

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA10-1354
NORTH CAROLINA COURT OF APPEALS

Filed: 21 June 2011

DANI T'WANDA,
Plaintiff,

v.

Wayne County
No. 09 CVS 1249

D&D TECHNICAL SERVICES, INC.,
and DAVID A. DURHAM,
Defendants.

Appeal by plaintiff from judgment entered 20 April 2010 by Judge Frank F. Lanier in Wayne County Superior Court. Heard in the Court of Appeals 25 April 2011.

Fertig Law Firm, by Lorna I. Fertig, for plaintiff-appellant.

Farris A. Duncan, for defendants-appellees.

MARTIN, Chief Judge.

Sometime in or before 2006, plaintiff Dani T'Wanda became interested in the "small house concept" and decided she wished to have a home built that was approximately 160 square feet. On or about 6 November 2006, she entered into an oral contract with defendant David Durham, who is the vice president of the design and fabrication firm, defendant D & D Technical Services Inc.

("D & D"), whereby Mr. Durham agreed to build the small home for Ms. T'Wanda in exchange for the purchase price of \$45,000.00. Ms. T'Wanda paid D & D a substantial portion of the total purchase price, \$31,000.00, and, while Mr. Durham began construction on the home, she attempted to purchase a lot where the home could be located.

Over the next two years, Ms. T'Wanda was unable to locate a lot she wished to purchase, relations between the parties disintegrated, and the project stalled. On 30 April 2009, Ms. T'Wanda commenced this action asserting that Mr. Durham was D & D's alter ego, as well as making claims for breach of contract, fraud, unfair and deceptive trade practices, and intentional infliction of emotional distress. The matter was heard by the court, sitting without a jury, on 19 April 2010. The only witnesses at trial were Ms. T'Wanda and Mr. Durham. Additionally, a number of emails between the parties were introduced into evidence.

At the conclusion of all the evidence, the trial court concluded that Ms. T'Wanda had failed to prove by the greater weight of the evidence that defendants breached the contract or committed fraud. The court ordered therefore that Ms. T'Wanda "have and recover nothing of the Defendants."

Ms. T'Wanda appeals.

"The standard of review on appeal from a judgment entered after a non-jury trial is 'whether there is competent evidence to support the trial court's findings of fact and whether the findings support the conclusions of law and ensuing judgment.'" *Cartin v. Harrison*, 151 N.C. App. 697, 699, 567 S.E.2d 174, 176 (quoting *Sessler v. Marsh*, 144 N.C. App. 623, 628, 551 S.E.2d 160, 163, *disc. review denied*, 354 N.C. 365, 556 S.E.2d 577 (2001)), *disc. review denied*, 356 N.C. 434, 572 S.E.2d 428 (2002).

However, in order for this Court to review a trial court's findings of fact and conclusions of law, the trial court must have made those findings in the first place. N.C.G.S. § 1A-1, Rule 52 provides that, "[i]n all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment." N.C. Gen. Stat. § 1A-1, Rule 52 (2009).

Rule 52 necessarily contemplates that facts be found before conclusions can be reached: "Evidence must support findings; findings must support conclusions; conclusions must support the judgment. Each step of the progression must be taken by the trial judge, in logical sequence; each link in the chain of reasoning must appear in the order itself."

Baker v. Baker, 102 N.C. App. 792, 796, 404 S.E.2d 20, 22 (1991) (quoting *Coble v. Coble*, 300 N.C. 708, 714, 268 S.E.2d 185, 190 (1980)).

In the case below, the trial court's judgment stated in its entirety:

The Plaintiff's complaint for breach of contract and fraud was heard before the undersigned at the April 19 2010 session of Wayne County Superior Court.

The Court, at the conclusion of all the evidence and arguments, finds that Plaintiff has failed to prove by the greater weight of the evidence that Defendants breached the contract and committed fraud.

It is, therefore, the judgment of this Court that the Plaintiff have and recover nothing of the Defendants.

The trial court made no findings of fact upon which it could make conclusions of law and enter a judgment. Its failure to do so precludes us from effectively reviewing the trial court's judgment and a new trial of the issues is required. See *Baker*, 102 N.C. App. at 797, 404 S.E.2d at 23.

New Trial.

Judges ELMORE and GEER concur.

Report per Rule 30(e).