

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA07-266

NORTH CAROLINA COURT OF APPEALS

Filed: 4 December 2007

THOMAS W. HILL,
Plaintiff

v.

GARFORD TONY HILL, JEWEL
ANNE HILL, D. SAMUEL NEILL,
BOYD B. MASSAGEE, JR., M.M.
HUNT, J.P. HUNT, BARBARA
HILL GARRISON, WILLIAM
LLOYD GARRISON, ERVIN W.
BAZZLE, CINCINNATI
INSURANCE CO., and ESTATE
OF SADIE C. HILL,
Defendants

Henderson County
No. 99 CVS 67

Court of Appeals

Slip Opinion

Appeal by plaintiff from judgment entered 1 December 2006 by Judge C. Preston Cornelius in Henderson County Superior Court. Heard in the Court of Appeals 18 September 2007.

Thomas W. Hill, plaintiff-appellant, pro se.

William E. Loose for plaintiff-appellant.

Long, Parker, Warren & Jones, P.A., by W. Scott Jones, for defendant-appellees D. Samuel Neill, Boyd B. Massagee, Jr., M.M. Hunt, J.P. Hunt, Ervin W. Bazzle, Garford Tony Hill, Jewell Anne Hill, Barbara H. Garrison, and William L. Garrison.

HUNTER, Judge.

Thomas W. Hill ("plaintiff") appeals from a judgment imposing sanctions in the form of defendants' attorneys' fees for a violation of Rule 11. After careful review, we affirm.

This case is a dispute over the estate of Sadie C. Hill, mother of both the plaintiff and four other children, some of whom are involved in this litigation. Ms. Hill died in 1997.

The case has already appeared before this Court several times in various incarnations. The full facts of the original case can be found in any of a number of earlier opinions from this Court on the case, which has been in litigation for ten years. One of these, our prior opinion most relevant to this case, is *Hill v. Hill*, 173 N.C. App. 309, 622 S.E.2d 503 (2005), where we evaluated the trial court's imposition of sanctions pursuant to Rule 11 in the form of an award of attorneys' fees to defendants.

There, this Court held that the trial court had abused its discretion in including in that award costs incurred by defendants in bringing the appeal; as such, we "remanded for further findings of fact, separating the attorney's fees and costs incurred by defendants at the trial level from those incurred after plaintiff's filing of notice of appeal and directly stemming from defendants' defense of his appeal and petition." *Id.* at 322, 622 S.E.2d at 512. The Court instructed the trial court to make those findings and then "issue an order under Rule 11 awarding only those fees and costs incurred at the trial level." *Id.* On remand, the trial court did so, holding that defendants were owed a total of \$97,053.61. Plaintiff now appeals this ruling.

Essentially, plaintiff makes a series of arguments as to how the trial court miscalculated the fees he owes to defendants. That

is, he appeals not the actual sanctions but the court's calculation of those sanctions. All of these arguments are without merit.

"[I]n reviewing the appropriateness of the particular sanction imposed, an 'abuse of discretion' standard is proper[.]" *Turner v. Duke University*, 325 N.C. 152, 165, 381 S.E.2d 706, 714 (1989). Thus, to succeed, plaintiff must prove that the trial court abused its discretion in calculating the fees owed to defendants. Plaintiff cannot do so in this case.

First, plaintiff argues that the trial court had only the evidence of defendants' attorneys' affidavits as to what portion of their total fees were incurred at trial level and which were incurred after plaintiff filed for appeal (and thus stemmed from that appeal). However, this Court recently granted defendants' motion to amend the record that includes several dozen pages of supplemental information on the precise charges that make up the amounts submitted by defendants' attorneys. As such, there is copious evidence in the record to support the trial court's finding that these were the expenses incurred by defendants.

Second, plaintiff argues that the trial court's calculations allow fees and costs in actions other than the action at hand. Plaintiff names specific amounts that he claims to have already paid, but offers no evidence that this is true beyond his bare assertion. It does not appear from the record that he offered any proof to the trial court. Thus, there is no evidence before this Court to support this claim.

Third, plaintiff argues that the trial court allowed unreasonable fees and costs, including duplicative fees. This argument is related to his final argument, in which he argues that the sanctions order is arbitrary both because the trial court did not take into consideration that plaintiff has been forced into bankruptcy over the matter and because plaintiff has requested a jury trial to determine the facts required for a Rule 11 award. Essentially, both of these arguments boil down to a claim that the trial court's award violated the language of Rule 11, which states: "an appropriate sanction . . . may include an order to pay to the other party or parties the amount of the *reasonable* expenses incurred because of the filing of the pleading, motion, or other paper, including a *reasonable* attorney's fee." N.C. Gen. Stat. § 1A-1, Rule 11(a) (2005) (emphasis added).

In support of this argument, plaintiff calls certain costs, such as video recording depositions and general discovery costs, "extravagant" and states that the trial judge never properly scrutinized the amount or justification for them.¹

Again, however, he offers nothing on these points beyond these bare assertions. In its order, the trial court noted these objections by plaintiff and stated: "The Court finds that the

¹ Plaintiff also makes a demand in his brief for a jury trial on the factual basis for the Rule 11 award, but as he made no assignment of error on this point, we do not address it here. N.C.R. App. P. 10(c)(1). At any rate, as we have already stated at length in a previous decision of this case, there is no right to a jury trial to determine the factual basis for a Rule 11 award. See *Hill v. Hill*, ___ N.C. App. ___, ___, 638 S.E.2d 601, 604-05 (2007).

expenses Plaintiff complains of were incurred as a result of legitimate and proper trial tactics, and the Court will not second guess appropriate and proper tactical decisions by counsel[.]” It appears to this Court that the trial court gave proper consideration to the claims and arguments made by both sides. Finally, plaintiff’s remaining argument -- that the cost of this sanction has forced him into bankruptcy -- is irrelevant. This point is simply another factor in the consideration of whether the award was “reasonable,” and as discussed above, the cumulative effect of all these factors does not show an abuse of discretion by the trial court. Plaintiff has cited no case, and this Court has found none, holding that such a circumstance automatically makes a court’s award unreasonable.

Because plaintiff can show no legal basis for reversing the trial court’s measure of sanctions, we affirm.

Affirmed.

Judges WYNN and JACKSON concur.

Report per Rule 30(e).