

IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-374

No. COA20-465

Filed 20 July 2021

Mecklenburg County, No. 18-CVD-23363

J. NEAL RODGERS, Plaintiff,

v.

LAW OFFICE OF KENNETH T. DAVIES, P.C., Defendant.

Appeal by Defendant from order entered 23 December 2019 by Judge Donald R. Cureton, Jr. in Mecklenburg County Superior Court. Heard in the Court of Appeals 23 March 2021.

J. Neal Rodgers, pro se, for Plaintiff-Appellee.

The Law Office of Kenneth T. Davies, P.C. by Kenneth T. Davies, for Defendant-Appellant.

WOOD, Judge.

¶ 1

Defendant-Appellant Law Office of Kenneth T. Davies (“Appellant”) appeals an order awarding damages to J. Neal Rodgers (“Plaintiff”) in the amount of \$15,878.00 for breach of contract. On appeal, Appellant alleges the trial court erred in failing to make findings of fact regarding Plaintiff’s unauthorized practice of law. On September 19, 2020, Plaintiff filed a motion for sanctions pursuant to Rule 34 of our rules of appellate procedure. In moving for sanctions, Plaintiff contends

Appellant’s appeal is not warranted by existing law, and Appellant does not put forth a good faith argument for the extension, modification, or reversal of existing law. After careful review, we affirm the decision of the trial court and deny Plaintiff’s motion for sanctions.

I. Background

¶ 2 In 2012, Plaintiff, a former attorney, was disbarred for misappropriating approximately \$80,000.00 from Plaintiff’s client trust account. Plaintiff subsequently obtained employment as a contract paralegal with attorney Kenneth T. Davies (“Davies”). In 2014, Plaintiff requested that Davies meet with Elise Siharath (“Siharath”), a personal friend, to discuss representing Siharath in a civil suit with her business partners. Davies agreed to represent Siharath and contracted with Plaintiff to work as a paralegal on her case. While representing Siharath, Davies formed a professional corporation known as the “Law Office of Kenneth T. Davies, P.C.”

¶ 3 Plaintiff and Siharath were friends for approximately ten years before Davies represented Siharath; they shared meals, attended holiday and birthday celebrations together, and Plaintiff loaned Siharath money on at least one occasion. Davies maintains that if he had known the close nature of Plaintiff and Siharath’s friendship, he would not have hired Plaintiff to work on her case.

¶ 4

In 2018, after approximately three years of litigation and a three-day trial, Siharath's case was settled for a substantial sum. However, a dispute arose between Davies and Siharath over the payment of Davies's attorney fees. Plaintiff involved himself and attempted to negotiate a resolution on Siharath's behalf. Unbeknownst to Appellant, Plaintiff sent Siharath an invoice for Plaintiff's services on two separate occasions because she was concerned with the billing amount requested by Appellant. Siharath sought independent counsel, Nathan Hall, because she was concerned that Plaintiff's services were not included within Appellant's invoice. Nathan Hall subsequently filed grievances with the North Carolina State Bar ("State Bar") regarding Davies and Plaintiff's representation of Siharath on March 27, 2018. Specifically, Siharath asserted Plaintiff rendered unauthorized legal advice to Siharath during the course of litigation, and Davies allowed Plaintiff to engage in the unauthorized practice of law by failing to properly supervise him.

¶ 5

In May 2018, the Grievance Committee of the State Bar censured Davies, concluding he aided Plaintiff in the unauthorized practice of law. Additionally, in August 2018, the State Bar sent Plaintiff a letter of caution,¹ finding probable cause

¹ Pursuant to the State Bar's "Grievance Definitions," a letter of caution is a "written communication from the Grievance Committee or the DHC to a lawyer stating that the lawyer's conduct, while not the basis for discipline, is unprofessional or not in accord with accepted professional practice." <https://www.ncbar.gov/for-the-public/i-am-having-a-dispute-with-a-lawyer/grievance-definitions/>

that Plaintiff's activities violated the unauthorized practice of law statutes. The State Bar further found Plaintiff gave Siharath legal advice outside of any direct supervision of Davies; Plaintiff directly billed Siharath for \$55,285.50 without copying Davies on the invoices; Plaintiff billed Siharath at two hundred dollars per hour; and Plaintiff told Siharath he was a retired attorney. However, the letter of caution carried no legal implication for Plaintiff.

¶ 6

After the settlement of Siharath's lawsuit, but prior to the State Bar grievances, Appellant agreed to pay Plaintiff at the rate of one hundred dollars per hour. However, Appellant refused to pay Plaintiff after learning Siharath had filed grievances against Davies and Plaintiff, and the State Bar instituted disciplinary actions against them. On December 14, 2018, Plaintiff filed suit for breach of contract, and Appellant asserted the affirmative defense of unclean hands. On December 23, 2019, after a bench trial, the trial court awarded Plaintiff \$15,878.00 in damages for breach of contract. In its order, the trial court concluded Plaintiff did not have unclean hands. Appellant timely filed and served its notice of appeal on January 16, 2020.

II. Discussion

¶ 7

Appellant contends in its sole argument on appeal that the trial court erred by failing to make the necessary findings of fact to support its conclusion of law that Plaintiff did not have unclean hands. In reviewing a trial court's findings of fact, this

Court is “strictly limited to determining whether the trial judge’s underlying findings of fact are supported by competent evidence . . . and whether those factual findings in turn support the judge’s ultimate conclusions of law.” *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982) (citations omitted). “Conclusions of law drawn by the trial court from its findings of fact are reviewable *de novo* on appeal.” *Carolina Power & Light Co. v. City of Asheville*, 358 N.C. 512, 517, 597 S.E.2d 717, 721 (2004) (citing *Humphries v. City of Jacksonville*, 300 N.C. 186, 187, 265 S.E.2d 189, 190 (1980)). “Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment” for that of the lower tribunal. *In re Appeal of The Greens of Pine Glen Ltd. P’ship*, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003) (citing *Mann Media, Inc. v. Randolph Cty. Planning Bd.*, 356 N.C. 1, 13, 565 S.E.2d 9, 17 (2002)).

A. Error in the Trial Court’s Findings of Fact

¶ 8 Appellant contends the trial court erred in failing to make specific findings of fact regarding Plaintiff’s unauthorized practice of law. Appellant further contends the trial court’s conclusion of law that Plaintiff’s claim for breach of contract is not barred by the doctrine of unclean hands is not supported by adequate findings of fact. We disagree.

¶ 9 Rule 52(a)(1) of our rules of civil procedure provides that “[i]n all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts

especially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment.” N.C. Gen. Stat. § 1A-1, Rule 52(a)(1) (2020).

In cases in which the trial court passes on the facts, the court is required to do three things in writing: (1) [t]o find the facts on all issues of fact joined on the pleadings; (2) to declare the conclusions of law arising on the facts found; and (3) to enter judgment accordingly.

Coggins v. City of Asheville, 278 N.C. 428, 434, 180 S.E.2d 149, 153 (1971) (internal quotations marks, citations, and alterations omitted).

¶ 10 The trial court is required to find “ultimate facts established by the evidence which are determinative of the questions involved in the action and [are] essential to support the conclusions of law reached.” *Gilbert Eng’g Co. v. City of Asheville*, 74 N.C. App. 350, 364, 328 S.E.2d 849, 857, *cert. denied*, 314 N.C. 329, 333 S.E.2d 485 (1985). “When the conclusions of law are unsupported by determinative facts, the case must be remanded to the trial court for further findings.” *Curd v. Winecoff*, 88 N.C. App. 720, 722, 364 S.E.2d 730, 732 (1988).

¶ 11 “The general rule is that in making findings of fact, the trial court is required only to make brief, pertinent and definite findings and conclusions about the matters in issue.” *Fortis Corp. v. Northeast Forest Prods.*, 68 N.C. App. 752, 753, 315 S.E.2d 537, 538 (1984). “[T]he court need not find on every issue requested, but a finding of such essential facts as lay a basis for the decision is sufficient.” *Trotter v. Hewitt*, 19 N.C. App. 253, 254, 198 S.E.2d 465, 466 (1973) (citation omitted). “The requirement

of appropriately detailed findings is designed to dispose of the issues raised by the pleadings and to allow the appellate courts to perform their proper function in the judicial system.” *Mashburn v. First Investors Corp.*, 102 N.C. App. 560, 562, 402 S.E.2d 860, 862 (1991) (citing *Coble v. Coble*, 300 N.C. 708, 712, 268 S.E.2d 185, 189 (1980)).

¶ 12 Appellant contends the trial court did not make specific findings of fact concerning the following two elements of the unclean hands doctrine: (1) did the party against whom the doctrine is asserted act in bad faith, or engage in dishonest, deceitful, fraudulent, unfair, or overreaching behavior in regard to the transaction at issue, and (2) was the party asserting the defense injured thereby. *See Collins v. Davis*, 68 N.C. App. 588, 592-93, 315 S.E.2d 759, 762 (1984); *see also Crumley & Assocs., P.C. v. Charles Peed & Assocs., P.A.*, 219 N.C. App. 615, 619, 730 S.E.2d 763, 767 (2012).

¶ 13 Appellant bases its defense on three allegations: (1) Plaintiff engaged in an adulterous affair with Siharath without informing Appellant; (2) Plaintiff engaged in the unauthorized practice of law and therefore failed to abide by the terms of the contract with Appellant to work as a paralegal; and (3) the trial court failed to make any findings of fact apportioning Plaintiff’s billing between legitimate paralegal services and billing for services which constituted the unauthorized practice of law.

However, we hold the trial court made sufficient findings of fact to conclude Plaintiff does not have unclean hands.

¶ 14 Appellant’s first allegation, that Plaintiff engaged in an adulterous affair with Siharath without informing Appellant, is addressed in findings of fact 60, 63, and 65.

(60) Subsequent to his settlement with [Siharath], [Appellant] was told . . . that [P]laintiff and [Siharath] had engaged in an adulterous affair. [Appellant] believed this [] to be true.

. . .

(63) [Appellant] told [P]laintiff what he learned [about the alleged affair] and told [P]laintiff he was not going to pay him for the services he rendered on [Siharath’s] case.

. . .

(65) Plaintiff and [Siharath] have never engaged in a romantic relationship.

¶ 15 The trial court’s findings must be “appropriately detailed” and “dispose of the issues raised by [Appellant’s] pleadings.” *See Mashburn*, 102 N.C. App. at 562, 402 S.E.2d at 862. Since the trial court specifically found that Plaintiff did *not* engage in a romantic relationship with Siharath, Appellant’s argument that the trial court erred in failing to make the opposite finding is without merit.

¶ 16 Appellant’s second allegation, that by engaging in the unauthorized practice of law, Plaintiff failed to abide by the terms of the engagement as a contract paralegal, is addressed in findings of fact 53-56, 77, 78, and 79.

(53) [Appellant] argued to [] the NC State Bar . . . that he and [P]laintiff did nothing wrong during his representation of [Siharath].

(54) On August 13, 2018, the NC State Bar issued a Letter of Caution to [P]laintiff and concluded that [P]laintiff engaged in the unauthorized practice of law.

(55) The Letter of Caution has no legal implication and no formal criminal charges were filed against [P]laintiff.

(56) On September 5, 2018, the NC State Bar issued a Notice of Censure to [Appellant] and concluded that [Appellant] failed to properly supervise [P]laintiff.

...

(77) [Appellant] alleges [P]laintiff's unauthorized practice of law and the subsequent grievance caused him to not obtain the attorney fees from [Siharath] in full.

(78) The [trial] court does not find this [finding of fact 77] to be an accurate assertion as [Siharath] accused [Appellant] of not properly representing her in several ways, only some of which pertained to how [P]laintiff billed for her services, and none of which had anything to do with [P]laintiff's communications with her.

(79) Plaintiff did not breach said contract.

The trial court specifically found that Plaintiff did not breach his contract. Appellant does not contest this finding or the others quoted above. These uncontested findings include the necessary ultimate facts essential to support the trial court's conclusion that Plaintiff does not have unclean hands. *See Gilbert Eng'g Co.*, 74 N.C. App. at 364, 328 S.E.2d at 857.

¶ 17

Appellant’s third allegation, that the trial court failed to make any findings of fact apportioning Plaintiff’s billing between legitimate paralegal services and billings which constituted the unauthorized practice of law, is addressed in findings of fact 74, 76, and 79.

(74) Per the timesheet, [P]laintiff worked on [Siharath’s] case for approximately 158.7 hours after May 2, 2016. If paid \$100 per hour he would be owed \$15,870 by [Appellant] for his services.

...

(76) [Appellant] has never disputed the accuracy of the timesheet.

...

(79) Plaintiff did not breach said contract.

While the findings themselves do not specifically delineate between paralegal services rendered and services that Appellant contends constitute the unauthorized practice of law, the trial court is not required to find facts on every issue. *See Trotter*, 19 N.C. App. at 254, 198 S.E.2d at 466. “[A] finding of such essential facts as lay a basis for the decision is sufficient.” *Id.* (citation omitted). Here, the trial court found that Appellant did not contest Plaintiff’s timesheets. So the trial court was not required to, *sua sponte*, delineate between paralegal services rendered and billings that constitute the unauthorized practice of law. Therefore, the third allegation is without merit.

¶ 18 Further, Appellant does not challenge the trial court’s finding that “Plaintiff does not have unclean hands.” Where “plaintiffs have not assigned error to the judge’s findings, those findings are conclusive on appeal” *Sharpe v. Park Newspapers of Lumberton, Inc.*, 317 N.C. 579, 583, 347 S.E.2d 25, 28 (1986) (citation omitted). “Because of [a] failure to challenge the findings of fact, our review . . . is limited to the question of whether the trial court’s findings of fact, which are presumed to be supported by competent evidence, support its conclusions of law and judgment.” *Hannah v. Nationwide Mut. Fire Ins. Co.*, 190 N.C. App. 626, 628, 660 S.E.2d 600, 602 (2008) (citations and alterations omitted). The trial court did not err in concluding that Plaintiff does not have unclean hands.

B. Plaintiff’s Motion for Sanctions

¶ 19 Pursuant to Rule 34 of our rules of appellate procedure, Plaintiff moved to impose sanctions against Appellant, arguing Appellant’s sole issue on appeal is not warranted by existing law, and Appellant does not attempt to put forth a good faith argument for the extension, modification, or reversal of existing law.

¶ 20 Rule 34 provides,

(a) 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;

N.C. R. App. P. 34(a)(1). Here, Appellant put forth a good faith argument that Plaintiff's unclean hands precluded his claim for monetary damages. Therefore, we conclude, "[i]n our discretion," that sanctions should not be imposed. *See State v. Hudgins*, 195 N.C. App. 430, 436, 672 S.E.2d 717, 721 (2009).

III. Conclusion

¶ 21 After careful review, we hold the trial court found the ultimate facts necessary to properly dispose of the case, and that the findings supported the trial court's conclusions of law. Accordingly, we affirm the order of the trial court. In our discretion, we deny Plaintiff's motion for sanctions.

AFFIRMED.

Judges INMAN and GRIFFIN concur.

Report per Rule 30(e).