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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-174

No. COA21-376

Filed 15 March 2022

Forsyth County, No. 20 CVS 3420

HEDGECOCK LUMBER COMPANY, Plaintiff,

v.

WILLIS W. APPLE, and WILLIS W. APPLE, P.A., Defendants.

Appeal by Plaintiff from order entered 15 February 2021 by Judge Richard S. Gottlieb in Forsyth County Superior Court. Heard in the Court of Appeals 12 January 2022.

Hill Evans Jordan & Beatty, A Professional Limited Liability Company, by R. Thompson Wright, for plaintiff-appellant.

The Bomar Law Firm, PLLC, by J. Chad Bomar, for defendants-appellees.

MURPHY, Judge.

¶ 1 A trial court cannot err by declining to retroactively extend the time to issue an alias and pluries summons after an action had been discontinued because it lacks any authority to do so. Further, when an appellant fails to make a transcript from a motion to dismiss hearing part of the record on appeal and nothing else in the record indicates its argument advanced on appeal was preserved for our review, we need not

address whether emergency directives issued by the then Chief Justice of our Supreme Court applied to the issuance of an alias and pluries summons.

BACKGROUND

¶ 2 On 31 July 2020, Plaintiff Hedgecock Lumber Company filed a *Complaint* in Forsyth County Superior Court against Defendants Willis W. Apple and Willis W. Apple, P.A., alleging legal malpractice arising out of professional services that were performed "in the Spring of 2017." Although the three-year statute of limitations would have expired "at the latest on [7 May 2020,]" the statute of limitations was extended by the North Carolina Supreme Court Chief Justice's 21 May 2020 Order ("May 2020 Order"), in accordance with N.C.G.S. § 7A-39(b)(1), that stated: "All periods of limitation that were set to expire between 16 March 2020 and 31 July 2020, inclusive of those dates, are hereby extended until the close of business on 31 July 2020." *Order of the Chief Justice of the Supreme Court of North Carolina* (21 May 2020);[1] *see* N.C.G.S. § 1-15(c) (2021) ("[A] cause of action for malpractice arising out of the performance of or failure to perform professional services shall be deemed to accrue at the time of the occurrence of the last act of the defendant giving rise to the

[1] Available at: https://www.nccourts.gov/assets/news-uploads/21%20May%202020%20-%207A-39%28b%29%281%29%20Order%20%28FINAL%29.pdf?2nANI_xM311YtKvOPf0JeUFxGbY0aWRA (last visited 2 February 2022).

cause of action[.]"). Pursuant to the May 2020 Order, the statute of limitations for Plaintiff's legal malpractice claim expired on 31 July 2020.[2]

¶ 3 The same day that Plaintiff filed its *Complaint*, on 31 July 2020, the Forsyth County Clerk of Superior Court issued a civil summons to Defendants. However, service of this summons was never perfected. On 22 October 2020, Plaintiff mailed an alias and pluries summons to the Forsyth County Clerk of Superior Court. The Forsyth County Clerk of Superior Court did not issue an alias and pluries summons until 3 November 2020, 95 days after the issuance of the original summons. The alias and pluries summons was received by Defendants on 14 November 2020.

¶ 4 Defendants filed a motion to dismiss arguing, *inter alia*, pursuant to Rule 12(b)(6), the timing of the issuance of the alias and pluries summons constituted a break in the chain of summonses and that, for statute of limitations purposes, the action should be treated as commenced on 3 November 2020, which was after the statute of limitations expired. In its *Order* entered 15 February 2021 ("February 2021 Order"), the trial court granted Defendants' motion to dismiss and dismissed Plaintiff's action with prejudice. Plaintiff timely filed a *Notice of Appeal* on 16 March 2021.

ANALYSIS

[2] The parties do not dispute that the statute of limitations for Plaintiff's claim expired on 31 July 2020.

¶ 5 Plaintiff argues the trial court erred in granting Defendants' motion to dismiss because the trial court (A) should have retroactively extended the time for issuance of the alias and pluries summons, and (B) should have applied the emergency directives issued by an order of the Chief Justice of the North Carolina Supreme Court.

¶ 6 "The standard of review for the dismissal of a complaint [under Rule 12(b)(6)] is *de novo*." *Atkinson v. Lesmeister*, 186 N.C. App. 442, 444, 651 S.E.2d 294, 296 (2007).

> On a motion to dismiss pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure, the standard of review is whether . . . the allegations of the complaint, treated as true, are sufficient to state a claim upon which relief may be granted under some legal theory. The complaint must be liberally construed, and the court should not dismiss the complaint unless it appears beyond a doubt that the plaintiff could not prove any set of facts to support his claim which would entitle him to relief.

Holleman v. Aiken, 193 N.C. App. 484, 491, 668 S.E.2d 579, 584-85 (2008).

A. Discretion of the Trial Court

¶ 7 Rule 4 of the North Carolina Rules of Civil Procedure provides that a summons must be issued within five days of when a plaintiff files a complaint. N.C.G.S. § 1A-1, Rule 4(a) (2021) ("Upon the filing of the complaint, summons shall be issued forthwith, and in any event within five days."). "Personal service or substituted

personal service of summons as prescribed by Rules 4(j) and (j1) must be made within 60 days after the date of the issuance of summons." N.C.G.S. § 1A-1, Rule 4(c) (2021).

> A summons not served within sixty days loses its vitality and becomes *functus officio*, and service obtained thereafter does not confer jurisdiction on the trial court over the defendant. However, although a summons not served within sixty days becomes dormant and unserveable, under Rule 4(c) it is not invalidated nor is the action discontinued.

Valentine v. Solosko, 270 N.C. App. 812, 815, 842 S.E.2d 621, 624 (marks omitted), *disc. rev. denied*, 376 N.C. 537, 851 S.E.2d 45 (2020).

¶ 8 If a defendant is not served within 60 days after the date of the issuance of the original summons, Rule 4(d) provides that the action may be continued in existence so long as the plaintiff follows one of the following methods of extension:

> (1) The plaintiff may secure an endorsement upon the original summons for an extension of time within which to complete service of process. . . .
>
> (2) The plaintiff may sue out an alias or pluries summons returnable in the same manner as the original process. Such alias or pluries summons may be sued out at any time within 90 days after the date of issue of the last preceding summons in the chain of summonses or within 90 days of the last prior endorsement.

N.C.G.S. § 1A-1, Rule 4(d) (2021).

¶ 9 However, when there is neither an endorsement nor issuance of an alias and pluries summons within the time specified by Rule 4(d), the action is discontinued as to any defendant who was not served with summons within the time allowed.

N.C.G.S. § 1A-1, Rule 4(e) (2021). Thereafter, endorsement may be obtained or alias and pluries summons may issue, but, as to any defendant who was not served with summons within the time specified in Rule 4(d), the action shall be deemed to have commenced on the date of such issuance or endorsement. *Id.*

¶ 10 While a trial court has the discretion to extend the time for service of an alias and pluries summons after the summons becomes dormant but before the expiration of the summons, a trial court does *not* have the discretion to retroactively extend the time for issuance of the alias and pluries summons after the action has been discontinued. *Wetchin v. Ocean Side Corp.*, 167 N.C. App. 756, 760-61, 606 S.E.2d 407, 409-10 (2005); *Russ v. Hedgecock*, 161 N.C. App. 334, 336-37, 588 S.E.2d 69, 70-71 (2003) (holding that "alias and pluries summons issued [over 90 days after the last preceding summons] resulted in the commencement of an entirely new action, outside of the statutory limitations period" and "[b]ecause discontinuance of the action is mandat[ory] . . . , the trial court erred in allowing [the] plaintiffs' motion to retroactively extend the time period for issuing an alias and pluries summons"), *disc. rev. denied*, 358 N.C. 545, 599 S.E.2d 407 (2004); *Dozier v. Crandall*, 105 N.C. App. 74, 78, 411 S.E.2d 635, 638 ("[W]here there is neither endorsement nor issuance of alias or pluries summons within 90 days after issuance of the last preceding summons, the action is *discontinued* as to any defendant not served within the time

allowed and treated as if it had never been filed."), *disc. rev. improvidently allowed*, 332 N.C. 480, 420 S.E.2d 826 (1992).

¶ 11 Here, the original summons was issued within five days of the filing of the *Complaint*. However, personal service of the summons was not made within sixty days of 31 July 2020, when the *Complaint* was filed. Plaintiff's action could be continued as long as an alias and pluries summons was issued within 90 days of 31 July 2020. N.C.G.S. § 1A-1, Rule 4(d)(2) (2021). The alias and pluries summons was issued on 3 November 2020, more than 90 days from the issuance of the last preceding summons, so the action was discontinued, and a new action commenced on 3 November 2020. *See* N.C.G.S. § 1A-1, Rule 4(e) (2021). As the alias and pluries summons was issued after the action was discontinued, the trial court did not have any authority to retroactively extend the time for issuance of the alias and pluries summons, and therefore the trial court did not have the discretion to prevent the discontinuance of Plaintiff's action. *Wetchin,* 167 N.C. App. at 760, 606 S.E.2d at 409-10; *Russ*, 161 N.C. App. at 336-37, 588 S.E.2d at 70-71; *Dozier*, 105 N.C. App. at 78, 411 S.E.2d at 638. The trial court did not err by granting Defendants' motion to dismiss and dismissing Plaintiff's claim as barred by the statute of limitations.

B. Application of Emergency Directives

¶ 12 Plaintiff argues "the trial court should have applied Emergency Directives 4 and [15], of the Order of the Chief Justice of the Supreme Court of North Carolina, so

as to allow the Clerk's issuance of an alias summons effective four days earlier than the actual issuance date of [3 November 2020]" and "[u]nder the letter and spirit of the Emergency Directives, the filing and issuance of the alias summons on [3 November 2020] should be deemed timely."

¶ 13 Emergency Directives 4 and 15 are contained in the *Order of the Chief Justice of the Supreme Court of North Carolina*, issued 15 October 2020 ("October 2020 Order"). *See Order of the Chief Justice of the Supreme Court of North Carolina* (15 October 2020).[3] Emergency Directive 4 states:

> Attorneys and other persons who do not have business in a courthouse should not enter a courthouse, and those who do have business in a courthouse should not prolong their visit once their business has concluded. Attorneys are strongly encouraged to submit filings by mail rather than in person.

Id. Emergency Directive 15 states:

> To further minimize foot traffic in the courthouses, attorneys and litigants are encouraged to submit filings by mail to the greatest extent possible. Beginning 1 June 2020, pleadings and other documents delivered by the United States Postal Service to the [C]lerk of [S]uperior [C]ourt shall be deemed timely filed if received within five business days of the date the filing is due.

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[3] Available at: https://www.nccourts.gov/assets/news-uploads/15%20October%202020%20-%207A-39%28b%29%282%29%20Order%20Extending%20Emergency%20Directives%202-5%2C%208-15%2C%2018%2C%2020-22%20%28Final%29_0.pdf?Lgp2JVHakRQ3xYspNBhDg0r6deotdR7h (last visited 2 February 2022).

Id.

¶ 14 To the extent that Plaintiff argues that Emergency Directives 4 and 15 apply here to provide a five-day grace period for the issuance of the alias and pluries summons, there is nothing in the Record to indicate this issue was preserved for appellate review. Under North Carolina Rule of Appellate Procedure 10(a)(1), "[i]n order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context." N.C. R. App. P. 10(a)(1) (2022). "[A]n appellant has the duty to ensure the record and complete transcript are properly prepared and transmitted to this Court." *Hill v. Hill*, 173 N.C. App. 309, 322, 622 S.E.2d 503, 512 (2005), *disc. rev. denied, appeal dismissed*, 360 N.C. 363, 629 S.E.2d 851 (2006).

¶ 15 Plaintiff could have included a narrative or the transcript of the motion to dismiss hearing in the Record on appeal, but failed to do so. *See* N.C. R. App. P. 9(c) (2021) ("Testimonial evidence, voir dire, statements and events at evidentiary and non-evidentiary hearings, and other trial proceedings necessary to be presented for review by the appellate court may be included either in the record on appeal in the form specified in Rule 9(c)(1) or by designating the transcript of proceedings of the trial tribunal as provided in Rule 9(c)(2) and (3)."). The current Record on appeal contains no indication that Plaintiff made a timely request, objection, or motion to

the trial court concerning the applicability of Emergency Directives 4 and 15. Plaintiff failed to properly preserve this issue for appellate review under our Rules of Appellate Procedure, and we do not address the merits of its argument.

CONCLUSION

¶ 16 The trial court did not err by granting Defendants' motion to dismiss because the trial court did not have any authority to prevent a discontinuance of this action. Additionally, Plaintiff failed to preserve for appellate review whether Emergency Directives 4 and 15 apply to this set of facts, and we decline to reach the merits of this argument on appeal.

AFFIRMED.

Judge GRIFFIN concurs.

Judge COLLINS concurs in the result only and writes separately.

Report per Rule 30(e).

COLLINS, Judge, concurs in the result only and writes separately.

¶ 17 Plaintiff concedes that if Emergency Directives 4 and 15 are not applicable, "[P]laintiff's action would be properly dismissed as being outside the statute of limitations." As Plaintiff argues, however, "[t]he sole issue presented by this appeal is whether the trial court should have applied Emergency Directives 4 and 1[5], of the Order of the Chief Justice of the Supreme Court of North Carolina, so as to allow the Clerk's issuance of an alias summons effective four days earlier than the actual issuance date of November 3, 2020." The trial court's order dismissing Plaintiff's action specifically addressed Emergency Directive 15, finding and concluding that it did not apply to issuing a summons; a transcript or narration of the hearing is not "necessary for an understanding" of the purely legal issue presented on appeal, N.C. R. App. P. 9(a)(1)e.; and both parties on appeal thoroughly briefed whether Emergency Directives 4 and 15 applied to issuing the Alias Summons in this case. I believe this issue is squarely before us and I write separately to address it.

I. Background

A. Emergency Directives

¶ 18 Beginning on 13 March 2020 and continuing throughout the course of the Covid-19 pandemic, the Chief Justice of the Supreme Court of North Carolina issued a series of orders affecting the operation of the North Carolina court system aimed at protecting public safety during the outbreak of Covid-19. An order issued 2 April 2020 stated, in part:

Emergency Directive 4

> Attorneys and other persons who do not have business in a courthouse should not enter a courthouse, and those who do have business in a courthouse should not prolong their visit once their business has concluded. Attorneys are strongly encouraged to submit filings by mail rather than in person.
>
> . . . .
>
> I encourage all court officials to liberally grant additional accommodations to parties, witnesses, attorneys, and others with business before the courts, as they deem appropriate.

Order of the Chief Justice of the Supreme Court of North Carolina (2 April 2020).[4]

¶ 19 An order issued 13 April 2020 stated, in part:

> I order that all pleadings, motions, notices, and other documents and papers that were or are due to be filed in any county of this state on or after 16 March 2020 and before the close of business on 1 June 2020 in civil actions, criminal actions, estates, and special proceedings shall be deemed to be timely filed if they are filed before the close of business on 1 June 2020.
>
> I further order that all other acts that were or are due to be done in any county of this state on or after 16 March 2020 and before the close of business on 1 June 2020 in civil actions, criminal actions, estates, and special proceedings shall be deemed to be timely done if they are

[4] Available at: https://www.nccourts.gov/assets/news-uploads/2%20April%202020%20-%207A-39%28b%29%282%29%20Order%20%28Final%29.pdf?UqRJH9wO2z3oEU4GW3Eg9rxRuFvTlixn

done before the close of business on 1 June 2020.

Order of the Chief Justice of the Supreme Court of North Carolina (13 April 2020).[5]

¶ 20 An order issued 21 May 2020 stated, in part:

Extension of Time and Periods of Limitation Pursuant to N.C.G.S. § 7A-39(b)(1)

1. **Civil Actions, Estates, and Special Proceedings.**

a. **Time for Filing and for Other Acts Due to be Done.** All deadlines for filing documents and papers and all deadlines for other acts that were due to be filed or done between 16 March 2020 and 1 June 2020, inclusive of those dates, remain extended until the close of business on 1 June 2020 in accordance with my 13 April 2020 order.

b. **Periods of Limitation.** All periods of limitation that were set to expire between 16 March 2020 and 31 July 2020, inclusive of those dates, are hereby extended until the close of business on 31 July 2020.

Order of the Chief Justice of the Supreme Court of North Carolina (21 May 2020).[6]

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[5] Available at: https://www.nccourts.gov/assets/news-uploads/COVID-19%20-%2013%20April%202020%20-%207A-39%28b%29%281%29%20Order%20%28FINAL%29.pdf?.u_u1lNIMPsEI6sKza5B6f7ZiZRcBH.D

[6] Available at: https://www.nccourts.gov/assets/news-uploads/21%20May%202020%20-%207A-39%28b%29%281%29%20Order%20%28FINAL%29.pdf?2nANI_xM311YtKvOPf0JeUFxGbY0aWRA

¶ 21 An order issued 20 June 2020 stated, in part:

> **Emergency Directive 15**
>
> To further minimize foot traffic in the courthouses, attorneys and litigants are encouraged to submit filings by mail to the greatest extent possible. Beginning 1 June 2020, pleadings and other documents delivered by the United States Postal Service to the clerk of superior court shall be deemed timely filed if received within five (5) business days of the date the filing is due.
>
> . . . .
>
> All court officials are encouraged to liberally grant additional relief and accommodations to parties, witnesses, attorneys, and others with business before the courts.

Order of the Chief Justice of the Supreme Court of North Carolina (20 June 2020).[7]

B. Procedural Posture

¶ 22 Plaintiff filed a Complaint against Defendants on 31 July 2020, alleging Defendants engaged in legal malpractice in the "Spring of 2017." Summons was issued on that date. Service of the Summons and the Complaint was not obtained. On 22 October 2020, Plaintiff mailed a letter and an Alias Summons to the Forsyth County Clerk of Superior Court. The letter stated, in part:

> Please find enclosed, an original and three copies of an Alias and Pluries Summons for issuance in the above-

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[7] Available at: https://www.nccourts.gov/assets/news-uploads/20%20June%202020%20-%207A-39%28b%29%282%29%20Extension%20Order%20for%20Emergency%20Directives%209-16%20%28FINAL%29.pdf?BFx89k8V3CLlSIT9Qq7mUzRSfUGWt6u7

> captioned action. Also enclosed is a copy of the original Summons issued July 31, 2020. The original Summons and Complaint were returned unserved due to the defendants' change of address, which has been included on the Alias and Pluries Summons. **{R p 44}**

¶ 23 On 3 November 2020, ninety-five days after the original Summons had been issued, the Alias Summons was issued by the Clerk. On or after 14 November 2020, Defendants received the Alias Summons and the Complaint via the United States Postal Service.

¶ 24 Defendants moved to dismiss Plaintiff's Complaint, pursuant to Rules 4 and 12(b)(2), (4), (5), and (6) of the North Carolina Rules of Civil Procedure. After a hearing, the trial court entered an order on 15 February 2021 wherein the trial court found and concluded, inter alia,

> 15. The Court is keenly aware of the harshness of a dismissal in light of the Covid-19 pandemic and the apparent good faith efforts Plaintiff's counsel took to secure issuance of an alias summons. However, Emergency Directive 15, by its plain text, applies to filings. Summonses are not filed before they are issued. The Directive does not refer to an extension of time for issuance of a summons and the Court does "not have discretion to prevent a discontinuance of an action under N.C. R. Civ. P. 4(e) where there is neither an endorsement of the original summons nor issuance of alias and pluries summons within ninety days after issuance of the last preceding summons. *See Dozier v. Crandall*, 105 N.C. App. 74, 78, 411 S.E.2d 635, 638 (1992). The Court further notes that in Emergency Directive 14, the Chief Justice required "the Clerks of superior court . . . to ensure that filings may be submitted during normal business hours and that access to

public records is provided." **{R p 48}**

The trial court granted Defendants' motion to dismiss and dismissed Plaintiff's complaint with prejudice. Plaintiff timely appealed.

II. Discussion

¶ 25 The sole issue on appeal is whether the trial court erred by failing to apply Emergency Directives 4 and 15 to allow the Alias Summons to be deemed issued on 31 October 2020, instead of its actual issue date on 3 November 2020, so that the chain of summonses would be kept alive for statute of limitations purposes. If the Emergency Directives did not allow the Alias Summons to be deemed issued on or before 31 October 2020, the Alias Summons was issued more than 90 days from the issuance of the last preceding summons, the action was discontinued, and a new action commenced on 3 November 2020, outside of the statute of limitations.

¶ 26 We look to our cannons of statutory interpretation for guidance interpreting the Emergency Directives. "Under our canons of statutory interpretation, where the language of a statute is clear, the courts must give the statute its plain meaning." *North Carolina State Bar v. Brewer*, 183 N.C. App. 229, 236, 644 S.E.2d 573, 577 (2007) (internal quotation marks and citation omitted). "Undefined words are accorded their ordinary meaning[.]" *Stark ex rel. Jacobsen v. Ford Motor Co.*, 365 N.C. 468, 476-77, 723 S.E.2d 753, 759 (2012) (citation omitted). Moreover, where particular language is included in one section of a statute but omitted in another

section of the same act, "it is generally presumed that the legislative body acts intentionally and purposely in the disparate inclusion or exclusion." *Comstock v. Comstock*, 244 N.C. App. 20, 24, 780 S.E.2d 183, 186 (2015) (citation, quotation marks, and brackets omitted). We review a trial court's statutory interpretation de novo. *Dion v. Batten*, 248 N.C. App. 476, 485, 790 S.E.2d 844, 851 (2016).

¶ 27 The relevant portion of Emergency Directive 15 states, "Beginning 1 June 2020, pleadings and other documents delivered by the United States Postal Service to the clerk of superior court shall be deemed *timely filed* if received within five business days of the date the *filing* is due." (Emphasis added). As the trial court found and concluded, "Emergency Directive 15, by its plain text, applies to filings. Summonses are not filed before they are issued. The Directive does not refer to an extension of time for issuance of a summons . . . ." Accordingly, the plain text of Emergency Directive 15 does not allow an alias summons to be deemed timely issued if delivered by the Postal Service to the clerk within five business days of the date the alias summons must be issued before the action is discontinued.

¶ 28 The language in Emergency Directive 15 contrasts with the language used in the 13 April and 21 May 2020 orders. The 13 April order separately addresses "documents and papers . . . due to be filed" and "*other acts . . . due to be done*" and orders documents and papers due to be filed "deemed to be timely filed if they are filed before the close of business on 1 June 2020" and other acts due to be done

"*deemed to be timely done* if they are done before the close of business on 1 June 2020." (Emphasis added). Similarly, the 21 May 2020 order addresses, in part, "Time for Filing and for Other Acts Due to be Done" and orders "[a]ll deadlines for filing documents and papers and all deadlines for *other acts that were due to be* filed or *done* between 16 March 2020 and 1 June 2020, inclusive of those dates, remain extended . . . ." (Emphasis added).

¶ 29 The 13 April and 21 May 2020 orders indicate the Chief Justice's intent to differentiate filings to be filed from other acts to be done, including, for example, issuing a summons. Emergency Directive 15 could have included language making it applicable to "acts due to be done," but it did not. I presume the Chief Justice acted intentionally and purposely in the disparate inclusion. *See Comstock*, 244 N.C. App. at 25, 780 S.E.2d at 186.

¶ 30 Plaintiff argues that "the trial court should have given accommodation to allow the issuance of the alias summons on October 31, 2020, so that the chain of summonses would be kept alive for statute of limitations purposes" in accordance with the portion of Emergency Directive 15, and similar statements in previous orders of the Chief Justice, that "[a]ll court officials are encouraged to liberally grant additional relief and accommodations to parties, witnesses, attorneys, and others with business before the courts." *See, i.e.,* Emergency Directive 4 ("I encourage all

court officials to liberally grant additional accommodations to parties, witnesses, attorneys, and others with business before the courts, as they deem appropriate.”).

¶ 31 However, as the trial court found and concluded, the court does not have discretion to prevent the discontinuance of an action under N.C. Gen. Stat. § 1A-1, Rule 4(e), where there is neither an endorsement of the original summons nor issuance of alias and pluries summons within ninety days after issuance of the last preceding summons. *See Dozier v. Crandall*, 105 N.C. App. 74, 78, 411 S.E.2d 635, 638 (1992).

¶ 32 Because Emergency Directives 4 and 15 did not allow the Alias Summons to be deemed timely issued on or before 31 October 2020, instead of its actual issue date on 3 November 2020, and the trial court did not have discretion to prevent the discontinuance of an action under N.C. Gen. Stat. § 1A-1, Rule 4(e), the chain of summonses was not kept alive, and Plaintiff’s action was properly dismissed as being outside the statute of limitations.