint in [] superior court . . . .

N.C.G.S. § 136-111 (2021).

NCDOT argues that, in this case, N.C.G.S. § 136-111's allowance of 24 months from the date of the completion of the project does not apply because that window of time only applies where "no complaint and declaration of taking has been filed . . . ." N.C.G.S. § 136-111 (2021). Instead, it argues, this case is governed by the window of time proscribed in N.C.G.S. § 136-107, which dictates that "[a]ny person named in and served with a complaint and declaration of taking shall have 12 months from the date of service thereof to file answer." N.C.G.S. § 136-107 (2021). Under that section, "[f]ailure to answer within [12 months] shall constitute an admission that the amount deposited is just compensation and shall be a waiver of any further proceeding to determine just compensation[.]" N.C.G.S. § 136-107 (2021). According to NCDOT, because the entire tract of Sanders's land was identified in the declarations of taking in this case, all claims for inverse condemnation with respect to those tracts must have been raised under N.C.G.S. § 136-107 in Sanders's answer to the original declarations of taking.

We disagree. NCDOT, in support of the proposition that the allotted timeframe in N.C.G.S. § 136-107 operates as a bar to Sanders's claim, argues that Sanders was required, under N.C.G.S. § 136-106(a)(3), to raise all "matters . . . pertinent to the action" either in an answer or in a counterclaim to the original complaints and declarations of taking. N.C.G.S. § 136-106(a)(3) (2021). NCDOT also argues, without citation to authority, that "[t]he matters pertinent to the action which may be raised are expansive."

However, while N.C.G.S. § 136-106(a)(3) does speak to the range of claims to be raised in an answer or counterclaim to a declaration of taking, our caselaw discussing the breadth of claims that *may* be raised in response to a declaration of taking—most notably our Supreme Court's holding in *Department of Transportation v. Bragg*—bases its reasoning on "principles of judicial economy[,]" not on N.C.G.S. § 136-106(a)(3). *See Dep't of Transp. V. Bragg*, 308 N.C. 367, 371 n.1 (1983) ("[W]hen, as here, the Department has initiated a partial taking under N.C.G.S. [§] 136-103 and trial on the issue of damages has not yet occurred, principles of judicial economy dictate that the owners of the taken land may allege a further taking by inverse condemnation in the ongoing proceedings."); *see also N.C. Dep't of Transp. v. Cromartie*, 214 N.C. App. 307, 311 (2011), *disc. rev. denied*, 366 N.C. 412 (2012); *City of Greensboro v. Pearce*, 121 N.C. App. 582, 587-88 (1996); *City of Winston-Salem v. Ferrell*, 79 N.C. App. 103, 108-09 (1986). In fact, our research reveals no cases interpreting N.C.G.S. § 136-106(a)(3)'s use of the phrase "matters . . . pertinent to the action" at all. N.C.G.S. § 136-106(a)(3) (2021).

In keeping with our precedent and the plain language of the statute itself, we do not understand the range of claims *permitted* in response to a complaint and declaration of taking to be dictated by N.C.G.S. § 136-106(a)(3); this "ceiling" for allowable claims is instead dictated by *Bragg* and its progeny. *Bragg*, 308 N.C. at 371. By contrast, the mandatory language in N.C.G.S. § 136-106(a)(3), alongside its sister provisions in N.C.G.S. § 136-106(a)(1) and N.C.G.S. § 136-106(a)(2), dictates

what *must* appear in an answer to a complaint and declaration of taking, setting the allowable claim "floor." *See* N.C.G.S. § 136-106(a)(3) (2021) (emphasis added) ("Said answer *shall*[] . . . contain . . . [s]uch affirmative defenses or matters as are pertinent to the action.").

Given its function as part of the allowable claim "floor" for answers to complaints and declarations of taking, we do not read the phrase "matters . . . pertinent to the action" as the expansive, catch-all provision NCDOT suggests it is. N.C.G.S. § 136-106(a)(3) (2021). To the contrary, we understand the scope of "the action" to be dictated by N.C.G.S. § 136-103, which requires any complaint and declaration of taking by NCDOT initiating a condemnation proceeding to allege, in relevant part, the "authority under which and the public use for which said land is taken[,]" "the entire tract or tracts affected by said taking[,]" and "the estate or interest in said land taken . . . ." N.C.G.S. § 136-103(b)-(c) (2021). Thus, while *Bragg* and its progeny may permit a party whose land is subject to a condemnation proceeding to include in its answer matters outside the immediate ambit of "the action" where principles of judicial economy allow for it, the scope of "the action" itself, as used in N.C.G.S. § 136-106(a)(3), is parameterized by the authorities, tracts, and interests actually articulated by NCDOT in its complaint pursuant to N.C.G.S. § 136-103.

Sanders's claims therefore were not barred by statute of limitations. While it may be true that the complaints and declarations of taking culminating in the two

previous consent judgments between Sanders and NCDOT dealt with the same tracts of land, NCDOT does not argue—and did not argue at trial—that the interests in the land contemplated by the previous consent judgments are the same interests at issue in this case; rather, NCDOT admits that both of those complaints and declarations of taking identified "[a set acreage] of [Sanders]'s property in fee simple as well as [an additional acreage] in temporary and permanent easements." Meanwhile, Sanders's complaint in the current action identifies the nature of the interest for which he seeks compensation as being "in the nature of a negative easement" placed on the subject tracts pursuant to NCDOT's 1992 and 2006 Map Act maps—an interest independent from those identified in the previous complaints and declarations of taking. The interest Sanders identifies in the current complaint was not a matter pertinent to the previous action for purposes of N.C.G.S. § 136-106(a)(3); thus, the timeframe allotted in N.C.G.S. § 136-107 does not operate as a bar to the current claim. The trial court did not err in denying NCDOT's motion to dismiss on this ground.

C. Consent Judgment

Having determined whether Sanders's claim was barred by statute of limitations, we now turn to whether the trial court correctly denied NCDOT's motion to dismiss pursuant to the terms of the 2011 consent judgment. In so doing, we subdivide our analysis into two parts: (1) whether res judicata bars any claims at issue in the current action by virtue of having been contemplated in the 2011 consent judgment, and (2) whether the nature of the interests transferred in the 2011 consent

judgment extinguishes claims raised by Sanders in the current complaint.

1. Res Judicata

NCDOT argues that the doctrine of res judicata bars Sanders from seeking compensation for interests in the tracts of land covered by the 2011 consent judgment. Under the doctrine of res judicata, "a final judgment on the merits in one action precludes a second suit based on the same cause of action between the same parties or their privies. The doctrine prevents the relitigation of all matters that were or should have been adjudicated in the prior action." *Whitacre P'ship v. Biosignia, Inc.*, 358 N.C. 1, 15 (2004) (marks and citations omitted). Moreover, "[a] valid consent judgment is entitled to *res judicata* effect, so as to preclude relitigation of the same claim or cause of action as was covered by the judgment." *Daniel Boone Complex, Inc. v. Furst*, 43 N.C. App. 95, 106 (1979).

The 2011 consent judgment, which NCDOT argues carries preclusive effect as to Sanders's claims in this case, reads as follows in relevant part:

> [T]his action was duly instituted on the 5th day of August 2010 by the issuance of Summons, filing of a Complaint and Declaration of Taking and Notice of Deposit, and by the deposit of SIX-MILLION FIVE-HUNDRED THREE THOUSAND ($6,503,000.00) DOLLARS as estimated just compensation[.]
>
> [] Summons was duly served on [Sanders], together with a copy of the Complaint and Declaration of Taking and Notice of Deposit;
>
> [Sanders] is the only party who has or claims to have an interest in the property described in the Complaint and

Declaration of Taking, and the title to the property is not in dispute; [] as of the date of the institution of this action, the property described in the Complaint and Declaration of Taking was subject only to such liens and encumbrances as were set forth in Exhibit "A" of the Complaint and Declaration of Taking[.]

[A]ll parties who are necessary to the determination of this action are properly before the [trial] [c]ourt; and that [Sanders] is under no legal disability[.]

. . . [Sanders] and [NCDOT] have reached an agreement whereby [NCDOT] has agreed to pay and [Sanders] has agreed to accept the additional sum of NINE- MILLION TWO-HUNDRED NINETY-SEVEN THOUSAND ($9,297,000.00) DOLLARS, and [NCDOT] has further agreed to amend its project plans by marking the plans with a median break (reserving all of its police powers) notated as follows, "Future Median and Turn Lanes to Be Constructed By Others," at the location of the intersection of the service road and Cliffdale Road; and the payment of said additional sum and the agreement to amend said plans is in complete and final settlement of all claims in this action and that said additional sum includes any claim for interest and all costs, as full and just compensation pursuant to Article 9, Chapter 136, of the North Carolina General Statutes for the appropriation of the interests and areas as set forth in the Complaint and Declaration of Taking and as hereinafter more particularly described; for any and all damages caused by the acquisition for the construction of [NCDOT] Project # 34817.2.8 (U-2519CB), Cumberland County; and for the past and future use thereof by [NCDOT], its successors and assigns, for all purposes for which [NCDOT] is authorized by law to subject the same.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:

l. That [NCDOT] . . . was entitled to acquire and did acquire, free and clear of all encumbrances, on the 5th day

of August 2010, by the filing of a Complaint and Declaration of Taking and Notice of Deposit, together with the deposit of SIX-MILLION FIVE-HUNDRED THREE THOUSAND ($6,503,000.00) DOLLARS, those certain interests or estates and areas, hereinafter more particularly described, in, over, upon, and across the property of [Sanders]; and that said property of [Sanders] is described as follows:

[The order proceeds to describe some land taken in fee simple and other land in easements.]

4. That [NCDOT] . . . pay into [the trial] [c]ourt the additional sum of NINE- MILLION TWO-HUNDRED NINETY-SEVEN THOUSAND ($9,297,000.00) DOLLARS, and that said sum, together with the original deposit made by [NCDOT] in this action, unless heretofore disbursed by order of the Court, be disbursed by the Clerk to George B. Autry, Jr., as counsel for, and for the benefit of, . . . Sanders, as his interest may appear.

5. That the sum of FIFTEEN-MILLION EIGHT-HUNDRED THOUSAND ($15,800,000.00) DOLLARS, said sum being the total amount of the original deposit plus said additional amount, and the agreement by [NCDOT] to amend its plans for Project I.D.# 34817.2.8 (U-2519CB) by marking its project plans with a median break (reserving all of its police powers) notated as follows, []"Future Median and Turn Lanes to Be Constructed By Others," at the location of the intersection of the service road and Cliffdale Road, is just compensation pursuant to Article 9, Chapter 136, of the North Carolina General Statutes for the taking of the hereinabove described interests and areas by [NCDOT]; for any and all claims for interest and costs; for any and all damages caused by the acquisition for the construction of [NCDOT] Project I.D. # 34817.2.8 (U-2519CB), Cumberland County; and for the past and future use thereof by [NCDOT], its successors and assigns, for all purposes for which [NCDOT] is authorized by law to subject the same.

> 6. That a copy of this Judgment be certified by the Clerk of Superior Court of this county to the Register of Deeds, who shall record the same among the land records of said County.

Among the provisions of the consent judgment, NCDOT specifically directs our attention to the language stating that its payments to Sanders were

> in complete and final settlement of all claims in this action and that [the] sum includes any claim for interest and all costs, as full and just compensation pursuant to Article 9, Chapter 136, of the North Carolina General Statutes for the appropriation of the interests and areas as set forth in the Complaint and Declaration of Taking and as hereinafter more particularly described; *for any and all damages caused by the acquisition for the construction of [NCDOT] Project # 34817.2.8 (U-2519CB)*, Cumberland County; and *for the past and future use thereof by [NCDOT]*, its successors and assigns, for all purposes for which [NCDOT] is authorized by law to subject the same.

(Emphasis added.) According to NCDOT, these provisions extinguished Sanders's future ability to pursue claims arising from the negative easements on his property under the Map Act.

We disagree. The 2010 consent judgment reveals no reference to the negative easements imposed pursuant to the 1992 and 2006 applications of the Map Act, and reference to the project number, U-2519CB, fails to do so by implication. U-2519CB was only one subsection of the broader Fayetteville Loop project for which the land impacted by the Map Act was affected by negative easements; and, in fact, maps in the record indicate that Sanders's property was impacted by Map Act maps pursuant

to at least two project subsections, U-2519CA and U-2519CB. Nothing in the language of the consent judgment indicates that it would be res judicata as to the negative easements taken under the Map Act, as those easements were imposed pursuant to the entire Fayetteville Loop project, not just the subsection labeled U-2519CB. NCDOT's argument accordingly fails.

2. Acquisitions in Fee

We next address whether, as the trial court ruled in its order, Sanders's entitlement to pursue damages for the negative easements taken under the Map Act was extinguished as to the parcels NCDOT took in fee in 2002 and 2010. Sanders does not argue that his actual compensation for his land reflected a value depreciated by encumbrance; rather, he argues that his right to seek compensation for the negative easements imposed on the now-alienated properties survives their acquisition by NCDOT.

However, we need not delve into the merits of this issue, as our Supreme Court has long held that, "unless an action for permanent damages or condemnation proceedings has been instituted by the original owner pending his ownership, the right to recover will pass to the grantee." *Caveness v. Charlotte, Raleigh & S. R.R. Co.*, 172 N.C. 305, 308 (1916). When such a transfer occurs, the previous owner of the property lacks standing to pursue such an action. *See id.* Thus, we are bound to hold that the effect of NCDOT's acquisition in fee simple of portions of Sanders's tracts affected by the Map Act was to leave him without standing to pursue claims

for damages with respect to those portions unless he raised them prior to their acquisition.

D. Nature of the Easements

Finally, NCDOT argues the trial court incorrectly categorized the negative easements taken pursuant to the Map Act as temporary rather than indefinite. Specifically, NCDOT argues two of our Supreme Court's prior opinions discussing Map Act takings, *Kirby v. NCDOT* and *Chappell v. NCDOT*, have already held Map Act takings to be indefinite and that a contrary holding would "astronomically over-compensate [Sanders] . . . ."

In *Chappell*, our Supreme Court held that the landowners' 2014 inverse condemnation claim based on the Map Act was indefinite:

> *Kirby* holds that a Map Act recordation effected an "indefinite restraint on fundamental property rights" which restricts the property owners' rights to improve, develop, and subdivide their property for an indefinite period of time. [*Kirby*, 368 N.C. at 855-56]. The value of the loss of those rights is to be measured "by calculating the value of the land before the corridor map was recorded and the value of the land afterward, taking into account all pertinent factors, including the restriction on each plaintiff's fundamental rights, as well as any effect of the reduced *ad valorem* taxes." *Kirby*, 368 N.C. at 856[] . . . . Thus, the relevant determination when calculating just compensation for a taking that involves less than the entire parcel of property starts with the fair market value of the entire property before the taking and the fair market value of what remains after the taking. This is true whether the taking is an indefinite negative easement, as in the case of Map Act takings, or involves some other taking for public use. By eminent domain, the state may take "an easement,

> a mere limited use, leaving the owner with the right to use in any manner he may desire so long as such use does not interfere with the use by the sovereign for the purpose for which it takes, or it may take an absolute, unqualified fee, terminating all of [the] defendant's property rights in the land taken." *Morganton v. Hutton & Bourbonnais Co.*, 251 N.C. 531, 533[] . . . (1960) (citations omitted). The property owner's damages are calculated on the basis of before and after fair market values in each instance.

Chappell v. N.C. Dep't of Transp., 374 N.C. 273, 284 (2020); *cf. also* N.C.G.S. § 136-112(1) (2021) ("Where only a part of a tract is taken, the measure of damages for said taking shall be the difference between the fair market value of the entire tract immediately prior to said taking and the fair market value of the remainder immediately after said taking, with consideration being given to any special or general benefits resulting from the utilization of the part taken for highway purposes.").

The trial court, correctly noting that "there was no evidence before the Court that the negative easements were of temporary duration" in *Chappell*, distinguished *Chappell* from the case at bar, relying instead on the United States Supreme Court's decision *in First English Evangelical Lutheran Church of Glendale v. Los Angeles County*, 482 U.S. 304 (1987). In that case, the United States Supreme Court clarified that state governments' constitutional duty to provide compensation under the Takings Clause extends to temporary takings as well as permanent ones. *Id.* at 318. And, applying *First English* in *City of Charlotte v. Combs*, we have held that "the measure of damages for a temporary taking is the rental value of the land actually

occupied by the condemnor." *City of Charlotte v. Combs*, 216 N.C. App. 258, 261 (2011) (marks omitted).

Combs clearly renders the rental value measure of damages applicable to "temporary taking[s] [] in the form of [] temporary [] easement[s][.]" *Id.* at 262. Thus, we hold that the trial court's reliance on *First English* to distinguish *Chappell*—which, unlike this case, did not deal with a claim brought after the rescission of the Map Act—was proper.

CONCLUSION

Sanders's action was not barred by statute of limitations or res judicata. Sanders is without standing to bring claims for compensation for negative easements on properties where he has since divested himself of the fee, and dismissal was therefore proper as to those claims. Finally, the trial court properly categorized the negative easements in this case as temporary.

AFFIRMED.

Chief Judge DILLON and Judge HAMPSON concur.

Report per Rule 30(e).