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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-1021

Filed 18 November 2026

Vance County, No. 19CVS001102-900

KAREN JEAN SINGLETON, Plaintiff,

v.

DAVID CLINTON MCNABB, M.D. and RALEIGH ORTHOPAEDIC CLINIC, P.A., Defendants.

Appeal by plaintiff from orders entered 27 September 2024 and 23 January 2025 by Judge John M. Dunlow in Vance County Superior Court. Heard in the Court of Appeals 24 March 2026.

Anderson, Johnson, Lawrence & Butler, LLP, by Steven C. Lawrence and Charles R. Smith, for plaintiff-appellant.

Hall Booth Smith, PC, by Elizabeth P. McCullough, Kelsey Heino, and Noelle K. Demeny, for defendants-appellees.

FREEMAN, Judge.

Plaintiff appeals from the trial court's 23 January 2025 order dismissing plaintiff's complaint with prejudice and 27 September 2024 order denying plaintiff's motion to amend her complaint. On appeal, plaintiff argues that the trial court erred by dismissing her claim based on a discovery violation and by denying her motion to

amend her complaint by improperly considering evidence outside of the pleadings. After careful review, we affirm the trial court's orders.

I. Factual and Procedural History

This is plaintiff's third appeal in this matter and plaintiff's first appeal of a final judgment. *See Singleton v. McNabb*, No. 21-764, slip op. at 8 (N.C. Ct. App. May 17, 2022) ("*Singleton I*") (unpublished) (dismissing as interlocutory); *Singleton v. McNabb*, No. 21-764, slip op. at 8 (N.C. Ct. App. Apr. 16, 2024) ("*Singleton II*") (unpublished) (affirming the trial court's order imposing discovery sanctions). Accordingly, we adopt the previous factual and procedural history:

> On 14 February 2020, following the entry of an Order extending the statute of limitations, Ms. Singleton [("plaintiff")] filed a Complaint against David Clinton McNabb, M.D. and Raleigh Orthopaedic Clinic, P.A. (collectively "defendants"). The Complaint alleges that Dr. McNabb failed to perform adequate leg length analysis and measurements of [plaintiff's] right leg before Dr. McNabb performed a total replacement of [plaintiff's] right hip. Dr. McNabb's alleged error resulted in him making [plaintiff's] leg too long, which required him to repair the leg length during surgery and resulted in damage to the femoral and sciatic nerve. Following surgery, [plaintiff] experienced a total lack of feeling in her right leg for a period of time, lack of feeling and function in the lower right leg for many months, and excruciating pain and spasms in her hip area and throughout her right leg. [Plaintiff] required substantial physical therapy and use of a wheelchair. [plaintiff's C]omplaint alleges negligence on the part of [defendants].
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> Defendants filed an Answer on 2 June 2020, denying negligence and liability and asserting numerous defenses.

> On 11 March 2021, the trial court entered a Second Amended Consent Discovery Scheduling Order. The Scheduling Order, among other things, ordered that [plaintiff] shall provide medical records requested by defendants in written discovery on or before 15 March 2021. The Scheduling Order stated that Dr. McNabb's deposition may be requested by [plaintiff] after she produced the required medical records.
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> Dr. McNabb's deposition was scheduled for 11 June 2021. Defendants allege that during the deposition[, plaintiff] produced two x-rays which had not been produced before. [Plaintiff] claimed these x-rays were of her leg and contained marking[s] and notes for purpose of measurement made by Dr. McNabb. Once these x-rays were produced, Dr. McNabb's counsel stopped the deposition, went to a separate room to consult with Dr. McNabb following which they terminated the deposition. Following the deposition defendants filed a Motion for Sanctions and Motion to Dismiss.
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> On 17 August 2021, [plaintiff] filed a Motion to Compel and Response to [d]efendants' Motion and Amended Motion for Sanctions and Motion to Dismiss. [Plaintiff] asked the trial court to compel Dr. McNabb to complete his deposition.
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> The motions came on for hearing on 18 August 2021. Following the hearing, the trial court entered an Order on 8 September 2021 imposing sanctions pursuant to North Carolina Rules of Civil Procedure 37(b)(2), assessing costs to [plaintiff], compelling [plaintiff] to produce certain discovery materials, and dismissing defendants' Motion to Dismiss. [Plaintiff] filed Notice of Appeal on 5 October 2021.

Singleton I, slip op. at 2–4. We dismissed the first matter as interlocutory. *Id.* at 8. After her injuries, including while the appellate matter was pending, plaintiff kept three journals detailing her pain and daily schedule.

> Subsequently, on 18 October 2022, the trial court entered its Order on Attorney's Fees and Costs for Discovery Violations. The trial court assessed a total amount of attorney fees against Plaintiff of $11,147.75 and costs of $505.65. The trial court ordered these fees paid within thirty days of a final judgment in this case. On 10 November 2022, Plaintiff filed Notice of Appeal from both the 8 September 2021 Order Imposing Discovery Sanctions and the 18 October 2022 Order on Attorney's Fees and Costs for Discovery Violations.

Singleton II, slip op. at 4. We affirmed the trial court's Order on Attorney's Fees and Costs for Discovery Violations, holding that plaintiff "failed to show the trial court erred in concluding plaintiff violated the discovery orders in this case" and that the trial court did not abuse its discretion. *Id.* at 7.

While the interlocutory matters were pending before this Court, the underlying matter proceeded.[1] The trial court held a motions hearing on 16 August 2024, denying plaintiff's previous motions to compel, for leave to amend, for permission to file counter or cross claims, for request for defendants' admissions, and for a protective order regarding plaintiff's journals. The trial court ordered that plaintiff comply with production of her journals or be subject to further discovery sanctions, including involuntary dismissal. Subject to plaintiff's compliance with production, the trial court denied defendants' motion to dismiss.

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[1] On 28 October 2024, defendants moved to dismiss the second appeal or, in the alternative, moved to stay the proceedings. Counsel for plaintiff contacted the Trial Court Coordinator on 1 November 2024 to confirm plaintiff's second appeal automatically stayed the underlying proceedings. Nevertheless, the trial court entered an Order as to Jurisdiction on 18 November 2024, concluding as a matter of law, plaintiff's appeal was interlocutory and did not deprive the trial court of its jurisdiction, and ordering the trial court retain jurisdiction over the matter and that the matter proceed with litigation.

The trial court entered an Order on In-Camera Review on 30 September 2024, classifying plaintiff's journals as discoverable and compelled the Clerk of Superior Court to provide a copy of the journals to defendants.

On 12 December 2024, plaintiff responded to defendants' Third Set of Interrogatories and Requests for Production of Documents, objecting to twenty-five of the thirty-four interrogatories, and alleging that defendants were "attempting to weaponize discovery and [make] misrepresentations of fact in violation of Rule 11 of the North Carolina Rules of Civil Procedure." In response, defendants moved to compel plaintiff's discovery responses.

Plaintiff submitted a supplemental affidavit to support her objections, stating that she would "not waiv[e her] rights to privacy or objections to the production of [her] private journals or diaries." Defendants moved to strike plaintiff's supplemental affidavit, alleging it was neither timely nor based on plaintiff's personal knowledge.

The trial court held a subsequent motions hearing on 10 January 2025, addressing defendants' outstanding motions to execute, to dismiss, for sanctions, and to strike. The trial court granted all outstanding motions in defendants' favor and ordered plaintiff's claim be dismissed.

II. Jurisdiction

Though neither party raised the issue, we must first determine if the notice of appeal and amended notice of appeal conferred jurisdiction.

"Parties permitted by law to appeal from a judgment or order must do so by filing an appropriate notice of appeal." *Stephenson v. Bartlett*, 177 N.C. App. 239, 240 (2006). "In order to confer jurisdiction on the state's appellate courts, appellants of lower court orders must comply with the requirements of Rule 3 of the North Carolina Rules of Appellate Procedure." *Id.* at 241 (quoting *Bailey v. State*, 353 N.C. 142, 156 (2000)). "The provisions of Rule 3 are jurisdictional, and failure to follow the requirements thereof requires dismissal of an appeal." *Id.* (quoting *Abels v. Renfro Corp.,* 126 N.C. App. 800, 802 (1997)). Rule 3 requires that the notice of appeal "shall designate the judgment or order from which appeal is taken and the court to which appeal is taken." N.C. R. App. P. 3(d).

However, "a mistake in designating the judgment . . . should not result in loss of the appeal as long as the intent to appeal from a specific judgment can be *fairly inferred* from the notice and the appellee is not misled by the mistake." *Stephenson v. Bartlett*, 177 N.C. App. 239, 241 (2006) (quoting *Von Ramm v. Von Ramm*, 99 N.C. App. 153, 156–57 (1990)).

Here, on 18 February 2025, plaintiff entered written notice of appeal, appealing from the following:

> 1. Order entered January 23, 2025, dismissing Plaintiff's claims with prejudice;
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> 2. Order entered on August 27, 2024 ruling inter alia:
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> a. Denying Plaintiff's Motion to Amend;

> b. Denying Plaintiff's Motion for Sanctions against Defendants for improperly terminating Defendant McNabb's deposition;
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> c. Denying Plaintiff's request to reconvene Defendant McNabb's deposition; [and]
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> d. Denying Plaintiff's Motion for a Protective Order[.]

On 4 September 2025, plaintiff filed an amended Notice of Appeal to correct *August* to *September*. Because the amended notice of appeal was not timely under Rule 3, we must determine if the original notice of appeal is sufficient to confer jurisdiction.

In the 27 September 2024 order, the court, *inter alia*, denied plaintiff's motion to compel, denied plaintiff's request for sanctions against defendants for termination of the deposition, denied plaintiff's request to reconvene Dr. McNabb's deposition, denied plaintiff's motion for leave to amend, denied as moot defendants' motion for permission to file counter claim/cross claim, denied plaintiff's oral motion to request that her first request for admissions to ROC and her second request for admissions to Dr. McNabb be deemed admitted, denied defendant's motions for recusal of plaintiff's counsel, denied plaintiff's motion for protective order, and denied defendant's motion to dismiss.

Because the notice of appeal detailed four specific denials the trial court made in the 27 September 2024 order, the intent to appeal from that order can be easily inferred from that notice. It would be unreasonable to think the appellee would be misled by the incorrect month on the notice of appeal. Thus, under *Von Ramm*, we

will consider assignments of error from the 27 September 2024 order.

Lastly, because the 23 January 2025 order dismissing plaintiff's claims with prejudice is a final judgment of a superior court, we have jurisdiction over plaintiff's appeal. N.C.G.S. § 7A-27(b)(1) (2025).

III. Standards of Review

"[O]rders regarding discovery matters are within the discretion of the trial court and will not be upset on appeal absent a showing of abuse of that discretion." *Miller v. Forsyth Mem'l Hosp., Inc.*, 174 N.C. App. 619, 620 (2005) (quoting *Windman v. Britthaven, Inc.*, 173 N.C. App. 630, 632 (2005)). Similarly, we review a trial court's decision to deny a motion for leave to amend for abuse of discretion. *Cunningham v. Riley*, 169 N.C. App. 600, 603 (2005). "An abuse of discretion is a decision manifestly unsupported by reason or one so arbitrary that it could not have been the result of a reasoned decision." *Briley v. Farabow*, 348 N.C. 537, 547 (1998).

IV. Discussion

Plaintiff argues that the trial court erred by granting defendants' motion to dismiss and by denying plaintiff's motion for leave to amend her complaint. Specifically, plaintiff argues that the record does not support the notion that plaintiff had failed to produce all journals in her possession, that the trial court "failed to reasonably interpret" the 8 September 2024 order, and that any failure to produce was owed to good faith objection or practical limitations.

Defendants' contend that plaintiff repeatedly failed to produce her journals

despite being ordered to do so by both the trial court and this Court. Defendants also argue that plaintiff's motion for leave to amend was futile.

A. Motion to Dismiss

If a party fails to obey an order entered under Rule 26(f), the trial court may make an order dismissing the action. N.C.G.S. § 1A-1, Rule 37(b)(2)(c) (2025). "Before a court imposes severe sanctions, such as dismissing an action with prejudice, 'it must consider less severe sanctions.' " *Dunhill Holdings, LLC v. Lindberg*, 282 N.C. App. 36, 85 (2022) (quoting *Hursey v. Homes by Design, Inc.*, 121 N.C. App. 175, 179 (1995)). "The trial court is not required to *impose* lesser sanctions, but only to *consider* lesser sanctions." *Global Furniture, Inc. v. Proctor*, 165 N.C. App. 229, 233 (2004) (second emphasis added); *see also Badillo v. Cunningham*, 177 N.C. App. 732, 735 (2006) (stating the trial court is not required to list and specifically reject each possible lesser sanctions prior to determining that dismissal is appropriate).

Here, the trial court dismissed the action after plaintiff had refused to submit "all" her journals to the trial court for in camera inspection. The record shows that the trial court considered lesser discovery sanctions prior to dismissing the action, specifically by assessing a total amount of attorney fees against plaintiff of $11,147.75 and costs of $505.65. *Singleton II*, slip op. at 4. The record also shows that plaintiff repeatedly failed to comply with ordered discovery requirements, even after this Court affirmed the 8 September 2024 Order. These considerations, standing alone, are sufficient to uphold the trial court's sanction of dismissal. *See Proctor*, 165 N.C.

App. at 232.

Regarding plaintiff's argument of good faith objection, we find nothing in the record to support plaintiff's inability to produce the required medical records. Plaintiff's failures to comply with the 8 September 2024 Order "were due to [her] own conduct and circumstances within [her] control." *See Lindberg*, 282 N.C. App. at 64.

Thus, the trial court did not abuse its discretion by dismissing the action for plaintiff's repeated failures to comply with discovery mandates.

B. Motion for Leave to Amend

Plaintiff argues that the trial court erred by denying her motion for leave because it improperly considered evidence outside the pleadings. Plaintiff further argues that her motion for leave should have been granted because the new allegations formed the basis for claims of fraud and obstruction that were "inextricably related" to her underlying claim for medical negligence. In response, defendants argue that plaintiff's contention that the trial court considered evidence outside the pleadings is disingenuous and any proposed claims were futile. Defendants also assert that plaintiff's motion is now moot.

We agree with defendants and hold that plaintiff's motion is now moot. However, even if the motion were not moot, we would still affirm the trial court's denial of plaintiff's motion pursuant to *Miller*.

If a party moves for leave to amend, "leave shall be freely given when justice so requires." N.C.G.S. § 1A-1, Rule 15(a) (2025). However, a trial court may deny a

motion pursuant to the *Foman* factors. *United Leasing Corp. v. Miller*, 60 N.C. App. 40, 43 (1982) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). These *Foman* factors include whether the amendment: (1) would cause undue delay, (2) is the product of bad faith or dilatory tactics, (3) would cause undue prejudice, (4) would be futile, or (5) would represent a repeated failure to cure defects of previous amendments. *Id.* (citing *Foman*, 371 U.S. at 182). The trial court may also deny a motion for leave if the facts alleged in the proposed amendment fail to state a claim for relief. *Smith v. McRary*, 306 N.C. 664, 666 (1982).

Here, plaintiff first argues that the trial court improperly considered evidence outside of the pleadings when denying leave. Plaintiff relies on *Stanback v. Stanback*, where our Supreme Court stated that a "Rule 12(b)(6) motion to dismiss for failure to state a claim is indeed converted to a Rule 56 motion for summary judgment when matters outside the pleadings are presented to and not excluded by the court." 297 N.C. 181, 205 (1979). However, this reliance is misplaced because *Stanback* refers to the conversion of a Rule 12(b)(6) motion hearing to a Rule 56 motion hearing, not the conversion of a Rule 15 hearing to a Rule 56 hearing. *Id.*

Instead, when a trial court rules on a motion for leave to amend, it must consider the *Foman* factors. *Miller*, 60 N.C. App. at 43. We reject plaintiff's argument that the trial court's consideration of facts outside the pleadings converted the hearing from one on a motion for leave to amend to one on summary judgment.

Next, plaintiff attempts to establish claims of fraud and obstruction by

claiming that defendants destroyed the physical copies of plaintiff's x-rays. Plaintiff argues that the trial court's denial of leave infringes on her "substantial right to avoid separate trials on the same issues and creates the possibility of inconsistent verdicts on factual issues." We reject this argument.

Plaintiff's decision not to move for leave to amend prior to the expiration of the statute of limitations, combined with the two interlocutory appeals, help show a continued effort of plaintiff to delay litigation in this matter. The trial court's denial of leave was proper.

V. Conclusion

The trial court did not err by dismissing the action and by denying plaintiff's motion for leave to amend.

AFFIRMED.

Judges TYSON and COLLINS concur.

Report per Rule 30(e).