

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA09-1405

NORTH CAROLINA COURT OF APPEALS

Filed: 17 August 2010

MARK A. WARD,
Plaintiff,

v.

Forsyth County
No. 07 CVD 4315

JETT PROPERTIES, LLC.,
Defendant.

Appeal by Plaintiff from an order entered 23 July 2009 by Judge Denise S. Hartsfield in Forsyth County District Court. Heard in the Court of Appeals 24 March 2010.

Mark A. Ward, pro se.

Hinshaw & Jacobs, LLP, by Robert D. Hinshaw, for Defendant-Appellee.

BEASLEY, Judge.

Plaintiff, Mark A. Ward, appeals from a trial court order holding him in civil contempt for failing to comply with an earlier order awarding Defendant, Jett Properties, LLC, \$2,000 in attorney's fees and costs pursuant to Rule 11. Based on the reasoning stated herein, we affirm in part and dismiss as moot in part.

The facts underlying Plaintiff's cause of action have been outlined extensively in *Ward v. Jett Properties, LLC*, 191 N.C. App. 605, 663 S.E.2d 862, *disc. review denied*, 362 N.C. 481, 667 S.E.2d

463 (2008). Relevant here, our Court affirmed a trial court's decision sanctioning Plaintiff pursuant to Rule 11. *Id.* On 18 May 2009, Plaintiff filed a motion to show cause requesting an order compelling Defendant to pay the Rule 11 fees and sanctions. By an order filed 23 July 2009, the Forsyth County District Court determined that "the failure of the Plaintiff to comply with the Order of this Court with regard to reimbursement to Defendant for attorney fees and costs pursuant to Rule 11 has been willful and without just cause and excuse and therefore constitutes contempt of this Court." Additionally, the trial court ordered that Plaintiff be held in the custody of the Sheriff of Forsyth County until he could purge himself of the contempt or was "otherwise released according to law." After being incarcerated for a single day, Plaintiff paid the Forsyth County Clerk of Court \$2,000, thereby purging himself of the contempt.

Plaintiff appeals the trial court's decision holding him in contempt, arguing that: (I) the trial court improperly and in violation of N.C.G.S. § 5A-21 found him in contempt of court; (II) the court's findings of fact did not support its conclusion that he had the ability to pay the monetary judgment; and (III) the trial court erred in refusing to assign counsel to represent him at trial.

I.

First, Plaintiff argues that "[the trial court's] decision to confine [him] to jail was a predetermined decision that was the

result of a concerted calculated effort designed to violate [his] civil rights." We disagree.

A party may be held in civil contempt for violation of a court order so long as

"(1) the order remains in force; (2) [t]he purpose of the order may still be served by compliance with the order; (2a) [t]he noncompliance by the person to whom the order is directed is willful; and (3) [t]he person to whom the order is directed is able to comply with the order or is able to take reasonable measures that would enable the person to comply with the order."

N.C. Gen. Stat. § 5A-21(a) (2009). Subject to several limitations, imprisonment may be appropriate so long as the civil contempt continues. N.C. Gen. Stat. § 5A-21(b).

Here, the trial court appropriately found that Plaintiff willfully failed to comply with an order requiring him to pay Rule 11 sanctions to Defendant. Thereafter, the trial court concluded that Plaintiff was to "remain in custody [of the Forsyth County Sheriff's Department] until such time as he purges himself of contempt of this Court or until . . . [he] is otherwise released according to law." The trial court's contempt order complied with the requirements set forth by the statute. Plaintiff cites no competent evidence indicating that his confinement was part of a calculated effort by the trial court to violate his civil rights. Accordingly, Plaintiff's first argument is without merit.

II.

Plaintiff next argues that the trial court's findings of fact do not support its conclusion that he had the ability to pay the Rule 11 sanctions. We disagree.

"This Court's review of a trial court's finding of contempt is limited to a consideration of 'whether the findings of fact by the trial judge are supported by competent evidence and whether those factual findings are sufficient to support the judgment.'" *General Motors Acceptance Corp. v. Wright*, 154 N.C. App. 672, 677, 573 S.E.2d 226, 229 (2002) (quoting *McMiller v. McMiller*, 77 N.C. App. 808, 810, 336 S.E.2d 134, 136 (1985)). "Where no exceptions are taken to findings of fact, such findings are binding on appeal." *Creech v. Ranmar Props.*, 146 N.C. App. 97, 100, 551 S.E.2d 224, 227 (2001) (citation omitted). The failure of a litigant to comply with a civil order constitutes a continuing civil contempt if "[t]he person to whom the order is directed is able to comply with the order or is able to take reasonable measures that would enable the person to comply with the order." N.C. Gen. Stat. § 5A-21(a)(3). "If a trial court orders imprisonment for civil contempt, the court must also state how the defendant may purge himself of contempt and find that the defendant has the ability to do so." *Tucker v. Tucker*, __, N.C. App. __, __, 679 S.E.2d 141, 143 (2009).

Here, the trial court appropriately determined that Plaintiff had the ability to comply with the order. In several unchallenged findings of fact the trial court found that:

7. At the hearing on this matter, the Plaintiff testified that he is not currently

employed and has been unemployed for a number of years. In support of his position, the Plaintiff submitted letters from Wake Forest University Baptist Medical Center, one dated in 1997, the other in 2002, indicating that at those times, the Plaintiff had back problems and that he should refrain from lifting weights of more than 20 to 25 pounds.

8. The Plaintiff further testified that he had been turned down by Social Security for disability.

. . . .

10. The letter from physicians dated 1997 and 2002 do not state that the Plaintiff is unable to become gainfully employed. The Plaintiff failed to bring any updated information regarding his purported disability; the filing of numerous lawsuits and the paying of some expenses for serving papers in said suits shows ability to comply with this Court's Order.

Plaintiff may be found guilty of civil contempt, despite currently lacking the assets to make required payments, if he could have taken employment that would enable him to make the required payments. See *Frank v. Glanville*, 45 N.C. App. 313, 315, 262 S.E.2d 677, 679 (1980). Moreover, the trial court determined that Plaintiff was able to pay some of the costs associated with numerous lawsuits and Plaintiff actually satisfied the judgment by payment of \$2,000 after serving only one day in jail.

Accordingly, we conclude that the trial court's findings of fact support its conclusion that Plaintiff, as a matter of law, had the ability to comply with the order that required him to pay the Rule 11 sanctions.

III.

Lastly, Plaintiff argues that the trial court erroneously failed to assign him counsel at his contempt proceeding. However, because Plaintiff fails to cite any authority in support of this argument, it is abandoned on appeal. See N.C. R. App. P. 28(b)(6) (2007). Accordingly, we affirm the trial court's order.

Affirmed.

Judges BRYANT and STEELMAN concur.

Report per Rule 30(e).