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NO. COA05-1570

NORTH CAROLINA COURT OF APPEALS

Filed: 3 October 2006

PATRICIA LARIOS AGUILAR,
Plaintiff-Appellee,

v.

Moore County
No. 04 CVS 816

JEFFREY DEAN FRYE,
Defendant-Appellant.

Appeal by Defendant from order entered 8 September 2005 by Judge James M. Webb in Superior Court, Moore County. Heard in the Court of Appeals 16 August 2006.

Staton, Doster, Post & Silverman, by Norman C. Post, Jr., for Plaintiff-Appellee.

Horton and Gsteiger, P.L.L.C., by Urs R. Gsteiger, for Defendant-Appellant.

McGEE, Judge.

Patricia Larios Aguilar (Plaintiff) filed a complaint against Jeffrey Dean Frye (Defendant) seeking damages for personal injuries resulting from an automobile collision that occurred on 9 January 2004. The jury returned a verdict in favor of Plaintiff and awarded her \$185,000.00 in damages. Plaintiff orally moved for an order taxing certain costs to Defendant. The trial court granted Plaintiff's motion in an order entered 8 September 2005 and taxed Defendant with, *inter alia*, deposition expenses and expert witness costs. Defendant appeals.

Our Supreme Court has held that costs "'are entirely creatures of legislation, and without this they do not exist.'" *City of Charlotte v. McNeely*, 281 N.C. 684, 691, 190 S.E.2d 179, 185 (1972) (quoting *Clerk's Office v. Commissioners of Carteret County*, 121 N.C. 29, 30, 27 S.E. 1003, 1003 (1897)). In *Department of Transp. v. Charlotte Area Mfd. Housing, Inc.*, 160 N.C. App. 461, 470, 586 S.E.2d 780, 785 (2003), this Court adopted the "explicitly delineated" approach as the appropriate inquiry to determine what costs a trial court may properly assess under our statutes. This approach precludes the taxing of any costs not "(1) specifically enumerated in the statutes, or (2) recognized by existing common law." *Id.* at 468, 586 S.E.2d at 784. Thus, there are two distinct categories of taxable costs: (1) those delineated in N.C. Gen. Stat. § 7A-305(d), which lists recoverable expenses in a civil action; and (2) common law costs. *Lord v. Customized Consulting Specialty, Inc.*, 164 N.C. App. 730, 734, 596 S.E.2d 891, 894 (2004). Common law costs are defined as "those costs established by case law prior to the enactment of N.C. Gen. Stat. § 7A-320 in 1983." *Id.* at 734, 596 S.E.2d at 895. Pursuant to N.C. Gen. Stat. § 6-20, the trial court may award these costs, in its discretion. *Lord*, 164 N.C. App. at 734, 596 S.E.2d at 895.

I. Expert Witness Fees

Defendant assigns error to the trial court's award of certain expert witness fees as costs "because such costs cannot be awarded under North Carolina law." Defendant contends that the award of any costs which did not involve actual trial testimony "was error

under this [C]ourt's precedent and should be reversed."

N.C. Gen. Stat. § 7A-305(d)(1) (2005) authorizes expert witness fees to be assessed as costs "as provided by law." This provision refers to N.C. Gen. Stat. § 7A-314(d) (2005), which permits expert witnesses to "receive such compensation and allowances as the court . . . in its discretion, may authorize." However, expert witness fees may only be awarded where the expert witness is under subpoena. *Lord*, 164 N.C. App. at 735, 596 S.E.2d at 895.

Initially, we note that Defendant failed to include a Statement of the Grounds for Appellate Review in his brief in violation of Rule 28(b)(4) of the North Carolina Rules of Appellate Procedure. Further, Defendant also failed to include a "concise statement of the applicable standard(s) of review for each question presented" as required by Rule 28(b)(6) of the North Carolina Rules of Appellate Procedure. N.C.R. App. P. 28(b)(6). As a result, we are unable to discern whether Defendant is contending that the trial court abused its discretion by awarding the expert witness fees, or that the trial court improperly interpreted N.C.G.S. § 7A-305(d). Defendant's cursory treatment of the case law regarding the assessment of costs, coupled with an incomplete argument regarding the appropriate standard of review precludes us from reviewing this portion of the trial court's award. Accordingly, we decline to address this argument.

II. Deposition Costs

Defendant also argues that the trial court's award of various

deposition expenses was improper. We disagree.

Pursuant to the "explicitly delineated" approach noted above, because N.C.G.S. § 7A-305(d) does not authorize the assessment of deposition expenses, these expenses must qualify as common law costs to be properly awarded. See *Lord*, 164 N.C. App. at 734, 596 S.E.2d at 894. This Court recognized deposition expenses as taxable costs prior to the 1983 enactment of N.C. Gen. Stat. § 7A-320, stating that "[a]s a general rule, recoverable costs may include deposition expenses unless it appears that the depositions were unnecessary." *Dixon, Odom & Co. v. Sledge*, 59 N.C. App. 280, 286, 296 S.E.2d 512, 516 (1982). The decision to tax deposition costs is therefore within the discretion of the trial court. *Morgan v. Steiner*, 173 N.C. App. 577, 581, 619 S.E.2d 516, 519-20 (2005). As such, "[t]his Court will not disturb a trial court award of expenses related to depositions absent an abuse of discretion." *Id.* at 582, 619 S.E.2d at 520.

Defendant has set forth no argument that the trial court abused its discretion by awarding these costs. Instead, Defendant cites *Lord* and simply states that "deposition and deposition related costs cannot be taxed as costs under N.C.G.S. § 7A-305." In doing so, Defendant does not consider the trial court's ability to award common law costs within its discretion pursuant to N.C. Gen. Stat. § 6-20. See *Lord*, 164 N.C. App. at 734, 596 S.E.2d at 895. Defendant has therefore failed to show that the trial court abused its discretion. Thus, we affirm the decision of the trial court to tax the deposition expenses as costs.

Affirmed.

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Judges BRYANT and ELMORE concur

Report per Rule 30(e).