NO. COA10-345

NORTH CAROLINA COURT OF APPEALS

Filed: 16 November 2010

AMERICAN DECORATIVE FABRICS, LLC,
Plaintiff,

v. Caldwell County
No. 07 CVS 801

JORDAN ALEXANDER, INC., H. ANDRE TEAGUE, JACKIE TEAGUE and MORGAN TEAGUE by and through her Guardian Ad Litem, Carroll D. Tuttle,
Defendants.

Appeal by plaintiff from order entered 3 February 2009 by Judge C. Preston Cornelius in Caldwell County Superior Court and from order and judgment signed 23 June 2009 by Judge Robert C. Ervin in Caldwell County Superior Court. Heard in the Court of Appeals 11 October 2010.

Law Offices of Matthew K. Rogers, PLLC, by Matthew K. Rogers, for plaintiff-appellant.

Gorham, Crone, Green & Steele, LLP, by John W. Crone, III and J. Samuel Gorham, III, for defendant-appellee Jackie Teague.

MARTIN, Chief Judge.

On 9 May 2007, plaintiff American Decorative Fabrics, LLC filed a complaint in superior court against defendants Jordan Alexander, Inc., H. Andre Teague, Jackie Teague, and Morgan Teague. Plaintiff American Decorative Fabrics manufactures and sells fabrics to customers, including furniture manufacturers. Jordan

Alexander, Inc. was "in the business of manufacturing furniture for sale in commerce." At the time the action was filed, H. Andre Teague and Jackie Teague were married; Morgan Teague is the couple's minor child. Jordan Alexander, Inc. was incorporated in North Carolina on 10 January 2005. According to its Business Corporation Annual Report filed on 3 April 2006, H. Andre Teague served as the President of Jordan Alexander, Inc. and Jackie Teague served as Jordan Alexander, Inc.'s Secretary and Treasurer.[1] The parties appear to agree, however, that in spite of these titles, Jackie Teague "performed no duties as a director or officer for Jordan Alexander" and "was not involved in the day-to-day operation of Jordan Alexander, Inc."

Plaintiff American Decorative Fabrics alleged in its complaint that it had a business relationship with Jordan Alexander, Inc. in which plaintiff provided fabric to Jordan Alexander, Inc. for use in the manufacture of furniture. Plaintiff further alleges that, in 2006, H. Andre Teague "requested assistance from [p]laintiff in funding [Jordan Alexander, Inc.]" so that he could pay "outstanding receivables, potentially including receivables owed to [plaintiff American Decorative Fabrics]." As a result, in July 2006, plaintiff American Decorative Fabrics provided "short-term financial assistance to [H. Andre Teague] in the form of a short-term loan" of $50,000.00. According to a letter dated

[1]According to the minutes of the first Board of Directors meeting, H. Andre Teague was elected to serve as President and Treasurer of Jordan Alexander, Inc., and Jackie Teague was elected to serve as Vice President and Secretary.

27 July 2006, which was sent to plaintiff by Jordan Alexander, Inc. and signed by H. Andre Teague, this $50,000.00 loan was to be repaid "in full on or before August 28, 2006"; however, at the time of the filing of this action in May 2007, the loan had not yet been repaid. The parties agree that Jordan Alexander, Inc. also placed orders with plaintiff "on numerous occasions beginning at the latest in July of 2006 and continuing through at least November of 2006." Although invoices for orders through November 2006 were alleged to have gone unpaid, defendant Jordan Alexander, Inc. continued to order fabric. After Jordan Alexander, Inc. ceased operation on or about 17 January 2007, the unpaid invoices owed to plaintiff were alleged to total $41,541.67.

Plaintiff's complaint alleged ten claims, including two claims for breach of contract and a request to pierce the corporate veil of Jordan Alexander, Inc. as to H. Andre Teague. Defendants' motion to dismiss plaintiff's complaint pursuant to N.C.G.S. § 1A-1, Rule 12(b)(6) was denied. Default judgments were entered against defendants Jordan Alexander, Inc. and H. Andre Teague, requiring payments of $289,516.52 plus reasonable attorney's fees and postjudgment interest.

Defendants Jackie Teague and Morgan Teague subsequently moved for summary judgment and plaintiff filed a cross-motion for summary judgment. The court granted defendants' motion for summary judgment as to Morgan Teague, but denied Jackie Teague's motion for summary judgment as well as plaintiff's cross-motion for summary judgment. After a bench trial, the trial court entered judgment in

which it determined that "Plaintiff has failed to carry its burden of establishing any claims set forth in Plaintiff's Complaint as to Defendant Jackie Teague by the greater weight of the evidence, and Plaintiff's Complaint should be dismissed as a matter of law." Accordingly, the court dismissed plaintiff's complaint as to Jackie Teague, dismissed and dissolved plaintiff's claim of attachment as to property owned by Jackie Teague, and ordered that Jackie Teague recover costs of the action from plaintiff. Plaintiff appeals.

The record on appeal lists fourteen assignments of error.[2] Those assignments of error in support of which plaintiff American Decorative Fabrics failed to present argument or cite relevant authority in its brief are deemed abandoned. *See* N.C.R. App. P. 28(b)(6) (amended Oct. 1, 2009) ("Assignments of error not set out in the appellant's brief, or in support of which no reason or argument is stated or authority cited, will be taken as abandoned.").

Additionally, at the time this appeal was taken, Rule 10(c) of "[t]he North Carolina Rules of Appellate Procedure require[d] that each assignment of error contained in the record on appeal state plainly and concisely and without argumentation the basis upon which error is assigned." *Kimmel v. Brett*, 92 N.C. App. 331, 334, 374 S.E.2d 435, 436 (1988) (internal quotation marks omitted); *see*

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[2]Because this appeal was taken prior to 1 October 2009, this appeal is subject to the former Rules of Appellate Procedure which required that appealing parties enumerate and carry forward their issues on appeal by way of assignments of error.

N.C.R. App. P. 10(c)(1) (amended Oct. 1, 2009) ("Each assignment of error shall, so far as practicable, be confined to a single issue of law; and shall state plainly, concisely and without argumentation the legal basis upon which error is assigned."). One of the purposes of this rule has been to "enable[] the appellate court to fairly and expeditiously consider the assignments of error as framed without making a voyage of discovery through the record in order to determine the legal questions involved." *Kimmel*, 92 N.C. App. at 335, 374 S.E.2d at 437 (internal quotation marks omitted); *see also State v. Kirby*, 276 N.C. 123, 130, 171 S.E.2d 416, 421 (1970) ("The Rules of the Supreme Court have been dictated by experience and stem from a desire to expedite the public business. They are designed to enable the [C]ourt to grasp more quickly the questions involved and to help it follow the assignments of counsel more intelligently."). Thus, "[a]ssignments of error which are 'broad, vague, and unspecific [sic] . . . do not comply with the North Carolina Rules of Appellate Procedure.'" *Hedingham Cmty. Ass'n v. GLH Builders, Inc.*, 178 N.C. App. 635, 641, 634 S.E.2d 224, 228 (second alteration and omission in original) (quoting *In re Lane Co.*, 153 N.C. App. 119, 123, 571 S.E.2d 224, 226-27 (2002)), *disc. review denied*, 360 N.C. 646, 636 S.E.2d 805 (2006).

Instead, "'the appellant must except and assign error separately to each finding or conclusion that he or she contends is not supported by the evidence, then state which assignments support which questions in the brief.'" *Id.* at 642, 634 S.E.2d at 228

(quoting *Concrete Serv. Corp. v. Investors Grp., Inc.*, 79 N.C. App. 678, 684, 340 S.E.2d 755, 759-60, *cert. denied*, 317 N.C. 333, 346 S.E.2d 137 (1986)); *see also Town of Burnsville v. Boone*, 231 N.C. 577, 580, 58 S.E.2d 351, 353-54 (1950) (holding that, when a party fails to object to specific findings of fact and a party's exceptions and assignments of error "are too general and indefinite to challenge the sufficiency of, and to bring up for review the evidence as to any particular finding of fact made by the trial judge," such exceptions are not proper). An appellant's "failure to assign error to specific findings of fact of the trial court renders those findings binding on this Court, which must conclude that [such unchallenged findings] are supported by competent evidence." *Hedingham Cmty. Ass'n*, 178 N.C. App. at 642, 634 S.E.2d at 228 (citing *Koufman v. Koufman*, 330 N.C. 93, 97-98, 408 S.E.2d 729, 731 (1991)); *see also Koufman*, 330 N.C. at 97, 408 S.E.2d at 731 ("Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal.").

Because, in the present case, plaintiff asserts only that the trial court erred "in finding facts that are unsupported by the trial record and evidence," we conclude that plaintiff has not properly assigned error to any of the trial court's forty-two (42) findings of fact and, thus, decline plaintiff's invitation to examine the entire record to adjudge the competency of the evidence supporting each of the trial court's findings. *See Viar v. N.C. Dep't of Transp.*, 359 N.C. 400, 402, 610 S.E.2d 360, 361 (per

curiam) ("It is not the role of the appellate courts . . . to create an appeal for an appellant."), *reh'g denied*, 359 N.C. 643, 617 S.E.2d 662 (2005). Therefore, we deem each of the trial court's findings of fact to be supported by competent evidence and overrule those assignments of error in which plaintiff purports to except and assign error to the court's findings as a whole.

Thus, the only argument properly before us is whether the trial court erred by failing to pierce Jordan Alexander, Inc.'s corporate veil as to Jackie Teague. Our Supreme Court has held that, where a corporation is operated such that it is "'a mere instrumentality or alter ego of the sole or dominant shareholder and a shield for his activities in violation of the declared public policy or statute of the State, the corporate entity will be disregarded and the corporation and the shareholder treated as one and the same person . . . .'" *Atl. Tobacco Co. v. Honeycutt*, 101 N.C. App. 160, 164, 398 S.E.2d 641, 643 (1990) (omission in original) (quoting *Henderson v. Sec. Mtge. & Fin. Co.*, 273 N.C. 253, 260, 160 S.E.2d 39, 44 (1968)), *disc. review denied*, 328 N.C. 569, 403 S.E.2d 506 (1991). In order to establish that a corporation is a "mere instrumentality or alter ego" indistinct from the persons composing it, a party must prove the following: "1. the domination and control of the corporate entity; 2. the use of that domination and control to perpetrate a fraud or wrong; 3. the proximate causation of the wrong complained of by the domination and control." *Id.* (citing *B-W Acceptance Corp. v. Spencer*, 268 N.C. 1, 9, 149 S.E.2d 570, 576 (1966)).

In the present case, the trial court made the following unchallenged findings:

> 9. H. Andre Teague was initially the sole shareholder of Defendant Jordan Alexander.
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> 10. At some point after the formation of Defendant Jordan Alexander, Inc., Defendant Jackie Teague was elected/appointed Director and Treasurer of the corporation.
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> 11. At all times since the formation of Jordan Alexander, Inc., Defendant H. Andre Teague exercised complete control of the day-to-day operations of Jordan Alexander, Inc., and made all of the business decisions on behalf of the Corporation. . . .
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> 12. At no time since the formation of Defendant Jordan Alexander, Inc., did Defendant Jackie Teague exercise any form of control or participation in the affairs of Defendant Jordan Alexander, Inc., except for her role as an employee of Defendant Jordan Alexander, Inc., in selecting fabrics for the corporation which she did from her home. She received a salary as an employee of $1,000 per week.
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> 13. Sometime in the early part of 2005, Defendant H. Andre Teague entered into an agreement with CIT to factor accounts receivable of Defendant Jordan Alexander, Inc. CIT required various documents to be signed before agreeing to factor. At this time Defendant Jackie Teague was asked by H. Andre Teague to sign in her capacity as Treasurer, various documents required by CIT. At this time Defendant Jackie Teague learned that H. Andre Teague was the sole shareholder of the corporation. She immediately demanded that since she had loaned the corporation the sum of $137,000 upon its formation, she and her daughter should be issued stock in the corporation. Stock issuance was then adjusted to reflect that H.

Andre Teague owned one (1) share, Jackie Teague owned fifty (50) shares and daughter Morgan owned forty-nine (49) shares.

. . . .

17. There is no evidence that Defendant Jackie Teague had any knowledge of Defendant Jordan Alexander, Inc.'s purchase of fabric from Plaintiff. There is no evidence that Defendant Jackie Teague benefit[t]ed from any breach of contract by Defendant Jordan Alexander, Inc.

18. There is no evidence that Defendant Jackie Teague had knowledge of or exercised any form of control over the affairs or business policies of Jordan Alexander, Inc. To the contrary, the evidence supports Plaintiff's contention that Defendant H. Andre Teague maintained complete control of Defendant Jordan Alexander, Inc's business policies in connection with all transactions set forth in Plaintiff's Complaint, including the transactions set forth in Plaintiff's First Claim for Relief for breach of contract.

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39. In the case at bar, Jackie Teague was the wife of H. Andre Teague. Plaintiff alleges and admits that H. Andre Teague is the dominate [sic] shareholder/controller of Jordan Alexander. The evidence shows that Defendant Jackie Teague had resigned as a "figurehead" officer prior to the relationship between Plaintiff and Defendant Jordan Alexander, Inc., that is the subject matter of this trial. Defendant Jackie Teague had no involvement whatsoever in the day-to-day activities of Jordan Alexander. Her only connection was as an employee (which she had been for years) working out of her home to help coordinate/select fabrics.

Thus, although the trial court found that Jackie Teague came to own 50 of the 100 shares of Jordan Alexander, Inc., the court nevertheless found that "[t]here [wa]s no evidence that Jackie Teague had any domination or control of Jordan Alexander, Inc. or that she had knowledge or involvement with Plaintiff as to the transactions presented at Trial." Based on these unchallenged findings, we must uphold the trial court's conclusion that "there is no evidence establishing the threshhold existence of [Jackie Teague's] domination and control of the corporate entit[y Jordan Alexander, Inc.]" *See Atl. Tobacco Co.*, 101 N.C. App. at 165, 398 S.E.2d at 644. Accordingly, "it is not possible to proceed to the further issues of whether that control was used to perpetrate a wrong, or whether the control proximately caused plaintiff's injuries." *See id.*

Affirmed.

Judges STEPHENS and STROUD concur.

Report per Rule 30(e).