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NO. COA01-1493

NORTH CAROLINA COURT OF APPEALS

Filed: 5 November 2002

DANIELLE COUNCIL,
Plaintiff-Appellee

v.

Durham County
No. 01 CVS 3619

LEWIS SLACK,
Defendant-Appellant

Appeal by defendant from judgment entered 12 July 2001 by Judge Donald Jacobs in Durham County Superior Court. Heard in the Court of Appeals 11 September 2002.

James E. Rogers, P.A., by James E. Rogers; and Foy & Lavelle, PLLC, by Lydia E. Lavelle, for plaintiff-appellee.

Teague, Rotenstreich & Stanaland, LLP, by Kenneth B. Rotenstreich and Paul A. Daniels, for defendant-appellant.

Bailey & Dixon, L.L.P., by Gary S. Parsons and Dayatra T. King, for amicus curiae Nationwide Mutual Insurance Company.

WALKER, Judge.

Plaintiff filed a complaint alleging personal injury as the result of an automobile accident with defendant. At the mediation conference she sought \$187,000 in damages. After unsuccessful mediation, the case went to trial, which resulted in a verdict for plaintiff in the amount \$1,165.

Plaintiff then moved for an award of costs and attorney fees. Subsequently, after a hearing, the trial court awarded plaintiff

costs of \$6,981.65, and attorney fees for both of her attorneys, Ms. Lavelle and Mr. Rogers, in the amount of \$4,850.00 and \$18,462.50, respectively.

In its order allowing attorney fees, the trial court's findings, in pertinent part, are summarized as follows: (1) defendant made two oral conditional offers to settle for \$10,000, one during mediation and the other during jury deliberations; (2) defendant did not exercise superior bargaining power nor did plaintiff unreasonably go to trial; (3) although the plaintiff's demand may have been excessive, it could have also reasonably been more than \$10,000; (4) plaintiff's refusal to settle was not unreasonable; (5) defendant made no offers of judgment; (6) the amount of the oral conditional settlement offers were substantially above the jury's verdict; (7) plaintiff's credibility was severely challenged and (8) plaintiff's attorneys had no way of controlling plaintiff's credibility issues.

Defendant assigns as error the trial court's awards of attorney fees and costs. Specifically, defendant contends the trial court abused its discretion in awarding attorney fees and costs. However, defendant's argument is directed only at the trial court's award of attorney fees.

Attorney fees are recoverable by a successful party to a trial as part of court costs in personal injury actions where the judgment for damages is \$10,000 or less. N.C. Gen. Stat. § 6-21.1 (2001); *Washington v. Horton*, 132 N.C. App. 347, 349, 513 S.E.2d 331, 333 (1999). In such a case, the trial court has the

discretion to allow reasonable attorney fees as a part of court costs. N.C. Gen. Stat. § 6-21.1. We review defendant's assignment of error for an abuse of that discretion. *Hillman v. United States Liab. Ins. Co.*, 59 N.C. App. 145, 296 S.E.2d 302 (1982); *Callicut v. Hawkins*, 11 N.C. App. 546, 181 S.E.2d 725 (1971).

In determining whether to award attorney fees, a trial court should consider:

the entire record... including but not limited to the following factors: (1) settlement offers made prior to the institution of the action... (2) offers of judgment pursuant to Rule 68, and whether the "judgment finally obtained" was more favorable than such offers... (3) whether defendant unjustly exercised "superior bargaining power"... (4) in the case of an unwarranted refusal by an insurance company, the "context in which the dispute arose"... (5) the timing of settlement offers... [and] (6) the amounts of the settlement offers as compared to the jury verdict; and the whole record[.]

Washington, 132 N.C. App. at 351, 513 S.E.2d at 334-35 (citations omitted).

Here, the trial court addressed the Washington factors, and admittedly, some of the findings favor defendant. However, upon reviewing all of the findings, we cannot conclude that the trial court abused its discretion in awarding attorney fees and costs.

Nevertheless, where a trial court awards attorney fees under N.C. Gen. Stat. § 6-21.1, it must also make findings concerning "the time and labor expended, skill required, customary fee for like work, and experience or ability of the attorney based on competent evidence." *Thorpe v. Perry-Riddick*, 144 N.C. App. 567, 572, 551 S.E.2d 852, 856 (2001); see also *Porterfield v. Goldkuhle*,

137 N.C. App. 376, 528 S.E.2d 71 (2000). The mere recitation that the fees are "reasonable" without further findings is inadequate. *Thorpe*, 144 N.C. App. at 572, 551 S.E.2d at 857.

The amount of attorney fees awarded is not supported by the trial court's findings or conclusions. Moreover, the trial court awarded attorney fees for two attorneys without making findings as to whether this case reasonably required the skill of two attorneys or whether cases such as this customarily involve more than one attorney. The trial court awarded attorney fees based only on the following conclusions:

In its discretion, the Court allows attorney's fees requested for Plaintiff's counsel Lydia E. Lavelle, but deducting time spent reviewing the deposition of Dr. Paul Suh, leaving a total of 48.5 hours at a reasonable hourly rate of \$100.00 for a total of \$4,850.00.

In its discretion, the Court allows attorney's fees requested for Plaintiff's counsel James E Rogers, deducting time spent reviewing the deposition of Dr. Paul Suh, leaving a total of 105.5 hours at a reasonable hourly rate of \$175.00 for a total of \$18,462.50.

Although the trial court heard arguments in support of attorney fees, it failed to make findings concerning: (1) what was reasonable time and labor for plaintiff's counsel to expend, (2) skill required by this case, (3) the customary fee for similar cases and (4) the experience of the attorneys.

Since we are unable to determine if the amount of the attorney fees awarded is reasonable, we reverse and remand for a new hearing to determine the amount of attorney fees that should be awarded plaintiff.

Affirmed in part, reversed in part and remanded.

Judges McGEE and THOMAS concur.

Report per Rule 30(e).