NO. COA09-1529

NORTH CAROLINA COURT OF APPEALS

Filed: 3 August 2010

BLACKARD PROPERTIES II LLC,

Plaintiff,

v. Alamance County
No. 08 CVD 2780

ROSA CAMACHO GARCIA,

Defendant.

Appeal by plaintiff from judgment entered 9 July 2009 by Judge Bradley R. Allen, Sr. in Alamance County District Court. Heard in the Court of Appeals 26 April 2010.

Nichols and Satterfield, PLLC, by Daron D. Satterfield, for plaintiff-appellant.

Khot & Associates, PLLC, by Bobby P. Khot, for defendant-appellee.

JACKSON, Judge.

Blackard Properties II, LLC ("plaintiff") appeals from the trial court's judgment awarding compensatory damages to Rosa Camacho Garcia ("defendant"). For the reasons set forth below, we vacate and remand.

From 1994 to 2008, defendant operated a bakery business named Mi Ranchito ("the business") located at 106 D Hanover Drive, Graham, North Carolina ("the property"). On 1 March 2008,

defendant and plaintiff entered into a leasehold agreement for the property.

On 5 August 2008, the North Carolina Department of Agriculture ("NCDOA") visited the property and conducted a routine inspection of the facility. The inspection identified the presence of rodents and ants, as well as the smell of urine throughout the business. Due to violations of the Food, Drug and Cosmetic Act, the NCDOA requested that defendant "enter into a voluntary agreement to close the business[,]" and she complied.

The NCDOA scheduled a follow-up investigation of the business for 12 August 2008. The NCDOA placed an embargo on the food products of the business due to rodent infestation, and plaintiff was notified of the business's condition. This embargo was placed on the food products on 5 August 2008 and remained in effect on 12 August 2008. Moreover, there had been no attempts to clean the premises or contact an exterminator. Approximately 5,280 pounds of contaminated food were removed from the premises. Thereafter, plaintiff boarded up the majority of the entrances and locked the front door, and, on or about 12 August 2008, plaintiff filed a motion for summary ejectment against defendant, seeking money damages. On 27 August 2008, defendant filed an answer and counterclaim for breach of contract against plaintiff. The magistrate ordered summary ejectment on behalf of plaintiff, denied money damages, and denied defendant's counterclaims. Defendant appealed to the district court.

On 8 September 2008, plaintiff and defendant entered into an agreement allowing defendant to retrieve her property from the boarded and locked business. Notwithstanding the agreement, defendant attempted to remove items that had not been listed to be removed from the business, including an air compressor and toolbox. As a result, the police were called and defendant was not permitted to remove any items.

On 22 October 2008, the NCDOA again inspected the business and closed out the existing embargo. At this inspection, a dumpster was loaded with food items that remained on the premises as well as some non-food inventory items, including paper products and milk crates showing larvae infestation. The district court granted defendant an opportunity to remove her items from the business, and she did so.

On or about 22 October 2008, plaintiff placed a freezer and a soda machine outside of the business. The next day, plaintiff's agent notified defendant that she could pick up these items from the property, but she failed to do so.

Defendant filed three amended counterclaims against plaintiff stemming from plaintiff's alleged conversion, unfair and deceptive trade practices, and bailment. On 8 June 2009, the matter came on for trial. At trial, the parties stipulated that the combined value of the soda machine and the freezer that plaintiff had placed outside of the business was $1,200.00. The trial court found that defendant was entitled to some measure of damages, and awarded defendant $5,250.00 in compensatory damages and $658.09 in costs.

On appeal, plaintiff argues that the trial court's order for damages in the amount of $5,250.00 to defendant is not supported by the trial court's findings of fact. We agree.

"When a trial court sits without a jury, the standard of review upon appeal is 'whether there was competent evidence to support [the court's] findings of fact and whether its conclusions of law were proper in light of [the] facts.'" *City of Wilmington v. Hill*, 189 N.C. App. 173, 175, 657 S.E.2d 670, 671–72 (2008) (quoting *In re Norris*, 65 N.C. App. 269, 275, 310 S.E.2d 25, 29 (1983), *cert. denied*, 310 N.C. 744, 315 S.E.2d 703 (1984)) (alterations in original).

"'The well-established rule is that findings of fact made by the [trial] court in a non-jury trial have the force and effect of a jury verdict and are conclusive on appeal if there is evidence to support them [.]'" *Lowe v. Bell House, Inc.*, 74 N.C. App. 196, 199, 328 S.E.2d 301, 303 (1985) (quoting *Henderson County v. Osteen*, 297 N.C. 113, 120, 254 S.E.2d 160, 165 (1979)). If "'[t]he record does not contain [a transcript of] the oral testimony[,] . . . the court's findings of fact are presumed to be supported by competent evidence.'" *Davis v. Durham Mental Health/Dev. Disabilities Area Auth.*, 165 N.C. App. 100, 111, 598 S.E.2d 237, 245 (2004) (quoting *Fellows v. Fellows*, 27 N.C. App. 407, 408, 219 S.E.2d 285, 286 (1975)).

However, "'[w]hether the conclusions of law are supported by the findings [is] a question of law fully reviewable on appeal.'" *Overcash v. N.C. Dep't of Env't & Natural Res.*, 179 N.C. App. 697,

708, 635 S.E.2d 442, 450 (2006) (quoting *State v. Campbell*, 359 N.C. 644, 662, 617 S.E.2d 1, 13 (2005), *cert. denied*, 547 U.S. 1073, 164 L. Ed. 2d 523 (2006)), *disc. rev. denied*, 361 N.C. 220, 642 S.E.2d 445 (2007) (second alteration in original).

Pursuant to the North Carolina Rules of Appellate Procedure, Rule 9(a)(1)e, "the record in a civil action shall contain 'so much of the evidence, set out in the form provided in Rule 9(c)(1), as is necessary for an understanding of all errors assigned[.]'" *Global Circuits of N.C., Inc. v. Chandak*, 174 N.C. App. 797, 800, 622 S.E.2d 643, 645 (2005) (quoting *Fortis Corp. v. Northeast Forest Products*, 68 N.C. App. 752, 754, 315 S.E.2d 537, 538-39 (1984)). "'It is incumbent upon the appellant to see that the record on appeal is properly made up and transmitted to the appellate court.'" *Id.* (quoting *Fortis Corp. v. Northeast Forest Products*, 68 N.C. App. 752, 754, 315 S.E.2d 537, 538-39 (1984)).

In the case *sub judice*, the trial court's findings of fact are vague and do not specifically identify values of defendant's property to support the final damages award. The following findings of fact are the only ones that we can tie to the court's award of damages:

> 25. Testimony was given by Tom Jones that [d]efendant's year end inventory was worth $9,876 in 2006 and 2007[;] however, most of this amount comprised food items and he did not recall if there [were] clothing items in the store.
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> 26. Testimony was given, and an exhibit introduced by the defendant, as to items lost and their value along with incidental expenses of moving costs. The court found that [d]efendant did not meet her burden of proof

> with regard to the value of items lost and that the valuation presented was not a reliable indicator as to the value of the items.
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> 27. The [c]ourt further found that some items which were listed would have to have been thrown away pursuant to the NC Dept. of Agriculture requirement of removal of all adulterated food products.
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> 28. On or about October 22, 2008, there was a freezer and coke machine that [p]laintiff placed outside of [the property]. The power had been turned off to [the property] and items in the freezer had contaminated and caused a stench and there were complaints from other tenants in the building. There was no evidence as to who turned off the power to the business.
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> 29. The following day, [d]efendant returned to the business. At that time, [d]efendant was informed by . . . [p]laintiff's agent, that she could pick up the freezer and [c]oke machine that [were] outside the business.
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> 30. The [c]ourt found that the freezer and [c]oke machine were not left in a secure location.
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> 31. The [c]ourt heard evidence that [d]efendant did not pick up the freezer and [c]oke machine.
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> 32. The Court heard evidence as to a broken glass case[;] however, no evidence was presented as to who caused the glass to break or the value of the display. Defendant did not retrieve the broken glass display.
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> . . . .
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> 35. Defendant did not meet its burden with regards to the measure of damages sought; however, [d]efendant did meet its burden that she is entitled to a measure of damages.

None of these findings specifically delineate defendant's damages, and we are left to speculate how the trial court reached

its conclusion that $5,250.00 was an appropriate measure of damages in this case. Notwithstanding our canon of interpretation that, in the absence of oral testimony in the record — as is the case here — "'the court's findings of fact are presumed to be supported by competent evidence,'" *Davis*, 165 N.C. App. at 111, 598 S.E.2d at 245 (quotation omitted), these findings simply do not provide adequate information for meaningful review. Therefore, we are constrained to vacate the trial court's order and remand for adequate findings of fact regarding defendant's damages.

Vacated and Remanded.

Chief Judge MARTIN and Judge BEASLEY concur.

Report per Rule 30(e).