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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-46

No. COA20-269

Filed 2 March 2021

Chowan County, No. 19 CVS 73

JOHN JOSEPH CALLAHAN, ADMINISTRATOR OF THE ESTATE OF MEGGAN LEE CALLAHAN, Plaintiff,

v.

NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY, Defendant.

Appeal by defendant from order entered 9 December 2019 by Judge Jerry R. Tillett in Chowan County Superior Court. Heard in the Court of Appeals 9 February 2021.

*Knott & Boyle, PLLC, by W. Ellis Boyle, for plaintiff-appellee.*

*Joshua H. Stein, Attorney General, by Special Deputy Attorney General Tamika Henderson and Assistant Attorney General Terence Steed, for defendant-appellant.*

ARROWOOD, Judge.

¶ 1

The North Carolina Department of Public Safety (“defendant”) appeals from the trial court’s 9 December 2019 order denying in part defendant’s motion to dismiss. For the following reasons, we hold that this appeal is interlocutory and

therefore not properly before this Court. As such, the instant appeal is dismissed.

I. Background

¶ 2 Plaintiff is the father and administrator of the estate of Sergeant Meggan Callahan (“Sergeant Callahan”). At all times relevant, Sergeant Callahan was employed by defendant as a correctional officer at Bertie Correctional Institution (“Bertie”).

¶ 3 On 26 April 2017, an inmate at Bertie, Craig Wissink (“Wissink”), murdered Sergeant Callahan while she was on duty at the penal institution. Wissink was serving a life sentence for a previous murder conviction and was being held in medium custody at Bertie.

¶ 4 Plaintiff filed the instant action on 25 April 2019 asserting two alternative claims. Plaintiff asserted a “*Woodson*”<sup>1</sup> claim “alleging that the Department knew it had inadequate staffing to provide a safe work environment for Sergeant Callahan, and that the unsafe working conditions at Bertie led to Sergeant Callahan’s death.” Alternatively, plaintiff asserted a “*Corum*”<sup>2</sup> claim under Article I, Section 19 of the North Carolina Constitution alleging those same facts.

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<sup>1</sup> This claim stems from the decision in *Woodson v. Rowland*, 329 N.C. 330, 407 S.E.2d 222 (1991).

<sup>2</sup> This claim stems from the decision in *Corum v. Univ. of N. Carolina Through Bd. of Governors*, 330 N.C. 761, 413 S.E.2d 276 (1992).

¶ 6 On 27 June 2019, defendant filed a motion to dismiss plaintiff's complaint pursuant to North Carolina Rules of Civil Procedure 12(b)(1), 12(b)(2), and 12(b)(6). On 9 December 2019, the trial court entered an order granting defendant's motion to dismiss the *Woodson* claim and denying its request to dismiss plaintiff's *Corum* claim. The trial court dismissed the *Woodson* cause of action on the grounds of sovereign immunity. Defendant filed a notice of appeal on 6 January 2020. Defendant appeals the trial court's denial of its motion to dismiss plaintiff's *Corum* claim. Plaintiff did not cross appeal the dismissal of the *Woodson* claim.

## II. Discussion

¶ 7 Defendant contends that this appeal is properly before this Court because the trial court's 9 December 2019 order affects a substantial right. According to defendant, "[o]rders denying dispositive motions based on the defenses of governmental and public official immunity affect a substantial right and are immediately appealable."

¶ 8 Plaintiff concedes that if a government entity's motion to dismiss a state or common law claim based on sovereign immunity is denied, the state agency defendant may immediately appeal the denial.<sup>3</sup> However, plaintiff maintains that defendant

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<sup>3</sup> As mentioned above, the trial court dismissed plaintiff's *Woodson* claim based on sovereign immunity—which is not at issue on appeal.

cannot pursue an interlocutory appeal of a trial court’s decision to deny a motion to dismiss a *Corum* claim based on sovereign immunity. We agree.

¶ 9

“An interlocutory order entered before final judgment is immediately appealable ‘in only two circumstances: (1) if the trial court has certified the case for appeal under Rule 54(b) of the Rules of Civil Procedure; and (2) when the challenged order affects a substantial right of the appellant that would be lost without immediate review.’” *Campbell v. Campbell*, 237 N.C. App. 1, 3, 764 S.E.2d 630, 632 (2014) (quoting *Robinson v. Gardner*, 167 N.C. App. 763, 767, 606 S.E.2d 449, 452 (2005)). More relevant to the instant appeal, our Supreme Court has unequivocally held that *Corum* claims brought under the North Carolina Constitution are not susceptible to a sovereign immunity defense. *Craig ex rel. Craig v. New Hanover Cty. Bd. of Educ.*, 363 N.C. 334, 338, 678 S.E.2d 351, 354 (2009) (“Allowing sovereign immunity to defeat plaintiff’s colorable constitutional claim here would defeat the purpose of the holding of *Corum*.”).

¶ 10

Defendant did not move to dismiss the *Corum* claim on the grounds of governmental or sovereign immunity. Rather, defendant moved to dismiss the claim because plaintiff allegedly has adequate state remedies from which plaintiff could recover for the alleged injuries. This indicates that defendant acknowledges that sovereign (or governmental) immunity could not shield it from plaintiff’s *Corum* claim, and, therefore, that the trial court’s disinclination to dismiss that claim could

not be appealed on the grounds that the order affects a substantial right. Defendant has shown no substantial right to have its claim of adequate state remedies decided on appeal at this stage of the proceedings.

¶ 11 Because the 9 December 2019 order did not dispose the entire action and was not certified for immediate appeal by the trial judge, and because defendant has failed to show that the order deprived it of a substantial right which would be jeopardized absent a review prior to a final determination on the merits, this Court must dismiss the instant appeal as interlocutory and premature. *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, 362 N.C. 191, 197, 657 S.E.2d 361, 365 (2008) (citations omitted) (“A jurisdictional default, therefore, precludes the appellate court from acting in any manner other than to dismiss the appeal.”).

### III. Conclusion

¶ 12 For the foregoing reason, we dismiss this appeal as interlocutory.

DISMISSED.

Judges ZACHARY and MURPHY concur.

Report per Rule 30(e).