New Trial Motions under Rule 59: Only for Post-trial Relief?

North Carolina Rule of Civil Procedure 59 permits a trial judge to order a "new trial" for a number of reasons, including prejudicial irregularity, jury misconduct, newly-discovered evidence, insufficient evidence to justify the verdict, prejudicial error of law, and several other bases. Rule 59 relief is designed to follow fast on the heels of a trial judgment: a new trial motion must be served within 10 days of entry of judgment, and the court cannot extend this deadline. By its plain language, Rule 59 clearly is intended to provide relief after a "trial." Several of the listed grounds indeed explicitly relate to juries and verdicts or are otherwise relevant only in a post-trial context. And, of course, the stated remedy is itself a *new* "trial." To what extent are parties nevertheless allowed to use Rule 59 to seek relief from judgments not resulting from a jury or non-jury trial? And why might it matter? As discussed below, it appears that invoking Rule 59 for appealable orders other than trial judgments could put the movant's appeal rights at risk.

Cases. I admit the case law presents some ambiguity. In a handful of opinions, the Court of Appeals has tacitly accepted Rule 59 motions used as a procedural means of challenging non-trial judgments. In none of these cases, however, has the court squarely addressed the question of Rule 59's applicability. *See, e.g.*, Elliott v. Enka-Candler Fire and Rescue Dep't, Inc., 213 N.C. App. 160, 169 (2011) (analyzing a Rule 59 motion, apparently based on improper notice, to set aside summary judgment); Broughton v. McClatchy Newspapers, Inc., 161 N.C. App. 20, 34 (2003) (affirming denial of Rule 59 relief from summary judgment as a matter of discretion without discussing procedural propriety); Muse v. Charter Hosp. of Winston-Salem, 117 N.C. App. 468, 480–81 (1995) (affirming relief under Rule 59 from order granting summary judgment); *see also* Sellers v. Ochs, 180 N.C. App. 332, 335 (2006); Smith v. Johnson, 125 N.C. App. 603, 606 (1997) (rejecting Rule 59 motions for relief from summary judgment because Rule 59 grounds not properly invoked, but not addressing propriety of Rule 59 generally). The court also has held that the trial judge erred in denying a Rule 59 motion to amend a default judgment. Jackson v. Culbreth, 199 N.C. App. 531, 538–39 (2009). The default judgment contained findings of fact, however, as would be required after a non-jury trial, so the court seemed to treat the trial judge's disposition as though it had resulted from a non-jury trial. *See id.* at 537–38. In addition, in *Batlle v. Sabates*, 198 N.C. App. 407 (2009), the court permitted use of Rule 59 to seek relief from dismissal of claims as a discovery sanction. The court noted, however, that "no party to this proceeding has contended that a litigant is not entitled to seek relief from an order imposing sanctions . . . under . . . Rule 59, and we do not, for that reason, express an opinion on that issue here." *Id.* at 413, n.1.

In the few cases (of precedent) in which the court has actually addressed the question of Rule 59's applicability, the court has rejected a broader use of the Rule. In the relatively recent Court of Appeals opinion in Bodie Island Beach Club Ass'n, Inc. v. Wray, 215 N.C. App. 283 (2011), the trial court denied defendant's motions under Rule 59(a) to set aside default and summary judgment. The defendant appealed. The Court of Appeals determined that the motions were not properly brought under Rule 59 "[b]ecause both Rule 59(a)(8) and (9) are properly made after a trial, and the case *sub judice* concluded at the summary judgment stage." *Id.* at 287. Earlier cases support

the holding in *Bodie Island*. For example, in *Garrison ex rel. Chavis v. Barnes*, the court held that "Rule 59 is an inappropriate vehicle to challenge the denial of a Rule 60 motion." 117 N.C. App. 206, 211 (1994); *cf.* Curry v. First Fed. Savs. & Loan Ass'n of Charlotte, 125 N.C. App. 108, 112 (1997) (Rule 59(e) motion inappropriate to challenge denials of class certification and intervention motions because those orders were not "judgments").

[Note that in a case more recent than *Bodie Island*, the court reversed a trial court's denial of a Rule 59 motion seeking to amend a summary judgment order. Rutherford Plantation, LLC v. Challenge Golf Grp. of the Carolinas, LLC, 225 N.C. App. 79, 83 (2013). The dissenting judge argued that Rule 59 was "simply not applicable" to the case because the judgment was neither a verdict nor the result of a trial and had been used improperly to make legal arguments not made at the summary judgment hearing. *Id.* at 86. The Supreme Court affirmed the majority's opinion *per curiam* but with an equally divided panel, thus leaving the Court of Appeals opinion undisturbed and standing without precedential value. 367 N.C. 197, 197 (2014).]

The Caution. So it appears that, under the language of *Bodie Island*, Rule 59 is not intended for orders other than judgments resulting from trial. Parties should be very cautious when seeking relief under Rule 59 from other types of appealable judgments. A proper Rule 59 motion tolls the period for appeal of the underlying judgment. N.C. R. App. P. 3(c)(3); G.S. 1-279.1. If a court determines that Rule 59 was not the appropriate vehicle for the party's argument for relief, it is likely that the motion will not have tolled the appeal period. If the appeal deadline (typically thirty days) runs during the time the moving party's purported Rule 59 motion is pending, the party may lose its right to appeal. This was indeed the conclusion in *Bodie Island*. The Court of Appeals noted that the improper Rule 59 motions "did not toll the appeal, permitting us to dismiss the appeal[.]" 215 N.C. App. at 287–88. The court nevertheless went on to grant *certiorari* over the issue and then again concluded that the trial court did not err in denying the Rule 59 motions because they were "post-trial motions and because the instant case concluded at the summary judgment stage." *Id.* at 294–95.