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NO. COA08-1486

NORTH CAROLINA COURT OF APPEALS

Filed: 19 May 2009

FIRST-CITIZENS BANK & TRUST  
COMPANY,

Plaintiff

v.

Cumberland County  
No. 07-CVS-3421

DARWIN MEDICAL MANAGEMENT,  
L.L.C., CAROLYN MACDONALD,  
PROGRESSIVE REHABILITATION &  
PAIN MANAGEMENT, PLLC, CABELL J.  
REGAN AND CAROLINA  
REHABILITATION MEDICINE  
ASSOCIATES, P.A.,

Defendants

# Court of Appeals

## Slip Opinion

Appeal by Defendant Cabell J. Regan from judgment entered 9 June 2008 by Judge Richard T. Brown in Superior Court, Cumberland County. Heard in the Court of Appeals 21 April 2009.

*Ward and Smith, P.A., by Benjamin E. F. B. Waller, for plaintiff.*

*Cabell J. Regan, pro se.*

WYNN, Judge.

"[F]indings of fact and conclusions of law are necessary so that this court may review the trial court's decision and test the correctness of its judgment."<sup>1</sup> In this case, Plaintiff concedes,

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<sup>1</sup> *Appalachian Poster Adver., Inc. v. Harrington*, 89 N.C. App. 476, 480, 366 S.E.2d 705, 707 (1988) (citing *Quick v. Quick*,

and we agree, that the trial court's judgment is deficient; thus, we remand for compliant findings of fact and conclusions of law.

This matter arose from a bench trial judgment holding Defendant Cabell J. Regan jointly and severally liable with the other Defendants for \$31,208.85 plus interest, and \$4,730.38 in attorneys' fees. The other Defendants are not parties to this appeal. Defendant Regan contends that the trial court's judgment does not include findings of fact or conclusions of law. Plaintiff "concedes the Judgment rendered by the trial court is deficient insofar as it contains insufficient findings of fact and conclusions of law." See N.C. Gen. Stat. § 1A-1, Rule 52(a)(1) (2007) ("In all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment.").

We agree that the lack of any written findings of fact or conclusions of law makes it impossible for this Court to test the correctness of the trial court's resolution of the issues submitted for trial. Accordingly, we remand this case to the trial court with instructions to make findings of fact and conclusions of law in compliance with Rule 52(a)(1). The trial court may take additional evidence if necessary. See *Woodring v. Woodring*, 164 N.C. App. 588, 592, 596 S.E.2d 370, 373 (2004) (where the trial court fails to make sufficient findings of fact and conclusions of law).  

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305 N.C. 446, 451, 290 S.E.2d 653, 657 (1982)).

law, this Court "may order a new trial or allow additional evidence to be heard by the trial court or leave it to the trial court to decide whether further findings should be on the basis of the existing record or on the record as supplemented.").

Reversed and remanded.

Judges JACKSON and Robert N. HUNTER concur.

Report per Rule 30(e).