

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA03-1484

NORTH CAROLINA COURT OF APPEALS

Filed: 19 October 2004

LESTER DANIEL BRYSON
and JOHN FRANK BOWEN,
Plaintiffs

v.

Haywood County
No. 03 CVS 552

STATE ATTORNEY GENERAL
ROY COOPER and STATE
SUPERIOR COURT JUDGES
ROBERT P. JOHNSTON and
FORREST D. BRIDGES,
Defendants

Appeal by plaintiffs from orders entered 13 October 2003 by Judge James U. Downs in Haywood County Superior Court. Heard in the Court of Appeals 31 August 2004.

Lester Daniel Bryson and John Frank Bowen, plaintiff-appellants, pro se.

Attorney General Roy A. Cooper, III, by Assistant Attorney General David J. Adinolfi II, for defendant-appellees.

HUNTER, Judge.

Lester Daniel Bryson and John Frank Bowen ("plaintiffs") appeal from orders granting a motion to dismiss and sanctions entered on 13 October 2003 in a civil action for declaratory judgment and injunctive relief. On appeal, plaintiffs contend the trial court erred in allowing the motion to dismiss and in issuing sanctions against plaintiffs, and that plaintiffs were deprived of

constitutional rights by application of N.C. Gen. Stat. § 15A-1354. We disagree. Accordingly, we affirm the judgment of the trial court.

Plaintiffs filed a civil action for declaratory judgment and injunctive relief from sentences imposed after conviction of various crimes following jury trials. Plaintiff Bryson was convicted of two counts of indecent liberties with a child and sentenced to consecutive sentences. Plaintiff Bowen was convicted of conspiracy to commit forgery of a codicil, forgery of a codicil, conspiracy to obtain property by false pretense, ten counts of embezzlement, and three counts of obtaining property by false pretense and sentenced to consecutive sentences.

The trial court dismissed plaintiffs' suit on 13 October 2003 on the grounds of: (1) lack of subject matter jurisdiction, (2) failure to state a claim upon which relief could be granted, (3) absolute immunity of defendant, and (4) *res judicata* from a prior identical lawsuit which was dismissed on 15 March 2002. Additionally, the trial court granted sanctions which prevent plaintiffs from refiling the lawsuit or other frivolous lawsuits in North Carolina courts. Plaintiffs appeal from these rulings.

Plaintiffs first contend the trial court erred in granting the motion to dismiss, arguing that both the order in this case, and in the prior case which barred the complaint on the grounds of *res judicata*, were entered out of session and were therefore null and void. We disagree.

Written orders may be entered out of session when a trial court has made an oral ruling in open court and in session. See *State v. Smith*, 320 N.C. 404, 415-16, 358 S.E.2d 329, 335 (1987). Here, the record shows that the trial court orally entered the ruling in open court in the presence of plaintiffs on 15 September 2003, and that the ruling was later reduced to writing on 13 October 2003. The written order specifically noted that the order had been made in open court during the term and session. Therefore the trial court's grant of the motion to dismiss was validly entered and not null and void.

Further, the trial court properly dismissed the action on the grounds of *res judicata* as to defendants Johnston and Bridges. "A final judgment, rendered on the merits by a court of competent jurisdiction, is conclusive as to the issues raised therein with respect to the parties and those in privity with them and constitutes a bar to all subsequent actions involving the same issues and parties.'" *Stafford v. County of Bladen*, ___ N.C. App. ___, ___, 592 S.E.2d 711, 713 (2004) (quoting *Kabatnik v. Westminster Co.*, 63 N.C. App. 708, 711-12, 306 S.E.2d 513, 515 (1983)). "A dismissal with prejudice is an adjudication on the merits and has *res judicata* implications[.] . . . Strict identity of issues . . . is not absolutely required and the doctrine of *res judicata* has been accordingly expanded to apply to those issues which could have been raised in the prior action.'" *Id.* (quoting *Caswell Realty Assoc. v. Andrews Co.*, 128 N.C. App. 716, 720, 496 S.E.2d 607, 610 (1998)).

In the case sub judice, the trial court found plaintiffs' suit was virtually identical to a lawsuit dismissed with prejudice on 15 March 2002. See *Bryson v. Johnston*, No. COA02-1149 (N.C. App. 2002) (order entered by Judge Dennis Winner on 15 March 2002 in District Court, Haywood County, No. 01CVS1270), *appeal dismissed*, 1 October 2002 (by order of the Clerk of Court for failure to pay fees). Plaintiffs' petition for review of the suit dismissed on 15 March 2002 was denied by the North Carolina Supreme Court. See *Bryson v. Johnston*, ___ N.C. ___, 574 S.E.2d 676 (2002). This Court takes judicial notice of the complaint alleged in the prior dismissed suit and affirms the trial court's finding that the present action was "virtually identical" and therefore barred by the principles of *res judicata*.

Further, the trial court properly dismissed plaintiffs' declaratory judgment action as to Attorney General Roy Cooper for lack of subject matter jurisdiction. Plaintiffs requested relief in the form of reversal of their convictions. As the trial court noted, such relief, if appropriate at all, would be available under the criminal statutes in a motion for appropriate relief, rather than a civil action for declaratory judgment. See N.C. Gen. Stat. § 15A-1415(b)(4) (2003) (providing relief in noncapital cases on the grounds that defendant was sentenced under a statute in violation of the United States or North Carolina Constitutions). Therefore the trial court did not err in granting defendant's motion to dismiss plaintiffs' action as to all parties.

Plaintiffs next contend error in the imposition of sanctions by the trial court. We disagree.

Sanctions may be imposed under Rule 11 for a violation of any one of three separate and distinct issues: (1) legal sufficiency, (2) factual sufficiency, or (3) improper purpose. See *Bryson v. Sullivan*, 330 N.C. 644, 655, 412 S.E.2d 327, 332 (1992). The decision by the trial court to impose mandatory sanctions under N.C. Gen. Stat. § 1A-1, Rule 11(a) (2003) is reviewed *de novo* as a legal issue. See *Turner v. Duke University*, 325 N.C. 152, 165, 381 S.E.2d 706, 714 (1989). “[T]he appellate court [must] determine (1) whether the trial court’s conclusions of law support its judgment or determination, (2) whether the trial court’s conclusions of law are supported by its findings of fact, and (3) whether the findings of fact are supported by a sufficiency of the evidence.” *Id.* A finding in the affirmative of all three factors requires the appellate court to uphold the trial court’s decision to impose sanctions under N.C. Gen. Stat. § 1A-1, Rule 11(a). *Id.*

Here, the trial court found plaintiffs’ complaint lacked legal sufficiency based on failure to state a claim and lack of jurisdiction, as well as defendants’ absolute immunity. Such legal conclusions are supported by the facts of the case and therefore the trial court properly imposed sanctions.

When a sanction is properly imposed, the appropriateness of the particular sanction selected is reviewed by the appellate court under an “‘abuse of discretion’” standard. *Turner*, 325 N.C. at 165, 381 S.E.2d at 714. This Court has previously noted that such

a "standard is intended to give great leeway to the trial court and a clear abuse of discretion must be shown." *Central Carolina Nissan, Inc. v. Sturgis*, 98 N.C. App. 253, 264, 390 S.E.2d 730, 737 (1990). The trial court's injunction from refiling a lawsuit on the facts of this case, or some variation thereof, and from filing other frivolous and baseless suits in North Carolina courts does not amount to an abuse of discretion.

As the trial court properly dismissed plaintiffs' action for lack of subject matter jurisdiction and *res judicata*, we do not reach plaintiffs' remaining assignment of error as to the merits of their suit.

Affirmed.

Judges TIMMONS-GOODSON and McCULLOUGH concur.

Report per Rule 30(e).