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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA26-251

Filed 4 November 2026

Durham County, No. 24CVS000792-310

REGINA DOZIER, Plaintiff,

v.

ELLIS LAW FIRM, PLLC and AUTUMN D. OSBOURNE, Defendants.

Appeal by plaintiff from order entered 15 July 2025 by Judge Josephine Kerr Davis in Durham County Superior Court. Heard in the Court of Appeals 14 October 2026.

Law Offices of John M. Kirby, PLLC, by John M. Kirby, for plaintiff-appellant.

Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., by J. Mitchell Armbruster and Justin B. Lockett, for defendants-appellees.

GORE, Judge.

This appeal arises from a legal-malpractice action brought by plaintiff Regina Dozier against defendants Ellis Law Firm, PLLC, and Autumn D. Osbourne based upon their representation of plaintiff in equitable-distribution proceedings against her former husband. Plaintiff appeals from an order granting summary judgment in favor of defendants. She contends genuine issues of material fact exist as to whether

defendants negligently advised her not to accept her former husband's proposal to set aside the parties' equitable-distribution Consent Order and whether that advice caused her damages. Plaintiff failed to forecast substantial evidence that vacating the entire Consent Order and relitigating the marital estate would have produced a more favorable net distribution. We affirm.

I. Factual and Procedural Background

This appeal arises from defendants' representation of plaintiff Regina Dozier in an equitable-distribution action between plaintiff and her former husband, Charles Dozier. On 8 October 2015, following mediation, plaintiff and Charles entered a consent order resolving equitable distribution. The order distributed numerous parcels of real property, vehicles, financial accounts, annuities, business interests, and other assets and liabilities between the parties.

One provision addressed a house and lot located at 38489 Jacaranda Drive in Newark, California ("the Jacaranda property"). The consent order provided plaintiff would retain the property but, within ninety days after receiving an appraisal, would pay Charles one-half of the net sum obtained by subtracting $300,288 from the property's appraised value. If plaintiff could not make that payment, she was required to list the property for sale. The order also awarded Charles an annuity valued at $119,080.03 and the proceeds of a loan to his brother that was "initially $35,000.00."

After entry of the consent order, plaintiff asserted she had learned Charles

executed a quitclaim deed in September 2000 transferring his interest in the Jacaranda property to her as her sole and separate property. On 18 December 2017, defendants filed a verified motion on plaintiff's behalf pursuant to Rule 60(b) of the North Carolina Rules of Civil Procedure. The motion requested that the district court relieve the parties from the consent order "and/or modify the terms contained therein as it relates to paragraph 3(d)," the provision concerning the Jacaranda property.

On 19 December 2018, Charles filed a reply and joinder to plaintiff's Rule 60 motion. Charles agreed good cause existed to relieve both parties from the consent order, but he opposed granting relief only to plaintiff or modifying only the provision concerning the Jacaranda property. Charles instead requested for the district court to set aside the entire consent order and reopen equitable distribution in full. He asserted additional assets and debts had not been addressed, and the court would need to consider the entire marital estate when classifying, valuing, and distributing those assets and debts.

Osbourne informed plaintiff of Charles's position by email on 2 January 2019. Osbourne explained that setting aside the entire order would require the parties to begin equitable distribution "from scratch" and advised that doing so was not in plaintiff's best interests. The next day, Osbourne again advised plaintiff they could not consent to setting aside the entire order because restarting equitable distribution would result in additional expense.

Plaintiff continued to seek relief only from the provision concerning the

Jacaranda property. After plaintiff clarified the limited relief she sought, Charles withdrew his consent and joinder to her Rule 60 motion. *Dozier v. Dozier*, 283 N.C. App. 326 (2022) (unpublished). The district court heard the Rule 60 motion on 28 January 2021.

The following day, Osbourne sent plaintiff an email outlining three possible courses of action. First, plaintiff could appeal the possible dismissal of her Rule 60 motion. Second, she could accept Charles's proposal to set aside the entire consent order and restart equitable distribution. Osbourne explained the second option would require the parties to identify, classify, value, and distribute all assets and debts, including divisible property accumulated since the date of separation. Osbourne further explained she lacked sufficient information concerning the parties' current assets to determine how reopening equitable distribution would affect plaintiff. Third, plaintiff could decline to pursue either option and proceed to the pending contempt proceedings. Osbourne recommended plaintiff to obtain different counsel if she elected either an appeal or a new equitable-distribution proceeding.

Plaintiff later testified that Osbourne orally recommended against reopening equitable distribution and advised an appeal was plaintiff's best option. Plaintiff testified she had relied on Osbourne's recommendation. On 17 March 2021, the district court entered an order dismissing plaintiff's Rule 60 motion, and plaintiff appealed. This Court affirmed the dismissal in an unpublished opinion. *Dozier*, 283 N.C. App. 326. In a subsequent appeal, this Court affirmed an order holding plaintiff

in civil contempt for willfully failing to comply with the consent order's appraisal requirement. *Dozier v. Dozier*, 296 N.C. App. 775 (2024) (unpublished).

On 29 January 2024, plaintiff commenced the present action against defendants. Plaintiff alleged, among other things, defendants had negligently failed to obtain the deeds concerning the Jacaranda property, improperly pursued relief from only one provision of the consent order and had failed to advise her to accept Charles's proposal to set aside the entire order. Plaintiff alleged, but for defendants' negligence, she would have reopened equitable distribution, established the Jacaranda property was already her separate property, and obtained a more favorable result.

Defendants moved to dismiss plaintiff's complaint pursuant to Rule 12(b)(6). On 26 July 2024, the superior court dismissed as time-barred plaintiff's claims concerning defendants' conduct from 2015 through 2017, including the preparation of the consent order and the drafting and filing of the Rule 60 motion. The court otherwise determined plaintiff had stated a timely claim based on defendants' conduct concerning the 28 January 2021 hearing and Charles's settlement proposal. Plaintiff subsequently acknowledged her only remaining claim was Osbourne should have advised her to accept Charles's proposal and reopen equitable distribution in its entirety.

During discovery, plaintiff identified $622,000 in alleged damages. She calculated $460,000 in lost equity in the Jacaranda property by using its asserted

current value of $1,150,000, subtracting a $230,000 encumbrance, and dividing the resulting equity in half. She also claimed the loss of the annuity, which she valued at $120,000, and the loan proceeds, which she valued at $42,000. When asked during her deposition what evidence demonstrated that reopening equitable distribution would have produced a better overall result, plaintiff referred generally to her property documentation. When asked how much Charles would owe her following a new equitable-distribution proceeding, plaintiff responded that she "would be guessing."

On 19 June 2025, defendants moved for summary judgment. Defendants relied upon the pleadings, plaintiff's deposition and discovery responses, and an affidavit from Charles's attorney. They argued, among other things, that plaintiff could not establish a duty requiring defendants to recommend acceptance of Charles's proposal and could not establish compensable damages because Charles had never withdrawn that proposal. Following a hearing on 7 July 2025, the superior court entered an order granting defendants' motion for summary judgment on 15 July 2025. The order did not identify the particular ground upon which summary judgment was granted.

On 23 July 2025, plaintiff filed a *pro se* motion titled "Motion to Reconsider." The motion did not identify a particular rule of civil procedure and asked the court to set aside the underlying equitable-distribution consent order based upon alleged discovery omissions and fraud upon the court. While that motion remained pending, plaintiff, through counsel, filed notice of appeal from the summary-judgment order

on 14 August 2025. On 23 September 2025, the superior court entered an order denying plaintiff's motion "pursuant to N.C.R. Civ. P. 59" and striking several of plaintiff's *pro se* filings. The record contains no subsequent notice of appeal.

II. Appellate Jurisdiction

We first address our jurisdiction. "Failure to give timely notice of appeal is jurisdictional," and an untimely appeal must be dismissed. *In re A.L.*, 166 N.C. App. 276, 277 (2004) (cleaned up).

The 15 July 2025 summary-judgment order disposed of plaintiff's sole remaining claim and left nothing further to be determined. It was therefore a final judgment appealable under N.C.G.S. § 7A-27(b)(1) (2025).

Rule 3(c)(1) of the North Carolina Rules of Appellate Procedure generally requires notice of appeal to be filed within thirty days after entry of judgment. When a party timely moves for relief under Rule 59, Rule 3(c)(3) tolls that period until the trial court enters an order disposing of the motion. N.C.R. App. P. 3(c)(1), (3). A party need not, however, invoke that tolling provision. The party may instead appeal the underlying judgment within the original thirty-day period, even while a postjudgment motion remains pending. *Reeder v. Carter*, 226 N.C. App. 270, 273–74 (2013).

Plaintiff filed her motion to reconsider on 23 July 2025. Before the trial court had ruled on that motion, plaintiff filed notice of appeal from the summary-judgment order on 14 August 2025—thirty days after the order's entry. Plaintiff thus followed

the first route recognized in *Reeder* and timely appealed the final judgment. We therefore need not determine whether plaintiff's motion to reconsider was a proper Rule 59 motion capable of tolling the appeal period.

The trial court subsequently entered an order denying plaintiff's motion to reconsider. Because plaintiff's notice of appeal designated only the 15 July 2025 summary-judgment order, and plaintiff filed no notice of appeal from the later order, the denial of reconsideration is not before us. *See* N.C.R. App. P. 3(d). Accordingly, we have jurisdiction to review the summary-judgment order under N.C.G.S. § 7A-27(b)(1) (2025).

III. Standard of Review

We review a trial court's order granting summary judgment de novo. *Value Health Sols., Inc. v. Pharm. Rsch. Assocs., Inc.*, 385 N.C. 250, 267 (2023). Summary judgment is appropriate when "there is no genuine issue as to any material fact and . . . any party is entitled to a judgment as a matter of law." N.C.G.S. § 1A-1, Rule 56(c) (2025). We view the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in that party's favor. *Value Health Sols.*, 385 N.C. at 267.

The moving party bears the initial burden of showing an essential element of the opposing party's claim does not exist; the opposing party cannot produce evidence supporting an essential element; or, that an affirmative defense bars the claim. *Patterson v. Worley*, 265 N.C. App. 626, 627–28 (2019). Once the moving party makes

that showing, the burden shifts to the nonmoving party to forecast specific evidence establishing a *prima facie* case. *Id.* at 628. A genuine issue must be supported by substantial evidence—"more than a scintilla or a permissible inference." *Daughtridge v. Tanager Land, LLC*, 373 N.C. 182, 187 (2019).

IV. Analysis

Plaintiff argues genuine issues of material fact exist as to whether defendants negligently advised her not to accept Charles's proposal to set aside the Consent Order and whether that advice caused her damages. We need not decide the scope of defendants' duty when advising plaintiff about that proposal. Presuming defendants breached the applicable standard of care, plaintiff did not forecast evidence from which a jury could find proximate causation and damages without speculation.

A plaintiff asserting legal malpractice must establish "(1) that the attorney breached the duties owed to his client . . . and that this negligence (2) proximately caused (3) damage to the plaintiff." *Rorrer v. Cooke*, 313 N.C. 338, 355 (1985). When the alleged negligence caused the plaintiff to lose or unfavorably resolve an underlying claim, the plaintiff must prove a "case within a case" by showing that the underlying claim was valid, would have resulted in a judgment in the plaintiff's favor, and would have produced a collectible judgment. *Id.* at 361.

This Court applied that requirement to a legal-malpractice claim arising from the settlement of an equitable-distribution action in *Young v. Gum*, 185 N.C. App. 642 (2007). There, the plaintiff alleged that negligent advice caused her to settle for

less than she would have received through equitable-distribution litigation. *Id.* at 645–46. We presumed the alleged negligence for purposes of summary judgment, but we held the plaintiff still had to forecast evidence showing that litigation would have produced a judgment more favorable than the settlement. *Id.* at 646–49. Although a malpractice plaintiff need not forecast every detail of the underlying equitable-distribution case, she must present some evidence concerning the identification, classification, and value of the property sufficient to explain how and why the resulting judgment would have been more favorable. *Id.* at 650–51.

Plaintiff's reliance on this Court's decision in *Bamberger v. Bernholz*, 96 N.C. App. 555, 561 (1989), does not alter that requirement. Our Supreme Court reversed that decision *per curiam* for the reasons stated in the dissent. *Bamberger v. Bernholz*, 326 N.C. 589, 589 (1990). Indeed, *Young* cites the Supreme Court's disposition of *Bamberger* as authority for applying the case-within-a-case requirement at summary judgment. *Young*, 185 N.C. App. at 646.

Here, the order partially granting defendants' motion to dismiss limited plaintiff's surviving claim to defendants' conduct surrounding the 28 January 2021 hearing and Charles's settlement proposal. We therefore presume, without deciding, defendants negligently advised plaintiff not to accept the proposal, that plaintiff would have accepted it upon different advice, and that the Consent Order would have been set aside.

Those presumptions, however, establish only that plaintiff could have resumed

litigating equitable distribution. Charles's proposal was not an agreement to award plaintiff the Jacaranda property or any other particular asset. He proposed the Consent Order be set aside in its entirety, that the parties' equitable-distribution claims remain unresolved, and for the court to conduct a "full and complete distribution" after considering the marital estate as a whole.

The Consent Order likewise represented a comprehensive distribution rather than an isolated disposition of the Jacaranda property. It allocated numerous parcels of real property, vehicles, bank and retirement accounts, annuities, personal property, income rights, and debts between the spouses. Accordingly, the relevant counterfactual is not whether plaintiff might have obtained more favorable treatment of one asset. It is whether vacating the entire Consent Order and relitigating the entire marital estate would have produced a more favorable net distribution.

Plaintiff did not make that forecast. Her 2015 equitable-distribution inventory classified the Jacaranda property as marital property, identified other property she claimed was separate, and left the values of several accounts, vehicles, boats, and other assets as unknown or "TBD." The inventory also listed the loan to Charles's brother—the proceeds of which plaintiff now claims were her separate property—on the schedule of marital assets. Nothing in the inventory calculates the net value of the estate or compares the distribution plaintiff might have received after litigation with the distribution made under the Consent Order.

In her discovery response, plaintiff calculated her alleged damages as

$622,000. She asserted that she lost $460,000 in equity from the Jacaranda property, a Prudential annuity worth approximately $120,000, and the benefit of a $42,000 loan to Charles's brother. Even treating that response as competent evidence and accepting its asserted values, the calculation presumes the very proposition plaintiff was required to prove: an equitable-distribution court would have classified and awarded all three assets to her while leaving the balance of the negotiated distribution effectively unchanged. It does not account for the remaining assets and debts, the provisions of the Consent Order favorable to plaintiff, or the distribution the court would have made after considering the entire estate.

Plaintiff's deposition testimony did not fill that gap. When asked what evidence showed that reopening equitable distribution would produce a better result, plaintiff referred generally to unspecified documentation and stated that Charles would "probably" owe her money. When asked how much, she responded that she would be "guessing" and acknowledged that she did not know. Plaintiff characterizes that testimony as uncertainty only about the amount of damages. But absent evidence that the reopened proceeding would have produced a more favorable net distribution, the record leaves uncertain the existence—not merely the amount—of damages.

Plaintiff's asserted loss of the use of the Prudential annuity is derivative of the same unproven premise. The Consent Order establishes that the annuity, then valued at $119,080.03, was awarded to Charles in 2015. Acceptance of Charles's

proposal in 2021, however, would not itself have returned that annuity to plaintiff; it would have reopened equitable distribution. Plaintiff forecast no evidence establishing that the court ultimately would have classified and awarded the annuity to her, when such an award would have occurred, or the value of any resulting loss of use. Her damages response likewise identified no litigation expenses or other independently quantified loss attributable to the 2021 advice.

Thus, as in *Young*, plaintiff's evidence would require a jury to speculate about the outcome of the underlying equitable-distribution proceeding. Because plaintiff failed to forecast substantial evidence that defendants' alleged negligence proximately caused her a less favorable financial result, defendants were entitled to summary judgment. We therefore do not address whether defendants breached the applicable standard of care or whether Charles's proposal remained available when summary judgment was entered.

V. Conclusion

Plaintiff failed to forecast substantial evidence that defendants' alleged negligence proximately caused her damages. Accordingly, the trial court properly granted summary judgment in favor of defendants.

AFFIRMED.

Judges TYSON and WOOD concur.

Report per Rule 30(e).