

NO. COA14-706

NORTH CAROLINA COURT OF APPEALS

Filed: 20 January 2015

STEPHANIE L. NEEDHAM,
Individually, And as
"Guardian Ad Litem" for
John Doe, Jane Doe and
June Doe, Minor Children

Plaintiffs,

v.

Buncombe County
No. 12 CVS 04611

ROY ALAN PRICE,

Defendant.

Appeal by plaintiff from order entered 3 February 2014 by
Judge J. Thomas Davis in Buncombe County Superior Court. Heard
in the Court of Appeals 3 December 2014.

*Paul Louis Bidwell and Douglas A. Ruley, for plaintiff-
appellant Guardian Ad Litem.*

Jack W. Stewart, for defendant-appellee.

ELMORE, Judge.

Plaintiff, Guardian Ad Litem and parent of three minor
children, appeals from an order granting defendant's motion for
summary judgment against plaintiff on her claims on behalf of

the minor children. After careful consideration, we affirm, in part; reverse, in part.

I. Facts

Stephanie L. Needham (plaintiff) and Roy Alan Price (defendant) had engaged in a long-term domestic relationship but were separated at some point before 20 November 2009. Three children were born of the relationship (the minor children). Plaintiff filed a complaint on 26 September 2012 alleging individual claims against defendant and also bringing claims on behalf of her minor children against defendant (the minor children's claims) for negligence, premises liability, negligent infliction of emotional distress, intentional infliction of emotional distress (IIED), gross negligence, and punitive damages. In the complaint, plaintiff alleged, in relevant part, the following facts:

5. That [plaintiff and the minor children] were occupying a home owned by Defendant . . . when, at approximately 1:25 a.m., Defendant surreptitiously entered the residence through the garage and attic; as Defendant attempted to enter the dwelling area, he caused an attic ladder to unfold to the hallway below, striking [plaintiff] on the back of her head, neck and right shoulder and causing her serious and permanent injuries.

6. That [the] minor children were awakened by the noise from the attic and observed

[plaintiff] being struck by the ladder; they recoiled in terror, screaming as [plaintiff] collapsed to the floor crying out in pain; and watched in shock as their father descended the ladder shouting obscenities at their fallen mother, causing them severe emotional distress.

7. That [plaintiff] sustained injuries in the subject incident including, but not limited to, cervical spine, right upper and lower extremities, left upper and lower extremities, nerve damage, and post-traumatic stress disorder.

8. That [the] minor children sustained emotional/psychological injuries, including but not limited to, post-traumatic stress disorder, as a direct result of the subject incident.

Defendant filed a motion for summary judgment on all of the minor children's claims, arguing that "there [was] no genuine issue as to any material fact in controversy due to the parent-child immunity doctrine[.]" After a hearing on said motion, the trial court entered an order (the order) granting summary judgment in defendant's favor and dismissing all of the minor children's claims.

II. Analysis

a.) Interlocutory Appeal

We must first address the interlocutory nature of this 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 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. City of Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950) (citations omitted). An order granting partial summary judgment is interlocutory and ordinarily cannot be appealed "because it does not completely dispose of the case[.]" *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 379, 444 S.E.2d 252, 253 (1994) (citation and quotation marks omitted).

However, immediate appeal of an interlocutory order is available when it "affects a substantial right." *Sharpe v. Worland*, 351 N.C. 159, 162, 522 S.E.2d 577, 579 (1999) (citations and quotation marks omitted). Our Supreme Court has noted that "the right to avoid the possibility of two trials on the same issues can be such a substantial right." *Bockweg v. Anderson*, 333 N.C. 486, 490-91, 428 S.E.2d 157, 160 (1993) (citation and internal quotation marks omitted). The possibility of a second trial "affects a substantial right only when 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." *Green v. Duke Power Co.*, 305 N.C. 603, 608, 290 S.E.2d 593, 596 (1982).

This appeal clearly arises from an interlocutory order because the trial court would be required to address plaintiff's claims notwithstanding the dismissal of the minor children's claims. However, the order affects a substantial right because should we dismiss this appeal, plaintiff could proceed to trial on her individual claims, which overlap with, and arise from, the same set of facts as the minor children's claims. Thus, if plaintiff later appeals the trial court's dismissal of the minor children's claims, and we were to rule that the trial court erred, then a trial on the minor children's claims could occur. A second trial arising from the same facts as plaintiff's individual claims could result in an inconsistent jury decision on overlapping issues. Accordingly, we hold that the order affects a substantial right and address the merits of plaintiff's arguments on behalf of the minor children.

b.) Summary Judgment

i. Parent-Child Immunity

Plaintiff argues that the trial court erred by granting defendant's motion for summary judgment on the minor children's

claims for gross negligence, IIED, and punitive damages. Specifically, plaintiff avers that the doctrine of parent-child immunity does not apply to claims based on willful and malicious acts. We agree.

Plaintiff concedes that the doctrine of parent-child immunity would bar the minor children's claims for ordinary negligence. Thus, the trial court's decision to dismiss the minor children's claims of negligence, premises liability based on ordinary negligence, and negligent infliction of emotional distress are not at issue.

"Our standard of review of an appeal from summary judgment is de novo; such judgment is appropriate only when the record shows that 'there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.'" *In re Will of Jones*, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008) (quoting *Forbis v. Neal*, 361 N.C. 519, 524, 649 S.E.2d 382, 385 (2007)). We must consider "the pleadings, affidavits and discovery materials available in the light most favorable to the non-moving party[.]" *Pine Knoll Ass'n, Inc. v. Cardon*, 126 N.C. App. 155, 158, 484 S.E.2d 446, 448 (1997) (citations omitted).

The parent-child immunity doctrine "bar[s] actions between unemancipated children and their parents based on *ordinary negligence*." *Doe By & Through Connolly v. Holt*, 332 N.C. 90, 95, 418 S.E.2d 511, 514 (1992) (emphasis in original) (citations omitted). However, the doctrine "has never applied to, and may not be applied to, actions by unemancipated minors to recover for injuries resulting from their parent's willful and malicious acts." *Id.* at 96, 418 S.E.2d at 514. An act is willful "when it is done purposely and deliberately in violation of law or when it is done knowingly and of set purpose, or when the mere will has free play, without yielding to reason." *Yancey v. Lea*, 354 N.C. 48, 52-53, 550 S.E.2d 155, 157-58 (2001) (citation and quotation marks omitted). Moreover, the terms "willful and wanton conduct" and "gross negligence" have been used interchangeably to describe conduct falling between "ordinary negligence and intentional conduct." *Id.* at 52, 550 S.E.2d at 157 (quotation marks omitted). Thus, the doctrine of parent-child immunity clearly does not bar the minor children's claims of gross negligence and IIED.

ii. Forecast of Evidence

Even though the parent-child immunity doctrine does not bar the minor children's claims of gross negligence and IIED, we

must also determine whether plaintiff forecast sufficient evidence of each element of these claims. See *Waddle v. Sparks*, 331 N.C. 73, 82, 414 S.E.2d 22, 27 (1992).

The tort of IIED requires a showing of: "(1) extreme and outrageous conduct, (2) which is intended to cause and does cause (3) severe emotional distress." *Shreve v. Duke Power Co.*, 85 N.C. App. 253, 256-57, 354 S.E.2d 357, 359 (1987) (citation and quotation marks omitted). The first element requires conduct that "exceeds all bounds usually tolerated by a decent society." *Phillips v. Rest. Mgmt. of Carolina, L.P.*, 146 N.C. App. 203, 213, 552 S.E.2d 686, 693 (2001) (citation and quotation marks omitted). The second element can be satisfied by showing that a defendant "acts recklessly in deliberate disregard of a high degree of probability that the emotional distress will follow[.]" *Dickens v. Puryear*, 302 N.C. 437, 449, 276 S.E.2d 325, 333 (1981) (citations and quotation marks omitted). Finally, the third element is "any emotional or mental disorder, such as, for example, neurosis, psychosis, chronic depression, phobia, or any other type of severe and disabling emotional or mental condition which may be generally recognized and diagnosed by professionals trained to do so."

Waddle, 331 N.C. at 83, 414 S.E.2d at 27 (citation and quotation marks omitted).

Here, in the light most favorable to plaintiff as supported by her affidavit and complaint, defendant entered the residence at 1:25 a.m. through the garage and attic, waking up and startling the minor children. The minor children were in defendant's presence as they observed plaintiff being struck by a ladder and collapsing to the floor "crying out in pain" while defendant "shout[ed] obscenities" at her. Subsequently, the minor children suffered "emotional/psychological injuries, including but not limited to, post-traumatic stress disorder; and the medical records submitted in discovery support the same." Such forecasted evidence is sufficient to raise genuine issues of material fact as to each essential element of the minor children's IIED claim. See *Johnson v. Ruark Obstetrics & Gynecology Associates, P.A.*, 327 N.C. 283, 305, 395 S.E.2d 85, 98 (1990) (considering "plaintiff's proximity to the . . . act, the relationship between the plaintiff and the other person for whose welfare the plaintiff is concerned, and whether the plaintiff personally observed the . . . act" as factors in determining the viability of an emotional distress claim). Thus, the trial court erred by dismissing the minor children's

IIED claim. Consequently, the trial court also erred by dismissing the minor children's claim for punitive damages related to the IIED claim.

With regard to gross negligence, a plaintiff, in addition to pleading the facts on each element of negligence (duty, breach of that duty, proximate cause, and injury), must also forecast sufficient evidence of "wanton conduct[.]" *Clayton v. Branson*, 170 N.C. App. 438, 442-43, 613 S.E.2d 259, 264 (2005) (citation and quotation marks omitted). The "duty" element in an actionable negligence claim "presupposes the existence of a legal relationship between parties by which the injured party is owed a duty by the other, and such duty must be imposed by law." *Pinnix v. Toomey*, 242 N.C. 358, 362, 87 S.E.2d 893, 897 (1955). It is well established that "[p]arents in this State have an affirmative legal duty to protect and provide for their minor children." *State v. Walden*, 306 N.C. 466, 473, 293 S.E.2d 780, 785 (1982).

The minor children's claim for gross negligence in this case properly alleged wanton conduct: "[T]he acts and omissions as set forth above indicate such a reckless indifference to, or conscious disregard for, the rights and safety of others and,

specifically, of [the] Minor Children, sufficient to constitute willful and wanton negligence."

Additionally, the time and nature of defendant's entry into the residence, his conduct towards plaintiff in the presence of the minor children despite her vulnerable physical condition, and the minor children's resulting injuries forecast evidence sufficient to raise genuine issues of material fact as to each essential element of the minor children's gross negligence claim.

Accordingly, the trial court erred by dismissing the minor children's gross negligence claim. In light of our ruling, the trial court also erred by dismissing the minor children's claim for punitive damages stemming from their gross negligence claim.

III. Conclusion

In sum, we affirm the trial court's order granting summary judgment to defendant on the minor children's claims of negligence, premises liability, and negligent infliction of emotional distress. However, we reverse the trial court's dismissal of the minor children's claims for IIED and gross negligence along with the punitive damages related to these remaining claims.

Affirmed, in part; reversed, in part.

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Judges STEPHENS and DAVIS concur.