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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-479

Filed 2 September 2026

Montgomery County, No. 24CVS000138-610

BERNICE RUIZ GUTIERREZ, INDIVIDUALLY, AND AS ADMINISTRATRIX OF
THE ESTATE OF LUIS ROJAS LEZAMA, Plaintiffs,

v.

WALLACE INDUSTRIAL, INC. and ALL CLEANING CAROLINA, LLC,
Defendants.

Appeal by defendants from order entered 27 February 2025 by Judge Taylor
Browne in Montgomery County Superior Court. Heard in the Court of Appeals 16
October 2025.

Everson Law Office, PLLC, by Cynthia E. Everson, for plaintiffs.

McAngus, Goudelock & Courie, PLLC, by Jeffrey B. Kuykendal, for defendants.

FREEMAN, Judge.

Defendants appeal from the trial court's order denying their 12(b)(1) and
12(b)(6) motions to dismiss. On appeal, defendants argue that the trial court erred
in denying defendants' motions to dismiss because plaintiff did not plead sufficient

allegations to state a legally cognizable claim under *Woodson*. After careful review, we affirm the trial court's order.

I. Factual and Procedural Background

The allegations in plaintiff's complaint tended to show the following. In 2022, defendant Wallace Industrial, Inc. and defendant All Cleaning, LLC employed Luis Rojas Lezama (Decedent) as a commercial cleaner. The employment required Decedent to work at significant heights and use personal protection devices such as a self-retracting lifeline (SRL). On 24 May 2022, Decedent was power washing the interior of a large horizontal duct while wearing a harness that was attached to an SRL. The cable on the SRL failed, and Decedent fell 84 feet to his death. Following Decedent's death, the Occupational Safety and Health Administration (OSHA) ultimately cited Wallace Industrial for eight serious violations.

On 31 October 2024, plaintiff, the personal representative of Decedent's estate, filed an amended complaint in superior court, which contained a *Woodson* claim.

Plaintiff alleged:

17. Upon information and belief, one or both Defendants were familiar with, and/or created, the risks of the work Decedent was performing at the time of his death and failed to take proper safety precautions to ensure that he would not fall or that, if he did, he would not be certain to die. No adequate safety measures were taken, despite both Defendants being aware of this risk.

18. Upon information and belief, one or both Defendants had been cited by OSHA for serious violations prior to the Decedent's death, including prior fatalities, and yet failed

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to take appropriate remedial measures to ensure a safe working place for their agents and employees, such that additional serious injuries or harm were substantially certain to occur.

. . . .

21. At the time and place set out above, Defendants, through their employees and agents, acted recklessly, wantonly and with reckless disregard of the rights and safety of the Decedent, and/or intentionally engaged in conduct with the knowledge that such conduct was substantially certain to cause serious injury or death to the Decedent in the following particulars:

- a. Defendants intentionally failed to provide a safe workplace in which the Decedent and other employees could work without fear of harm and injury;
- b. Defendants intentionally created dangerous working conditions for the Decedent and other employees;
- c. Defendants intentionally failed to provide proper training in connection, use, and maintenance of personal protection devices for the Decedent and other employees;
- d. Defendants failed to provide an adequate amount of sufficiently-trained employees and agents involved in the project and/or contract between them to prevent dangerous working conditions;
- e. Defendants provided defective or unsafe personal protection devices for the Decedent and other employees;

On 6 November 2024, defendants moved to dismiss the complaint for lack of jurisdiction pursuant to Rule 12(b)(1) and for failure to state a claim under Rule 12(b)(6). Defendants argued that plaintiff did not allege sufficient factual allegations to state a claim under *Woodson*. Consequently, defendant argues that the trial court

lacked jurisdiction to hear the *Woodson* claim because plaintiff failed to sufficiently allege an exception to the North Carolina Industrial Commission’s exclusive jurisdiction.

On 24 February 2025, the trial court heard the motions to dismiss. On 27 February 2025, the trial court entered its written order denying the motion to dismiss. On 21 March 2025, defendants appealed from the trial court’s order.

II. Jurisdiction

An order denying a defendant’s motion to dismiss “is not a final order and is therefore interlocutory.” *Estate of Stephens v. ADP TotalSource DE IV, Inc.*, 288 N.C. App. 208, 212 (2023). This Court has jurisdiction to immediately review interlocutory orders in limited circumstances, including if the matter “affects a substantial right.” N.C.G.S. § 7A-27(b)(3) (2025). The denial of a motion to dismiss under Rule 12(b)(1) and Rule 12(b)(6) is immediately appealable as affecting a substantial right when it involves the exclusivity provision of the North Carolina Worker’s Compensation Act (“the Act”). *Estate of Stephens*, 288 N.C. App. at 213. Here, because defendants’ motions to dismiss under Rules 12(b)(1) and 12(b)(6) are based on the exclusivity provision of the Act and its effect on the trial court’s jurisdiction, the trial court’s order denying the motions to dismiss affects a substantial right and is immediately appealable. Accordingly, we have jurisdiction to review the trial court’s order.

III. Standard of Review

We review a trial court’s order on Rule 12(b)(1) and Rule 12(b)(6) motions to

dismiss de novo. *Marlow v. TCS Designs, Inc.*, 288 N.C. App. 567, 572 (2023). “In ruling on a Rule 12(b)(6) motion to dismiss, ‘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.’” *Id.* (quoting *Stanback v. Stanback*, 297 N.C. 181, 185 (1979)). In ruling on a 12(b)(1) motion to dismiss, the trial court “need not confine its evaluation of a Rule 12(b)(1) motion to the face of the pleadings, but may review or accept any evidence.” *Smith v. Privette*, 128 N.C. App. 490, 493 (1998) (cleaned up).

IV. Discussion

Defendants argue that the trial court erred in denying their motions to dismiss because plaintiff did not sufficiently plead a *Woodson* claim, and therefore, the trial court lacked subject matter jurisdiction over the matter.

“The Superior Court is a court of general jurisdiction and has jurisdiction in all actions for personal injuries caused by negligence, except where its jurisdiction is divested by statute.” *Morse v. Curtis*, 276 N.C. 371, 374–75 (1970) (citing N.C.G.S. § 7A-240). “[T]he Superior Court is divested of original jurisdiction of all actions which come within the provisions of the” Act. *Id.*

“Where an employee and their employer are subject to and have complied with the provisions of the Act, the rights and remedies granted to the employee under the Act exclude all other rights and remedies of the employee.” *Marlow*, 288 N.C. App. at 572 (citing N.C.G.S. § 97-10.1 (2022)). Generally, a worker’s accidental injury

sustained during employment and arising out of that employment is subject to the provisions of the Act. *Holliday v. Tropical Nut & Fruit Co.*, 242 N.C. App. 562, 566 (2015).

However, in *Woodson v. Rowland*, our Supreme Court carved out an exception to the exclusivity provision of the Act:

[W]hen 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, that employee, or the personal representative of the estate in case of death, may pursue a civil action against the employer.

329 N.C. 330, 340–41 (1991).

“‘Substantial certainty’ under *Woodson* is more than the ‘mere possibility’ or ‘substantial probability’ of serious injury or death. No one factor is determinative in evaluating whether a plaintiff has stated a *Woodson* claim; rather, all of the facts taken together must be considered.” *Regan v. Amerimark Building Products, Inc.*, 118 N.C. App. 328, 331 (1995) (cleaned up).

The *Woodson* exception 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 (2003).

This Court has examined the *Woodson* exception in the context of a motion to

dismiss. In *Estate of Vaughn v. Pike Electric, LLC*, the decedent died after being instructed by his manager to climb a utility pole supporting overhead powerlines to retrofit and de-energize a transformer. 230 N.C. App. 485, 487 (2013). The plaintiff alleged that the employer knew the decedent had no previous experience or training to do this work, was not supervised, and was not provided with adequate personal protective equipment. *Id.* at 488–89. The plaintiff also alleged that the employer had been cited by OSHA in other states for employees being seriously or fatally electrocuted while working on energized power lines or with electrical systems. *Id.* at 489. We concluded that the manager’s actions were in “clear violation” of the employer’s policies, which supported that the defendant-employer did not intend for its employees to climb utility poles to de-energize transformers. *Id.* at 499. Further, there was nothing in the complaint to indicate that the employer knew or should have known of the manager’s conduct beyond “factually unspecific safety violations occurring in North Carolina and other states.” *Id.* Therefore, this Court held that the plaintiff’s allegations were insufficient “uncontroverted evidence” of the employer’s misconduct to survive a motion to dismiss because there was “no basis” to show that the employer “was aware of, intended, or was substantially certain that” the manager’s actions would result in the decedent’s death, and “given the ‘narrow’ application of the *Woodson* exception.” *Id.*

Conversely, we concluded that there were sufficient allegations to sustain a *Woodson* claim in *Estate of Stephens*. 288 N.C. App. at 223. The decedent was

crushed to death after working under a 2,000-pound tire mold that was elevated by a forklift modified by the defendant-employer without manufacturer approval. *Id.* at 219. The plaintiff alleged that the employer knew the decedent was not trained or experienced to work with tire molds and that the employer did not give the decedent adequate protective equipment. *Id.* at 219-20. Further, the plaintiff alleged that the employer received OSHA citations for employees working under elevated tire molds and for modifying the forklift without manufacturer approval. *Id.* We held that the plaintiff alleged sufficient facts that the employer intentionally engaged in misconduct knowing that conduct was substantially certain to result in the decedent's death. *Id.* at 223.

Likewise, in *Arroyo v. Scottie's Professional Window Cleaning, Inc.*, the plaintiff-employee alleged that he and another employee were instructed to wash the exterior windows on a tall building by climbing down a ladder from the roof to stand on a narrow ledge. 120 N.C. App. 154, 157 (1995). The employees did not have any fall protection or safety equipment. *Id.* While leaning out to wash a window, the plaintiff lost his footing and fell. *Id.* at 158. The plaintiff alleged the company knew that requiring him to work in that method was substantially certain to result in him falling and being seriously injured. *Id.* We held that these allegations were sufficient to state a legally cognizable claim under *Woodson* because the employer intentionally engaged in conduct that it knew to be substantially certain to cause serious injury or death. *Id.* at 159.

Here, plaintiff alleged as follows. Defendants intentionally did not train Decedent on the maintenance and use of personal protective devices. Defendants intentionally failed to inspect personal protective devices to ensure they were safe for use and failed to remove faulty protection devices. OSHA cited defendant Wallace Industries for failing to train Decedent to establish his proficiency in his job duties and for failing to follow the proper safety precaution for connecting personal protective devices. Decedent washed the interior of a horizontal duct from a significant height, within the scope his professional duties, and fell eighty-four feet to his death after his personal protective equipment failed.

Further, unlike in *Estate of Vaughn*, where the decedent was instructed to act in a way that was in “clear violation” of the employer’s policies, there were no instructions here to establish that defendants did not intend for Decedent to act as he did. *See* 230 N.C. App. at 499. Although the *Woodson* exception is a narrow one, plaintiff’s allegations, taken as true, are sufficient to state a legally cognizable claim that defendants intentionally acted in a way that was substantially certain to cause injury or death.

V. Conclusion

For the foregoing reasons, we affirm the trial court’s order denying defendants’ motion to dismiss.

AFFIRMED.

Judges HAMPSON and CARPENTER concur.

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Report per Rule 30(e).