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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-547

Filed: 20 December 2016

Jackson County, No. 15 CvD 590

ZARA ELLIS SADLER, Plaintiff,

v.

SHERIFF CHIP HALL & JACKSON COUNTY SHERIFF'S OFFICE, Defendants.

Appeal by Plaintiff from order entered 10 December 2015 by Judge Richard K. Walker in Jackson County District Court. Heard in the Court of Appeals 2 November 2016.

Zara Ellis Sadler, pro se.

Roberts & Stevens, P.A., by Ann-Patton Hornthal, for Defendants-Appellees.

DILLON, Judge.

Zara Ellis Sadler ("Plaintiff") appeals from an order granting a motion to dismiss and a motion to quash subpoenas filed by Sheriff Chip Hall and Jackson County Sheriff's Office ("Defendants"), and awarding attorney's fees to Defendants.

For the following reasons, we affirm.

I. Background

Plaintiff filed a complaint alleging, in pertinent part, the following:

1. Plaintiff is a Jackson County resident, taken into

custody by the Jackson County Sheriff's Office (JCSO) on Saturday, 27 June 2015, detained at Harris Regional Hospital Emergency Room (HRH ER), when two high school girlfriends from the WDC area, invited for on-site review of center's June 30th JCAC Grassroots Grant application, were permitted by JCSO on Friday, June 26th, to move half of 1-bedroom apt contents at Mountain Villages Apts, 3250 Old Cullowhee Road, Apt. #3, WITHOUT Plaintiff's permission or presence. Plaintiff has incurred hotel stays, June 15th – July 15th, including expenses for relocation to 1 bedroom (dorm-style) apartment around the corner on S. Painter Rd to Mountain Meadow Apartment #406. Medically UnInsured, Plaintiff was taken into JCSO custody, at the Holiday Inn & Suites of Dillsboro, involuntarily committed to HRH ER, for a 7-day stay, under the supervision of JCSO officers. While HRH has applied a 40 percent UnInsured Discount, as Self-Pay billing, there are additional hospital costs, incurred, including ER Physician services.

2. Defendant(s) owes plaintiff seven thousand, eight hundred seventy-three dollars and eighty-six cents (\$7,873.86 USD) to the account(s) annexed as Exhibits I-V.

Though the complaint refers to "Exhibits I-V" as being part of the complaint, the record does not indicate that Plaintiff attached said exhibits.

Defendants moved to dismiss Plaintiff's complaint pursuant to N.C. Gen. Stat. § 1A-1, Rule 12(b)(6). In addition, Defendants moved to: (1) release all records pertaining to Plaintiff's involuntary commitment;¹ (2) recover attorney's fees; and (3) quash Plaintiff's subpoenas.

¹ It appears from the December 2015 order that the trial court permitted Defendants to review the involuntary commitment records *prior* to dismissal of Plaintiff's complaint.

After hearing argument in the matter, the trial court granted Defendants' motion to dismiss and motion to quash Plaintiff's subpoenas. Additionally, the trial court awarded attorney's fees to Defendants pursuant to N.C. Gen. Stat. § 1A-1, Rule 45(c)(8).² Plaintiff timely appealed.

II. Analysis

An order to dismiss pursuant to Rule 12(b)(6) is appropriate where the plaintiff fails to plead allegations sufficient to support some theory of liability. *Sutton v. Duke*, 277 N.C. 94, 105, 176 S.E.2d 161, 167 (1970) (“[T]he claim for relief . . . must still satisfy the requirements of the substantive law which give rise to the pleadings, and no amount of liberalization should seduce the pleader into failing to state enough to give the substantive elements of his claim.”).

We have carefully reviewed the complaint, and we conclude that Plaintiff has failed to plead allegations that would support recovery on the basis of breach of contract or negligence. There is no allegation that Defendants owed Plaintiff a duty. *See Hart v. Ivey*, 332 N.C. 299, 305, 420 S.E.2d 174, 177-78 (1992) (setting forth the elements of a negligence action). Nor has Plaintiff alleged that she and the Defendants entered into an agreement that the Defendants then breached. *See Poor v. Hill*, 138 N.C. App. 19, 26, 530 S.E.2d 838, 843 (2000) (setting forth the elements

² The trial court actually cited to Rule 45(8), a rule which does not exist, rather than to Rule 45(c)(8), which allows for an award of certain attorney's fees against the party whose subpoena has been quashed. N.C. Gen. Stat. § 1A-1, Rule 45(c)(8). *See infra* II and footnote 3 for additional discussion on the trial court's award of attorney's fees.

of a contract action). We hold that the trial court properly dismissed Plaintiff's complaint.

Moreover, the trial court did not abuse its discretion when it quashed Plaintiff's subpoenas. *See Vaughan v. Broadfoot*, 267 N.C. 691, 697, 149 S.E.2d 37, 42 (1966) (holding that the propriety of a subpoena is "addressed to the sound discretion of the court in which the action is pending"). Subpoenas may not be used to carry out fishing expeditions. *Id.* at 696, 149 S.E.2d at 41. It is unclear from the record how any of the fifty-five witnesses would have provided testimony relevant to the motion to dismiss. Indeed, it is unclear if many of the witnesses were even present at the relevant times alleged in Plaintiff's complaint. Thus, the trial court did not abuse its discretion in quashing Plaintiff's subpoenas.

Plaintiff challenges the trial court's award of attorney's fees,³ which we review for abuse of discretion. *Martin Architectural Prod., Inc. v. Meridian Const. Co.*, 155 N.C. App. 176, 182, 574 S.E.2d 189, 193 (2002). Plaintiff, however, has failed to present any specific arguments challenging the award. As such, this issue is deemed

³ Rule 45(c)(8) would appear to limit recovery to attorney's fees incurred by a *subpoenaed witness*. N.C. Gen. Stat. §1A-1, Rule 45(c)(8) (stating that "[w]hen a court enters an order quashing or modifying the subpoena, the court may order the party on whose behalf the subpoena is issued to pay all or part of the *subpoenaed person's reasonable expenses including attorney's fees*" (emphasis added)). Only a few of the subpoenaed witnesses were agents of Defendants. Assuming, *arguendo*, the trial court could award attorney's fees pursuant to Rule 45(c)(8), it is unclear whether the trial court's order had the effect of awarding attorney's fees incurred in connection with *all fifty-five subpoenas*.

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abandoned. N.C. R. App. P. 28(b)(6). Accordingly, we leave the trial court's award of attorney's fees undisturbed.

AFFIRMED.

Judges ELMORE and HUNTER, JR., concur.

Report per Rule 30(e).