

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA12-493
NORTH CAROLINA COURT OF APPEALS

Filed: 19 March 2013

WILLIAM DAVID CARDEN,
Plaintiff,

v.

Durham County
No. 11 CVS 5119

OWLE CONSTRUCTION, LLC,
Defendant.

Appeal by plaintiff from order entered 5 March 2012 by Judge Orlando F. Hudson, Jr., in Durham County Superior Court. Heard in the Court of Appeals 26 September 2012.

Law Office of Michael W. Patrick, by Michael W. Patrick and Suzanne Begnoche, for plaintiff-appellant.

Bryant, Lewis & Lindsley, P.A., by David O. Lewis, for defendant-appellee.

BRYANT, Judge.

Where the Cherokee Court had subject matter jurisdiction over plaintiff's action, the Durham County Superior Court did not err by dismissing plaintiff's action pursuant to Rule 12(b)(1) of the North Carolina Rules of Civil Procedure. Where the trial court properly dismissed plaintiff's claim based on lack of subject matter jurisdiction, we do not reach plaintiff's

remaining argument that the trial court erred in dismissing his action for failure to state a claim upon which relief could be granted.

Facts and Procedural History

On 29 September 2011, plaintiff William David Carden filed a complaint alleging negligence against defendant Owle Construction, LLC, in Durham County Superior Court. Defendant, employed by Harrah's NC Casino Company, LLC, was making improvements to the curb and sidewalk at an intersection of U.S. Highway 19, near Harrah's Cherokee Hotel and Casino on the Qualla Boundary in Cherokee, North Carolina. Plaintiff alleged that on 12 December 2003, he was struck by a passing vehicle while standing at that intersection.

On 16 December 2011, defendant filed a motion to dismiss pursuant to Rule 12(b)(1), (2), and (6) of the North Carolina Rules of Civil Procedure.

On 5 March 2012, the trial court entered an order stating the following:

1. On December 8, 2006, the plaintiff filed a civil action in Durham County Superior Court against various defendants including Owle Construction, LLC, Harrah's Operating Company, Inc; and Harrah's N.C. Casino Company LLC (collectively, "Harrah's[") for personal injury claims arising out of an accident on the Qualla Boundary Indian Reservation.

2. After Harrah's filed a motion to dismiss the 2006 case for lack of subject matter jurisdiction, the case was removed by Consent Order to the Cherokee Court.
3. The Cherokee Court conducted a jury trial, which resulted in a mistrial on December 15, 2009.
4. Following the mistrial, the Cherokee Court ordered a mediation, which resulted in the settlement of plaintiff's claims against Harrah's and the Tribal Casino Gaming Enterprise [(TCGE)]. The plaintiff filed a voluntary dismissal with prejudice in the Cherokee Court on May 19, 2010 as to Harrah's and the [TCGE].
5. Following the dismissal of Harrah's and the [TCGE], the plaintiff filed a motion in the Cherokee Court seeking a transfer of the case back to Durham County Superior Court. That motion was denied by Judge Martin's September 2, 2010 Order. Judge Martin's order includes a finding of fact that, "The only remaining Defendant is Owle Construction, LLC, which is an Indian owned, North Carolina corporation." Judge Martin's order includes a conclusion of law that "The [Cherokee] Court has jurisdiction over the parties and the subject matter of this civil action."
6. On October 21, 2010, the plaintiff filed a motion in Durham County Superior Court bearing the 2006 Durham Superior Court case caption seeking to "lift the stay." The motion was denied by order entered in Durham County Superior Court on December 16, 2010. The Court of Appeals affirmed that order in an opinion issued January 17, 2012. [*Carden v. Owle Construction, LLC*, ___ N.C. App. ___, 720 S.E.2d 825 (2012).]

7. On October 27, 2010, the plaintiff filed a voluntary dismissal without prejudice in the Cherokee Court as to the defendant Owle.
8. The plaintiff filed the instant action in Durham County Superior Court on September 29, 2011.

The 5 March 2012 order dismissed plaintiff's complaint, holding that it lacked jurisdiction over the subject matter of the case and holding that the complaint failed to state a claim for which relief could be granted. From this order, plaintiff appeals.

Plaintiff presents the following issues on appeal: whether the trial court erred by (I) concluding that it had no subject matter jurisdiction; (II) concluding that plaintiff's complaint failed to state a claim upon which relief could be granted.

I

Plaintiff first argues the trial court erred in concluding that it lacked subject matter jurisdiction to hear plaintiff's action. We disagree.

"We review Rule 12(b)(1) motions to dismiss for lack of subject matter jurisdiction de novo and may consider matters outside the pleadings." *Harris v. Matthews*, 361 N.C. 265, 271, 643 S.E.2d 566, 570 (2007) (citation omitted).

Plaintiff argues that our Court's holding in *Sasser v. Beck*, 40 N.C. App. 668, 253 S.E.2d 577 (1979), established that North Carolina courts have subject matter jurisdiction to adjudicate tort claims arising on the Qualla Boundary between the Eastern Band of the Cherokee Indians (ECBI) and non-Indians. Further, plaintiff contends that because defendant is a corporation chartered by the State of North Carolina, "the General Court of Justice has jurisdiction of a suit by a non-Indian North Carolina citizen against a North Carolina corporation for a claim of negligence occurring in a right-of-way owned by the State of North Carolina."

However, the question before us in the instant case is whether once the Cherokee Court has assumed jurisdiction over a matter, it is error for the General Court of Justice to exercise jurisdiction over the same action.

Section 1E-1 of the North Carolina General Statutes provides that

[t]he courts of this State shall give full faith and credit to a judgment, decree, or order signed by a judicial officer of the Eastern Band of Cherokee Indians and filed in the Cherokee Tribal Court to the same extent as is given a judgment, decree, or order of another state, subject to the provisions of subsection (b) of this section; provided that the judgments, decrees, and orders of the courts of this State are given full faith and credit by the

Tribal Court of the Eastern Band of Cherokee Indians.

N.C. Gen. Stat. § 1E-1(a) (2011).

On 2 September 2010, an order was entered in the Cherokee Tribal Court of the Eastern Band of Cherokee Indians regarding plaintiff's motion to transfer the case to Durham County Superior Court. The 2 September 2010 order found the following: Plaintiff argued that because there was an absence of tribal entities (Harrah's and TCGE were dismissed from the case), plaintiff's motion should be granted. The Cherokee Court held that

[a]t the time of the transfer Order [(from Durham County Superior Court to the Cherokee Court)], Tribal entities were party Defendants, and all parties agreed that the [Cherokee] Court properly possessed subject matter jurisdiction over the action and personal jurisdiction over them. Indeed, there was a jury trial on the matter.

"Once the jurisdiction of a court or administrative agency attaches, the general rule is that it will not be ousted by subsequent events. This is true even when the events are of such a nature that they would have prevented jurisdiction from attaching in the first instance." *In Re Peoples*, 296 N.C. 109, 146, 250 S.E.2d 890, 911 (1978).

. . .

The Court can only conclude that the dismissal of the Tribal entities had no effect on the continued exercise of its

jurisdiction over the remaining parties and subject matter of the action. The Motion to dismiss should be denied.

Plaintiff's motion to dismiss before the Cherokee Court was denied.

Therefore, the trial court did not err in concluding that the Cherokee Court had jurisdiction over the parties and the subject matter of the action based on giving full faith and credit to the 2 September 2010 order.

II

Next, plaintiff argues that the trial court erred by dismissing his action based on failure to state a claim for which relief could be granted.

As the trial court properly dismissed plaintiff's action for lack of subject matter jurisdiction, we do not reach plaintiff's remaining argument. Therefore, the judgment of the trial court dismissing this action is affirmed.

Affirmed.

Judges HUNTER, Robert C., and STEELMAN concur.

Report per Rule 30(e).