An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-96

Filed: 7 August 2018

Nash County, No. 15-CVS-950

DEBRA JONES, Plaintiff,

v.

WELLS FARGO COMPANY AND JOSHUA HODGIN, Defendants.

Appeal by plaintiff from order entered 26 July 2017 by Judge Cy A. Grant in Nash County Superior Court. Heard in the Court of Appeals 7 June 2018.

Perry & Associates, by Cedric R. Perry, for plaintiff-appellant.

McGuireWoods LLP, by John G. McDonald and Meredith A. Pinson, for defendants-appellees.

BERGER, Judge.

Debra Jones ("Plaintiff") appeals from the dismissal of her amended complaint filed against Wells Fargo Company ("Defendant Bank") and Joshua Hodgin ("Defendant Hodgin") for failure to state a claim for which relief may be granted. Because Plaintiff's claim for negligence is against her former employer and a former supervisor and arose in the course of her employment, the exclusivity provision of the North Carolina Workers' Compensation Act precludes Plaintiff from resolving this

claim in any manner except those provided for by the Workers' Compensation Act. Therefore, we affirm the trial court's dismissal of Plaintiff's amended complaint.

Factual and Procedural Background

Plaintiff began working for Defendant Bank[1] in June 2012 as a Personal Banker I. Before being hired into this position, Plaintiff informed Defendant Bank that she had been receiving Social Security disability payments for a mental illness, but she wanted to return to the workforce.

Plaintiff was later promoted to a Personal Banker II position, which placed her under the supervision of Defendant Hodgin. Plaintiff worked for Defendant Bank until approximately June 2013 when her mental illness resurfaced, whereupon she returned to disabled status with the Social Security Administration. Defendant Bank placed Plaintiff on short-term disability due to this relapse and inability to perform her work duties.

Plaintiff returned to work at Defendant Bank in October 2013, but her doctor placed her on a limited work schedule. Despite this reduced work schedule,

[1] Plaintiff, throughout her amended complaint, refers to Defendant Bank as Wells Fargo Company. Defendant Bank appears to actually be Wells Fargo Bank, N.A. Ordinarily, the unjustified failure to name the proper entity would lead to dismissal of a complaint on jurisdictional grounds unless the error is deemed to be a misnomer and corrected by amendment. *See Franklin v. Winn Dixie Raleigh, Inc.,* 117 N.C. App 28, 34-36, 450 S.E.2d 24, 27-29 (1994), *aff'd per curiam*, 342 N.C. 404, 464 S.E.2d 46 (1995). However, Defendant Bank has not argued, either at the trial court or in its brief to this Court, that the amended complaint should be dismissed for lack of subject matter jurisdiction. Even though this Court may consider subject matter jurisdiction *sua sponte*, *see Guthrie v. Conroy*, 152 N.C. App. 15, 17, 567 S.E.2d 403, 406 (2002), there is insufficient information in the record for us to make this determination.

Defendant Bank expected Plaintiff to produce the same results it had required before her relapse. Plaintiff requested to be transferred to a different branch location, but the transfer request was denied. By December 2013, Defendant's condition became so profound that her doctor took her out of work completely and diagnosed her with bipolar disorder.

Plaintiff filed her amended complaint against Defendant Bank and Defendant Hodgin on August 27, 2015 alleging negligence. This claim was based on Defendants' purported failure to exercise reasonable care and provide Plaintiff with a safe working environment free from mental stress or anxiety, which Plaintiff contends aggravated a pre-existing mental condition about which Defendants were aware.

Defendants removed the case to the U.S. District Court for the Eastern District of North Carolina, where Plaintiff moved to have the case remanded and Defendants moved for dismissal. The U.S. District Court denied Plaintiff's motion for remand and granted Defendants' motion to dismiss. However, the U.S. Court of Appeals for the Fourth Circuit reversed the District Court's ruling and ordered the case to be remanded to Nash County Superior Court.

Once the case had been remanded, Defendants moved for dismissal of the amended complaint pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. Defendant argued that Plaintiff's amended complaint failed to state a claim for which relief could be granted because her claim, based solely on Defendants'

alleged workplace negligence, is barred by the exclusivity provision of the Workers' Compensation Act. Defendants further asserted in their motion that Plaintiff's claim against Defendant Hodgin is barred because there is no individual liability for managers in employment-based claims in North Carolina.

On July 26, 2017, the trial court entered an order granting Defendants' motion to dismiss, finding that the exclusivity provision of the Worker's Compensation Act bars Plaintiff's claim. It is from this order that Plaintiff timely appeals.

Standard of Review

> The motion to dismiss under [Rule 12(b)(6) of the North Carolina Rules of Civil Procedure] tests the legal sufficiency of the complaint. In ruling on the motion[,] the allegations of the complaint must be viewed as admitted, and on that basis the court must determine as a matter of law whether the allegations state a claim for which relief may be granted.

Stanback v. Stanback, 297 N.C. 181, 185, 254 S.E.2d 611, 615 (1979) (citations omitted). "This Court must conduct a *de novo* review of the pleadings to determine their legal sufficiency and to determine whether the trial court's ruling on the motion to dismiss was correct." *Leary v. N.C. Forest Prods., Inc.*, 157 N.C. App. 396, 400, 580 S.E.2d 1, 4, *aff'd per curiam*, 357 N.C. 567, 597 S.E.2d 673 (2003).

Plaintiff's claim should be dismissed if "it affirmatively appears plaintiff is entitled to no relief under any state of facts which could be presented in support of the claim." *Johnson v. Bollinger*, 86 N.C. App. 1, 4, 356 S.E.2d 378, 380-81 (1987) (citation omitted). Our "system of notice pleading affords a sufficiently liberal

construction of complaints so that few fail to survive a motion to dismiss." *Id.* at 4, 356 S.E.2d at 381 (*purgandum*[2]). However, dismissal of a complaint pursuant to Rule 12(b)(6) is proper "(1) when on its face the complaint reveals no law supports plaintiff's claim; (2) when on its face the complaint reveals the absence of fact sufficient to make a good claim; [or] (3) when some fact disclosed in the complaint necessarily defeats plaintiff's claim." *Id.* at 4, 356 S.E.2d at 380.

Analysis

Plaintiff argues that the trial court erred in granting Defendants' motion to dismiss pursuant to the Workers' Compensation Act's exclusivity doctrine. She asserts on appeal that her amended complaint stated, with sufficient specificity, a claim of negligent infliction of emotional distress that is excepted from the exclusivity provision of the Workers' Compensation Act because of Defendants' "egregious and extreme conduct." We disagree.

An employee's remedies for injuries sustained in the course of employment attributable to the negligence of an employer, a co-employee, or a supervisor, are limited to those expressly provided by the Workers' Compensation Act. *See* N.C. Gen. Stat. § 97-9 and 97-10.1 (2017). Mental injuries, as well as physical injuries, are

[2] Our shortening of the Latin phrase "*Lex purgandum est*." This phrase, which roughly translates "that which is superfluous must be removed from the law," was used by Dr. Martin Luther during the Heidelberg Disputation on April 26, 1518 in which Dr. Luther elaborated on his theology of sovereign grace. Here, we use *purgandum* to simply mean that there has been the removal of superfluous items, such as quotation marks, ellipses, brackets, citations, and the like, for ease of reading.

compensable under the Workers' Compensation Act as long as the resulting disability meets statutory requirements. *Jordan v. Cent. Piedmont Cmty. Coll.*, 124 N.C. App. 112, 119, 476 S.E.2d 410, 414 (1996), *disc. review denied*, 345 N.C. 753, 485 S.E.2d 53 (1997).

Section 97-9 of the Workers' Compensation Act provides:

> Every employer subject to the compensation provisions of this Article shall secure the payment of compensation to his employees in the manner hereinafter provided; and while such security remains in force, he or those conducting his business shall only be liable to any employee for personal injury or death by accident to the extent and in the manner herein specified.

N.C. Gen. Stat. § 97-9. Section 97-10.1 states that the Workers' Compensation Act provides the exclusive rights and remedies for employers and employees covered by the Act:

> If the employee and the employer are subject to and have complied with the provisions of this Article, then the rights and remedies herein granted to the employee, his dependents, next of kin, or personal representative shall exclude all other rights and remedies of the employee, his dependents, next of kin, or representative as against the employer at common law or otherwise on account of such injury or death.

N.C. Gen. Stat. § 97-10.1.

The Workers' Compensation Act's exclusivity provision "bar[s] a worker from maintaining a common law negligence action against his employer" for injuries sustained in the course of his employment, and "from suing a co-worker whose

negligence caused the injury." *Pleasant v. Johnson*, 312 N.C. 710, 713, 325 S.E.2d 244, 247 (1985). Additionally, this exclusivity provision "precludes a claim for ordinary negligence, even when the employer's conduct constitutes willful or wanton negligence." *Wake Cnty. Hosp. Sys., Inc. v. Safety Nat'l Cas. Corp.*, 127 N.C. App. 33, 40, 487 S.E.2d 789, 793, *disc. review denied*, 347 N.C. 410, 494 S.E.2d 600 (1997).

Our Supreme Court has previously held that there is a narrow exception to the exclusivity provision of the Workers' Compensation Act that applies "when an employer intentionally engages in misconduct knowing it is substantially certain to cause serious injury or death to employees and an employee is injured or killed by that misconduct." *Woodson v. Rowland*, 329 N.C. 330, 340-41, 407 S.E.2d 222, 228 (1991). "Such misconduct is tantamount to an intentional tort, and civil actions based thereon are not barred by the exclusivity provisions of the Act." *Id.* at 341, 407 S.E.2d at 228.

However, this exception from *Woodson v. Rowland*

> represents a narrow holding in a fact-specific case, and its guidelines stand by themselves. *This exception applies only in the most egregious cases of employer misconduct.* Such circumstances exist where there is uncontroverted evidence of the employer's intentional misconduct and where such misconduct is substantially certain to lead to the employee's serious injury or death.

Whitaker v. Town of Scotland Neck, 357 N.C. 552, 557, 597 S.E.2d 665, 668 (2003) (emphasis added), *reh'g denied*, 358 N.C. 159, 593 S.E.2d 591 (2004). "The issue, therefore, is whether defendant's conduct, viewed in the light most favorable to the

plaintiff, was willful, wanton, or reckless, so as to fall within [this] exception." *Baker v. Ivester*, 150 N.C. App. 406, 409, 563 S.E.2d 245, 247 (2002).

Here, Plaintiff alleged in her amended complaint that she suffered mental injury because Defendants acted negligently in pressuring her to perform the duties associated with her position within Defendant Bank. The amended complaint alleges no intentional conduct on the part of the Defendants, and it only contains allegations that Defendants "pressur[ed] Plaintiff about trying to increase the customers base [sic] by openly harsh criticisms and evaluations," which resulted in "stress or anxiety" and caused "Plaintiff's bipolar disorder and the aggravation of her pre-existing mental illness." Further, Plaintiff alleged that Defendants "knew or should have known of Plaintiff's delicate and sensitive mental and psychological condition . . . [and] owed a duty of reasonable care to Plaintiff not to cause mental stress or anxiety to Plaintiff," and yet Defendants breached this duty of reasonable care.

These allegations say nothing of willful, wanton, egregious, or intentional conduct of Defendants that would elevate this case above the type of conduct to which the Workers' Compensation Act exclusively applies. "In sum, the [conduct alleged in Plaintiff's amended complaint] in the present case fails to establish that defendants intentionally engaged in misconduct knowing that it was substantially certain to cause serious injury or death to [Plaintiff]." *Whitaker*, 357 N.C. at 558, 597 S.E.2d at 669.

Viewing the allegations in the amended complaint in the light most favorable to the Plaintiff, "it affirmatively appears that plaintiff is entitled to no relief under any state of facts which could be presented in support of the claim." *Bollinger*, 86 N.C. App. at 4, 356 S.E.2d at 380-81.

Conclusion

Dismissal of Plaintiff's amended complaint pursuant to Rule 12(b)(6) was proper because Plaintiff's claim falls within the exclusivity provision of the Workers' Compensation Act, and "on its face[,] the complaint reveals no law [that] supports plaintiff's claim." *Id.* at 4, 356 S.E.2d at 380. Thus, the trial court did not err in dismissing Plaintiff's amended complaint with prejudice.

AFFIRMED.

Judge TYSON concurs.

Judge DIETZ concurs in separate opinion.

Report per Rule 30(e).

No. COA18-96 – *Jones v. Wells Fargo Co.*

DIETZ, Judge, concurring.

The majority opinion uses the Latin phrase "*purgandum*" in a citation parenthetical to indicate that it removed unnecessary quotation marks, ellipses, brackets, or citations to improve the readability of the quoted text without altering its substance. Other courts and commentators suggest the phrase "cleaned up." *See*, *e.g.*, Jack Metzler, *Cleaning Up Quotations*, 18 J. App. Prac. & Process 143 (2017). Whatever notation is used, I support this practice and believe it is appropriate for counsel to use it in their briefs. So long as the substance of the quote is unchanged and the parenthetical informs the reader that there are non-substantive changes, this practice is consistent with the requirement in our rules that parties conform their filings "to the most recent edition of *The Bluebook: A Uniform System of Citation*." N.C. R. App. P. App. B.