IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-12

Filed: 4 October 2016

Halifax County, No. 14-CVS-28

BAIDYA NATH CHATTERJEE, Plaintiff,

v.

MARY LIZZIE IVORY, Defendant.

Appeal by defendant from judgment entered 9 September 2015 by Judge Walter H. Godwin, Jr. in Halifax County Superior Court. Heard in the Court of Appeals 25 May 2016.

No brief filed on behalf of plaintiff-appellee.

Mary Lizzie Ivory, pro se, for defendant-appellant.

DAVIS, Judge.

Mary Lizzie Ivory ("Defendant") appeals from a judgment in favor of Baidya Nath Chatterjee ("Plaintiff") on his claims against her for fraud and malicious prosecution. On appeal, Defendant argues that the trial court (1) erred in determining that she was liable for fraud; (2) improperly limited the scope of her cross-examination of Plaintiff; and (3) awarded attorneys' fees to Plaintiff despite the absence of a legal basis for such an award. After careful review, we affirm in part and vacate in part.

Factual Background

The parties, who are both residents of Halifax County, North Carolina, had been friends for several years before the controversy giving rise to this action. In January 2011, Plaintiff learned from Defendant that a home (the "Property"), which had previously been owned by her family and was located on U.S. Highway 301 North in Halifax County, was scheduled to be auctioned in a court-ordered sale.

After the auction had occurred and within the ten-day period of time during which upset bids were permitted to be made, Defendant asked Plaintiff if he would make an upset bid and purchase the Property. Plaintiff placed the winning upset bid of approximately $27,000, paid that amount in full, and was deeded the Property on 14 March 2011.

The next day, by means of a deed drafted by Defendant, Plaintiff conveyed the Property in fee simple absolute to her in exchange for her promise to pay him "the full amount" of the purchase price within five to seven weeks. Defendant offered to memorialize this agreement in writing, but Plaintiff told her that a contract was unnecessary because he trusted her.

Plaintiff then helped Defendant make improvements to the Property and have utilities turned on inside the home. At some point thereafter, the two of them had an argument during which Defendant accused Plaintiff of having been "two-faced."[1]

[1] It is unclear from the record exactly when this argument occurred.

This caused Plaintiff to "bl[o]w up" and yell at her. Plaintiff then demanded payment of the $27,000 that Defendant had promised him, but she refused to pay him anything. Following this argument, she hung up the phone each time he called her.

On 27 April 2012, Defendant filed a complaint in Halifax County District Court along with a motion for a domestic violence protective order ("DVPO") against Plaintiff in which she alleged that he had been making harassing phone calls to her for four months "regarding some property which he purchased for [her] one year ago." In these documents, she alleged that she and Plaintiff had begun a "personal relationship" after he conveyed the Property to her but that after the relationship ended he "started harassing [her] about the house, stating that [she] owed him $27,000 for it."

An *ex parte* DVPO was issued the same day, and deputies from the Halifax County Sheriff's Office seized firearms owned by Plaintiff pursuant to the DVPO. After a 30 April 2012 hearing on the protective order in Halifax County District Court, Defendant's domestic violence complaint was dismissed, and it was ordered that Plaintiff's firearms be returned to him.

On 25 June 2012, Defendant caused a misdemeanor criminal summons to be issued against Plaintiff alleging that he stole a chain and lock from a gate located on another property she owned. Following a bench trial in Halifax County District Court, Plaintiff was found not guilty of this charge on 16 July 2012.

On 13 January 2014, Plaintiff filed in Halifax County Superior Court the lawsuit against Defendant from which this appeal arises. In his complaint, he alleged various causes of action, including claims for fraud and malicious prosecution. A bench trial was held on 8 September 2015 before the Honorable Walter H. Godwin, Jr. Plaintiff was the sole witness at the trial. Defendant appeared *pro se*.

On the following day, the trial court entered a judgment (1) ruling that Defendant was liable to Plaintiff on his claims for fraud and malicious prosecution; (2) dismissing Plaintiff's other claims; (3) awarding Plaintiff $27,000 in damages on the fraud claim, $10,000 on the malicious prosecution claim relating to the domestic violence complaint Defendant filed against him, and $5,000 on the malicious prosecution claim relating to the criminal summons she had caused to be issued against him; and (4) awarding Plaintiff $4,000 in attorneys' fees. Defendant filed a timely notice of appeal.

Analysis

The standard of review on appeal from a judgment entered following 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." *Dep't of Transp. v. Webster*, 230 N.C. App. 468, 477, 751 S.E.2d 220, 226 (2013) (citation and quotation marks omitted), *disc. review denied*, 367 N.C. 332, 755 S.E.2d 618 (2014). The trial court's findings of fact "are conclusive on appeal if there

is evidence to support those findings," *Hanson v. Legasus of N.C., LLC*, 205 N.C. App. 296, 299, 695 S.E.2d 499, 501-02 (2010) (citation omitted), and "unchallenged findings of fact are presumed correct and are binding on appeal[,]" *Webster*, 230 N.C. App. at 477, 751 S.E.2d at 226 (citation, quotation marks, and brackets omitted). The trial court's conclusions of law are reviewed *de novo*. *Id.*

I. Fraud Claim

Defendant's first argument on appeal is that Plaintiff failed to establish the elements of fraud in connection with his transfer of the Property to her. Initially, she contends that North Carolina's statute of frauds requires agreements for the sale of property to be memorialized in writing in order to be legally valid. However, "[i]t has long been the rule in this State that the Statute of Frauds bars only *enforcement* of the invalid contract; it does not bar other claims which a party might have even though those claims arise in connection with the voidable [agreement]." *Kent v. Humphries*, 303 N.C. 675, 679, 281 S.E.2d 43, 46 (1981) (emphasis added). Accordingly, the statute of frauds does not preclude Plaintiff from proceeding under a fraud theory in this context.

The "elements of actual fraud are well established: (1) False representation or concealment of a material fact, (2) reasonably calculated to deceive, (3) made with intent to deceive, (4) which does in fact deceive, (5) resulting in damage to the injured party." *Forbis v. Neal*, 361 N.C. 519, 526-27, 649 S.E.2d 382, 387 (2007) (citation and

quotation marks omitted). Additionally, "any reliance on the allegedly false representations must be reasonable." *Id.* at 527, 649 S.E.2d at 387. "The reasonableness of a party's reliance is a question for the jury, unless the facts are so clear that they support only one conclusion." *Id*.

With respect to the first element of fraud, Defendant contends that "a mere breach of an oral contract is not fraud" because it does not necessarily involve a false representation about a material fact. However, an unfulfilled promise *can* constitute fraud when "the promisor had no intention of carrying it out at the time of the promise, since this is misrepresentation of a material fact." *Supplee v. Miller-Motte Bus. Coll., Inc.*, __ N.C. App. __, __, 768 S.E.2d 582, 598 (2015). "A litigant's state of mind is seldom provable by direct evidence but must ordinarily be proven by circumstances from which it may be inferred." *Johnson v. Phoenix Mut. Life Ins. Co.*, 300 N.C. 247, 260, 266 S.E.2d 610, 619 (1980).

Here, the trial court determined that "a promise . . . was made and that it was a false representation of fact at the time it was made and that the *person making the promise [Defendant] had no intention of carrying it out*, that being the payment of funds for the purchase of the real property." (Emphasis added.) In support of that determination, the trial court made the following findings of fact:

> The plaintiff and the defendant entered into an agreement that provided, among other things, that if the plaintiff deeded the property to the defendant so that she could have utilities connected, that the defendant would pay the

> purchase price of approximately $27,000 within five to seven weeks to reimburse the plaintiff the total purchase price paid for the property. Based upon those assurances, the plaintiff did deed to the defendant the property on March 15, 2011, as shown by deed recorded in Book 2341 at Page 225 through Page 226. Evidence presented was that defendant prepared this deed for recordation. The plaintiff did so based upon assurances that he would be reimbursed or paid his full purchase price. As of the filing of this complaint on January 13, 2014, and upon demand for payment, the defendant has never paid the plaintiff any sums whatsoever as promised for the consideration of the conveyance.

The trial testimony supports these findings as well as the ultimate finding that Defendant had no intention of paying Plaintiff for the Property. Plaintiff's testimony — which was the only evidence offered at trial — showed that Defendant urged him to purchase the Property at the auction and then promised him that she would pay him $27,000 within five to seven weeks of him conveying the Property to her. After the conveyance, however, she never paid him any money for the Property. Under these circumstances, the trial court — as the finder of fact — could have reasonably found that Plaintiff established that Defendant made a material false representation to him in connection with the conveyance of the Property in that she never intended to pay him the $27,000 she promised.

Defendant next asserts that it would not have been reasonable for Plaintiff to rely on her oral promise to pay him $27,000 for the Property given that the parties

had a "creditor/debtor relationship." We are not persuaded.

A person "to whom a positive and definite representation has been made is entitled to rely on such representation if the representation is of a character to induce action by a person of ordinary prudence, and is reasonably relied upon." *Little v. Stogner*, 162 N.C. App. 25, 30, 592 S.E.2d 5, 9 (2004) (citation and quotation marks omitted). Admittedly, "[j]ust where reliance ceases to be reasonable and becomes such negligence and inattention that it will, as a matter of law, bar recovery for fraud is frequently very difficult to determine." *Davis v. Sellers*, 115 N.C. App. 1, 10, 443 S.E.2d 879, 885 (1994), *disc. review denied*, 339 N.C. 610, 454 S.E.2d 248 (1995).

Here, the trial court's findings do not characterize the relationship as one of a creditor and debtor engaged in an arm's length transaction but rather describe the parties as having a "friendly relationship." Moreover, the trial court found that "the plaintiff's reliance upon the false representation was reasonable . . . ."

The evidence in the record demonstrates a close personal relationship between the parties that supports the trial court's finding of reasonable reliance. Plaintiff testified that he had known Defendant for a "number of years." Before Plaintiff conveyed the Property to Defendant, she offered to write a contract but he told her it was not necessary because he trusted her. The fact that he did not require her to memorialize the agreement shows that the parties had a relationship involving a significant degree of trust. The close nature of their relationship is further evidenced

by the fact that Plaintiff spent an extensive amount of time helping make improvements to the Property and "even vouched for her to get the gas" turned on at the Property.

These facts show that the parties shared a level of trust not present in an arm's length business transaction. Accordingly, given the personal nature of the relationship, we cannot conclude that the trial court erred in finding that Plaintiff reasonably relied on Defendant's promise to pay him $27,000 for the Property after he conveyed it to her.

II. Scope of Cross-Examination

Defendant next argues that the trial court impermissibly restricted the scope of her cross-examination of Plaintiff at trial. In support of this argument, she points to the following exchange that occurred during the cross-examination:

> [DEFENDANT:] Mr. Chatterjee, isn't it true that you refused the contract and earnest money which I offered you?
>
> [PLAINTIFF:] You never offered me any money. You offered me in the very beginning that within five or six weeks you would pay me the whole amount; that's all.
>
> [DEFENDANT:] Isn't it true that you did the same thing with another girlfriend?
>
> [PLAINTIFF'S COUNSEL:] Object.
>
> THE COURT: Sustained. You do not have to answer that question. It is not relevant.

The trial court has "broad discretion in controlling the scope of cross-examination, and a ruling by the trial court should not be disturbed absent an abuse of discretion and a showing that the ruling was so arbitrary that it could not have been the result of a reasoned decision." *Williams v. CSX Transp., Inc.*, 176 N.C. App. 330, 336, 626 S.E.2d 716, 723 (2006) (citation and quotation marks omitted). Moreover, an appellant must show that the trial court's decision to limit cross-examination actually prejudiced her. *See Gray v. Allen*, 197 N.C. App. 349, 355, 677 S.E.2d 862, 866-67 (2009) (holding there was no abuse of discretion where "plaintiff makes no showing of prejudice based on the exclusion of any portion of the evidence").

Here, even assuming, without deciding, that the trial court erred in sustaining the objection at issue, Defendant has provided no explanation whatsoever as to how the court's ruling prejudiced her. Accordingly, we overrule her argument on this issue.

III. Attorneys' Fees

Finally, Defendant argues that the trial court erred in awarding Plaintiff attorneys' fees in the amount of $4,000 in connection with his fraud claim. We agree.

The trial court's judgment included the following determination: "The Court finds that the issue of attorney fees in the issue of fraud is a proper matter before the Court and, conforming to the evidence, attorney fees are hereby issued in favor of the plaintiff against the defendant in the amount of $4,000."

This Court has previously explained that attorneys' fees "may not be awarded in the absence of express statutory authority." *Lacey v. Kirk*, __ N.C. App. __, __, 767 S.E.2d 632, 648 (2014), *disc. review denied*, __ N.C. __, 771 S.E.2d 321 (2015). Here, we are not aware of any legal basis under North Carolina law for the award of attorneys' fees on a claim for common law fraud. Accordingly, we vacate the award of attorneys' fees in this case.[2]

Conclusion

For the reasons stated above, we affirm the trial court's 9 September 2015 judgment in part and vacate the portion of the judgment awarding $4,000 in attorneys' fees to Plaintiff.

AFFIRMED IN PART; VACATED IN PART.

Judges ELMORE and DIETZ concur.

Report per Rule 30(e).

[2] We note that although Defendant asserts several additional errors in sections III, V-IX, and XI of her brief, she provides no substantive argument or legal authority regarding these issues. Accordingly, these issues are deemed abandoned on appeal. *See* N.C. R. App. P. 28(b)(6) ("Issues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned.").