

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA12-1455
NORTH CAROLINA COURT OF APPEALS

Filed: 20 August 2013

TERRY L. EDGERTON

v.

Buncombe County
No. 12 CVD 1061

JOHN AND ALECIA OLIVER

Appeal by defendant from orders entered 9 August 2012 and 21 September 2012 by Chief District Court Judge J. Calvin Hill in Buncombe County District Court. Heard in the Court of Appeals 22 April 2013.

William E. Loose for defendant-appellant.

No brief filed for plaintiff.

BRYANT, Judge.

Where defendant can show no error on the face of the order directing defendant to pay plaintiff, and no abuse of discretion in the District Court's order denying defendant's motion to amend, alter, or set aside its prior order, we affirm the judgment of the District Court.

On 9 February 2012, plaintiff Terry Lee Edgerton filed a complaint seeking to recover money owed him by defendants John Oliver and Alecia Oliver in Buncombe County Small Claims Court. Plaintiff alleged that defendants contracted with him to rebuild a stone retaining wall at defendants' residence but had not paid him for any work he completed. Plaintiff claimed \$3,375.00 as the amount defendants owed. Defendants denied the allegation and in their answer asserted that "[a]ny agreement that did exist between the parties was for each party to perform certain work for the other party for which neither party would receive compensation."

Following a 5 March 2012 hearing, the Small Claims court ordered that plaintiff recover from defendants \$3,375.00. Defendants appealed to Buncombe County District Court.

On 30 March 2012, defendants filed a motion to amend and allow further pleading. On 13 April 2012, the District Court allowed defendants' motion, and defendants amended their answer. Defendants amended answer states that "[t]here was never any agreement or discussions between the plaintiff and defendant Alicia [sic] Oliver and therefore no contract could exist between them." Defendants further alleged counterclaims of breach of contract and quantum meruit.

On 9 August 2012, the matter was heard in Buncombe County District Court, the Honorable J. Calvin Hill, Chief District

Court Judge presiding. The District Court entered a 9 August 2012 order in which it found that a verbal contract to repair a brick wall for defendant John Oliver ("defendant") existed between the parties. The court found that the fair market value of the goods and services was \$3,420.00 but that defendants had already paid \$500.00 for materials. The court found for plaintiff in the amount of \$2,875.00. The court also found that Defendant Alecia Oliver was not a party to the contract. The court rejected defendant's defenses and counterclaims. The court concluded that "defendant Alecia Oliver was not a party to the contract and therefore not liable" and that "[t]he plaintiff is entitled to recover and the defendant is ordered to pay two thousand eight hundred and seventy five dollars (\$2,875.00)."

On 16 August 2012, defendant moved to amend or alter or set aside the order. Defendant asserted that the "Order" of the court "should have been a 'judgment'"

3. The Order wrongfully requires the defendant to "pay" \$2875.00 which is not the correct form of a judgment. The appropriate language should be "The plaintiff shall have and recover from the defendant the principal sum of two thousand eight hundred and seventy five dollars (\$2875.00)." The judgment cannot order the defendant to pay the sum entered.

8. . . . [D]efendant would consent to the entry of a proper judgment . . . with the exception that the proper language for entry of the judgment as set forth above replace the last paragraph of the "Order" entered .

. . .

Defendant requested that the court "amend the Order to contain the appropriate language for entry of a judgment" On 21 September 2012, the District Court entered an order denying the motion, finding defendant's request to be without merit. Defendant appeals.

On appeal, defendant raises the following issues: whether the trial court erred in (I) ordering defendant John Oliver to pay a sum certain; (II) failing to properly dismiss Alecia Oliver from the case; and (III) failing to grant defendants' motion to amend the 9 August 2012 order.

I

Defendant Oliver first argues that the trial court erred when it issued an order against him rather than a judgment. Defendant contends that the difference is that as entered, enforcement of the order can be rendered through contempt proceedings while enforcement of a judgment could be accomplished only through remedies afforded a judgment creditor. Defendant Oliver contends that the trial court could not order him to pay plaintiff \$2,875.00. We find this argument to be without merit.

"An exception to the judgment raises only two questions of law: (1) whether the facts found support the conclusions of law

and the judgment, and (2) whether error of law appears on the face of the record." *S. Carolina Ins. Co. v. Se. Painting Co., Inc.*, 77 N.C. App. 391, 394, 335 S.E.2d 66, 68 (1985) (citations omitted).

Defendant cites *Curry v. First Fed. Sav. & Loan Ass'n*, for the proposition that "[a] judgment is a determination or declaration on the merits of the rights and obligations of the parties to an action, and an order is every direction of a court not included in a judgment." 125 N.C. App. 108, 112, 479 S.E.2d 286, 289 (1997) (citation and quotations omitted). While the language defendant quoted is found in *Curry*, neither that nor other language in the opinion supports defendant's contention which seeks to materially distinguish the order entered against him from the judgment he now seeks.

Defendant does not and cannot cite any authority for the proposition that the District Court was required to enter a "judgment" rather than an "order." Therefore, defendant has failed to establish error in the entry of the District Court's order.

Defendant also argues that the trial court erred in granting plaintiff the relief awarded. Defendant argues the relief the trial court provided plaintiff can be no more than the relief requested in plaintiff's complaint. Defendant asserts that the relief plaintiff requested "was to recover a

sum certain. The judgment does not comport with the relief requested" We find defendant's argument to be wholly without merit. Further, defendant does not challenge the findings of fact or conclusion of law, nor the ultimate amount of money owed. Because defendant challenges only the *form* of the District Court order, we dismiss defendant's argument.

II

Next, defendant argues that the District Court's order is improper in form because it does not formally dismiss Alecia Oliver from the suit. Defendant contends that because the 9 August 2012 order directing an unspecified "defendant" to pay plaintiff as opposed to "defendant John Oliver," the dismissal of Alecia Oliver is improper. We note that in its order, the trial court concluded "named defendant Alecia Oliver was not a party to the contract and therefore not liable." On appeal, defendant provides no authority for his assertion that more was required by the District Court in its dismissal of defendant Alecia Oliver.

We find this argument to be without merit.

III

As defendant's final argument, he asserts that the trial court erred when it denied the motion to amend or alter or set aside the order. We disagree.

"Motions to amend judgments pursuant to N.C.G.S. §1A-1, Rule 59 are addressed to the sound discretion of the trial court, and will not be disturbed on appeal absent an abuse of that discretion." *Spivey & Self, Inc. v. Highview Farms, Inc.*, 110 N.C. App. 719, 728, 431 S.E.2d 535, 540 (1993) (citation omitted).

Citing the above authority, defendant states that "[i]f appellants are not entitled to relief sought under Assignments of Errors 1 and or 2, the record does not disclose an abuse of discretion that would warrant relief under this assignment." We accept defendant's concession and find no abuse of discretion by the trial court in denying defendant's motion.

Therefore, the judgment of the trial court is affirmed.

Chief Judge MARTIN and Judge DAVIS concur.

Report per Rule 30(e).