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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-727

Filed 2 April 2025

Mecklenburg County, No. 23CVS011522-590

TONYA MICHELLE HAMILTON, THE ADMINISTRATOR OF THE ESTATE OF
ERIC A. PERRY, Plaintiff,

v.

FEDEX GROUND PACKAGE SYSTEM, INC., EARL CRISCO, individually and in
his official capacity, JOSEPH C. KRAWIEC, individually and in his official capacity,
and JOHN TODD SMITH, individually and in his official capacity, Defendants.

Appeal by Plaintiff from judgment entered 14 May 2024 by Judge Robert C.
Ervin in Mecklenburg County Superior Court. Heard in the Court of Appeals 11
February 2025.

Pamela A. Hunter for Plaintiff–Appellant.

*McAngus, Goudelock, & Courie LLC, by Meredith L. Cushing & Jeffrey B.
Kuykendal, for Defendants–Appellees.*

MURRY, Judge.

Tonya M. Hamilton (Plaintiff) appeals the trial court’s 14 May 2024 Order granting Defendants’ motion for summary judgment. Plaintiff asserts the trial court committed “reversible error” in that “[t]he evidence taken in the light most viable to the plaintiff establishes that plaintiff meats [sic] its burden in each and every one of

its causes of action.” Defendants argue summary judgment was proper and that this Court lacks jurisdiction to address Plaintiff’s claims. For the following reasons, we disagree with Plaintiff and affirm the trial court.

I. Background

As of 31 October 2019, Eric A. Perry (Decedent) was an employee of FedEx Ground Package System, Inc. in Charlotte, North Carolina (Defendant-FedEx).¹ Earl Crisco (Defendant-Crisco), Joseph Krawiec (Defendant-Krawiec), and John Todd Smith (Defendant-Smith) were supervisors of and coworkers with Decedent (collectively, “Defendants-Supervisors”). On 31 October 2019, while operating machinery during the course of employment, Decedent suffered “a medical emergency consist[ing] of pain in his chest” and lost consciousness. Decedent’s coworkers found Decedent unresponsive, radioed Defendants-Supervisors, and requested emergency services. The parties dispute the amount of time it took for Defendants-Supervisors to render aid to Decedent and whether this alleged delay entitles Plaintiff to relief.² Nonetheless, Decedent was transported to Carolinas Medical Center in Charlotte, North Carolina and pronounced dead on 1 November 2019.

¹ Federal Express Corporation/FedEx-Corporation was dismissed from this action on 28 April 2024, before the trial court granted summary judgment to Defendants on 14 May 2024.

² Plaintiff alleges that Defendants failed to render timely and effective medical aid to Decedent. Defendants deny these allegations in all answers and on appeal.

On 25 August 2020, Decedent’s wife, Sharon Perry (Ms. Perry), was appointed the personal representative for Decedent’s Estate, now administered by Tonya M. Hamilton.³ While acting as administrator, Ms. Perry filed a workers’ compensation claim and settled that claim on 13 January 2021. As part of the settlement, Ms. Perry, with the advice of counsel,⁴ signed a “Final Compromise Settlement Agreement” (Settlement Agreement) that the North Carolina Industrial Commission (Industrial Commission) approved. The Settlement Agreement released Defendants from any and all claims arising from the North Carolina Workers’ Compensation Act (the Act). *See* N.C.G.S. ch. 97, art. 1 (2023) (codified as amended at N.C.G.S. §§ 97-1 to -101.1).

On 4 May 2021, Ms. Perry signed an Agreement and Release (the Release) in exchange for which Defendant-FedEx promised to pay Plaintiff’s share of the total \$926.25 mediation fee for the mediated settlement conference held on 13 January 2021. The Release defined the “Company” as Defendant-FedEx and the “Releasor” as Ms. Perry in her role as the administrator of Decedent’s estate. The parties sought to “release any other claims, known or unknown, between Releasor and the Company, which are not covered by the workers’ compensation release.” The Release expressly disclaimed any contractual right of the Releasor “to sue the Company f[or] *any* . . .

³ After six amended notices of hearing, on 10 April 2024, Tonya M. Hamilton was substituted as the administrator of Decedent’s Estate.

⁴ We note that the counsel of record for Ms. Perry is the same counsel that filed the cause of action in Superior Court and this appeal for Plaintiff.

cause[] of action” that might derive from “*any* law . . . or other standard of conduct of *any* kind” that she might have had “against the Company . . . through the date that Releasor execute[d]” it. (Emphases added.) Plaintiff acknowledged that she “ha[d] read and fully underst[ood] the terms of th[e] Agreement and [was] hereby advised of [her] right to consult with legal counsel . . . prior to signing it.”

Despite signing the Release, the Plaintiff filed a complaint on 30 June 2023 that alleged negligence, nonfeasance, intentional infliction of emotional distress, negligent infliction of emotional distress, wrongful death, loss of consortium, and non-economic damages. Plaintiff premised her claims on Defendants’ alleged failure to timely render effective medical aid to Decedent and thus “jointly and severally . . . exceeded all bounds of decency” to a degree “not tolerated in a civilized society.”

On 26 September 2023, Defendant-Krawiec answered the complaint with an affirmative accord-and-satisfaction defense asserting that Ms. Perry accepted valid consideration in exchange for the Release. On 27 September 2023, Defendant-Crisco and Defendant-FedEx filed similar answers with the same defense and basis. Defendant-Smith filed the same on 1 November 2023. On 15 November 2023, Defendants collectively filed a motion for summary judgment, which the trial court heard on 24 April 2024 and granted ten days later. On 15 May 2024 and 22 May 2024, respectively, Plaintiff filed a timely notice and amended notice of appeal.

II. Jurisdiction

Defendants argue that this Court lacks subject-matter jurisdiction because

Plaintiff's claims fall within the exclusivity provision of the North Carolina Workers' Compensation Act. For the following reasons, we agree with Defendants and limit our holding accordingly.

A. North Carolina Workers' Compensation Act

Recognizing its duty to “ensure that the purpose of the legislature is accomplished,” this Court “interpret[s] the Act according to well-established principles of statutory construction.” *Woodson v. Rowland*, 329 N.C. 330, 338 (1991). The Act divests “the Superior Court . . . of original jurisdiction of all actions . . . within [its] provisions” in favor of the Industrial Commission. *Morse v. Curtis*, 276 N.C. 371, 375 (1970); see N.C.G.S. § 97-91 (“All questions arising under this A[ct] . . . shall be determined by the [Industrial] Commission . . .”). The Act seeks “to ensure that injured employees . . . recover[] for their work[place] injuries without having to prove negligence” or defend against contributory negligence accusations. *Whitaker v. Town of Scotland Neck*, 357 N.C. 552, 556 (2003). In exchange for these benefits, an employee cannot “sue [her] employer for potentially larger damages in civil negligence actions”; instead, she is “limited . . . to those remedies set forth in the Act.” *Id.*; see *Edwards v. GE Lighting Sys., Inc.*, 193 N.C. App. 578, 581 (2008). In effect, the Act “exclude[s] all other rights and remedies of the employee” to file suit in our courts. N.C.G.S. § 97-10.1; see *Wake Cty. Hosp. Sys., Inc. v. Safety Nat. Cas. Corp.*, 127 N.C. App. 33, 40 (1997) (“[T]he exclusivity provision of the Act precludes a claim for ordinary negligence, even when the employer’s conduct constitutes willful or

wanton negligence.”).

The Act “appl[ies] to all employees” and any “employers . . . [with] three or more employees.” *Reece v. Forga*, 138 N.C. App. 703, 705 (2000) (citing N.C.G.S. §§ 97-2(1), -3). Thus, we assume that “every employer or employee . . . ha[s] accepted the provisions” of the Act. *Hanks v. S. Pub. Util. Co.*, 204 N.C. 155 (1993); *see* N.C.G.S. § 97-3 (presuming that “every employer and employee . . . accept[s] [as binding] the provisions of this [Act] respectively to pay and accept compensation for personal injury or death by accident arising out of and in the course of . . . employment”). Recognizing the General Assembly’s express intent to adjudicate claims for work-related injuries within the Industrial Commission’s jurisdiction, our Supreme Court excepts only employer conduct that falls “outside the provisions of the Act”—that is, acts not present here. *Reece*, 138 N.C. App. at 705.

Here, Decedent’s employment by Defendant-FedEx at the time of his death is undisputed and demonstrated by the estate administrator making and settling claims on Decedent’s behalf with the Industrial Commission. Thus, Decedent and Defendants “have accepted the provisions of [the] [A]ct” and are “bound thereby.” N.C.G.S. § 97-3. The Act governs the “exclusive remedy in the event of [Decedent’s] injury.” *Id.* Accordingly, Plaintiff’s claims fall under the Act and are thus outside this Court’s subject-matter jurisdiction.

1. Woodson Exception

Nonetheless, our Supreme Court recognizes two narrow exceptions to the

exclusive provision of the Act in which our state courts may exercise jurisdiction over an employee's claims against his employers or co-employees. We now assess whether these exceptions apply.

An employee may take legal action against his employer if the employer “intentionally engages in misconduct knowing it is substantially certain to cause injury or death to employees and an employee is injured or killed by that conduct.” *Woodson*, 329 N.C. at 340–41. This exception is reserved for “the most egregious cases of employer misconduct” and applies 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*, 357 N.C. at 557.

This is an exceptionally high burden, and we have declined to apply *Woodson* in cases of willful and wanton negligence absent additional evidence that the employer knew the negligence was “substantially certain” to result in injury. *See Blue v. Mtn. Farms, Inc.*, 247 N.C. App. 489, 498 (2016) (“Willful and wanton negligence alone is not enough to establish a *Woodson* claim . . . [t]he conduct must be so egregious as to [be] tantamount to an intentional tort”); *Jones v. Willamette Indus.*, 120 N.C. App. 591, 595 (2013) (“While much more might have been done to ensure workers’ safety, the evidence does not show that [the employer] engaged in misconduct *knowing* it was substantially certain to cause death or serious injury”); *Arroyo v. Scotties Pro. Window Cleaning, Inc.*, 120 N.C. App. 154, 159 (1995) (“‘Substantial certainty’ under *Woodson* is more than the ‘mere possibility’ or

‘substantial possibility’ of a serious injury or death.” (quotation omitted)).

2. Pleasant Exception

An employee may also take legal action against a coworker who causes “injury . . . resulting from willful, wanton and reckless negligence” tantamount to “an intentional injury.” *Pleasant v. Johnson*, 312 N.C. 710, 715 (1985). “The burden of proof is heavy,” such that “even unquestionably negligent behavior rarely meets the high standard of ‘willful, wanton or reckless’ negligence.” *Trivette v. Yount*, 366 N.C. 303, 310–12 (2012). We have declined to apply the *Pleasant* exception in cases of “unquestionably negligent behavior,” *id.*, absent evidence showing “negligence so egregious as to be equivalent in spirit to actual intent,” *Estate of Baker v. Reinhardt*, 288 N.C. App. 529, 541 (2023). *See Pendergrass v. Card Care, Inc.*, 333 N.C. 233, 238 (1993) (holding that *Pleasant* does not apply because, even if plaintiff’s coworkers had known a machine violated Occupational Safety and Health Administration (OSHA) standards, this Court could not infer that the coworkers “intended that [the plaintiff] be injured or that they were manifestly indifferent to the consequences” of plaintiff’s operation); *Fagundes v. Ammons Dev. Grp., Inc.*, 251 N.C. App. 735, 740 (2017) (holding that *Pleasant* does not permit employee to recover against co-employee–supervisor after sustaining injuries in an incident where OSHA found a supervisor at fault and issued five citations for “egregious” safety violations).

3. Applying the Woodson and Pleasant Exceptions

In the case *sub judice*, Plaintiff alleges that Defendants failed to render timely

medical care to Decedent and filed actions against them for negligence, nonfeasance, intentional infliction of emotion distress, negligent infliction of emotional distress, wrongful death, loss of consortium, and non-economic damages.

On appeal, Plaintiff fails to cite a single case holding that failure to render aid is satisfies the *Woodson* or *Pleasant* exceptions. Hence, Plaintiff has failed to plead sufficient allegations, much less provide “uncontroverted evidence,” to show that *Woodson* or *Pleasant* apply. *Whitaker*, 357 N.C. at 557. Therefore, Plaintiff has abandoned her claims by failing to provide authority in support of her arguments. See N.C. R. App. P. 28(b)(6) (“Issues not presented in a party’s brief, or in support of which no reason or argument is stated, will be taken as abandoned.”).

Nonetheless, even if Defendants were negligent in rendering aid to Decedent, this Court holds that their presumed negligence was not so “egregious” as to warrant exception under *Woodson* or *Pleasant*. Accordingly, neither exception applies, and Plaintiff’s claims are within the exclusive jurisdiction of the Industrial Commission. Acknowledging our lack of jurisdiction over Plaintiff’s claims, we limit our holding to whether the trial court erred in granting Defendants’ motion for summary judgment.

III. Analysis

Plaintiff may appeal the trial court’s final judgment as a matter of right under N.C.G.S. § 7A-27(b); see *D.G. II, LLC v. Nix*, 213 N.C. App. 220 (2011). This Court reviews orders granting summary judgment *de novo*. *In re Will of Jones*, 362 N.C. 569, 573 (2008). Under a *de novo* review, this Court “considers the matter anew and

freely substitutes its own judgment for that of the lower tribunal.” *State v. Williams*, 362 N.C. 628, 632–33 (2008) (quotation omitted).

Plaintiff does not address the Release on appeal, much less provide any legal support to show its inapplicability. Plaintiff also ignores the question of proper jurisdiction under the Act. *See* N.C. R. App. P. 28(a) (“The scope of review on appeal is limited to issues so presented in the several briefs.”). Defendants argue that the trial court properly granted their motion for summary judgment. For the reasons below, we agree with Defendants and affirm the trial court.

A trial court may grant a motion for summary judgment where the accumulated pre-trial documentation, “together with [any] affidavits . . . show . . . no genuine issue” of “material fact” and the entitlement of either party to “judgment as a matter of law.” *Id.* 56(c). The court must consider all evidence in the light most favorable to the nonmovant and find recovery for that party impossible even if taking all alleged facts as true. *Howerton v. Arai Helmet, Ltd.*, 358 N.C. 440, 470 (2004), *superseded by statute on other grounds*, An Act to Provide Tort Reform for North Carolina Citizens and Businesses, S.L. 2011-183, sec. 2, r. 702(a), 2011 N.C. Sess. Laws 1048, 1049, *as recognized in SciGrip, Inc. v. Osae*, 373 N.C. 409 (2020). The movant bears the burden of showing that the nonmovant cannot “support an essential element of the claim or overcome an affirmative defense that would work to bar [her] claim.” *Wilhelm v. City of Fayetteville*, 121 N.C. App. 87, 89 (1995).

Ordinarily a question of fact, an accord-and-satisfaction expressed in a written

agreement can serve as an affirmative defense against tort claims. *See* 1 N.C. Index 4th *Accord and Satisfaction* § 18, Westlaw (database updated Feb. 2025); *Zanone v. RJR Nabisco, Inc.*, 120 N.C. App. 768, 771 (1995). But “the essential facts made clear of record” may render the existence of an accord-and-satisfaction to a question of law. *Zanone*, 120 N.C. App. at 771 (quotation omitted). An accord is “an agreement whereby one of the parties” agrees to perform “something other than” what he “considers himself[] entitled to” “in satisfaction of a claim.” *Dobias v. White*, 239 N.C. 409, 413 (1954). A satisfaction “is the execution . . . of such an agreement.” *Id.* “Agreements are reached by an offer by one party and an acceptance by the other.” *Prentzas v. Prentzas*, 260 N.C. 101, 104 (1963).

Parties may enter into a release agreement that “abandon[s] . . . a claim or right” against another. *Adder v. Holman & Moody, Inc.*, 288 N.C. 484, 492 (1975). Once executed, the release “bars all right to recover on[] the claim or right of action included therein[] as would a judgment duly entered in an action between” the parties. *Jenkins v. Fields*, 240 N.C. 776, 778 (1954). As a “voluntary and intentional relinquishment of a known right or benefit,” a release is “subject to the recognized rules of construction of contracts,” including “the question of intent.” *Adder*, 288 N.C. at 492. We determine intent by evaluating the “language,” “purposes,” and “subject matter” of the release, as well as the “situation of the parties” as of its execution. *Id.*

Applying these factors, we evaluate whether the parties intended to bind themselves to the Release here. In her capacity as the administrator of Decedent’s

estate, Ms. Perry released Defendant-FedEx and its employees from “*any* other claims, known or unknown, between” the parties that “the workers’ compensation [R]elease” may not otherwise cover. (Emphasis added.) As documented in the Release, Ms. Perry “waive[d] and release[d] *all* rights” that she “may have [had] . . . to pursue *any and all* remedies available to [her] under *any* cause of action whatsoever.” (Emphases added.) On the very next page, Ms. Perry acknowledged that she “ha[d] read and fully underst[ood] the terms” of the Release.

Ms. Perry signed the Release shortly after settling a workers’ compensation claim against Defendants. By accepting the terms of the Release, Ms. Perry agreed that their valid consideration satisfied her right to bring this cause of action. Plaintiff does not address how her claims “overcome [the Release] that would . . . bar [her] claim,” much less provide any “evidence to support” them. *Wilhelm*, 121 N.C. App. at 89. Thus, this Court holds that Plaintiff “intentional[ly] relinquish[ed]” her “right to recover” on any additional causes of action against Defendants and that the Release bars this suit. *Adder*, 288 N.C. at 492; *Jenkins*, 240 N.C. at 778. Therefore, there is no genuine issue of material fact and Defendants are entitled to summary judgment.

IV. Conclusion

For the reasons above, we hold that the trial court did not err in granting Defendants’ motion for summary judgment.

AFFIRMED.

Judges ZACHARY and CARPENTER concur.

HAMILTON V. FEDEX GROUND PACKAGE SYSTEM, INC.

Opinion of the Court

Report per Rule 30(e).