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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA26-260

Filed 4 November 2026

Forsyth County, No. 24CVS005888-330

LENA WATTS-ANDERSON, Plaintiff,

v.

RUSSELL CRAIG ROBINSON, Defendant.

Appeal by plaintiff from order entered 19 November 2025 by Judge John Morris in Forsyth County Superior Court. Heard in the Court of Appeals 15 October 2026.

Lena Watts-Anderson, pro se, for plaintiff-appellant.

Russell Craig Robinson, pro se, for defendant-appellee; no brief filed.

ARROWOOD, Judge.

Lena Watts-Anderson ("plaintiff") appeals from order dismissing her complaint pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure for failure to state a claim upon which relief can be granted. For the following reasons, we affirm the trial court's order.

I. Introduction

On 4 October 2024, plaintiff filed and served a *pro se* complaint against Russell Craig Robinson ("defendant"), her then-husband, alleging intentional and negligent infliction of emotional distress. The complaint alleged that defendant "staged a psycological [sic] attack game against his wife to steal his brothers [sic] inheritances[,]" "staged psychological attack against plaintiff wife in order to be with another woman[,]" "attacks his wife [sic] mental stability as a cover for his psycological [sic] game to steal his two brothers [sic] inheritances[,]" "disavows his marriage and openly engages with another woman who is not his wife" and was negligent in his "duty to act as a reasonably prudent husband toward his wife of 32-years." The complaint made claims for compensatory damages, punitive damages, and attorney's fees, and demanded a jury trial. Defendant filed his answer 12 May 2025, in which he requested the court dismiss the action with prejudice.

On 6 February 2025, plaintiff filed motions for default and default judgment supported by an affidavit. Defendant served plaintiff with a motion to dismiss her complaint with prejudice on 28 February 2025.

On 6 June 2025, the court issued an administrative order listing a trial date of 18 August 2025 and requiring the parties to sign a pre-trial order setting out the issues for trial. On 18 August, the parties appeared for trial but court adjourned until the following day, and according to plaintiff, the court denied her motions for default and default judgment, though no written order on the matter was filed. The following day, the court informed the parties that the trial would be rescheduled because the

parties had not completed the pre-trial order. Plaintiff and defendant's counsel signed a pre-trial order reciting the contested issues and stating that "[t]here are no pending motions, and neither party desires further amendments to the pleadings."

The case came on for trial on 22 September 2025 in Forsyth County Superior Court. The court noted at the outset that defendant's counsel wished to be heard on the 12(b)(6) motion. Plaintiff then claimed she never received a motion to dismiss from defendant. The trial court stated, and defendant's counsel confirmed, that defendant's counsel had moved for a dismissal in open court. The court stated that such motions may be made "before a trial or at a trial or anytime before a verdict" and that it wanted "to make sure that all the parties have the opportunity to be heard and that we're approaching this in a thorough manner." Plaintiff replied: "I have not received sufficient notice to be prepared to defend myself for a motion to dismiss for a rule [12]B. The only thing [defense counsel] provided to me as notice for any filing of a motion for dismissal is an unfiled motion that has no details at all. . . . There was no evidence or arguments presented to me to show grounds for filing a motion for 12B." Defense counsel responded, "[W]e are on today for a trial. She has received all of the evidence that we have. We have responded to her admissions, provided the documents. We put together the pretrial conference. There's nothing additional to provide to her."

Plaintiff presented the 28 February 2025 motion to the court, pointing out that the motion was unfiled. The court said, "Thank you. I did see that. . . . [A motion is]

also included in the defendant's answer." Defense counsel stated, "We are standing here in open court. There's nothing in the rules that says I cannot bring this motion in court." Plaintiff responded, "I'm not denying what you're saying to me[,]" but continued to argue that she had not "had an opportunity to see [defendant's] arguments[.]"

The court reiterated that it would allow the defense to be heard on the oral motion. The court heard argument from both parties on the contents of plaintiff's complaint, during which defense outlined the allegations in order and summarized their contents as "a long string of allegations that are not substantiated by anything, nothing at all." The court granted defendant's motion as the allegations of plaintiff's complaint were not "legally sufficient to satisfy the elements of at least some legally recognized claim" and made "note for the record that a [Rule 12(b)(6)] motion may be raised at trial, or before trial, anytime before a verdict is reached."

On 14 October 2025, plaintiff moved for a new trial under Rule 59, requesting reconsideration of the order granting defendant's motion to dismiss based on error of law, lack of procedural notice, and "any other reason heretofore recognized as grounds for a new trial." The order granting defendant's motion to dismiss was filed 19 November 2025. Plaintiff noticed appeal from this order on 18 December 2025. On 22 December 2025, following a hearing, the court filed an order denying plaintiff's motion for a new trial and reaffirming its grant of defendant's motion to dismiss.

II. Discussion

Plaintiff raises several issues on appeal, all challenging the court's decision to consider defendant's motion to dismiss on 22 September 2025. Plaintiff contends that the court erred in permitting defendant to argue an oral motion to dismiss without notice to plaintiff and without ordering the deferral of his defenses until trial, that the court ignored the parties' stipulation in the pre-trial order that there were "no pending motions," and that the court considered the motion in reliance upon matters outside the pleadings without converting the oral motion into a motion for summary judgment.

Generally, this Court reviews *de novo* an appeal from an order granting a party's Rule 12(b)(6) motion to dismiss, determining the pleading's legal sufficiency and ensuring the trial court ruled correctly on the motion. *Leary v. N.C. Forest Prods., Inc.*, 157 N.C. App. 396, 400 (2003). We liberally construe the complaint and treat its allegations as true. *Horizon Forest Products, L.P. v. Flowers Flooring LLC*, 301 N.C. App. 326, 328 (2025) (citations omitted). Dismissal is proper "if an examination of the complaint reveals that no law supports the claim, or that sufficient facts to make a good claim are absent, or that facts are disclosed which necessarily defeat the claim." *State Emps. Ass'n of N.C. v. N.C. Dept. of State Treasurer*, 364 N.C. 205, 210 (citation omitted).

However, plaintiff does not argue on appeal that her complaint was legally sufficient to state a claim but argues only that the court committed legal error in considering the motion at all. "An alleged error in statutory interpretation is an error

of law, and thus our standard of review for this question is *de novo*." *Armstrong v. N.C. State Bd. of Dental Exam'rs*, 129 N.C. App. 153, 156 (citations omitted), *disc. rev. denied and app. dismissed*, 348 N.C. 692 (1998), *cert. denied*, 525 U.S. 1103 (1999). We therefore "consider the matter anew and freely substitute our judgment for the lower tribunal's." *State v. Williams*, 362 N.C. 628, 632–33 (2008). "The party asserting error must show from the record not only that the trial court committed error, but that the aggrieved party was prejudiced as a result." *Lawing v. Lawing,* 81 N.C. App. 159, 162 (1986); *see also* N.C.G.S. § 1A–1, 61.

A. Notice of Motion and Deferral to Trial

Rule 12(b) of the North Carolina Rules of Civil Procedure permits defendants to move the court to dismiss a complaint for failure to state a claim upon which relief can be granted. N.C.G.S. § 1A-1, 12. Our Courts have long held that such motions can be made up until the trial: "Unquestionably, a motion to dismiss for failure to state a claim upon which relief may be granted, under Rule 12(b)(6), can be made as late as trial upon the merits." *Dale v. Lattimore*, 12 N.C. App. 348, 350 (1971).

Both statute and case law indicate that defendant's motion was timely and proper, so defendant cannot claim that she had insufficient notice to be prepared to argue that her own complaint was legally sufficient. Plaintiff was also in the courtroom for defendant's oral motion. Accordingly, plaintiff's argument that she had insufficient notice fails. The court did not err in its interpretation or application of Rule 12 in permitting argument on defendant's motion to dismiss.

Plaintiff also argues that the court could not have considered the motion without issuing an order that hearing and determination of the motion be deferred to trial. Rule 12(d) establishes that a 12(b)(6) defense, "whether made in a pleading or by motion . . . shall be heard and determined before trial on application of any party, unless the judge orders that the hearing and determination thereof be deferred until the trial." N.C.G.S. § 1A-1, 12. In the instant case, the court treated the motion to dismiss as an oral motion made at trial, and as discussed above, this is plainly permitted by both the express provisions of Rule 12 and longstanding case law. The court did not err in failing to order that an oral motion made *at trial* be deferred *until trial*. Therefore, this challenge fails.

B. Stipulation of "No Pending Motions"

Plaintiff next argues that, by stipulating that "no pending motions" existed, the parties forestalled consideration of defendant's motion to dismiss for failure to state a claim. Plaintiff ignores the subsequent clause of this agreement, which stipulated that neither party wished to alter the pleadings, which included defendant's answer containing a motion to dismiss the complaint. Furthermore, and more importantly, the court was clear that it was considering an oral motion made at trial and giving the movant an opportunity to be heard on it. Accordingly, plaintiff's argument, that the pre-trial agreement prevented the court from hearing defendant's motion to dismiss without prejudicing her, fails to convince this Court.

C. Matters Outside the Pleadings

In plaintiff's final argument, she posits that when the court heard the parties on the motion to dismiss, it considered matters outside the pleadings, thereby transforming it into a motion for summary judgment. Plaintiff is correct that a "motion to dismiss for failure to state a claim is 'converted to a Rule 56 motion for summary judgment when matters outside the pleadings are presented to and not excluded by the court.' " *King v. Cape Fear Mem'l Hosp., Inc.,* 96 N.C. App. 338, 342 (1989) (quoting *Stanback v. Stanback,* 297 N.C. 181, 205 (1979)). However, requests, explanations, and arguments of counsel relating to a motion to dismiss are not considered matters outside the pleadings. *Id.* "Reviewing courts have looked to cues in the trial court's order to determine whether it considered matters outside the pleadings." *Blackburn v. Carbone*, 208 N.C. App. 519, 523 (2010) (quoting *Charlotte Motor Speedway, Inc. v. Tindall Corp.*, 195 N.C. App. 296, 300 (2009)).

At the trial hearing, defendant's counsel addressed plaintiff's complaint section-by-section, arguing that each failed to plead sufficient facts to state claims for either intentional or negligent infliction of emotional distress. In this initial argument, defense counsel remained entirely within the four corners of plaintiff's complaint, pointing out the pleading's omissions. For example, as to the allegation that defendant "staged a psychological [sic] attack against [plaintiff] to steal his brothers [sic] inheritances," defense counsel pointed out that plaintiff failed to set out any facts showing that such theft occurred in the first place.

The defense then argued that plaintiff pled insufficient facts in support of each of her subsequent allegations. For example, as to the allegation that defendant "staged [a] psychological attack against [plaintiff] in order to be with another woman[,]" plaintiff included a phone number and had noted that "she believes that it belongs to a bank employee[,]" but the defense argued that the complaint lacked any "indication of any wrong doing between him and this person at the end of this phone number[,]" any "evidence of any relationship between the two" at all, or anything to establish that the "person at the end of the phone number is[ ] truly identified." In sum, defense counsel went claim-by-claim and properly pointed out deficiencies within the complaint itself, concluding that it "is a long string of allegations that are not substantiated by anything, nothing at all."

Any matters outside the pleadings presented at the hearing were brought forth by plaintiff herself when she asserted her claims were substantiated by defendant's lack of response to requests for admission and in discussing details from defendant's depositions. In *Sain v. Adams Auto Group, Inc.*, this Court rejected a party's attempt to argue the trial court improperly considered a document outside the pleadings where that party had introduced the document themselves. *Sain v. Adams Auto Grp., Inc.*, 244 N.C. App. 657, 668 (2016) ("Even presuming error, the transcript of the hearing clearly shows any error the trial court committed by reviewing and considering this document was invited error by Plaintiffs."). Invited error is "a legal

error that is not a cause for complaint because the error occurred through the fault of the party now complaining." *Id.* at 669 (internal quotation marks omitted).

Accordingly, plaintiff asks us to reverse the court's order based upon the provision transforming a motion to dismiss into a motion for summary judgment when the court considers matters outside the pleading, even though she raised those matters in court herself. "The obvious purpose" of this provision is "to preclude any unfairness resulting from surprise when an adversary introduces extraneous material on a Rule 12(b)(6) motion, and to allow a party a reasonable time in which to produce materials to rebut an opponent's evidence once the motion is expanded to include matters beyond those contained in the pleadings." *Coley v. N. Carolina Nat. Bank*, 41 N.C. App. 121, 126 (1979). Because the circumstances here preclude any such surprise or unfairness, plaintiff's assignment of legal error would upend the purpose of the statute she relies upon, and amounts to invited error.

Moreover, plaintiff can point to nothing in the dismissal order itself referring to matters outside the pleadings, as it mentions only the court's review of "the pleadings" and "the arguments of counsel and plaintiff" and application of the applicable law. The court stated the correct legal standard, that it was "considering whether . . . the complaint taken as true [was] legally sufficient to satisfy the elements of at least some legally recognized claim in this matter," and granted dismissal "in its discretion upon its weighing of all the arguments and reviewing of the pleadings[.]" We reject plaintiff's flat contention that the trial court's rulings in

open court and in the order make it "clear that the Judge did consider and did not exclude 'matters outside' the Complaint." We conclude the trial court did not consider matters outside the pleadings in its decision on defendant's motion to dismiss, and therefore the motion to dismiss was not converted into a motion for summary judgment as plaintiff contends.

Therefore, plaintiff's assignments of legal error are without merit, and we affirm the order dismissing her complaint for failure to state a claim upon which relief may be granted.

III. Conclusion

For the above reasons, we affirm the court's dismissal of plaintiff's complaint.

AFFIRMED.

Judges ZACHARY and STADING concur.

Report per Rule 30(e).