

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-104

NORTH CAROLINA COURT OF APPEALS

Filed: 6 February 2007

DEPARTMENT OF TRANSPORTATION,
Plaintiff

v.

Lee County
No. 00 CVS 1079

LEONARD E. PRINCE AND
MARJORIE R. PRINCE, Trustees
of the Prince Family Trust;
W. W. SEYMOUR, Trustee; and
JESSIE LEE PRINCE,
Defendants

Appeal by defendants from an order entered 29 September 2005 by Judge Gary L. Locklear in Lee County Superior Court. Heard in the Court of Appeals 13 November 2006.

Attorney General Roy Cooper, by Assistant Attorney General Spurgeon Fields, III, for plaintiff-appellee.

Moser, Schmidly & Roose, L.L.P., by Stephen S. Schmidly, and the Law Office of Marsh Smith, P.A., by Marsh Smith, for defendants-appellants.

CALABRIA, Judge.

Appellants Leonard E. Prince and Marjorie Prince ("appellants"), trustees of the Prince Family Trust, appeal from an order entered on 29 September 2005 by Judge Gary L. Locklear. We affirm.

The North Carolina Department of Transportation ("plaintiff") filed this highway condemnation action in Lee County Superior Court on 16 October 2000 and deposited \$19,330 with the Clerk of Court. The case was called for trial on 7 June 2004. After jury selection, the parties settled the case and announced the settlement to the trial court. In mid-August, following repeated inquiries by defendant's counsel, plaintiff's counsel prepared a consent judgment and sent it to defendants' counsel to execute. On 24 August 2004 defendants' counsel returned the executed consent judgment with all the necessary signatures. On 1 September 2004, defendants' counsel learned the plaintiff's counsel had not sent the executed judgment to Superior Court Judge Franklin F. Lanier. On 2 September 2004, plaintiff's counsel assured defendants' counsel that Judge Lanier would receive the proposed judgment executed by the parties that day. However, the executed judgment did not reach Judge Lanier until 10 September 2004. The judge signed the judgment and returned it to plaintiff's counsel that same day, but plaintiff's counsel delayed filing the judgment and depositing the required funds with the Clerk of Court.

On 28 September 2004, defendants filed a motion to enforce the settlement agreement. The motion hearing was scheduled for the 4 October 2004 session, but the motion was not reached that day. On 4 October 2004, the plaintiff filed the executed consent judgment and deposited the additional \$60,670 with the Clerk of Court. Defendants then moved for sanctions, and their motion was heard on 29 November 2004 by Superior Court Judge Gary L. Locklear. Judge

Locklear, citing "unreasonable and arbitrary" behavior by the plaintiff, entered an order sanctioning plaintiff in the amount of \$3,120.60. Plaintiff then filed a motion for rehearing pursuant to Rule 60(b)(6) of the North Carolina Rules of Civil Procedure, and that motion was granted. Judge Locklear heard the motion and entered an order on 29 September 2005 withdrawing the sanctions, citing his reexamination of the case law. From that order, defendants appeal.

North Carolina Rule of Appellate Procedure 10(c)(1) (2006) states, in pertinent part:

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.* An assignment of error is sufficient if it directs the attention of the appellate court to the particular error about which the question is made, with clear and specific record or transcript references.

(Emphasis added). Appellants violated this rule in that their lone assignment of error did not state a legal basis. The appellants' original assignment of error is as follows:

1. The Trial Court's granting of the Plaintiff's motion to set aside its prior order granting interest and attorney fees occasioned by the Plaintiff's unreasonable and arbitrary delays in complying with the consent judgment.

On 20 July 2006, appellants filed a motion to amend the assignment of error. The amended assignment of error states as follows:

1. The court's granting of the Plaintiff's motion under N.C. R. Civ. P. 60(b)(6) to set

aside its prior order granting interest and attorney fees occasioned by the Plaintiff's unreasonable and arbitrary delays in complying with the consent judgment on the ground that the court abused its discretion in granting said motion.

Since the appellee will not suffer any adverse impact from a decision allowing the amendment, we grant the appellants' motion to amend their assignment of error. We now consider the merits of the appeal, since the amended assignment of error complies with N.C. R. App. P. 10(c)(1) (2006).

On appeal, appellants argue that the trial court erred by granting appellee's motion to set aside its order awarding interest and attorney fees to the appellants under N.C. Gen. Stat. § 1A-1, Rule 60(b) (2005). We disagree.

Appellate review of a trial court ruling pursuant to Rule 60(b) is limited to determining whether the trial court abused its discretion. *Parris v. Light*, 146 N.C. App. 515, 518, 553 S.E.2d 96, 97 (2001) (citations and quotation marks omitted). An abuse of discretion occurs when the trial court's decision was "manifestly unsupported by reason." *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985).

Appellants contend that the trial court was required to order appellee to pay \$1,157.10 in post-judgment interest as a part of the just compensation owed to appellants. This amount represents post-judgment interest that accrued past the 30-day deadline the trial court identified as a reasonable time for the appellee to pay the money owed on the consent judgment. North Carolina General Statute § 136-113 (2005) sets forth the applicable law:

To said amount awarded as damages by the commissioners or a jury or judge, the judge shall, as a part of just compensation, add interest at the legal rate as provided in G.S. 24-1 on said amount *from the date of taking to the date of judgment*; but interest shall not be allowed from the date of deposit on so much thereof as shall have been paid into court as provided in this Article.

Id. (emphasis added).

This statute's plain meaning limits an award of interest to the time between the taking and the date judgment is entered. It does not contemplate post-judgment interest. In *Yancey v. N.C. State Highway & Pub. Works Comm'n*, our Supreme Court rejected an argument asserting post-judgment interest as a function of just compensation. 222 N.C. 106, 22 S.E.2d 256 (1942). The Court stated:

It is a somewhat different matter from adding interest from the date of taking to the value of the property as part of the compensation, to adding interest to the judgment by which the full amount has already been fixed, from and after its rendition, as damages for delay in payment.

Id. at 109, 22 S.E.2d at 259.

The Court further stated, "[I]nterest may not be awarded against the State unless the State has manifested its willingness to pay interest by an Act of the General Assembly or by a lawful contract to do so." *Id.* at 109, 22 S.E.2d at 259. Here, no constitutional, contractual or statutory provision entitles appellants to post-judgment interest, as the trial court discovered after reviewing the relevant case law. As such, the trial court's decision to withdraw post-judgment interest as a sanction for

appellee's delay in paying the consent judgment was not manifestly unsupported by reason.

Appellants further argue that the court erred by withdrawing its award for attorney fees against appellee. Attorney fees and other costs of litigation are not included in the just compensation owed as a constitutional right to a condemnee. "[L]itigation expenses and costs, including those incurred by a landowner in a condemnation proceeding, may be taxed only if authorized by statute." *Dep't. Of Transp. v. Winston Container Co.*, 45 N.C. App. 638, 640, 283 S.E.2d 830, 831 (1980). Here, there is no such authorizing statute, and the award of attorney fees as a sanction against appellee was a matter of discretion for the trial court. The court's decision to withdraw this sanction after consulting relevant case law was not manifestly without reason. In conclusion, the trial court's decision to withdraw the sanctions awarding post-judgment interest and attorney fees should remain undisturbed.

Affirmed.

Chief Judge MARTIN and Judge TYSON concur.

Report per Rule 30(e).