New Law: Who Can Appear on Behalf of a Party in Small Claims Court and on Appeal?

In a previous post I talked about the law related to who can appear on behalf of a party in a small claims case. To briefly reiterate, small claims law makes two exceptions to the general rule requiring parties to be represented by an attorney if they do not choose to represent themselves. One exception allows corporations to appear in small claims court through an agent. See *Duke Power Co. v. Daniels*, 86 NC App 469 (1987). The other exception, applicable only in summary ejectment actions, allows agents with actual knowledge of the relevant facts to sign the summary ejectment complaint and (presumably) represent the plaintiff/owner in the small claims action. See *GS 7A-216* and *7A-223*. Both exceptions are well-established and reasonably straightforward, subject to a few somewhat uncertain points I addressed in my previous post.

Questions sometimes arise about whether these exceptions continue to apply when a small claims case is appealed to district court for a trial de novo. My opinion has been that they did not. In the first instance – the "corporate exception" – the Court of Appeal's decision in *Lexis-Nexis v. Travishan*, 155 NC App 205 (2002) specifically refused to extend the "small claims exception" to corporate appearances in district court. While the case did not specifically deal with an appeal from a small claims action, nothing in the somewhat emphatic language of the opinion suggested that a case's origin in small claims court might call for a different rule. In the second instance – the "summary ejectment" exception – the statutory basis, set out in two different statutes, is an authorization for an agent to sign the small claims complaint. This limited authorization, in my opinion, simply could not be reasonably read to negate the otherwise-clear prohibition of the unauthorized practice of law should the case land in district court on appeal. GS 84-4.

In 2017 the General Assembly enacted Senate Bill 88, authorizing small claims magistrates to sever claims for possession and money damages in summary ejectment actions under certain conditions. 2017-S.L. 143. That legislation became effective on October 1, 2017, and its implementation has raised a number of procedural questions, some of which I addressed in a previous blog post. Somewhat overlooked in the flurry are two provisions in the new law related to the subject of this blog. Whether and how they change the law set out above is the topic of this post.

The first provision amends GS 7A-222 to add subsection (c), which states: "Notwithstanding GS 84-4, a party in a small claim action shall not be required to obtain legal representation." As mentioned above, well-established law provides that parties may be represented by attorneys or represent themselves, so this amendment appears to do little to change existing law: parties are not required to be represented by attorneys because they are entitled to represent themselves. Corporations, however, are unable to represent themselves except by an agent, and so this amendment can be read as a codification of the "corporate exception" established in *Duke*

Power. The new law also answers the question about whether that exception extends to business entities other than corporations, such as LLC's and PA's.

The precise phrasing of this provision troubles me a little bit, in two ways. First, the words "[n]otwithstanding GS 84-4" seems to suggest that what follows is in conflict with that statute. GS 84-4, however, specifically limits its application to exclude situations in which a party is acting "in his own behalf as a party" or when a court appearance is "otherwise permitted by law." Assuming I understand it correctly, the amendment seems to be consistent, rather than in conflict, with GS 84-4. Second, the General Assembly chose to phrase the amendment in the negative: A party shall not be required to obtain counsel. Because any parties capable of doing so are entitled to represent themselves as an alternative to obtaining legal counsel, the amendment is presumably implicated only when a party—a corporation, for example—is an entity other than a legally competent individual. Most significantly, the statutory phrasing does not identify acceptable alternatives to counsel in small claims actions.

Does the amendment change current law applicable to small claims court? Certainly, nothing in the amendment suggests any intention to impose additional restrictions on who may represent a party in small claims court, and so it seems safe to assume that the corporate and summary ejectment exceptions remain in place. Does the amendment expand the list of actors who might appear? As I've said, the amendment probably gives additional support to the current reading of the corporate exception as extending to other business entities. Does it authorize spouses, employees of unincorporated businesses, or helpful neighbors to appear in court on behalf of plaintiffs who can't make it for one reason or another? While there may be some narrow technical legal argument to be made for such a reading, I don't think so. The support for such a reading is slight, and the chaotic consequences of such a rule so probable that a more traditional, conservative reading seems far preferable.

The second provision amends GS 7A-228 to add a subsection making the same change for "any party in an action appealed for a trial de novo." This amendment clearly changes the law for corporations in small claims appeals. As I've said, corporations are unable to represent themselves, and necessarily always act through an agent. The "corporate exception" recognized in Duke Power applied only to small claims court, and the effort to expand the exception to district court appearances was emphatically refused by the Court of Appeals in Lexis-Nexis. The new legislation mandates some version of the "corporate exception" for small claims appeals, although it remains to be seen whether the appellate courts will expound upon the requirements for an acceptable agent in such cases.

What is not so clear is the status of the "summary ejectment exception" in small claims appeals under the new legislation. In these cases, the property owner is the real party in interest and thus the named plaintiff, but these individuals quite often do not actually appear in small claims court. They are instead represented by an agent "with actual knowledge." In the event of an appeal, these owners do have the option of appearing on their own behalf, thus not implicating the

amendment's provision that no party shall be "required to obtain legal representation." This interpretation of the law does, however, result in a rule that allows greater leeway for plaintiff-landlords wishing to avoid legal fees at the small claims level than on appeal. Under the new legislation, for every other category of plaintiff, the application of the rules is the same at both levels. Of course, the inconsistency arises in the first place from the "summary ejectment exception" preferentially benefitting plaintiff-landlords at the small claims level, and there may well be sound reasons for maintaining it in light of the differences between the two courts.

Once again, we are reminded that even brief, seemingly-straightforward changes in the law often raise a multitude of uncertainties about how the new law will be interpreted and applied. At least it's never boring!