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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-554

Filed 16 September 2026

Watauga County, No. 24CVS000299-940

FRANK S. KIRSCHBAUM and SUZANNE C. KIRSCHBAUM, Plaintiffs,

v.

GUSTAVO CESTARI, LUIS ECHEVERRIA, JUAN REYES, FRANK REYES, ORLIN GONZALEZ, FRANK GAVIRIA, and GC'S GENERAL SERVICES, LLC, Defendants.

Appeal by plaintiffs from order entered 13 January 2025 by Judge Gary M. Gavenus in Watauga County Superior Court. Heard in the Court of Appeals 28 January 2026.

Kirk Palmer & Thigpen, PA, by Keith B. Nichols, for plaintiffs-appellants.

The Nesmith Firm, PLLC, by Erica R. Nesmith, for defendants-appellees.

GORE, Judge.

Plaintiffs appeal from an order imposing Rule 11 sanctions—dismissal with prejudice and \$22,699.99 in attorney's fees—for voluntarily dismissing and refileing their timber trespass action. Because the trial court's reasoning contradicts well-established precedent governing Rule 41 voluntary dismissals, we reverse and

remand.

Although the order references Rule 54(b), its statement that there was “no reason for delay of entry of this dismissal” does not constitute a proper certification, and defendants’ counterclaims remain pending. We exercise jurisdiction under the substantial-right doctrine. *See* N.C.G.S. § 1-277; *Beasley v. Beasley*, 259 N.C. App. 735, 739 (2018).

I.

Plaintiffs filed a timber trespass action against defendant Cestari in October 2023, alleging he directed the cutting of approximately thirty trees on their property. After nine months of litigation—including discovery disputes over deposition logistics—the trial court entered an order on 1 July 2024 denying plaintiffs’ motion to amend their complaint to add Cestari’s employees as defendants, ruling the amendment would cause “undue delay.” The court extended discovery and set trial for September 2024.

Ten days later, plaintiffs voluntarily dismissed without prejudice. Nineteen days after that, they refiled, adding the employees as defendants. Defendants moved for Rule 11 sanctions and filed counterclaims for malicious prosecution and abuse of process.

At the sanctions hearing, the trial court found plaintiffs dismissed “on purpose to avoid compliance with my previous order” and because “I was not allowing additional parties.” The court dismissed all claims with prejudice—including claims

against defendants who had never been served—and awarded attorney’s fees.

II.

Rule 11 sanctions are reviewed de novo. *Turner v. Duke Univ.*, 325 N.C. 152, 165 (1989).

III.

Rule 41(a)(1) has “salvaged more lawsuits than any other procedural device,” providing plaintiffs a one-time safety net when a claim requires correction, additional investigation, or a change in litigation posture. *Brisson v. Santoriello*, 351 N.C. 589, 597 (2000) (cleaned up). The rule affords plaintiffs “a one-time opportunity where the plaintiff, for whatever reason, does not want to continue the suit.” *Id.* The permissible reasons “clearly include[] those circumstances in which the plaintiff fears dismissal of the case for rule violations, shortcomings in the pleadings, evidentiary failures, or any other of the myriad reasons for which the cause of action might fail.” *Id.* The dismissal must not be taken in bad faith and must precede any dispositive ruling against the plaintiff. *Id.*

While Rule 11 prevents the filing of sham pleadings, Rule 41 protects a plaintiff’s right to reassess the case once filed. Courts may award costs under Rule 41(d) but may not “encourage or discourage a party from refileing an action under Rule 41(a).” *Lincoln v. Bueche*, 166 N.C. App. 150, 159–60 (2004). In short, Rule 41 provides plaintiffs one unconditional reset; Rule 11 prevents its misuse. Sanctions may arise only where the complaint itself was filed in bad faith—not because the

plaintiff later exercised the statutory right to dismiss.

The trial court sanctioned plaintiffs for taking a dismissal to avoid the court's prior orders and to circumvent denial of plaintiff's motion to amend. But this is precisely what *Brisson* permits. A plaintiff who dismisses after an unfavorable ruling is exercising—not abusing—the Rule 41 right.

This case is unlike *Estrada v. Burnham*, where the plaintiff filed a bare-bones complaint and dismissed minutes later with no intent to prosecute. 316 N.C. 318, 319, 323 (1986). Here, plaintiffs litigated for nine months before dismissing. Whatever one thinks of their tactics, they plainly intended to prosecute their claims.

The trial court also failed to analyze whether the *refiled complaint* itself violated Rule 11. “It is well established that analysis under Rule 11 is three-pronged, requiring the trial court to determine whether the pleading, motion, or paper is (1) factually sufficient; (2) legally sufficient; and (3) not filed for an improper purpose.” *McKinnon v. CV Indus., Inc.*, 228 N.C. App. 190, 194 (2013). The order contains no finding that the complaint was factually or legally deficient—nor could it, as timber trespass is a recognized cause of action and plaintiffs allege trees were cut without permission. The court focused on the purpose of the *dismissal*, not the *complaint*. That targets the wrong conduct.

Finally, dismissing claims against defendants who were never parties to the original action—and were never served in this one—cannot be justified by plaintiffs' conduct in a case to which those defendants were strangers.

Allowing dismissal with prejudice under these circumstances would chill legitimate use of voluntary dismissals. Plaintiffs would be deterred from exercising their Rule 41 rights even for proper purposes—curing defects, obtaining new counsel, or reassessing litigation strategy. The “one-time opportunity” recognized in *Brisson* would become contingent on judicial approval of a plaintiff’s motives. We decline to circumscribe Rule 41 in this manner.

IV.

The trial court erred by imposing Rule 11 sanctions for conduct protected under Rule 41. The order dismissing plaintiffs’ claims with prejudice and awarding attorney’s fees is reversed, and this matter is remanded for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

Judges GRIFFIN and FREEMAN concur.

Report per Rule 30(e).