

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA26-172

Filed 7 October 2026

Mecklenburg County, No. 25CV024249-590

RANDY HEMBREE, Plaintiff,

v.

HENDRICK AUTOMOTIVE GROUP, LLC, HENDRICK CORPORATION, LLC,
HENDRICK MANAGEMENT, LLC, and ERIC WILLIAM WRIGHT, Defendants.

Appeal by defendant from order entered 26 November 2025 by Judge David Strickland in Mecklenburg County Superior Court. Heard in the Court of Appeals 27 August 2026.

O'Malley Tunstall, PC, by Peter J. Tomasek and Joseph P. Tunstall, III, and The Sumwalt Group, by Vernon Sumwalt, for plaintiff-appellee.

McAngus Goudelock & Courie, PLLC, by Jeffrey B. Kuykendal, for defendant-appellant.

FLOOD, Judge.

Defendant Eric William Wright appeals the trial court's order denying his motion to dismiss on the basis that the North Carolina Industrial Commission had exclusive jurisdiction over Plaintiff Randy Hembree's claims. On appeal, Defendant Wright argues Plaintiff's claim did not fall within the narrow spectrum of cases pursued by an employee against an employer that are not subject to the exclusive jurisdiction of the Industrial Commission. As discussed below, however, Plaintiff's claim did fall within a recognized exception to the Industrial Commission's exclusive

jurisdiction; thus, we affirm the trial court's order.

I. Factual and Procedural Background

On 15 May 2025, Plaintiff filed a complaint in superior court alleging, in relevant part, that, between 2015 and January of 2025, Plaintiff was an employee of Defendant Hendrick Automotive Group, LLC, directly supervised by Defendant Wright. Plaintiff alleged that, during the time Defendant Wright acted as his supervisor, he would, “[a]s a form of motivation, . . . physically strike his subordinates, including [Plaintiff], in the head and neck.” According to Plaintiff, the physical abuse “continued to ramp up” through 2022 despite Defendant Wright being aware that Plaintiff had undergone a neck surgery in 2015. This allegedly resulted in Plaintiff “experiencing a variety of severe neurological symptoms, including vertigo, dizziness, blurred vision, numbness, and fatigue,” as well as ongoing treatment for a severe cervical spinal condition, which had since escalated into a state of total disability.

In his complaint, Plaintiff characterized his claims for relief as three different causes of action: “willful, wanton, and reckless negligence by Defendant Wright”; “intentional misconduct substantially certain to cause injury by the Hendrick defendants”; and “negligence and gross negligence against Defendant Hendrick Corporation and Defendant Hendrick Management[.]” All three claims were pled substantially in the form of negligence actions.

Alongside their answer, the three corporate defendants moved to dismiss, and Defendant Wright separately moved to dismiss the claims against him on the grounds

that “there is no dispute that [] Defendant [Wright] was a co-employee of Plaintiff at all relevant times, and the Workers’ Compensation Act vests exclusive jurisdiction over claims against [] Defendant [Wright] with the Industrial Commission.” While the corporate defendants’ motion was still pending, the trial court denied Defendant Wright’s motion to dismiss, and Defendant Wright appealed.

II. Jurisdiction

The order from which Defendant Wright appealed is interlocutory. Under Rule 54(b) of our Rules of Civil Procedure,

any order . . . which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties and shall not then be subject to review either by appeal or otherwise except as expressly provided by these rules or other statutes.

N.C.G.S. § 1A-1, Rule 54(b) (2025); *see also Turner v. Hammocks Beach Corp.*, 363 N.C. 555, 558 (2009) (“As a general rule, interlocutory orders are not immediately appealable.”). “[I]mmediate appeal of interlocutory orders and judgments is available in at least two instances: when the trial court certifies, pursuant to N.C.G.S. § 1A-1, Rule 54(b), that there is no just reason for delay of the appeal; and when the interlocutory order affects a substantial right” *Williams v. Devere Const. Co.*, 215 N.C. App. 135, 137 (2011) (citations and internal quotation marks omitted).

As Defendant Wright correctly argues, our caselaw establishes that appeals from an order ruling on the exclusivity of the Industrial Commission’s jurisdiction

are automatically deemed to affect a substantial right. *See, e.g., Fagundes v. Ammons Dev. Grp., Inc.*, 251 N.C. App. 735, 737 (2017); *Blue v. Mountaire Farms, Inc.*, 247 N.C. App. 489, 495 (2016). Thus, appellate review of this interlocutory order is proper.

III. Analysis

Having determined that the appeal is jurisdictionally proper, we now turn to the merits; specifically, whether the trial court erred in denying Defendant Wright’s motion to dismiss on the basis that the Industrial Commission had exclusive jurisdiction over Plaintiff’s claims. Defendant Wright argues that the trial court erred in its determination because, as a default rule, the Workers’ Compensation Act (“the Act”) provides the exclusive remedy for work-related injuries, and none of the exceptions to that default rule apply. For the reasons explored at greater length below, Plaintiff’s complaint did articulate claims that fall within recognized exceptions to the exclusivity provision of the Act; thus, we affirm. “We review *de novo* the grant of a motion to dismiss.” *Davis v. Urquiza*, 233 N.C. App. 462, 463 (2014) (quoting *Lea v. Grier*, 156 N.C. App. 503, 507 (2003)).

Defendant correctly identifies the general rule that the Act is the exclusive remedy for injured workers—and, in particular, that the availability of relief under the Act precludes workers from recovering from their employers or co-employees in ordinary negligence actions for workplace injuries. N.C.G.S. § 97-9 (2025) (“Every employer subject to the compensation provisions of this Article shall . . . only be liable to any employee for personal injury or death by accident to the extent and in the

manner herein specified.”); *Abernathy v. Consol. Freightways Corp. of Del.*, 321 N.C. 236, 239 (1987). As a consequence of the rule limiting avenues for recovery, Workers’ Compensation claims are subject to the exclusive jurisdiction of the Industrial Commission. *See, e.g., Chambers v. Transit Mgmt.*, 360 N.C. 609, 611 (2006); *Clark v. Wal-Mart*, 360 N.C. 41, 42 (2005).

This rule, however, is subject to two exceptions: first, the *Woodson* exception, which permits an employee to pursue a negligence action against his or her employer when the 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,” *Woodson v. Rowland*, 329 N.C. 330, 340 (1991); and, second, the *Pleasant* exception, which allows an employee to pursue a civil action against a co-employee for their willful, wanton, and reckless negligence, *Pleasant v. Johnson*, 312 N.C. 710, 717 (1985).

Here, there is no meaningful dispute that the alleged injury is a workplace injury of the type that would be subject to the Act if no specific exception applies, nor is there any meaningful contention that the *Woodson* exception—which applies to the actions of employers, rather than co-employees—applies to the claims brought against Defendant Wright personally. As such, we devote the rest of the analysis to whether the complaint, as pled with respect to Defendant Wright, properly invoked the *Pleasant* exception to the Act’s exclusivity provision.

In *Pleasant v. Johnson*, our Supreme Court articulated one of the two

aforementioned exceptions to the exclusivity provision of the Act with respect to negligence suits arising out of a workplace injury. There, the defendant, who worked in the same construction site as the plaintiff, attempted a high-risk practical joke with the aim “to scare the plaintiff by blowing the horn” of a truck he was operating and by “operating the truck close to him.” *Id.* at 711. Rather than simply alarming the plaintiff, however, the defendant struck him with the truck, seriously injuring the plaintiff’s knee and disabling him. *Id.* The plaintiff, after receiving disability benefits under the Act, brought a subsequent action in superior court alleging, in relevant part, that the

[d]efendant was willfully, recklessly and wantonly negligent in that he was operating the motor vehicle in such a fashion so as to see how close he could operate the said motor vehicle to the plaintiff without actually striking him but, misjudging his ability to accomplish such a prank, actually struck the plaintiff with the motor vehicle he was operating.

Id. The defendant successfully moved for a directed verdict on the basis that the Act was the plaintiff’s sole vehicle for recovery, and we affirmed. *Id.* at 710.

Our Supreme Court reversed, however. *Id.* at 717–18. While acknowledging a general rule that co-employees, like employers, are typically free from liability in ordinary negligence by virtue of the Act’s exclusivity provision, our Supreme Court observed that recognized exceptions to the exclusivity provision existed for intentional torts committed by employers and co-employees. *Id.* at 713. Reasoning that “willful, reckless[,] and wanton negligence inhabits a twilight zone which exists

somewhere between ordinary negligence and intentional injury[,]” our Supreme Court held that willful, reckless, and wanton negligence created a “[c]onstructive intent to injure” *Id.* at 714–15. Accordingly, it held that “the Workers’ Compensation Act does not shield a co-employee from common law liability for willful, wanton[,] and reckless negligence[,] . . . consistent with the distinction which has previously been made in such cases between ordinary negligence and intentional torts.” *Id.* at 716.

Defendant Wright contends that, in the instant case, the *Pleasant* standard was not met because Plaintiff’s complaint has not shown that Defendant Wright acted with actual or constructive intent. To support this contention, Defendant Wright directs us to *Pender v. Lambert*, 225 N.C. App. 390 (2013). In *Pender*, the defendant was employed as a loss-prevention associate at a Wal-Mart location where the decedent worked as a greeter. *Id.* at 391. During an incident in which the defendant pursued a shoplifter toward the front of the store, the defendant collided with the decedent, causing her to suffer a fatal head wound. *Id.* at 391–92. The decedent’s estate brought a claim for willful, wanton, and reckless negligence in superior court, and the trial court granted summary judgment in the defendant’s favor. *Id.* at 390, 395.

The decedent’s estate, invoking *Pleasant* on appeal, argued that the claim was sufficient to withstand summary judgment. *Id.* at 394. We affirmed, however, noting that the uncontroverted evidence established the defendant “engaged in a foot-chase

and *accidentally* collided with a co-employee[.]” *Id.* at 395 (emphasis added). “[S]uch conduct,” we held, “does not evidence a reckless or manifest disregard for the consequences so as to warrant a finding of willfulness and wantonness equivalent in spirit to actual intent.” *Id.* at 395–96.

Defendant Wright argues that Plaintiff, like the decedent’s estate in *Pender*, failed to establish the equivalency to actual intent necessary to fall within the *Pleasant* exception; however, his argument fails for two reasons. First, while it is true that North Carolina courts have often been reticent to hold that a given case’s facts fall within our caselaw’s narrow exceptions to the Act’s exclusivity provision, *Pender* was—like the overwhelming bulk of the cases Defendant Wright cites in his brief—an appeal from an order denying *summary judgment*, not from an order denying a motion to dismiss. *Id.* at 396; *see also Trivette v. Yount*, 366 N.C. 303, 311 (2012); *Regan v. Amerimark Bldg. Prods., Inc.*, 127 N.C. App. 225, 229 (1997), *aff’d*, 347 N.C. 665 (1998). This difference is substantial, as summary judgment requires that the *actual* facts, in the light most favorable to the nonmovant, reveal that judgment is appropriate as a matter of law, whereas dismissal is only appropriate when no *conceivable* set of facts that could follow from the face of the complaint would permit recovery. *Compare Integon Nat. Ins. Co. v. Maurizzio ex rel. Langley*, 240 N.C. App. 38, 40 (2015) (“Summary judgment is proper where ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is

entitled to judgment as a matter of law.” (quoting N.C.G.S. § 1A-1, Rule 56(c)) *with Boyce & Isley, PLLC v. Cooper*, 153 N.C. App. 25, 28 (2002) (“A motion to dismiss pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure tests the legal sufficiency of the complaint. . . . Thus, a claim should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief.”), *disc. rev. denied, appeal dismissed*, 357 N.C. 163 (2003). Even if our precedent establishes that evidence, even in the light most favorable to the nonmovant, “rarely meets the high standard of ‘willful, wanton[,] and reckless’ negligence established in *Pleasant[,] Trivette*, 366 N.C. at 312, we are unable to say the complaint in this case establishes that *no* set of possible facts would demonstrate actual or constructive intent such that the trial court’s jurisdiction would be appropriate.

Second, even if the instant case were of a comparable procedural posture to *Pender*, Defendant’s argument appears to misunderstand the nature of intent as expressed in our jurisprudence concerning intentional torts. In *Pender*, our decision to reverse the trial court’s denial of summary judgment was based on the fact that the evidence forecast indicated the defendant, even in the light most favorable to the decedent’s estate, did not intend to make contact with the decedent or intend to create the apprehension thereof. *Pender*, 225 N.C. App. at 395–96. While Defendant Wright attempts to draw a comparison between his behavior and that of the defendant in *Pender* on the basis that neither party intended to cause the resulting harm, our

caselaw governing intentional torts reveals that Defendant Wright's behavior, in actuality, materially *contrasts* with the defendant in *Pender* because, unlike the latter, Defendant Wright intended to make contact.

Our Workers' Compensation jurisprudence has long recognized that the principal exception to the exclusivity provision of the Act is intentional torts, with other exceptions such as *Woodson* and *Pleasant* announcing their holdings as derivative of that core exception:

Where the employer^[1] is guilty of a felonious or [willful] assault on an employee he cannot relegate him to the compensation act for recovery. It would be against sound reason to allow the employer deliberately to batter his helper, and then compel the worker to accept moderate workmen's compensation benefits, either from his insurance carrier or from himself as self-insurer. The weight of authority gives the employee the choice of suing the employer at common law or accepting compensation.

Essick v. City of Lexington, 232 N.C. 200, 210–11 (1950) (citation omitted); *see also Woodson*, 329 N.C. at 340–341 (“We hold that when 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

¹ While the language in *Essick* specifies that actions for intentional torts may be maintained against an employer, our Supreme Court has recognized this principle as extending to co-employees as well. *Pleasant*, 312 N.C. at 713 (“We [] have said that an injured worker may maintain a tort action against a co-employee for intentional injury.” (citation omitted)).

civil action against the employer. Such misconduct is tantamount to an intentional tort, and civil actions based thereon are not barred by the exclusivity provision[] of the Act.”); *Pleasant*, 312 N.C. at 715 (“[I]njury to another resulting from willful, wanton[,] and reckless negligence should also be treated as an intentional injury for purposes of our Workers’ Compensation Act.”). Following the common law, in our assault and battery jurisprudence, “[t]he interest protected by the action for battery is freedom from intentional and unpermitted contact with one’s person[,] [and] the interest protected by the action for assault is freedom from apprehension of a harmful or offensive contact with one’s person.” *Dickens v. Puryear*, 302 N.C. 437, 445 (1981) (citations omitted). For this reason, while both torts have an intent component, the intent referenced in our caselaw is not the intent that whatever harm results come about, but the intent to cause the physical contact or apprehension thereof. *See McCracken v. Sloan*, 40 N.C. App. 214, 216–17 (1979) (“The gist of the action for battery is not the hostile intent of the defendant, but rather the absence of consent to the contact on the part of the plaintiff.”); *Lynn v. Burnette*, 138 N.C. App. 435, 440 (2000) (“When intent to act is shown, the tortfeasor will be held liable for the results, even if they were not foreseen.” (citation omitted)); *see also Wilkerson v. Duke Univ.*, 229 N.C. App. 670, 675 (2013) (“The elements of assault are intent, offer of injury, reasonable apprehension, apparent ability, and imminent threat of injury. A battery is made out when the person of the plaintiff is offensively touched against his will[.]” (citations and internal quotation marks omitted)).

Here, unlike in *Pender*, the allegations in Plaintiff's complaint indicate that Defendant Wright did intentionally strike Plaintiff. Regardless of whether he intended the contact to cause the harm that allegedly resulted, it was his intent to *make* the unwanted contact that supplied the requisite intent permitting the invocation of the *Pleasant* exception. *Sloan*, 40 N.C. App. 214, 216–17; *Lynn*, 138 N.C. App. at 440. Indeed, our caselaw discussing the exclusivity provision of the Act contains multiple examples of tortious conduct in which the conduct or apprehension was intended but the harm was not. *See, e.g., Pleasant*, 312 N.C. at 711 (intended action was to scare coworker with proximity to a moving vehicle; intended result was a prank); *Andrews v. Peters*, 55 N.C. App. 124, 124 (1981) (intended action was to buckle a coworker's knee; intended result was a prank). Far from *Pender*, Plaintiff's complaint evinces conduct that amounts to an intentional tort. The fact that the complaint styled the claim as one for “willful, wanton, and reckless negligence by Defendant Wright” does not remove it from the *Pleasant* exception; rather, it places the claim on all fours with *Pleasant*. *See Pleasant*, 312 N.C. at 710–11 (holding that assaultive conduct styled as a negligence action was exempt from the exclusivity provision of the Act). Therefore, the trial court correctly denied Defendant Wright's motion to dismiss.

IV. Conclusion

Plaintiff's complaint alleged behavior by Defendant Wright that amounted to an intentional tort. Pursuant to *Pleasant*, the exclusivity provision of the Act does not

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apply to such a claim. Accordingly, we affirm the trial court's order denying Defendant Wright's motion to dismiss.

AFFIRMED.

Judges ARROWOOD and GORE concur.