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NO. COA10-880
NORTH CAROLINA COURT OF APPEALS

Filed: 19 April 2011

IN THE MATTER OF THE ESTATE OF
DAISY L. MILITANA,
Deceased.

Cherokee County
No. 07 E 98

Appeal by Caveator from orders entered 8 December 2009, 10 December 2009, and 21 January 2010 by Judge James L. Baker, Jr., in Cherokee County Superior Court. Heard in the Court of Appeals 10 January 2011.

Long, Parker, Warren, Anderson & Payne, P.A., by Robert B. Long, Jr., and Philip S. Anderson, for Caveator-Appellant.

Shipman & Wright, LLP, by Gary K. Shipman and William G. Wright, for Propounders-Appellees.

THIGPEN, Judge.

Following a caveat filed against the probate of a will, the trial court entered orders allowing both Caveator and Propounders' motions to tax attorneys' fees and costs to the estate. On appeal, we must decide whether the trial court's findings of fact are supported by the evidence and sufficient to support the court's awards. We must also determine whether the trial court abused its discretion in

denying Caveator's motions to amend the attorneys' fees awards. We affirm the trial courts orders awarding attorneys' fees to both Caveator and Propounders and denying Caveator's motions to amend.

Daisy L. Militana ("Decedent") executed a last will and testament on 21 February 1997, devising her entire estate to her son, Ronald M. Militana, Sr. ("Caveator"). Five years later, on 20 December 2002, Decedent executed a second last will and testament, which devised to Caveator a life estate in her 65-acre tract and house in Cherokee County, North Carolina, with a remainder interest to her three grandchildren: Sherlon Elliott, Nicholas Militana, and Ronald A. Militana, Jr. The 2002 last will and testament also devised the rest and residue of Decedent's estate in the following manner: 60% to Caveator; 15% to Decedent's granddaughter, Propounder Sherlon Elliott; 10% to each grandson, Nicholas Militana and Ronald A. Militana, Jr.; and 5% to Propounder Margie O'Brien.¹

Decedent died on 28 May 2007, and on 29 May 2007, Decedent's granddaughter filed the 20 December 2002 last will and testament of Decedent for probate. Caveator filed a caveat on 13 June 2007

¹Propounder Margie O'Brien is Caveator's ex-wife and the mother of Propounder Sherlon Elliott and Propounder Ronald A. Militana, Jr. The propounders in this case, Margie O'Brien, Sherlon Elliott, Ronald A. Militana, Jr., and Nicholas Militana, will hereinafter be referenced as "Propounders." We note that Decedent's grandsons, Ronald A. Militana, Jr., and Nicholas Militana, did not appear in this action at trial; nonetheless, their interests are aligned with Propounders.

against the probate of the 2002 last will and testament. Propounders filed a motion for summary judgment on 6 July 2009. A memorandum of judgment/order settling the caveat was entered on 13 July 2009. The next day, the trial court entered an order and judgment incorporating the 13 July 2009 memorandum.

On 18 September 2009, Caveator filed a petition to tax attorneys' fees and costs, and on 30 September 2009, Propounders filed a motion for attorneys' fees and costs. On 8 December 2009, the trial court entered an order allowing Caveator's motion and taxing against the estate Caveator's attorneys' fees and costs in the amount of \$211,847.50 and \$25,904.22. On 10 December 2009, the trial court entered an order allowing Propounders' motion for an award of attorneys' fees and expenses in the amount of \$230,266.67 and \$18,163.56. On 21 December 2009, Caveator filed two motions to grant a new hearing, to make additional findings of facts in both orders allowing and taxing attorneys' fees and costs, and to amend both awards of attorneys' fees and costs. On 21 January 2010, the trial court entered an order denying Caveator's motions and decreeing that the orders "granting Attorneys' Fees and Costs to Propounders and Caveator remain unchanged and in force and effect." From the orders entered 8 December 2009 and 10 December 2009, awarding and taxing attorneys' fees upon motions by Propounders and Caveator, and from the order

entered 15 January 2010, denying Caveator's motions to amend, Caveator appeals.

I: Findings of Fact

In Caveator's first argument on appeal, he contends the trial court's findings of fact were insufficient to support the award of both Caveator and Propounders' fees and costs.² Specifically, Caveator argues that the trial court made insufficient findings of fact because the court "made no findings as to the nature, kind and value of the Estate or as to the amount of the represented Propounders interest therein[.]" Caveator further argues that the court "did not find how many hours of time were actually reasonably expended, the amount of the customary charge for similar services, [or] whether the charges by . . . counsel were in line with such customary fees[.]" Caveator places particular emphasis on the purported lack of findings with regard to the "value of the Estate[.]" Because the trial court incorporated by reference the affidavits attached to both

²Caveator does not argue that the findings of fact are not supported by competent evidence of record, and therefore, any argument on this issue is abandoned. *State v. Maness*, 363 N.C. 261, 286, 677 S.E.2d 796, 812 (2009) ("Questions" not "presented and discussed in a party's brief . . . are deemed abandoned") (citing N.C. R. App. P. 28(a)). Instead, Caveator exclusively argues that the trial court should have made additional findings of fact on evidence of record pertaining to the depletion of the estate and based on these additional findings, amended its award.

Propounders and Caveator's motion, we conclude that the findings of fact were sufficient.

N.C. Gen. Stat. § 6-21(2) specifically authorizes the trial court in its discretion to allow attorneys' fees to counsel for unsuccessful caveators to a will:

Costs allowed either party or apportioned in discretion of court. - Costs in the following matters shall be taxed against either party, or apportioned among the parties, in the discretion of the court: . . .

(2) Caveats to wills and any action or proceeding which may require the construction of any will or trust agreement, or fix the rights and duties of parties thereunder; provided, that in any caveat proceeding under this subdivision, the court shall allow attorneys' fees for the attorneys of the caveators only if it finds that the proceeding has substantial merit. . . .

The word 'costs' as the same appears and is used in this section shall be construed to include reasonable attorneys' fees in such amounts as the court shall in its discretion determine and allow[.]

N.C. Gen. Stat. § 6-21(2) "provides that the court must find that a caveat proceeding has substantial merit before it may award an attorney's fee[.]" *Dyer v. State*, 331 N.C. 374, 377, 416 S.E.2d 1, 2 (1992). "An award of attorney's fees must be supported by evidence and findings of fact showing the reasonableness of the award." *In re Estate of Tucci*, 104 N.C. App. 142, 155, 408 S.E.2d 859, 867 (1991),

review dismissed, 331 N.C. 749, 417 S.E.2d 236 (1992) (citation omitted). “To support an award of attorney’s fees, the trial court should make findings as to the lawyer’s skill, his hourly rate, its reasonableness in comparison with that of other lawyers, what he did, and the hours he spent.” *Falls v. Falls*, 52 N.C. App. 203, 221, 278 S.E.2d 546, 558 (1981). However, when a trial court incorporates by reference the motions and attached affidavits of the parties, our Court has held that “[c]omprehensive review of the order, the motion, and the affidavit and its attachments provides sufficient findings of fact to support the award of attorney’s fees.” *Winston-Salem Wrecker Ass’n v. Barker*, 148 N.C. App. 114, 119, 557 S.E.2d 614, 618 (2001).

We review the trial court’s findings of fact and conclusions of law to determine whether they are supported by competent evidence. *Dyer*, 331 N.C. at 376-77, 416 S.E.2d at 2. “If the findings of the superior court are supported by the evidence we cannot disturb them.” *Id.* “This is true even though there may be evidence in the record which could sustain findings to the contrary.” *In re Will of Ridge*, 302 N.C. 375, 380, 275 S.E.2d 424, 427 (1981).

“It is a matter in the discretion of the court, both as to whether to allow fees and the amount of such fees.” *Id.*, 302 N.C. at 380, 275 S.E.2d at 427. Our review requires that we determine “whether

the trial judge's award of . . . attorneys' fees and costs from the estate constituted an abuse of discretion." *Id.*

In the case *sub judice*, the court's order allowing Propounders' attorneys' fees contains the following pertinent findings of fact:

8. The Caveator is represented by his attorneys Robert B. Long, Jr. and Philip S. Anderson. Sherlon Elliot and Margie O'Brien are represented by their attorneys Gary K. Shipman and William G. Wright of Shipman & Wright, LLP and Jerry Collins of the Collins Law Firm. [Footnote:] Propounders were previously represented by McGuire, Woods & Bissett, PA whose invoices for the representation of Propounders are attached to their Motion for fees and costs and incorporated by reference in their fee petition as Ex. A. The invoices for the Collins Law Firm for the representation of Propounders is also attached thereto and incorporated by reference as Exhibit B.
9. The attached affidavits and exhibits to the Caveator's and Propounders' Motions establish that following more than two (2) years of litigation and months of summary judgment motion hearing and trial preparation, a Family Settlement Agreement and Consent Judgment was entered into by the Propounders and the Caveator on July 13, 2009.
10. Consistent with N.C. Gen. Stat. § 6-21(2), Propounders seek their attorneys' fees in this Motion in the amount of \$230,266.67. This amount includes fees incurred representing the Propounders in this Caveat proceeding by Shipman & Wright, LLP in the amount of \$205,472.67, by the Collins Law Firm in the amount of \$12,140.00, and by McGuire, Woods &

Bissett, PA the in the amount of \$12,654.00.

11. Consistent with N.C. Gen. Stat. § 6-20, Propounders also seek the following costs incurred by Propounders in this Caveat proceeding in the amount of \$18,163.56. This amount includes expenses incurred representing the Propounders in this Caveat proceeding by Shipman & Wright, LLP in the amount of \$17,904.87, and by McGuire, Woods & Bissett, PA the [sic] in the amount of \$258.69.
12. Attached to the Propounders' Motion are the Affidavits of their attorneys Gary Shipman and William G. Wright, with supporting material, and the affidavits of George Rountree, III, and James B. Maxwell verifying the reasonable attorneys' fees and costs.
13. The Court has considered Propounders' Counsel's attorneys' fees, in the amount of \$230,266.67, and expenses in the amount of \$18,163.56 under *inter alia* the factors set forth in North Carolina's Revised Rules of Professional Conduct, Rule 1.5, and finds the fees and expenses sought by Plaintiffs' Counsel to be reasonable.
14. There are a number of factors which the Court has considered in affirming the reasonableness [of] Counsel's fees and expenses in the Settlement Agreement, including, but not limited to:
 - a. This case was fraught with legal and procedural issues that were complex and sometimes novel.
 - b. This case required tremendous skill from both Propounders' Counsel.

- c. Propounders' Counsel expended a large albeit reasonable amount of time in pursuing the claims and defenses in this litigation.
- d. Propounders' Counsel had responsibilities to the clients in trying to litigate the claims concerning their inheritance from a relatively large estate.
- e. The litigation ultimately proved successful for Propounders as the Consent Judgment is a fair, adequate and reasonable compromise to this Caveat Proceeding.
- f. There was a substantial basis to submit the last will and testament of Daisy L. Militana to probate.
- g. The Propounders and their counsel expended [a] substantial amount of money and incurred substantial risks in pursuing this litigation.
- h. The Fee sought is [a] customary amount for this type of litigation and is consistent with the prevailing rates and fees in this area for the work performed by the Propounders' Counsel, and the hourly rates are well within or below the prevailing norm.
- h. Similarly, Propounders' Counsel's experience and ability justify charging the rates for the work performed in this matter.

- i. Propounders' Counsel's involvement in this case precluded other employment and representations.

15. The Court exercises its discretion and awards Propounders all of their reasonable attorney fees and costs being sought.

In the trial court's order granting Caveator's motion and taxing attorneys' fees and costs against the Estate, the court entered the following pertinent findings of fact:

4. In the Caveat action, Caveator was represented by the law firm of Long, Parker, Warren, Anderson & Payne, P.A. ["Long Parker"], formerly known as Long, Parker, Warren & Jones, P.A., and Long, Parker, Warren & Anderson, P.A., and Cowan & Cowan, P.A. ["the Cowan Firm"].
5. Based upon the affidavits filed herein, the Caveat action had substantial merit.
6. More particularly, the Caveator's claim that Daisy Militana lacked testamentary capacity on the date she signed the 12/20/02 Paper-Writing had substantial merit, based upon grounds including but not limited to the following: Overwhelming medical evidence of Daisy Militana's moderate dementia and other mental issues as of December 19 & 20, 2002; the Caveator's unopposed expert opinion testimony that Daisy Militana suffered moderate Dementia of Multiple Etiologies, including Vascular Dementia, as of December 19 & 20, 2002, that she did not then know the nature, kind, or extent of her property, and that it was doubtful that she then understood the effect that the act of making a will would have on all her

property; the contemporaneous notes of the attorney who drafted and notarized the 12/20/02 Paper-writing, evidencing Daisy Militana's omission of multiple valuable properties in response to that attorney's request that she identify all her property, thereby supporting by direct evidence the contention that Daisy Militana did not know the kind, nature, and extent of her property at the time she signed the 12/20/02 Paper-Writing; Propounder Elliott's verified petition, filed December 12, 2002, swearing that Daisy Militana was incompetent and had multiple medical problems including dementia and alcoholism; and the Court's adjudication of Daisy Militana's incompetence on August 11, 2003, based upon Propounder O'Brien's July 7, 2003 petition.

7. The Caveator's claim that the Propounders procured Daisy Militana's signature on the 12/20/02 paper-writing by undue influence had substantial merit, based upon grounds including but not limited to the facts that overwhelming medical evidence demonstrated Daisy Militana's mental and physical frailty as of December 19 & 20, 2002, including dementia and her mixture and abuse of alcohol and prescription pain medications; that Daisy Militana was under the constant watch and supervision of the Propounders and "caregivers" on their payroll from shortly after the November 30, 2002 death of Daisy Militana's husband of sixty years until her death, during which time Daisy Militana had no meaningful access to her only child, the Caveator; that on December 12, 2002, Propounder Elliott filed a verified petition swearing that Daisy Militana was "easily led" and "may be persuaded to give assets away"; that the propounders procured Daisy Militana's signing of Powers

of Attorney naming them as fiduciaries less than a week after Propounder Elliott filed the verified incompetency petition against Daisy Militana; that the Propounders procured Daisy Militana's signing of the 12/20/02 Paper-Writing, at least one day after procuring execution and delivery of the Powers of Attorney and while the incompetency proceeding was still pending; that the 12/20/02 Paper-Writing provided for a disposition materially different from Daisy Militana's 1997 Will and prior wills; and that Propounder Elliott dismissed the incompetency petition the day after the Propounders procured Daisy Militana's signing of the 12/20/02 Paper-Writing.

8. The Caveator has in fact incurred and is obligated to pay his counsel of record a total of \$211,847.50 in attorneys' fees, representing \$7,237.50 due the Cowan Firm under an express fee agreement plus \$204,610.00 due Long Parker under a written fee agreement (the latter being the sum of the firm attorney's fees, \$202,320.00, plus the \$2,290.00 in attorneys' fees paid Rodney Hasty on a contract-basis).
9. Further, the Caveator has in fact incurred and is obligated to pay Long Parker a total of \$25,904.22 in costs, pursuant to a written fee agreement (representing the \$28,194.22 shown on Exhibit L to the Long Affidavit, less the payments to Rodney Hasty for legal services on a contract-basis).
10. The Caveator's attorneys' fees and costs are fair and reasonable in light of the time and labor that Long Parker and the Cowan Firm expended; the experience and skill Long Parker and the Cowan Firm applied; the significant number and complexity of the

material factual and legal issues involved in the action; the zealous and skillful advocacy of opposing counsel; the uncertainty of the outcome of the Caveat action; the value of the Estate and Estate assets at stake; the hourly rates normally and customarily charged in Western North Carolina; the total fees and costs normally and customarily charged for attorneys' fees by these firms and other Western North Carolina law firms for litigation of this scale, magnitude, and complexity; and the success of the Caveator, as evidenced by the outcome reached and consent judgment entered.

11. In light of the foregoing factors and the nature and extent of the Estate of Daisy L. Militana, the Caveator's attorneys' fees and costs, in the amounts provided below, are fair and reasonable, as attorneys' fees and costs to be taxed against the Estate of Daisy L. Militana.

Caveator cites *Owensby v. Owensby*, 312 N.C. 473, 322 S.E.2d 772 (1984), and *Lowder v. All Star Mills, Inc.*, 82 N.C. App. 470, 346 S.E.2d 695 (1986), in support of his argument that the foregoing findings were insufficient.

In *Owensby*, the Supreme Court remanded an award of attorneys' fees on grounds that the trial court only "perfunctorily stated that it had considered" facts such as the "time and labor[,] the "customary charge for similar services[,] the "novelty and difficulty of the questions of law," and the "skill requisite to the proper representation of the defendant," without providing details of the foregoing, such as "how many hours of labor were actually expended[,] "

or “how [the court] adjudged the difficulty of the legal questions or the adequacy of the representations.” *Owensby*, 312 N.C. at 477, 322 S.E.2d at 774-75. We believe this opinion is distinguishable from the case *sub judice*. The court in *Owensby* did not incorporate by reference the motions and affidavits of the parties, and the Supreme Court stated that “[t]he court’s findings in no way shed light upon the nearly \$48,000 disparity between the amount submitted by defendant’s attorneys as the value of their services and the amount awarded by the court.” *Id.*, 312 N.C. at 477, 322 S.E.2d at 775. Here, the court incorporated by reference the affidavits submitted by the parties and granted the amount of attorneys’ fees requested by the parties. The affidavits contained details regarding the exact number of hours of labor that were actually expended, the exact amount of a customary charge for similar services, the reasons why the questions of law and fact in this case were novel and difficult, and the skill requisite to proper representation.

Lowder is also distinguishable from the case *sub judice*. Caveator cites *Lowder* for the following proposition: Where findings of fact are insufficient to allow meaningful appellate review, the mere fact that the information was available in the record to make such findings of fact does not cure the insufficiency. In *Lowder*, the Court stated, “[t]here are no findings indicating the number of hours reasonably expended; the nature or quality of the work; the

customary charge (hours or rates) by other attorneys for similar services; the actual hourly rates used in arriving at the total fee award; whether this representation precluded opportunities to represent other clients; or whether the services were rendered on a contingency basis.” *Lowder*, 82 N.C. App. at 478, 346 S.E.2d at 700. Because of the trial court’s omissions, the Court held that “[t]he findings are deficient under *Owensby v. Owensby*, 312 N.C. 473, 322 S.E.2d 772 (1984).” *Id.* The Court explained, “[a]lthough our review of the record reveals that evidence for all or nearly all of these findings is readily available, an effective review of the trial court’s exercise of discretion is not possible in this case[;] [t]herefore it must be remanded for more specific findings.” *Id.* Caveator argues that the foregoing holding necessitates a remand in the case *sub judice*; however, we believe this case is distinguishable from *Lowder*. We reiterate that in this case the trial court incorporated by reference the motions and affidavits of the parties. The trial court in *Lowder* did not. Because the trial court in this case incorporated by reference the motions and attached affidavits of the parties, and because a “[c]omprehensive review of the order, the motion, and the affidavit[s] and [their] attachments provides sufficient findings of fact to support the award of attorney’s fees[,]” *Barker*, 148 N.C. App. at 119, 557 S.E.2d at 618, we hold

that the findings of fact are sufficient to support the trial court's award.

II: Rule 52 and Rule 59 Motions to Amend Attorneys' Fee Award

In Caveator's second argument on appeal, he contends the trial court erred in denying his N.C. Gen. Stat. § 1A-1, Rule 52(b) motion to amend the findings of fact in the orders awarding attorneys' fees, to make additional findings of fact, and to amend the attorneys' fees awards. Caveator further argues the trial court erred in denying Caveator's N.C. Gen. Stat. § 1A-1, Rule 59 motion to grant a new hearing and amend the attorneys' fee award.³ We conclude the trial court did not err.

N.C. Gen. Stat. § 1A-1, Rule 52(b) provides that "[u]pon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend

³Propounders contend that Caveator's Rule 52 and Rule 59 motions were inappropriate vehicles to challenge an attorneys' fee award, and that Caveator should have filed a N.C. Gen. Stat. § Rule 60 motion addressing "[r]elief from judgment or order." We agree that in the context of this case, a motion pursuant to Rule 59 was not proper. Caveator did not wish to amend the consent judgment, which resolved the caveat filed against the probate of the will. Rather, Caveator's motions were intended to effectuate a reduction in the attorneys' fees awarded. This Court has held that "motions are properly treated according to their substance rather than their labels[.]" *Scott v. Scott*, 106 N.C. App. 379, 382, 416 S.E.2d 583, 585 (1992). Moreover, "[a]s with Rule 59 motions [and Rule 52(b) motions]," if Rule 60 were the more appropriate Rule as the Propounders contend, "the standard of review of a trial court's denial of a Rule 60(b) motion is [likewise] abuse of discretion[.]" *Davis v. Davis*, 360 N.C. 518, 523, 631 S.E.2d 114, 118 (2006). We therefore analyze the motions based on their substance.

the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59."

In the context of an appeal from orders denying both Rule 52(b) and Rule 59 motions, "[w]e review the trial court's" orders "for abuse of discretion and reverse only upon 'a showing that [the] ruling was so arbitrary that it could not have been the result of a reasoned decision.'" *Jackson v. Culbreth*, 199 N.C. App. 531, 538, 681 S.E.2d 813, 818 (2009) (citation omitted).

Caveator's motions address the amount of attorneys' fees awarded by the court. By the express language of N.C. Gen. Stat. § 6-21(2), attorneys' fees are allowed in the discretion of the trial court. The ruling of the trial court will not be disturbed on appeal absent a showing of abuse of discretion. *West v. Tilley*, 120 N.C. App. 145, 151, 461 S.E.2d 1, 4 (1995); *see also Culler v. Hardy*, 137 N.C. App. 155, 157, 526 S.E.2d 698, 700 (2000) (stating that "[t]he dispositive issue on appeal is whether the trial court abused its discretion in awarding counsel fees"). "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *Blackmon v. Bumgardner*, 135 N.C. App. 125, 130, 519 S.E.2d 335, 338 (1999) (citations omitted).

In the case *sub judice*, Caveator's sole argument that the trial court abused its discretion hinges on the premise that the trial

court's awards of attorneys' fees and costs depleted the value of the estate to the extent that the fees were excessive. Caveator, in his brief on appeal, indicates that "the entire value of the Estate [is] less than \$1,040,000.00[,]" and "[a]t the time of the first annual accounting, the liquid assets of the Estate were only \$496,953.08." We note, however, that Caveator petitioned the trial court to tax the estate "\$237,781.72," in attorneys' fees and costs, "representing \$211,847.50 in attorneys' fees and \$25,934.22 in costs." Moreover, the trial court considered an affidavit attached to Caveator's petition to tax attorneys' fees and costs made by counsel of record for Caveator, which stated that "[t]he assets affected by the Caveat exceeded \$2 million in value, even after the Propounders' expenditures of over one million three hundred thousand dollars[.]" At the hearing on Caveator's motions to amend, evidence was admitted tending to show that "[t]he land, cash, everything has been valued twice under oath by . . . the propounder, Sherlon Militana Elliott, as being one million forty thousand dollars." Evidence was also considered that "the value of the estate was in excess of two million dollars[.]" When evidence is conflicting, and there is competent evidence of record to support the trial court's findings, and in turn, its conclusions and award, we do not believe the trial court abused its discretion. *Wright v. Murray*, 187 N.C. App. 155, 161, 651 S.E.2d 913, 917 (2007) (quotation omitted) ("When a trial judge sits as both judge and juror,

as in a hearing on court costs and attorney's fees, it is that judge's duty to weigh and consider all competent evidence[,]” and the trial judge is entitled to resolve conflicts or discrepancies in the evidence, and draw any reasonable inferences supported thereby). Here, the trial court's findings incorporating by reference the affidavits of both parties supports the trial court's award. Moreover, there is evidence of record to support the trial court's findings of fact. Caveator's motions to grant a new hearing, make additional findings,⁴ and amend the attorneys' fees awards to Propounders and Caveator, were based solely on the argument that the awards of attorneys' fees, granted in the amounts requested by the parties, would deplete the liquid assets of the estate. The trial court heard, weighed and considered the evidence regarding the assets of the estate. Moreover, the trial court stated, “I recognize the amount that was in the estate based on prior matters that had been presented to me. I had that information before me and I recognized what the attorneys' fees would likely do to the estate, and that was,

⁴“It is immaterial that the evidence may support a finding not made by the superior court[;] [o]ur review is limited to whether competent evidence supports the findings that were made.” *Steinkrause v. Tatum*, __ N.C. App. __, __, 689 S.E.2d 379, 384 (2009) (quotation omitted); *see also Tolbert v. Hiatt*, 95 N.C. App. 380, 385, 382 S.E.2d 453, 456 (1989) (“[T]he trial court need not recite every evidentiary fact presented at the hearing, but must only make specific findings on the ultimate facts established by the evidence that are determinative of the questions raised in the action and essential to support its conclusions”).

of course, of great concern to me. But I did ultimately decide that the counsel fees that were being prayed for were counsel fees that should be awarded[.]” We conclude the trial court’s decision to deny Caveator’s Rule 52 and Rule 59 motions to amend the award of attorneys’ fees, grant a new hearing, and make additional findings of fact was not an abuse of discretion.

For the foregoing reasons, we affirm the trial court’s orders awarding attorneys’ fees and costs and the trial court’s order denying Caveator’s motions to amend the award of attorneys’ fees.

AFFIRMED.

Chief Judge MARTIN and Judge ROBERT C. HUNTER concur.

Report per Rule 30(e).