

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA08-1437

NORTH CAROLINA COURT OF APPEALS

Filed: 7 July 2009

TWIN TOWER ERECTION AND
MAINTENANCE, INC.,
Plaintiff-Appellee,

v.

Forsyth County
No. 07 CVS 2448

BRYAN E. BEATTY, SECRETARY
OF THE NORTH CAROLINA
DEPARTMENT OF CRIME CONTROL
AND PUBLIC SAFETY,
Defendant-Appellant.

Appeal by defendant from an order entered 1 August 2008 by Judge William Z. Wood, Jr. in Forsyth County Superior Court. Heard in the Court of Appeals 22 April 2009.

Melvin and Powell, by Edward L. Powell; and J. Clark Fischer, for plaintiff-appellee.

Attorney General Roy Cooper, by Assistant Attorney General John W. Congleton, for defendant-appellant.

HUNTER, Robert C., Judge.

This case arises out of a violation of N.C. Gen. Stat. § 20-119 (2007), whereby plaintiff trucking company was fined \$500.00 for operating its truck and trailer without the required special permit and \$11,090.00 for an overweight violation based on the statutory weight parameters of N.C. Gen. Stat. § 20-118 (2007). Following a 30 June 2008 hearing on the parties' respective motions for summary judgment, the trial court granted: (1) partial summary

judgment in favor of defendant, concluding that defendant was entitled to retain the \$500.00 fine and \$124.00 of the \$11,090.00 fine, both of which plaintiff had paid under protest; and (2) partial summary judgment in favor of plaintiff, concluding that plaintiff was entitled to a refund of \$10,966.00 of the \$11,090.00 overweight fine. Defendant appeals the grant of partial summary judgment for plaintiff. After careful review, we affirm.

Background

On 18 December 2006, plaintiff Twin Tower Erection and Maintenance, Inc. ("plaintiff") obtained a special "Single Trip Permit" (the "permit") from the North Carolina Department of Transportation, Division of Highways to transport a truck and trailer with a gross weight of no more than 132,000 pounds, from the Virginia state line to Yadkin County, North Carolina. Without the permit, the truck and trailer could not legally exceed 80,000 pounds. N.C. Gen. Stat. § 20-118(b)(3) (2007). Plaintiff operates two identical trucks; the one for which it obtained the permit, which bears North Carolina license plate number LW6578 (the "permitted vehicle"), and one which bears North Carolina license plate number LW6579 (the "non-permitted" vehicle).

On 19 December 2006, plaintiff's driver, Roger Bault ("Mr. Bault"), mistakenly placed the permit on the non-permitted vehicle and proceeded to operate it on the route authorized by the permit. Plaintiff did not operate the permitted vehicle on that date. Mr. Bault stopped at a weigh station in Surry County, North Carolina, and the gross weight of the non-permitted vehicle was 136,100

pounds.

Plaintiff received two civil citations. Plaintiff was fined/assessed \$500.00 pursuant to N.C. Gen. Stat. 20-119(d) (1) for "Operating Without a Permit" In addition, plaintiff was fined \$11,090.00 for an overweight violation pursuant to N.C. Gen. Stat. §§ 20-119(d) and 20-118(e) (1) and (e) (3). This overweight violation was calculated based on the difference between 80,000 pounds (the statutory pound limit for a truck without a special permit) and the 136,100 pounds it actually weighed. Plaintiff's vehicle was also in excess of the 132,000 pounds listed on its permit.

Plaintiff paid both of these penalties under protest. On 12 March 2007, defendant informed plaintiff that its administrative review revealed that the officer who issued the citations "followed State law and Patrol policy."

On 9 April 2007, plaintiff filed a complaint in Forsyth County Superior Court seeking, *inter alia*, a refund of both the \$11,090.00 penalty and the \$500.00 penalty. Plaintiff filed a motion for summary judgment on or about 16 June 2008. Defendant filed a motion for summary judgment on 18 June 2008 claiming that the citations issued were authorized by law.

On 1 August 2008, the trial court entered an order granting partial summary judgment in plaintiff's favor and partial summary judgment in defendant's favor. Specifically, the trial court concluded:

Defendant is entitled to Summary Judgment against Plaintiff in the sum of \$500.00 for

failure of Plaintiff to operate without a proper permit and in the sum of \$124.00 for overaxle group weight violations in excess of 132,000 pounds, and Plaintiff is entitled to Summary Judgment against Defendant with regard to its claim of a tax assessment refund in the sum of \$10,966.00 as Plaintiff has a valid defense for this amount of the said assessment by Defendant according to uncontroverted evidence as presented by the pleadings, affidavits and arguments of counsel.

In other words, the trial court concluded that plaintiff was obligated to pay: (1) the \$500.00 fine for operating its vehicle without the special permit; and (2) \$124.00 of the overweight fine based on the difference between what the non-permitted vehicle actually weighed (136,100 pounds) and the weight limit provided in the permit that plaintiff had obtained (132,000 pounds), not based on the difference between the actual weight and the statutory pound limit for a vehicle without a special permit (80,000 pounds). Accordingly, the trial court ordered defendant to retain \$624.00 and to refund plaintiff \$10,966.00. Defendant appeals from this order.

Analysis

Pursuant to our holding in *Daily Express, Inc. v. N.C. Dep't of Crime Control & Public Safety*, ___ N.C. App. ___, 671 S.E.2d 587 (2009), we affirm the trial court's order granting partial summary judgment for plaintiff.

Affirmed.

Judges MCGEE and BEASLEY concur.

Report per Rule 30(e).