

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA14-266  
NORTH CAROLINA COURT OF APPEALS

Filed: 16 December 2014

ROBERT F. BURNETTE and  
JILL C. BURNETTE,  
Plaintiffs,

v.

Haywood County  
No. 12 CVS 0029

PAMELA J. FOX,  
Defendant.

Appeal by Plaintiffs from an order entered 31 July 2013 by Judge J. Thomas Davis in Haywood County Superior Court. Heard in the Court of Appeals 23 September 2014.

*Hylar & Lopez, P.A., by Stephen P. Agan and George B. Hylar, Jr., for the Plaintiffs.*

*Frank G. Queen, PLLC, by Frank G. Queen and Smathers & Smathers, by Zebulon L. Smathers, for the Defendant.*

DILLON, Judge.

Jill C. Burnette, in her individual capacity and as administratrix of the estate of her deceased husband Robert F. Burnette, appeals from an order denying her motion for judgment notwithstanding the verdict, and alternatively, for a new trial in an action against her neighbor, Pamela J. Fox ("Defendant").

Ms. Burnette is referred to herein as "Plaintiff," and she and her deceased husband are referred to herein as "Plaintiffs." <sup>1</sup>

1. Background

The evidence tended to establish the following: Plaintiffs purchased land adjacent to Defendant's home. Plaintiffs began to make certain improvements to the property, which included the installation of outdoor lighting. Disputes surrounding the lighting and other property issues began to arise; and, in an attempt to resolve their differences, the parties participated in a voluntary mediation, agreeing to certain conditions regarding the lighting and other issues.

After reaching the agreement, Plaintiffs made various changes to the outdoor lighting, but tensions between the parties continued to escalate. Defendant remained unsatisfied with the amount of light shining onto her property and into her home at night. Plaintiffs installed outdoor video cameras in an effort to collect evidence of Defendant interfering with their property. Plaintiffs also erected a chain link fence to prevent

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<sup>1</sup> Mr. Burnette was a named plaintiff in this action. However, approximately two months after this appeal was commenced, Mr. Burnette died. His wife Plaintiff Jill Burnette became the administratrix of his estate and promptly filed a motion to substitute herself in her capacity as administratrix for her husband pursuant to N.C. R. App. P. 38(a), which we allowed by an order entered on 29 April 2014.

Defendant from entering their property. Plaintiffs involved the police several times, initiating criminal charges against Defendant twice. Thereafter, Plaintiffs chose to voluntarily dismiss certain of those charges.

Plaintiffs filed this action alleging breach of the agreement, trespass, private nuisance, and invasion of privacy. Defendant filed an answer, asserting counterclaims for breach of the agreement, trespass, private nuisance, invasion of privacy, and intentional infliction of emotional distress. Plaintiffs subsequently filed a supplemental complaint asserting additional causes of action for trespass, malicious prosecution, and tortious interference with contract. Defendant answered this supplemental complaint, asserting counterclaims for malicious prosecution and assault. A week-long jury trial ensued.

The jury found in favor of Defendant on her nuisance claim, awarding her \$1,500.00 in compensatory damages and \$20,000.00 in punitive damages. The jury also found in favor of Defendant on her malicious prosecution claim, awarding her nominal damages of \$1.00 and punitive damages of \$1,500.00.

Plaintiffs moved for judgment notwithstanding the verdict or, alternatively, for a new trial, which the trial court denied

by an order entered 31 July 2013. On 28 August 2013, Plaintiffs entered written notice of appeal from that order.

## II. Analysis

Plaintiff makes four arguments on appeal, which we address in turn below.

### A. Nuisance Claim

Plaintiff contends that the evidence was insufficient to support Defendant's nuisance claim and that the trial court therefore erred in denying her motion for a directed verdict and for judgment notwithstanding the verdict. We disagree.

We review denials of motions for a direct verdict and for judgment notwithstanding the verdict *de novo*, viewing the evidence in the light most favorable to the non-moving party, and giving the non-moving party the benefit of every reasonable inference arising from the evidence. *Brookshire v. North Carolina Dept. of Transp., Div. of Motor Vehicles*, 180 N.C. App. 670, 672, 674, 637 S.E.2d 902, 904, 905 (2006).

Nuisance consists of the defendant's substantial and unreasonable interference with the plaintiff's use and enjoyment of his or her land. *Whiteside Estates, Inc. v. Highlands Cove, LLC*, 146 N.C. App. 449, 455-56, 553 S.E.2d 431, 436-37 (2001).

In the present case there was ample evidence from which a jury could have concluded - as it did - that Plaintiffs unreasonably interfered with Defendant's use and enjoyment of her property and that Defendant's interest in her property was substantially injured as a result. Defendant testified that Plaintiffs installed fourteen lights on their property; that the lights shined into her bedroom; that she could not sit on her back patio at night because of the intensity of the light; and that she bought wooden blinds, heavy blankets, and French doors with louvers to block the light. One of Defendant's neighbors testified that the lights are "real bright" and "just [lit] up [Defendant's] house inside and out." Another neighbor testified that the lights on Plaintiffs' property had "[t]he place lit up like a ball field," and further, that Mr. Burnette personally told him "several times that he would light the damn place up to where it would blind the \*\*\*\* out of [Defendant]." Although Plaintiffs presented contrary evidence, viewing *all* the evidence in the light most favorable to Defendant and giving her the benefit of every reasonable inference arising from that evidence, as we are required to do, we cannot avoid the conclusion that the trial judge did not err in denying Plaintiffs' motions for a directed verdict and for judgment

notwithstanding the verdict. Accordingly, this argument is overruled.

B. Malicious Prosecution Claim

Plaintiff next contends that the evidence was insufficient to support Defendant's claim for malicious prosecution against Plaintiff Jill Burnette and the trial court therefore erred in denying her motion for a directed verdict and for judgment notwithstanding the verdict. We disagree.

Malicious prosecution consists of (1) the initiation of a proceeding prior to the instant action, (2) with malice and (3) without probable cause, and (4) the termination of the prior proceeding in favor of the party prosecuted. *Best v. Duke University*, 337 N.C. 742, 749, 448 S.E.2d 506, 510 (1994), *reh'g den.*, 338 N.C. 525, 452 S.E.2d 807 (1994).

Plaintiff contends that there was insufficient evidence to support a jury finding that the first element of Defendant's claim had been met with respect to her in her individual capacity because it was her husband who was responsible for initiating the criminal charges against Defendant. However, Ms. Burnette's own testimony belies this assertion:

Q: And on the night that you all heard [Defendant running over fence stakes], what, if anything, did you all do about calling any law enforcement people?

A: Well, when I got up there, of course I waited up at the barn until my husband came up there and **we called** the Sheriff's Department.

(Emphasis added). Furthermore, when asked whether he had taken out criminal charges on Defendant, Mr. Burnette testified as follows:

**We took** one for her coming out of the road into the driveway of our rental property and taking a piece that came off of our truck, and the other one was for the night that she run [sic] over these fence stakes.

(Emphasis added). Viewing the evidence in the light most favorable to Defendant and giving her the benefit of all reasonable inferences arising from that evidence, we conclude that sufficient evidence existed to support the only element of malicious prosecution Plaintiff challenges. Accordingly, this argument is overruled.

#### C. New Trial Motion

Plaintiff contends that the trial court's denial of her motion for a new trial constituted an abuse of discretion. Our review of the decision of the trial court to grant or deny a motion for a new trial is limited to where "the record affirmatively demonstrates a manifest abuse of discretion." *Kummer v. Lowry*, 165 N.C. App. 261, 263, 598 S.E.2d 223, 225

(2004), *disc. review denied*, 359 N.C. 189, 605 S.E.2d 153 (2004). In light of our holdings above - that sufficient evidence supported Defendant's claims for nuisance as to both Plaintiffs and malicious prosecution as to Plaintiff Jill Burnette - we conclude that the trial court did not abuse its discretion in denying Plaintiffs' motion for a new trial. Accordingly, Plaintiff's argument is overruled.

#### D. Punitive Damages

Finally, Plaintiff argues that the punitive damages award was excessive. In North Carolina, punitive damage awards are limited by statute to three times the amount of compensatory damages or \$250,000, whichever is greater. N.C. Gen. Stat. § 1D-25(b) (2012). The purpose of a punitive damage award is to "punish a defendant for egregiously wrongful acts and to deter the defendant from committing similar wrongful acts." *Id.* § 1D-1. On review of a jury award of punitive damages, we will not disturb the award unless "the amount assessed is . . . excessively disproportionate to the circumstances of contumely and indignity present in the case." *Horner v. Byrnett*, 132 N.C. App. 323, 328, 511 S.E.2d 342, 346 (1999). Thus, we have declined to disturb a punitive damage award of \$85,000 where the jury awarded only \$1 in compensatory damages. *Id.* The mere



fact that a punitive damage award "greatly exceed[s] the amount awarded in compensatory damages does not, by itself, warrant a new trial." *Id.* at 329, 511 S.E.2d at 346. "[T]he jury, as the trier of fact, may award damages based on the evidence they find credible and may disregard the evidence they [do] not find credible." *Dafford v. JP Steakhouse LLC*, 210 N.C. App. 678, 687, 709 S.E.2d 402, 409 (2011).

Applying the foregoing principles to the present case, we decline Plaintiff's invitation to disturb the jury's award of punitive damages. We believe that the jury was in a better position than we are to determine the credibility of witnesses, the weight to be afforded conflicting evidence, and the extent to which punitive damages, within the statutory limits, were appropriate. Accordingly, this portion of Plaintiff's argument is overruled.

### III. Conclusion

For the reasons stated herein, we conclude that Plaintiffs received a fair trial free from error.

NO ERROR.

Judge HUNTER, Robert C. and Judge DAVIS concur.

Report per Rule 30(e).