IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-962

Filed: 6 August 2019

Caldwell County, No. 17 CVS 42

LENNIE JAY YOUNCE, JR., VICKI YOUNCE WILLIAMS, and KIMBERLY ANN YOUNCE TURNER, Plaintiffs,

v.

DEATRA ANNE YOUNCE, a/k/a DEATRA ANNE YOUNCE SELLERS, WATAUGA MEDICS, INC., Defendants.

Appeal by plaintiff from order entered 2 May 2018 by Judge Robert C. Ervin in Caldwell County Superior Court. Heard in the Court of Appeals 11 April 2019.

Joseph C. Delk, III for plaintiff-appellant.

Bruce L. Kaplan for defendant-appellee.

DIETZ, Judge.

When Lennie Jay Younce, Jr.'s father passed away, Younce became convinced that his stepmother had failed to care for his father and had destroyed Younce's relationship with his father. So, he sued his stepmother for negligent and intentional infliction of emotional distress.

Yet despite claiming to have suffered severe emotional distress, Younce repeatedly refused legitimate discovery requests directed at his emotional well-being. Ultimately, after Younce ignored an order granting a motion to compel, the trial court sanctioned Younce by precluding him from offering any expert testimony or medical evidence concerning his purported emotional distress. This, in turn, led the trial court to grant summary judgment in favor of Younce's stepmother.

On appeal, Younce does not challenge the sanctions order, but insists that he nevertheless forecast sufficient evidence of emotional distress to send his case to the jury. We disagree. Younce has not identified any actual evidence (as opposed to mere allegations) to support his claim of emotional distress. We therefore affirm the trial court's summary judgment order.

Facts and Procedural History

Lennie Jay Younce, Jr.'s father died on 15 March 2014. Several years later, Younce and his two sisters sued their stepmother, Deatra Younce, and Watauga Medics Inc., alleging intentional infliction of emotional distress and negligent infliction of emotional distress. Plaintiffs' claims related primarily to the care their father received in the final days of his life. Watauga Medics is no longer a party in this action and Younce's sisters are not parties in this appeal.

On 9 August 2017, Younce's stepmother served her first set of interrogatories and request for production of documents. In his responses, Younce refused to answer

interrogatories or to produce medical records pertaining to his alleged emotional distress, claiming that such information was shielded from discovery under the federal Health Insurance Portability and Accountability Act. After sending a "good faith" letter under Rule 37 of the Rules of Civil Procedure, Younce's stepmother moved to compel Younce to respond to her discovery requests.

On 14 December 2017, the trial court granted the motion to compel and ordered Younce to produce the requested information concerning his alleged emotional distress. Younce did not comply. On 5 March 2018, Younce's stepmother again moved to compel. On 9 April 2018, the trial court granted the motion and also sanctioned Younce by ordering that he was precluded "from offering any expert testimony or medical evidence in support of his emotional distress claim." Younce does not challenge this sanctions order on appeal.

On 13 April 2018, Younce's stepmother moved for summary judgment. After a hearing, the trial court granted summary judgment in favor of Younce's stepmother on all his claims. Younce appealed.

Analysis

Younce challenges the trial court's order granting summary judgment against him on all claims. We review that order *de novo*. *In re Will of Jones*, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008).

Summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." N.C. R. Civ. P. 56(c). To survive a motion for summary judgment, the non-movant "must have forecast sufficient evidence of all essential elements of their claims." *Waddle v. Sparks*, 331 N.C. 73, 82, 414 S.E.2d 22, 27 (1992).

The essential element in dispute in this appeal is that Younce suffered "severe emotional distress," which our common law defines as "any emotional or mental disorder, such as, for example, neurosis, psychosis, chronic depression, phobia, or any other type of severe and disabling emotional or mental condition which may be generally recognized and diagnosed by professionals trained to do so." *Id.* at 83, 414 S.E.2d at 27. The presence of severe emotional distress is an essential element of both intentional infliction of emotional distress and negligent infliction of emotional distress. *Dickens v. Puryear,* 302 N.C. 437, 452, 276 S.E.2d 325, 335 (1981); *Johnson v. Ruark Obstetrics & Gynecology Assocs., P.A.*, 327 N.C. 283, 304, 395 S.E.2d 85, 97 (1990).

Here, as a sanction for discovery violations, the trial court prohibited Younce "from offering any expert testimony or medical evidence in support of his emotional distress claim." Younce does not challenge this sanctions order on appeal. Instead, he insists that the trial court "did not rule, however, that testimony about emotional

distress from the Plaintiff, Lennie Jay Younce, Jr. or his sisters, the other Plaintiffs, could not be used for the jury to consider whether the Plaintiffs had in fact suffered severe emotional distress."

Notably, this is a bare assertion in Younce's appellate brief—it is not accompanied by a citation to some portion of the record containing this purported testimony. This alone would be sufficient to reject Younce's arguments. *See* N.C. R. App. P. 28(b)(6). But more importantly, we have reviewed the record on appeal and determined that this purported "testimony about emotional distress" does not exist. Younce's argument relies entirely on mere allegations not supported by actual evidence. *See Waddle,* 331 N.C. at 87, 414 S.E.2d at 29.

Because Younce failed to establish any genuine issue of material fact with respect to his claim of severe emotional distress, the trial court properly entered summary judgment against him.

Conclusion

We affirm the trial court's order.

AFFIRMED.

Judges ZACHARY and BERGER concur.

Report per Rule 30(e).