Small Claims Appeals in Summary Ejectment Cases

In Small Claims Land there are so many questions about appeals for trial *de novo* that I could write a book – if only I knew the answers. Ba-dum-bum-CHING! In light of my limited mastery of a mysterious topic, a blog post seems like a better idea than a book. Today I'm going to talk about five possible endings in district court when a summary ejectment case is appealed. Certainly, there are more than five, so this list is not exhaustive. My hope is that at least one of them will be informative for you.

Dismissal for Lack of Subject-Matter Jurisdiction

I've previously blogged here about this topic but reiterate it due to its importance. Our appellate courts have said on numerous occasions that no trial court has subject-matter jurisdiction to consider a claim for summary ejectment in the absence of "a simple landlord-tenant relationship." *See, e.g.,* Hayes v. Turner, 98 NC App. 451 (1990); College Heights Credit Union v. Boyd, 104 NC App. 494 (1991).

While many opinions have emphasized this rule, one question, so far as I can tell, goes unanswered: Can a plaintiff cure this defect on appeal from a small claims judgment by amending the complaint to substitute a different claim for relief? Here's an example: a property owner files mistakenly files a summary ejectment action to remove an live-in employee (who is not a tenant). On appeal from small claims court, may the plaintiff amend the complaint to substitute a claim for injunctive relief based on a civil trespass theory? I wish I knew the answer to that question. GS 7A-229 authorizes the trial judge to order repleading, among other options, which perhaps provides some support for this action. What I DO know is that the rule about summary ejectment and subject-matter jurisdiction applies with equal force to small claims cases and appeals for trial de novo.

A Plaintiff May Take a Voluntary Dismissal of the Case

First Union National Bank v. Richards, 90 NC App 650 (1988) surprised most of us. In that case the Court of Appeals ruled that a plaintiff who loses in small claims, appeals to district court, and then voluntarily dismisses the **case** – not the **appeal** -- has avoided a final judgment in the case. The effect of a voluntary dismissal in these circumstances is not, as many of us thought, to re-institute the small claims judgment, but rather to erase it. The guiding principle in First Union, later cited with approval in a different case by the Supreme Court, is as follows: "When plaintiff gave notice of appeal for trial *de novo* in district court, it was if the case had been brought there originally." *See* Jones v. Ratley, 360 NC 50 (2005) [*per curiam* opinion reversing for "reasons stated in the dissenting opinion" in Jones v. Ratley, 168 NC App 126 (*citing* First Union).

The District Court May Dismiss the Case – or the Appeal

There are several situations in which an appeal of a summary ejectment action may terminate in a dismissal. Among those are:

1. When appeal is by a person claiming to be indigent, the district court may dismiss the appeal upon determining (1) that the claim of indigency was not true, or (2) that the action is frivolous or malicious. In this event, the judgment of the magistrate is affirmed. GS 7A-228(b1).
2. If the appellant fails to appear "and prosecute his appeal," the judge may dismiss the appeal, leaving the judgment of the magistrate in place. GS 7A-228(c).
3. GS 7A-228(d) sets out a detailed procedure terminating in eventual dismissal if the defendant's participation in the action has been minimal, aside from perfecting the appeal. This procedure is triggered when plaintiff files a motion to dismiss based on the statute. Space does not allow a detailed discussion of this procedure, but readers should consult the statute if such a motion is filed.
4. Just as in any other civil action, the plaintiff's failure to appear and prosecute may result in an involuntary dismissal under GS 1A-1, Rule 41(b).

Judgment on the Merits May be Entered in Favor of the Plaintiff/Landlord

Two legal issues sometimes come up when the landlord wins on appeal. First, Rule 62 (sort of) applies to small claims appeals just as it does in any other action. While trial judges sometimes order that plaintiff is entitled to "take immediate possession" of the premises, that order does not override the mandatory provisions of Rule 62 imposing a stay for the 30-day notice of appeal period.

There IS a wrinkle in the application of Rule 62, however. The stay is not automatic but is instead conditioned on the tenant's execution and performance of an undertaking to pay rent to the clerk's office during this 30-day period. GS 42-34.1(a). If the tenant won at the small claims level and the landlord prevailed on appeal for trial de novo, this will be new to the tenant. Quite often, however, the tenant will have lost at the small claims level and obtained a stay pending trial de novo. For these tenants, the requirement is simply that they maintain the stay by paying rent as it comes due. In the event of an appeal from the district court judgment, this procedure will continue. GS 42-34.1. A tenant who misses a payment and thus fails to maintain the stay may be evicted, but that eviction will have no impact on their appeal, whether to district court or the Court of Appeals.

The second issue related to judgment on the merits, regardless of who wins, requires the trial judge to include findings of fact and conclusions of law just as "if the case had been brought there originally." The Supreme Court in Jones v. Ratley, 360 NC 50 (2005) agreed with the dissent in the Court of Appeals (168 NC App 126) that Rule 52 applies with equal force in small claims appeals.

Judgment on the Merits May be Entered in Favor of the Tenant/Defendant

When the tenant wins a summary ejectment case on appeal, the aftermath is usually quite straightforward. A significant exception arises when a landlord has enforced the small claims judgment and evicted the tenant prior to trial in district court. (Note that judgments for possession of property are not automatically stayed by appeal for trial de novo. GS 1-292.) In that event, the landlord may be required to restore the tenant to possession of the rental property, GS 42-35, and to reimburse the tenant for damages resulting from the eviction. GS 42-36.

Thanks for tagging along on another tour of Small Claims Land! I hope you found some treasure along the way.