IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-1054

Filed 18 November 2026

Wake County, No. 24CV025454-910

AVYAN MANDADI, a minor, by and through his Guardian ad Litem, SHASHANK MANDADI, SRUTHI ANNAM, individually, and SHASHANK MANDADI, individually, Plaintiffs,

v.

MARIA C. MUNOZ, MD, in her individual capacity, UGOCHUKWU OKOROAFOR, MD, in his individual capacity, AUSTIN P. JOHNSON, MD, in his individual capacity, SARAH C. DEBURKARTE, RN, in her individual capacity, and AMANDA L. PIRRERA, RN, in her individual capacity, Defendants,

-and-

DESTIN HALL, in his official capacity as Speaker of the North Carolina House of Representatives, and PHIL BERGER, in his official capacity as President Pro Tempore of the North Carolina Senate, Legislative Defendants.

Appeal by Defendants and Legislative Defendants from order entered 28 July 2025 by Judge Matthew T. Houston in Wake County Superior Court. Heard in the Court of Appeals 11 August 2026.

Robinson, Bradshaw & Hinson, P.A., by Matthew W. Sawchak, Erik R. Zimmerman, and Kelley M. Storey; and Huff Powell & Bailey, PLLC, by Pankaj K. "PK" Shere, Katherine Hilkey, and Tahlia D. Cypress, for Defendants-Appellants.

Attorney General Jeff Jackson, by Special Deputies Attorneys General Stephanie A. Brennan and Michelle A. Liguori, for Legislative Defendants-Appellants.

Ballew Puryear PLLC, by Matthew D. Ballew, Zachary R. Kaplan, Trent N. Turk, and Katherine A. Copeland, for Plaintiffs-Appellees.

COLLINS, Judge.

Individual Defendants[1] and Legislative Defendants (together, "Defendants") appeal from an order denying Individual Defendants' motion to dismiss Plaintiffs' medical-negligence action. Defendants contend that N.C. Gen. Stat. § 143-291(e), enacted in 2023, requires Plaintiffs' claims to be brought exclusively against the State entities in the Industrial Commission and precludes suit against Individual Defendants in superior court. Plaintiffs assert that applying section 291(e) to their claims impairs their vested rights, in violation the Law of the Land Clause of Article I, Section 19, and denies them their right to a jury trial, in violation of Article I, Section 25 of the North Carolina Constitution.

For the reasons that follow, we hold that applying section 291(e) to Plaintiffs' claims impairs Plaintiffs' vested rights to pursue an accrued common-law cause of action protected by Article I, Section 19 and denies Plaintiffs their right to a jury trial, in violation of Article I, Section 25. Accordingly, section 291(e) is unconstitutional as applied to Plaintiffs' claims. We therefore affirm the trial court's order denying Defendants' motion to dismiss. We dismiss Legislative Defendants' remaining

[1] The case caption designates the treating doctors and nurses solely as "Defendants." We will refer to the treating doctors and nurses as "Individual Defendants" and refer to Individual Defendants and Legislative Defendants collectively as "Defendants."

arguments for lack of subject matter jurisdiction.

I. Background

Plaintiff Sruthi Annam presented to UNC Hospitals in Chapel Hill on 16 August 2021 for labor and delivery. Plaintiffs allege that during the course of treatment, Drs. Maria Munoz, Ugochukwu Okoroafor, and Austin Johnson, and nurses Sarah Deburkarte and Amanda Pirrera (collectively, "Individual Defendants") negligently failed to monitor fetal distress, resulting in hypoxic injury to minor Plaintiff Avyan Mandadi. Plaintiffs allege permanent neurological injury and seek compensatory damages.

At the time of the alleged negligence, Plaintiffs had two distinct causes of action recognized under North Carolina law: (1) common-law medical-negligence claims against Individual Defendants in their individual capacities in superior court, triable to a jury, and (2) a statutory negligence claim against the State entities[2] under the Tort Claims Act in the Industrial Commission. *See Meyer v. Walls*, 347 N.C. 97, 108-09 (1997) (recognizing the separate and distinct nature of individual-capacity negligence claims and Tort Claims Act claims).

On 3 October 2023, the General Assembly enacted sub-section (e) of N.C. Gen. Stat. § 143-291 of the State Tort Claims Act. Section 291(e) provides:

> This Article provides the sole and exclusive remedy for any claim that arises as a result of the negligence of any officer,

[2] UNC Carolina Hospitals at Chapel Hill d/b/a UNC Hospitals, UNC Healthcare, UNC Healthcare System, and UNC d/b/a The School of Medicine of UNC at Chapel Hill.

> employee, involuntary servant, or agent of the State while acting within the scope of his office, employment, service, agency, or authority, and the North Carolina Industrial Commission is the sole and exclusive forum for hearing any such claims. Any such claims filed in any other forum arising out of or relating to the same subject matter against the officer, employee, involuntary servant, or agent of the State is precluded.

N.C. Gen. Stat. § 143-291(e) (2023). Session Law 2023-134 states that section 291(e) is "effective when it becomes law and applies to all claims *filed* on or after that date." 2023 N.C. Sess. Laws 134 (emphasis added). Section 291(e) became effective on 3 October 2023; accordingly, section 291(e) ostensibly applies to all claims filed on or after 3 October 2023.

Plaintiffs filed their superior court complaint[3] on 14 August 2024, two years after the alleged negligence and ten months after the General Assembly enacted section 291(e). In addition to asserting negligence claims, Plaintiffs objected to the application of section 291(e) to their claims as unconstitutional, alleging the statute "would be unconstitutionally retroactive in nature as [their] claims accrued and were vested prior to the enactment of this statute" and would violate their "sacred and inviolable right to a jury trial under Article I, section 25 of the North Carolina Constitution."

Individual Defendants moved to dismiss Plaintiffs' complaint under Rules

[3] Plaintiffs also sued the State entities in the Industrial Commission. The allegations in those lawsuits mirror the allegations in this case.

12(b)(1), (2), and (6), arguing that section 291(e) required Plaintiffs to proceed exclusively in the Industrial Commission and exclusively against the State entities. Alternatively, Individual Defendants moved to transfer Plaintiffs' constitutional challenge to a three-judge panel. After a hearing, the trial court entered an Order Joining Legislative Defendants on 20 December 2024, wherein the trial court denied the transfer motion; concluded that Plaintiffs' constitutional challenge is as-applied, not facial; and joined Destin Hall, in his official capacity as Speaker of the North Carolina House of Representatives, and Phil Berger, in his official capacity as President Pro Tempore of the North Carolina Senate (together, "Legislative Defendants") as parties to the action under Rule 19(d) of our rules of civil procedure. Defendants did not appeal this order.

The trial court held a hearing on Individual Defendants' motion to dismiss about seven months later and denied the motion by Order on Motion to Dismiss entered 28 July 2025. Defendants timely appealed this order.

II. Issues Presented

Defendants argue that applying section 291(e) to Plaintiffs' claims does not retroactively disturb vested rights protected under Article I, Section 19 and does not violate Plaintiffs' right to trial by jury under Article I, Section 25. Additionally, Legislative Defendants argue that the trial court erred by concluding that Plaintiffs' constitutional challenges are as-applied, instead of facial, and by joining Legislative Defendants under Rule 19(d), despite finding Plaintiffs' challenges are as-applied.

III. Jurisdiction

We first address our jurisdiction to hear this appeal.

A. Order on Motion to Dismiss

The Order on Motion to Dismiss, denying Individual Defendants' motion to dismiss Plaintiffs' complaint, is interlocutory as it was "made during the pendency of an action" and "does not dispose of the case, but leaves it for further action by the trial court in order to settle and determine the entire controversy." *Veazey v. City of Durham*, 231 N.C. 357, 362 (1950) (citation omitted). Generally, there is no right of immediate appeal from an interlocutory order. *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 379 (1994). A party may immediately appeal an interlocutory order under certain circumstances, however, including "when the order deprives the appellant of a substantial right which would be jeopardized absent a review prior to a final determination on the merits." *Id.* (quotation marks and citations omitted); *see* N.C. Gen. Stat. §§ 1-277(a) (2023) and 7A-27(b)(3)(a) (2023).

Here, Individual Defendants' motion to dismiss is based on section 291(e), which designates the Industrial Commission as the "sole and exclusive forum" for claims arising from the negligence of State employees acting within the scope of their employment. N.C. Gen. Stat. § 143-291(e). When a statute creates exclusive jurisdiction in an alternative forum, a defendant possesses a substantial right not to be forced to litigate in a forum that the General Assembly has divested of authority. *See Burton v. Phoenix Fabricators & Erectors, Inc.*, 362 N.C. 352, 352 (2008)

(remanding to the Court of Appeals to consider the merits of an appeal of the denial of defendant's Rule 12(b)(1) motion to dismiss plaintiff's negligence action under the exclusivity provision of the Indiana workers' compensation statute); *see also Estate of Vaughn v. Pike Elec., LLC*, 230 N.C. App. 485, 489-91 (2013) (applying *Burton* to hold that an order denying a Rule 12(b)(1) dismissal under the exclusive-remedy provision of the Workers' Compensation Act affected a substantial right and warranted immediate appellate review); *Land v. Whitley*, 388 N.C. 296, 305-06 (2025) (explaining that exclusive-forum statutes confer a substantial right to avoid litigation in an improper forum).

Because section 291(e) expressly precludes litigation of certain causes of action in superior court and mandates their adjudication in the Industrial Commission, the trial court's denial of Individual Defendants' motion to dismiss deprives Defendants of their statutory right to avoid litigation in an improper forum. That right would be lost absent immediate review. Accordingly, the Order on Motion to Dismiss affects a substantial right and is immediately appealable. *See Jeffreys*, 115 N.C. App. at 379; N.C. Gen. Stat. § 7A-27(b)(3)(a).

B. Order Joining Legislative Defendants

Legislative Defendants argue that the trial court erred by concluding that Plaintiffs' constitutional challenges are as-applied, instead of facial, and by joining Legislative Defendants under Rule 19(d). These arguments challenge the trial court's Order Joining Legislative Defendants.

"Any party entitled by law to appeal from a judgment or order of a superior . . . court rendered in a civil action . . . may take appeal by filing notice of appeal" within the time allotted by the Appellate Rules. N.C. R. App. P. 3(a). "The requirement of timely filing and service of notice of appeal is jurisdictional, and unless the requirements . . . are met, the appeal must be dismissed." *Reidy v. Whitehart Ass'n, Inc.*, 185 N.C. App. 76, 85 (2007) (quotation marks and citation omitted). A "writ of certiorari may be issued in appropriate circumstances" by this Court to permit review of a trial court's order "when the right to prosecute an appeal has been lost by failure to take timely action, or when no right of appeal from an interlocutory order exists." N.C. R. App. P. 21(a)(1).

Here, Legislative Defendants did not file a notice of appeal from the Order Joining Legislative Defendants. Furthermore, Legislative Defendants did not file a petition for a writ of certiorari asking this Court to review that order. Legislative Defendants have thus failed to invoke this Court's jurisdiction to review the Order Joining Legislative Defendants, and we dismiss Legislative Defendants' arguments arising from that order.

IV. Discussion

Defendants argue that section 291(e) is not unconstitutional as applied to Plaintiffs' claims. Plaintiffs argue to the contrary.

A. Standard of Review

An as-applied constitutional challenge contends that a statute is

unconstitutional as applied to the particular litigant and circumstances before the court. *N.C. Dep't of Revenue v. Philip Morris USA, Inc.*, 388 N.C. 181, 189 (2025). Whether a statute violates constitutional guarantees as applied presents a question of law reviewed de novo. *Id.* at 186.

We presume the laws duly enacted by the General Assembly are valid. *Hart v. State*, 368 N.C. 122, 126 (2015). "North Carolina courts have the authority and responsibility to declare a law unconstitutional, but only when the violation is plain and clear." *Id.* (citation and footnote omitted). "Stated differently, a law will be declared invalid only if its unconstitutionality is demonstrated beyond reasonable doubt." *Id.* (citation omitted). We look to the constitutional text, the historical context, and our precedents to determine whether the alleged constitutional violation is plain and clear. *State v. Berger*, 368 N.C. 633, 639 (2016).

B. Vested Rights

Defendants first argue that applying section 291(e) to Plaintiffs' claims does not disturb vested rights. Plaintiffs, on the other hand, argue that section 291(e) cannot constitutionally apply to their claims because their cause of action against Individual Defendants accrued in August 2021–two years before the statute's enactment–and vested at the moment of injury. They contend that section 291(e) destroys those vested rights by eliminating their ability to sue Individual Defendants in superior court.

The Law of the Land Clause bars the State from depriving citizens of their "life, liberty, or property, but by the law of the land." N.C. Const. art. I, § 19. "[W]e have recognized for more than two centuries that the Clause's protections apply when the State interferes with a category of property rights known as 'vested rights.'" *McKinney v. Goins*, 387 N.C. 35, 48 (2025) (citations omitted). And for more than a century, our appellate courts have recognized that an accrued cause of action constitutes a vested property right. *See Williams v. Atlantic Coast Line R.R.*, 153 N.C. 360, 363-65 (1910); *Bolick v. American Barmag Corp.*, 306 N.C. 364, 371 (1982). "[A] cause of action accrues at the time the injury occurs, even in ever so small a degree." *Pembee Mfg. Corp. v. Cape Fear Constr. Co.*, 313 N.C. 488, 490 (1985). Thus, a cause of action vests at the moment the injury occurs. *Mizell v. Atlantic Coast Line R.R.*, 181 N.C. 36, 39 (1921).

In *Williams*, our Supreme Court explained, "A vested right of action is property in the same sense in which tangible things are property, and is equally protected against interference. Where it springs from contract, or from the principles of the common law, it is not competent for the Legislature to take it away." 153 N.C. at 363 (citation omitted). The Supreme Court in *Bolick* stated, "An accrued cause of action is a property interest. When a statute would have the effect of destroying a vested right if it were applied retroactively, it will be viewed as operating prospectively only." 306 N.C. at 371 (citations omitted). And in *Rhyne v. K-Mart Corporation*, "our Supreme Court reiterated that '[v]ested rights of action are property, just as tangible

things are property. A right to sue for an injury is a right of action; it is a thing in action, and it is property.'" *Mohebali v. Hayes*, 300 N.C. App. 293, 301 (2025) (quoting *Rhyne*, 358 N.C. 160, 176 (2004)).

In *Mohebali*, this Court analyzed a constitutional challenge to North Carolina's statutory cap on non-economic medical-negligence damages. 300 N.C. App. at 293. The General Assembly enacted the cap in 2011, but plaintiff's injury did not occur–and thus her rights to her cause of action did not vest–until 2019. *Id.* at 296. We concluded that the legislative cap was not unconstitutional in that case "*because* [p]laintiff's cause of action against [d]efendants did not become a vested property right until after the [l]egislative [c]ap was enacted in 2011" and "the General Assembly generally has the power to determine when a remedy is legally cognizable without impairing the right to a jury trial." *Id.* at 300 (emphasis added). Had plaintiff's cause of action vested prior to the enactment of the cap statute, retroactive application would have been unconstitutional. *See id.* at 303-04 ("[T]he Legislative Cap is constitutional as applied to those malpractice claims based on 'wrongs' which did not occur prior to the enactment of the Legislative Cap.").

The Fourth Circuit applied a similar analysis when evaluating whether amendments to the Right to Farm Act to limit nuisance claim damages could retroactively apply. *McKiver v. Murphy-Brown*, LLC, 980 F.3d 937, 954-58 (4th Cir. 2020). The Court explained, "In North Carolina, the right to compensatory damages 'vest in a plaintiff upon injury.'" *Id.* at 958 (quoting *Rhyne*, 358 N.C. at 176). Because

the statutory amendment would have retroactively limited the amount of the damages available to plaintiffs, the court held that it "without question would strip plaintiffs in pending suits of vested rights to damages[.]" *Id.* Thus, the statutory change could not apply retroactively to plaintiffs. *Id.* at 957-58.

Here, Plaintiffs' common-law medical-negligence action accrued at the moment the injury occurred and thus vested in August 2021. *See Mizell*, 181 N.C. at 39. Because the application of section 291(e) to Plaintiffs' claims would destroy their vested rights to pursue those claims entirely, such retroactive application is unconstitutional. *See Bolick*, 306 N.C. at 371; *McKiver*, 980 F.3d at 957-58.

Defendants contend that section 291(e) merely channels Plaintiffs' claims into a different forum and therefore affects only procedure. As a result, Defendants argue, the statute can operate retroactively here. We disagree.

The parties do not dispute that before the enactment of section 291(e), Plaintiffs possessed a recognized common-law cause of action against Individual Defendants. *See Atlanta Oculoplastic Surgery, P.C. v. Nestlehutt*, 691 S.E.2d 218, 221 (Ga. 2010) ("The antecedents of the modern medical malpractice action trace back to the 14th century.") And our Supreme Court expressly recognized that a plaintiff could pursue both a common-law negligence action against the responsible State employee and a Tort Claims Act action against the State entities. *See Meyer,* 347 N.C. at 108-09. After the enactment of section 291(e), that common-law action no longer exists. Section 291(e) does not transfer the individual-capacity action to the

Industrial Commission. Instead, the statute declares that claims against the individual employee are "precluded" and leaves only the separate Tort Claims Act action against the State entities. N.C. Gen. Stat. § 143-291(e).

A statute that changes pleadings, timing requirements, evidentiary rules, or methods of enforcing a claim typically regulates procedure. *See, e.g.*, *McKinney*, 387 N.C. at 49 (describing a statute of limitations as "clearly procedural, affecting only the remedy directly and not the right to recover" (citation omitted)). Our courts have never held that a statute that abolishes a cause of action merely regulates procedure. As stated in *Bolick*, the General Assembly cannot constitutionally apply a statute retroactively when doing so would destroy an accrued cause of action. 306 N.C. at 371.

Defendants also argue that Plaintiffs possess only a vested right to seek recovery somewhere, not a vested right to maintain an action against a particular defendant. This argument overlooks the nature of the right that vested.

Plaintiffs' vested property right is not a generalized entitlement to pursue compensation; it is the specific common-law cause of action that existed under North Carolina law when their injuries occurred. *Williams*, *Bolick*, and *Mizell* each focus on preserving the accrued cause of action itself. None suggests the General Assembly may retroactively eliminate the tortfeasor as a defendant and substitute a different party, so long as some remedy survives.

Meyer does not support Defendants' position either. To the contrary, *Meyer* recognized two distinct avenues of relief: a common-law claim against the individual employee and a statutory claim against the State entities. 347 N.C. at 108-09. The Constitution protects vested rights from retroactive destruction. *Bolick*, 306 N.C. at 371. The existence of an alternative action does not grant the General Assembly authority to abolish an accrued common-law cause of action.

For these reasons, Defendants' argument that applying section 291(e) to Plaintiffs' claims does not disturb Plaintiffs' vested rights fails, and section 291(e) is unconstitutional as applied to Plaintiffs' vested rights in their accrued medical-negligence claims.

C. Right to Trial by Jury

Defendants next argue that applying section 291(e) to Plaintiffs' claims does not violate Plaintiffs' right to a jury trial. Plaintiffs argue, in response, that section 291(e) violates their right to a jury trial because medical-negligence claims existed at common law in 1868 and were triable to a jury.

Article I, Section 25 provides that "the ancient mode of trial by jury" shall "remain sacred and inviolable." N.C. Const. art. I, § 25. This provision protects causes of action that existed at common law when the Constitution was adopted in 1868. *Kiser v. Kiser*, 325 N.C. 502, 507-08 (1989).

There is no dispute that common-law medical-negligence actions existed long before 1868 and historically were tried before juries. By destroying Plaintiffs' vested

common-law action against Individual Defendants and leaving only an administrative proceeding before the Industrial Commission against the State entities, section 291(e) wholly eliminates the jury-trial right attached to Plaintiffs' vested cause of action.

Defendants argue that section 291(e) does not violate Plaintiffs' right to a jury trial because it merely substitutes an administrative forum for a judicial one. This argument is unconvincing because the statute did not transfer Plaintiffs' common-law claim to the administrative forum; the statute destroyed it. The issue here is not whether the General Assembly may create an administrative remedy for newly-created statutory claims or whether the General Assembly may prospectively create of a substitute remedial scheme. The issue is whether the General Assembly may *retroactively* extinguish a vested common-law negligence action and simultaneously eliminate the jury trial guaranteed for that very action. We conclude it may not.

Defendants' reliance on certain workers' compensation opinions is misplaced. The cited opinions involve the Workers' Compensation Act as a prospective substitute remedial scheme. *See Huffman v. Douglas Aircraft Co.*, 260 N.C. 308, 310 (1963); *McCune v. Rhodes-Rhyne Mfg. Co.*, 217 N.C. 351, 355-56 (1940), *overruled on other grounds by Warner v. Leder*, 234 N.C. 727 (1952); *Heavner v. Town of Lincolnton*, 202 N.C. 400, 401-02 (1932). As the case before us concerns a vested cause of action accruing before the enactment of section 291(e), not the prospective creation of a

substitute remedial scheme, those authorities do not resolve the constitutional question presented here.

Finally, Defendants argue that the General Assembly possesses broad authority to modify the common law. This is not disputed. But the General Assembly's authority to prospectively alter the common law does not include the authority to retroactively destroy vested rights. While a cause of action that has not yet accrued may remain subject to legislative revision, a cause of action that has already accrued is protected as property. *See Williams*, 153 N.C. at 363-65; *Bolick*, 306 N.C. at 371. Accordingly, the General Assembly's broad legislative power does not overcome the constitutional prohibition against retroactively destroying a vested common-law cause of action and its attendant constitutional jury-trial right.

For these reasons, Defendants' argument that section 291(e) does not violate Article I, Section 25 fails, and section 291(e) is unconstitutional as applied to Plaintiffs' accrued claims.

V. Conclusion

For the reasons stated above, we hold that applying section 291(e) to Plaintiffs' claims impairs Plaintiffs' vested rights to pursue an accrued common-law cause of action protected by Article I, Section 19 and denies Plaintiffs their right to a jury trial, in violation of Article I, Section 25. Accordingly, Section 291(e) is unconstitutional as applied to Plaintiffs' claims. We therefore affirm the trial court's order denying Defendants' motion to dismiss. We dismiss Legislative Defendants' remaining

arguments for lack of subject matter jurisdiction.

AFFIRMED IN PART; DISMISSED IN PART.

Chief Judge DILLON and Judge GRIFFIN concur.