

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-537

Filed: 16 February 2016

Durham County, No. 14 CVD 5125

DORA P. BULLOCK, Plaintiff,

v.

ADAM HOPLER, HOPLER & WILMS, LLP, Defendant.

Appeal by plaintiff from order entered 9 March 2015 by Judge Pat Evans in Durham County District Court. Heard in the Court of Appeals 21 October 2015.

Dora P. Bullock, pro-se, for plaintiff-appellant.

Hopler & Wilms, LLP, by Adam J. Hopler, for defendants-appellees.

DAVIS, Judge.

Dora P. Bullock (“Plaintiff”) appeals from the trial court’s order dismissing her complaint against Adam Hopler (“Hopler”) and Hopler & Wilms, LLP (collectively “Defendants”) pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. After careful review, we affirm.

Factual Background

Plaintiff engaged Hopler & Wilms, LLP, a law firm, to represent her in a matter involving the recovery of various debts allegedly owed to her business. Hopler was an attorney with the firm who handled Plaintiff’s case. However, Plaintiff

BULLOCK V. HOPLER

Opinion of the Court

subsequently became dissatisfied with the legal services provided by him and terminated her relationship with the firm.

On 17 September 2014, Plaintiff filed an action in Durham County Small Claims Court against Defendants seeking damages in the amount of \$2,000.00. Plaintiff's only allegation set forth in the form complaint stating the basis for her claim was written in the "Other" box on the form and stated in its entirety: "Breach of Contract and Misrepresentation."

On 6 October 2014, the magistrate ruled in favor of Defendants and dismissed Plaintiff's action with prejudice. Plaintiff appealed the dismissal to Durham County District Court, and the case was assigned to arbitration pursuant to N.C. Gen. Stat. § 7A-37.1.

On 22 January 2015, an arbitration award and judgment was entered against Plaintiff taxing her with the costs of the action. On 30 January 2015, Plaintiff filed a request for a trial *de novo*.

Defendants filed a motion to dismiss Plaintiff's complaint on 25 February 2015 pursuant to Rule 12(b)(6) for failure to state a claim upon which relief could be granted. On that same date, Defendants calendared their motion to be heard on 9 March 2015 and served Plaintiff via mail with a notice of the upcoming hearing.

The hearing was held on 9 March 2015 before the Honorable Pat Evans in Durham County District Court. Plaintiff was not present. That same day, the trial

court entered an order granting Defendants' motion to dismiss with prejudice. Plaintiff filed a timely notice of appeal on 17 March 2015.

Analysis

I. Motion to Dismiss

Plaintiff's sole argument on appeal is that the trial court erred in granting Defendants' motion to dismiss. Specifically, she contends that by dismissing her complaint the trial court violated her constitutional right to a jury trial. We disagree.

It is well settled that "[t]he constitutional right to trial by jury . . . is not absolute; rather, it is premised upon a preliminary determination by the trial judge that there indeed exist genuine issues of fact and credibility which require submission to the jury." *N.C. Nat. Bank v. Burnette*, 297 N.C. 524, 537, 256 S.E.2d 388, 396 (1979). Here, because Plaintiff's complaint — as discussed below — failed to allege facts sufficient to state a recognized claim for relief, dismissal of her complaint was appropriate, and her constitutional right to trial by jury was not implicated.

The standard of review of an order granting a 12(b)(6) motion is whether the complaint states a claim for which relief can be granted under some legal theory when the complaint is liberally construed and all the allegations included therein are taken as true. On a motion to dismiss, the complaint's material factual allegations are taken as true. Dismissal is proper when one of the following three conditions is satisfied: (1) the complaint on its face reveals that no law supports the plaintiff's claim; (2) the complaint on its face reveals the absence of facts sufficient to make a good claim; or (3) the complaint discloses some fact that necessarily defeats the plaintiff's claim. On appeal of a

BULLOCK V. HOPLER

Opinion of the Court

12(b)(6) motion to dismiss, this Court conducts a *de novo* review of the pleadings to determine their legal sufficiency and to determine whether the trial court's ruling on the motion to dismiss was correct.

Podrebarac v. Horack, Talley, Pharr, & Lowndes, P.A., 231 N.C. App. 70, 74, 752 S.E.2d 661, 663-64 (2013) (citation omitted).

As noted above, Plaintiff's complaint merely stated that she was entitled to recover \$2,000.00 from Defendants due to "Breach of Contract and Misrepresentation[.]" Thus, Plaintiff simply listed the names of two causes of action without providing *any* factual allegations explaining why she was entitled to recovery on either of them.

It is well settled that "[t]he elements of a claim for breach of contract are (1) existence of a valid contract and (2) breach of the terms of that contract." *Poor v. Hill*, 138 N.C. App. 19, 26, 530 S.E.2d 838, 843 (2000). Nowhere in Plaintiff's complaint did she allege the existence of a valid contract. Nor did she plead any facts demonstrating how Defendants breached the terms of such an agreement. Therefore, Plaintiff's complaint on its face reveals the absence of any facts sufficient to establish a claim for breach of contract.

Similarly, Plaintiff failed to state a valid claim for relief by merely stating the word "Misrepresentation" in her complaint. As an initial matter, it is unclear whether she intended to assert a claim for fraudulent misrepresentation, negligent misrepresentation, or both. Regardless of which theory of misrepresentation Plaintiff

intended to reference, however, she has not pled any facts sufficient to state a valid claim under either theory.

The essential elements of actionable fraud are as follows: (1) material misrepresentation of a past or existing fact; (2) the representation must be definite and specific; (3) made with knowledge of its falsity or in culpable ignorance of its truth; (4) that the misrepresentation was made with intention that it should be acted upon; (5) that the recipient of the misrepresentation reasonably relied upon it and acted upon it; and (6) that there resulted in damage to the injured party. The tort of negligent misrepresentation occurs when a party justifiably relies to his detriment on information prepared without reasonable care by one who owed the relying party a duty of care.

Hudson-Cole Dev. Corp. v. Beemer, 132 N.C. App. 341, 346, 511 S.E.2d 309, 312-13 (1999) (internal citations and quotation marks omitted). Plaintiff's complaint does not identify the nature of the alleged misrepresentation, state how the misrepresentation caused her to suffer damages, or allege that she relied upon the misrepresentation to her detriment.

Thus, Plaintiff failed to allege facts sufficient to state a valid claim upon which relief could be granted under any legal theory.¹ Therefore, the trial court did not err in dismissing her complaint with prejudice.² See *Burgin v. Owen*, 181 N.C. App. 511,

¹ The record does not contain any indication that Plaintiff ever sought to amend her complaint.

² Although Plaintiff repeatedly mentions in her brief the fact that the hearing took place in her absence, she does not challenge the fact that she was properly served with notice of the hearing. In response to Defendants' motion to dismiss, she filed a document captioned "Motion to Deny Defendant's Motion to Dismiss" in which she stated, in part, that "[i]nsufficient time exists for Plaintiff

513, 640 S.E.2d 427, 429 (“We hold plaintiff’s complaint failed to state a legally sufficient claim and therefore affirm the trial court’s order granting defendants’ motion to dismiss[.]”), *appeal dismissed and disc. review denied*, 361 N.C. 425, 647 S.E.2d 98, *cert. denied*, 361 N.C. 690, 652 S.E.2d 257 (2007).

II. Motion for Sanctions

On appeal, Defendants have moved for the imposition of sanctions against Plaintiff pursuant to Rule 34 of the North Carolina Rules of Appellate Procedure because she “has violated the rules of appellate procedure and filed a frivolous appeal[.]” Rule 34 provides, in pertinent part, as follows:

A court of the appellate division may, on its own initiative or motion of a party, impose a sanction against a party or attorney or both when the court determines that an appeal or any proceeding in an appeal was frivolous because of one or more of the following:

- (1) the appeal was not well grounded in fact and was not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;
- (2) the appeal was taken or continued for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (3) a petition, motion, brief, record, or other paper filed in the appeal was grossly lacking in the

to plan to attend Defendant’s Hearing that was abruptly scheduled, with lack of regard to Plaintiff. This Hearing should not be allowed by the court.” However, the record contains no indication that after filing this motion she took any affirmative steps to actually obtain a continuance of the 9 March hearing.

BULLOCK V. HOPLER

Opinion of the Court

requirements of propriety, grossly violated appellate court rules, or grossly disregarded the requirements of a fair presentation of the issues to the appellate court.

N.C.R. App. P. 34(a).

Throughout her appellate brief, Plaintiff makes a number of contentions lacking in propriety. For example, Plaintiff alleged that

[t]he dismissal of Plaintiff's case with prejudice validates Plaintiff's claims of prejudicial and biased treatment, as evidenced through the personal bias that Plaintiff encountered throughout the entire Durham County Court Proceedings. The aforementioned facts in this Brief validate Plaintiff's theory of Improper Motive; abuse of discretion, and miscarriage of justice by Trial Court Judge Pat Evans.

Moreover, Plaintiff attacked Hopler's character, stating, in part, that "Plaintiff's theory is that the Defendant, Adam Hopler, practices under the concept of entitlement; the right to get paid without stipulations."

We find these and other statements in Plaintiff's brief highly inappropriate. While we recognize that Plaintiff is proceeding *pro se*, all parties — whether represented by counsel or not — are expected to adhere to the Rules of Appellate Procedure and refrain from exceeding the bounds of propriety. *See Mineola Cmty. Bank, S.S.B. v. Everson*, 186 N.C. App. 668, 671-72, 652 S.E.2d 369, 371-72 (2007) (imposing sanctions against *pro se* defendants pursuant to Rule 34 for filing brief "grossly lacking in the requirements of propriety" and "engag[ing] in a deliberate and

BULLOCK V. HOPLER

Opinion of the Court

unwarranted attack upon the personal integrity of plaintiff's counsel in an attempt to conceal their own deficient pleadings and defense”).

We take this opportunity to strongly admonish Plaintiff for her improper statements in her brief. However, in the exercise of our discretion under Rule 34, we decline to impose sanctions against her. *See Scott & Jones, Inc. v. Carlton Ins. Agency, Inc.*, 196 N.C. App. 290, 293, 677 S.E.2d 848, 850 (2009) (“In our discretion, we do not impose sanctions . . . pursuant to Rule 34.” (citation omitted)).

Conclusion

For the reasons stated above, we affirm the order of the trial court.

AFFIRMED.

Judges STEPHENS and STROUD concur.

Report per Rule 30(e).