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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA26-18

Filed 18 November 2026

Cumberland County, No. 18CVS005146-250

SHARELL FARMER, Plaintiff,

v.

TROY UNIVERSITY, PAMELA GAINEY, and KAREN TILLERY, Defendants.

Appeal by defendants Pamela Gainey and Karen Tillery and cross-appeal by plaintiff Sharell Farmer from order entered 15 July 2025 by Judge C. Douglas Green in Cumberland County Superior Court. Heard in the Court of Appeals 30 September 2026.

Kennedy, Kennedy, Kennedy and Kennedy, LLP, by Harold L. Kennedy, III, and Harvey L. Kennedy, for plaintiff-appellee/cross-appellant.

FordHarrison LLP, by Benjamin P. Fryer and Grant M. Wills, for defendant-appellants/cross-appellees.

ZACHARY, Judge.

Defendants Pamela Gainey and Karen Tillery appeal from the trial court's order denying their motion for summary judgment on res judicata grounds, and Plaintiff Sharell Farmer cross-appeals from the trial court's order granting Defendant Troy University's motion for summary judgment on res judicata grounds.

After careful review, we dismiss Defendants Gainey and Tillery's appeal and affirm the court's order as to Defendant Troy University.

I. Background

In 2015, Plaintiff was employed by Troy University at its Fayetteville, North Carolina office. On 22 May 2015, Plaintiff sent an email to Kara Hall in Troy University's Human Resources Department "set[ting] forth several concerns about the work environment at the recruiting office for which he worked," including acts of sexual harassment and discrimination by Troy University employees Pamela Gainey and Karen Tillery. Plaintiff contends that after he complained, he was subjected to a systemic course of retaliation, including a written warning, a suspension, changes to his schedule, and, on 9 September 2015, termination of his employment.

On 9 February 2017, Plaintiff filed a complaint in the United States District Court for the Eastern District of North Carolina raising two retaliation claims against Troy University. On 31 March 2017, Troy University filed its motion to dismiss. On 21 August 2017, the federal court entered an order dismissing Plaintiff's complaint with prejudice, determining that Plaintiff's 42 U.S.C. § 1981 claim was barred by sovereign immunity and that Plaintiff failed to state a claim upon which relief could be granted as to his Title IX claim.

The following year, on 24 July 2018, Plaintiff filed a second action against Troy University in Cumberland County Superior Court in which he included Pamela Gainey and Karen Tillery as defendants. Plaintiff again asserted that he had suffered

retaliation, advancing claims for wrongful discharge (Troy University); negligent retention and/or supervision of an employee (Troy University); intentional infliction of mental and emotional distress (all Defendants); tortious interference with contractual rights (all Defendants); and in the alternative, "[i]f the court were to determine that all of . . . Plaintiff's claims . . . are barred by the doctrine of [s]overeign [i]mmunity," a state constitutional claim pursuant to Article I, Section 19 (all Defendants). On 25 April 2019, Plaintiff filed a stipulation providing that he would not seek to recover "any damages from" nor "to enforce any judgment against Ms. Gainey or Ms. Tillery."

At the close of discovery, Defendants filed a joint motion for summary judgment, which came on for hearing on 23 June 2025. On 14 July 2025, the court heard arguments on the issue of res judicata and entered an order the following day, 15 July 2025, granting summary judgment in favor of Defendant Troy University and denying summary judgment as to Defendants Gainey and Tillery.

Defendants Gainey and Tillery filed written notice of appeal on 16 July 2025. Later that same day, Plaintiff filed notice of voluntary dismissal without prejudice of all claims against Defendants Gainey and Tillery. On 17 July 2025, Plaintiff filed a written notice of appeal from the order granting Troy University's motion for summary judgment.

II. Appellate Jurisdiction

"At the outset, we must determine whether this appeal is properly before us."

RPR & Assocs., Inc. v. State, 139 N.C. App. 525, 527, 534 S.E.2d 247, 249 (2000), *aff'd per curiam*, 353 N.C. 362, 543 S.E.2d 480 (2001). "Generally, appellate courts only have jurisdiction to hear appeals from a final judgment, not from an interlocutory order." *Lannan v. Bd. of Governors of Univ. of N.C.*, 285 N.C. App. 574, 581–82, 879 S.E.2d 290, 297 (2022), *aff'd as modified*, 387 N.C. 239, 913 S.E.2d 163 (2025).

Farmer Appeal

Defendant Troy University argues that Plaintiff's appeal of the trial court's order granting summary judgment in favor of Troy University "fails at the outset and should be dismissed as . . . interlocutory." We disagree.

"[T]his Court has routinely recognized where a trial court grants partial relief dismissing some claims against a defendant and a plaintiff subsequently voluntarily dismisses the remaining claims, the trial court's order is no longer interlocutory but becomes a final judgment." *Cassida v. Cassida*, ___ N.C. App. ___, ___, 932 S.E.2d 288, 295 (2026) (citing *Goodman v. Holmes & McLaurin Att'ys at Law*, 192 N.C. App. 467, 471–72, 665 S.E.2d 526, 530 (2008) ("[The] plaintiff voluntarily dismissed all of the claims which survived the trial court's two orders . . . . Thus[,] [the] plaintiff's claims were no longer interlocutory, and any rationale for dismissing the appeal as interlocutory fails."), *disc. review dismissed as moot*, 363 N.C. 125, 675 S.E.2d 363 (2009)).

In the case at bar, the trial court granted Defendants' motion for summary judgment as to Defendant Troy University and denied the motion as to Defendants

Gainey and Tillery, leaving Plaintiff's claims against them pending. If Plaintiff had appealed at that point, his appeal would have been from an interlocutory order. However, on 16 July 2025, before giving notice of appeal, Plaintiff voluntarily dismissed the remaining claims against Defendants Gainey and Tillery. Therefore, as to Plaintiff, "the trial court's order is no longer interlocutory but becomes a final judgment." *Id.* "Consequently, this Court has jurisdiction over Plaintiff's appeal." *Id.*

Gainey and Tillery Appeal

Defendants Gainey and Tillery appealed prior to Plaintiff's voluntary dismissal of his claims against them, and they acknowledge the interlocutory nature of their appeal. However, Defendants Gainey and Tillery assert that the order denying their motion for summary judgment based on res judicata is immediately appealable as affecting a substantial right, arguing that "it subjects a defendant or one in privity with a defendant to twice defend against the same claims by the same plaintiff" and that "the risk of inconsistent verdicts is plainly presented in this case." We disagree.

By and large, "a party has no right of immediate appeal from interlocutory orders and judgments." *Bartels v. Franklin Operations, LLC*, 288 N.C. App. 193, 195, 885 S.E.2d 357, 359 (2023) (extraneity omitted). "An interlocutory order is one made during the pendency of an action, which 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." *Smith v. Polsky*, 251 N.C. App. 589, 594, 796 S.E.2d 354, 358 (2017) (citation omitted). "As a general rule, a moving party may not appeal the denial of a

motion for summary judgment[.]" *Cameron Hosp., Inc. v. Cline Design Assocs., PA*, 223 N.C. App. 223, 225, 735 S.E.2d 348, 350 (2012), *disc. review denied*, 366 N.C. 564, 738 S.E.2d 370 (2013).

Nevertheless, "immediate review is available where the order affects a substantial right." *Polsky*, 251 N.C. App. at 594, 796 S.E.2d at 358. "Our Supreme Court has defined a 'substantial right' as a legal right affecting or involving a matter of substance as distinguished from matters of form: a right materially affecting those interests which a person is entitled to have preserved and protected by law: a material right." *Id.* at 594–95, 796 S.E.2d at 358 (extraneity omitted). "The burden is on the appellant to establish that a substantial right will be affected unless he is allowed immediate appeal from an interlocutory order." *Embler v. Embler*, 143 N.C. App. 162, 166, 545 S.E.2d 259, 262 (2001).

An order denying a dispositive motion asserting res judicata may affect a substantial right if there is "a risk of two actual trials resulting in two different verdicts." *Polsky*, 251 N.C. App. at 596, 796 S.E.2d at 360 (citation omitted). A risk of "inconsistent verdicts" is "a risk that different fact-finders would reach *irreconcilable* results when examining the same factual issues a second time." *Doe v. City of Charlotte,* 273 N.C. App. 10, 21, 848 S.E.2d 1, 10 (2020) (citation omitted).

"[T]he mere fact that claims arise from a single event, transaction, or occurrence does not, without more, necessitate a conclusion that inconsistent verdicts may occur." *Id.* (citation omitted). Accordingly, "the appellant cannot meet its burden

under the inconsistent verdicts doctrine simply by asserting that the facts involved in the claims remaining before the trial court may overlap with the facts involved in the claims that have been dismissed." *Id.* (extraneity omitted). Rather, "the appellant must explain to the Court *how*, in a second trial on the challenged claims, a second fact-finder might reach a result that cannot be reconciled with the outcome of the first trial." *Id.* (emphasis added).

It is clear that Defendants Gainey and Tillery's "assertion of a res judicata defense ha[s] no talismanic effect on the substantial right inquiry." *Polsky*, 251 N.C. App. at 598, 796 S.E.2d at 360. "To confer appellate jurisdiction based on a substantial right, the appellant must include in its opening brief, in the statement of the grounds for appellate review, sufficient facts and argument to support appellate review on the ground that the challenged order affects a substantial right." *Doe,* 273 N.C. App. at 21, 848 S.E.2d at 9 (extraneity omitted).

In their statement of grounds for appellate review, Defendants Gainey and Tillery contend that a substantial right will be lost absent immediate appellate review of the trial court's order rejecting their res judicata defense. They assert that the denial of the summary judgment motion as to Plaintiff's claims against them "could lead to a second trial in frustration of the underlying principles of the doctrine of res judicata," which "presents the risk of inconsistent verdicts in the [f]ederal [a]ction and [s]tate [a]ction." Additionally, Defendants Gainey and Tillery maintain that while they "have sufficiently explained in their opening brief why the [s]uperior

[c]ourt's order denying summary judgment affects a substantial right[,]" the "risk of inconsistent verdicts is plainly presented in this case in any event for purposes of this Court's appellate review."

Defendants Gainey and Tillery argue that the claims in the federal case against Troy University and the claims in the case at bar arise from the "same core operative facts" and that they are in privity with Troy University. Yet they fail to explain how a jury's consideration of those facts could lead to irreconcilable results, and it is well settled that this Court cannot "construct arguments for or find support for [an] appellant's right to appeal from an interlocutory order[.]" *Jeffreys v. Raleigh Oak Joint Venture*, 115 N.C. App. 377, 380, 444 S.E.2d 252, 254 (1994).

Accordingly, we conclude that Defendants Gainey and Tillery have failed to demonstrate how the denial of their motion for summary judgment "deprive[d] [them] of a substantial right which would be jeopardized absent a review prior to a final determination on the merits." *Id*. We dismiss Defendants Gainey and Tillery's appeal.

III. Discussion

Plaintiff asserts that the trial court erred by "granting Defendant Troy University's motion for [s]ummary [j]udgment based solely on res judicata." We disagree.

A. Standard of Review

"We review a trial court's order granting . . . summary judgment de novo." *Williams v. Peabody*, 217 N.C. App. 1, 4, 719 S.E.2d 88, 92 (2011). "Such review

requires a two-step analysis whereby summary judgment is appropriate if (1) the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact; and (2) the moving party is entitled to judgment as a matter of law." *Moody v. Able Outdoor, Inc.*, 169 N.C. App. 80, 83, 609 S.E.2d 259, 261 (2005) (extraneity omitted).

"Summary judgment is appropriate for the defending party when (1) an essential element of the other party's claim or defense is non-existent; (2) the other party cannot produce evidence to support an essential element of its claim or defense; or (3) the other party cannot overcome an affirmative defense which would bar the claim." *Id*. at 84, 609 S.E.2d at 261 (emphasis omitted).

"[R]es judicata is an affirmative defense[.]" *Cty. of Rutherford v. Whitener*, 100 N.C. App. 70, 73, 394 S.E.2d 263, 264 (1990). "[W]hether the doctrine of res judicata operates to bar a cause of action is a question of law reviewed de novo on appeal." *Housecalls Home Health Care, Inc. v. State, Dep't of Health & Hum. Servs.,* 225 N.C. App. 306, 313, 738 S.E.2d 753, 758, *disc. review denied*, 366 N.C. 592, 743 S.E.2d 181 (2013).

B. Analysis

On appeal, Plaintiff asserts that "the trial court committed reversible error by granting Defendant Troy University's motion for summary judgment" because "the doctrine of res judicata does not apply in [this] case." We disagree.

"Under the doctrine of res judicata or 'claim preclusion,' a final judgment on

the merits in one action precludes a second suit based on the same cause of action between the same parties or their privies." *Williams*, 217 N.C. App. at 5, 719 S.E.2d at 92.

> In order to successfully assert the doctrine of res judicata, a litigant must prove the following essential elements: (1) a final judgment on the merits in an earlier suit, (2) an identity of the causes of action in both the earlier and the later suit, and (3) an identity of the parties or their privies in the two suits.

Cassida, ___ N.C. App. at ___, 932 S.E.2d at 298.

Final Judgment on the Merits

As regards this element of a res judicata analysis, Plaintiff asserts that because one claim of his federal action was dismissed for "lack of subject[-]matter jurisdiction," the federal court should have dismissed it without prejudice rather than with prejudice; therefore, the dismissal did not constitute a judgment on the merits. Plaintiff contends that, with an adjudication on the merits in only one of the two claims, there was no final judgment on the merits in the federal suit and hence, the doctrine of res judicata is inapplicable.

As relevant here, the federal court expressly stated in its order—which Plaintiff declined to appeal—that its dismissal with prejudice of Plaintiff's 42 U.S.C. § 1981 claim was on the grounds of sovereign immunity. Although where a defendant is "protected by sovereign or governmental immunity, the court has no subject[-]matter jurisdiction over [the] plaintiff's claims," *Bunch v. Britton*, 253 N.C. App. 659,

665, 802 S.E.2d 462, 468 (2017), sovereign immunity is an exception to the rule upon which Plaintiff's argument hinges. "[A] ruling on the affirmative defense of sovereign immunity is a ruling on the merits." *Herring v. Winston-Salem/Forsyth County Bd. of Educ.,* 188 N.C. App. 441, 446, 656 S.E.2d 307, 311 (2008). Thus, "a dismissal on grounds of sovereign immunity is a final judgment on the merits for purposes of res judicata." *Id.* at 445, 656 S.E.2d at 310. We conclude that the dismissal of Plaintiff's § 1981 claim was an adjudication on the merits for res judicata purposes. *Id.*

The federal court also dismissed Plaintiff's Title IX claim with prejudice for failure to state a claim under Rule 12(b)(6). This dismissal "constitutes a final judgment on the merits for res judicata purposes and bars [P]laintiff from maintaining another action on the basis of this same claim." *United Daughters of the Confederacy v. City of Winston-Salem*, 383 N.C. 612, 650, 881 S.E.2d 32, 60 (2022).

Consequently, the federal court's dismissal with prejudice of Plaintiff's claims constitutes a final judgment on the merits in an earlier suit for res judicata purposes. The first element of res judicata is satisfied.

Identity of Actions

Plaintiff next asserts that the second element of res judicata—"an identity of the causes of actions in both the earlier and the later suit"—is not satisfied here, as the claims in the federal suit are based on different acts than the claims in the state suit. *Moody*, 169 N.C. App. at 84, 609 S.E.2d at 262. We disagree.

Although there must be an identity of the causes of action in both suits, *see*

Cassida, ___ N.C. App. at ___, 932 S.E.2d at 298, for purposes of res judicata, "[s]trict identity of issues is not absolutely required," so long as the issues arise out of the same operative facts as the prior action. *Caswell Realty Assocs. I, L.P. v. Andrews Co.*, 128 N.C. App. 716, 720, 496 S.E.2d 607, 610 (1998) (extraneity omitted). Additionally, "[t]he defense of res judicata may not be avoided by shifting legal theories or asserting a new or different ground for relief." *Britt v. Wake Cty. Sheriff's Off.*, ___ N.C. App. ___, ___, 931 S.E.2d 598, 602 (2026).

> A judgment operates as an estoppel not only as to all matters actually determined or litigated in the proceeding, but also as to all relevant and material matters within the scope of the proceeding which the parties, in the exercise of reasonable diligence, could and should have brought forward for determination.

Id. at ___, 931 S.E.2d at 601 (extraneity omitted). "A party is required to bring forth the whole case at one time and will not be permitted to split the claim or divide the grounds for recovery." *Id.* at ___, 931 S.E.2d at 601–02.

Here, the trial court determined that both the federal and state actions "ar[o]se out of the same occurrences and transactions, mainly centering around the alleged actions of Defendants Gainey and Tillery during their employment with Defendant Troy University." We agree. The operative facts giving rise to both causes of actions are the same: Plaintiff alleges that he witnessed and experienced discrimination and harassment by Troy University employees, which he reported to the Troy University Human Resources Department; he thereafter suffered retaliation for his complaint,

culminating in the termination of his employment.

Plaintiff further argues that res judicata will not bar a second action arising from the same operative facts where the subsequent action seeks a remedy for "separate and distinct tortious acts" leading to "separate and distinct injuries," citing *Tong v. Dunn,* 231 N.C. App. 491, 752 S.E.2d 669 (2013). Plaintiff maintains that his inclusion in the second complaint of state common-law claims evinces separate acts resulting in separate injuries, because the first action sought minimal damages for "a wrong against a student which was minor" and the second sought "significant and major damages" for the "wrongful tortious conduct . . . directly against" Plaintiff.

Plaintiff's reliance on *Tong* is misplaced. In *Tong*, the appellant presented two separate injuries—the loss of a promised $300,000.00 employment incentive and the reduction of his shareholder value from a merger that only benefitted preferred shareholders—premised on two separate acts—the defendants' false promises regarding his employment agreement and the breach of a duty to common shareholders. 231 N.C. App. at 501, 752 S.E.2d at 676. By contrast, the claims advanced by Plaintiff in both the federal and state suits are predicated on Plaintiff's allegations of retaliation after he complained of harassment and discrimination. Thus, we conclude that there is "an identity of the causes of action in both the earlier [federal] suit and the later [state] suit." *Cassida*, ___ N.C. App. at ___, 923 S.E.2d at 298.

Identity of the Parties or Their Privies

Finally, Plaintiff contends that the trial court erred by dismissing his complaint on the grounds of res judicata because the state action includes two additional defendants who are not in privity with Defendant Troy University. We disagree.

To satisfy the third element of a res judicata analysis, a litigant must show that there exists a shared "identity of the parties or their privies in the two suits." *Id.* "Both the party asserting res judicata and the party against whom res judicata is asserted must be either parties *or* stand in privity with parties to the original action." *Williams*, 217 N.C. App. at 8, 719 S.E.2d at 94 (extraneity omitted) (emphasis added). However, "it is not necessary that precisely the same parties were plaintiffs and defendants in the two suits[,] provided the same subject in controversy, between two or more of the parties, has been directly in issue in the former suit, and decided." *Green v. Dixon*, 137 N.C. App. 305, 309, 528 S.E.2d 51, 54–55 (extraneity omitted), *aff'd per curiam*, 352 N.C. 666, 535 S.E.2d 356 (2000). Put simply, the addition of parties to a later suit will not defeat the res judicata defense of a party to the original suit or one in privity with that party. *See Williams*, 217 N.C. App. at 11, 719 S.E.2d at 96.

Here, Plaintiff originally filed suit against Defendant Troy University in federal court. Following the dismissal with prejudice of that suit, Plaintiff filed a second suit against Defendant Troy University, together with Defendants Gainey and Tillery, in state court. Plaintiff and Defendant Troy University were parties in both

suits; hence, there was an identity of the parties.

Plaintiff's argument that "there was no identity of the parties or their privies" because Defendants "Gainey and Tillery were not privies" with Defendant Troy University is inapt. The disjunctive phrase "parties or their privies" recognizes that privity is relevant when the litigant in the subsequent action was not itself a party to, or a party appearing in the same capacity in, the prior action. *See Cassida*, ___ N.C. App. at ___, 932 S.E.2d at 298. It does not impose an additional requirement that an original party must establish its privity with other parties. Therefore, as regards the identity of the parties, it is of no moment that Plaintiff named additional defendants in his second suit or that these defendants may not be in privity with Defendant Troy University. We conclude that the trial court did not err in determining that there was an identity of parties, satisfying the third element of res judicata.

In sum, each element of res judicata has been established as to Plaintiff's claims against Defendant Troy University: "a final judgment on the merits in an earlier suit"; "an identity of the causes of action in both" suits; and "an identity of the parties or their privies in the two suits." *Id.*

IV. Conclusion

For the foregoing reasons, we dismiss the appeal of Defendants Gainey and Tillery and we affirm the trial court's order granting summary judgment as to Defendant Troy University on the basis of the affirmative defense of res judicata.

APPEAL DISMISSED; CROSS-APPEAL AFFIRMED.

Judges STROUD and WOOD concur.

Report per Rule 30(e).