IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-187

Filed 19 March 2024

Wake County, No. 19 CVS 16342

JENNIFER S. BURLESON, Plaintiff,

v.

LYNN P. BURLESON, Defendant.

Appeal by plaintiff from order entered 18 August 2022 by Judge Stephan R. Futrell in Wake County Superior Court. Heard in the Court of Appeals 19 September 2023.

John M. Kirby for the plaintiff-appellant.

Tharrington Smith, LLP, by Lynn P. Burleson for the defendant-appellee.

Boxley Bolton & Garber, LLP, by Ronald H. Garber for the defendant-appellee.

STADING, Judge.

Jennifer S. Burleson ("plaintiff") appeals from an order granting, in part, Lynn Burleson's ("defendant") motion for sanctions and awarding defendant $48,507.21 in attorney's fees and costs. For the reasons below, we affirm.

I. Background

Plaintiff and defendant married in February 2015 and purchased a home in on 29 November 2016 ("the marital home"). The parties understood that the home was to be a "fixer-upper." They agreed that since plaintiff was an interior designer, she would complete improvements around the home. However, on 24 September 2018, the parties separated, and defendant left the marital home while plaintiff remained.

On 8 August 2019, the parties, represented by attorneys, participated in mediation and signed a "Memorandum of Mediation Settlement Agreement" ("the Memorandum"). Among other things, the Memorandum provided that plaintiff would execute a North Carolina Special Warranty Deed, transferring all rights, title, and interest in the marital home to defendant, allowing defendant to sell the property in the near future. In exchange, defendant would make various payments to plaintiff. The Memorandum also provided that plaintiff would have possession of the property through 31 December 2019, maintain the property in good condition, and not make any extra improvements or repairs without defendant's express agreement. Lastly, the Memorandum provided that the parties were to prepare and execute a formal separation agreement consistent with the terms therein.

Under the Memorandum, plaintiff executed a Special Warranty Deed, transferring all interest in the marital home to defendant, and defendant delivered a check for $50,000. On 14 October 2019, the parties signed a formal "Separation Agreement and Property Settlement Agreement" ("the Agreement") incorporating the

terms of the Memorandum and representing the entire understanding of the parties. The Agreement also provided that "[n]o additional improvements or repairs will be made [to the marital home] without [defendant's] express permission" and "[plaintiff] relinquishes, waives, and releases any and all ownership, claim, right, title, and interest she has, now has, or may hereafter acquire in the [marital] residence." Moreover, the agreement contained a mutual release of other claims provision, stating in part:

> Any conduct on the part of either party occurring prior to the execution of this Agreement or in connection with the negotiation and execution of this Agreement which may have constituted a basis for any legal claim by either party against the other is hereby waived and realized and will not be used by either party against the other in any other proceeding between the parties.

Plaintiff left the marital home on 27 November 2019 and moved to Austin, Texas. As required by the Memorandum and Agreement, defendant delivered a second check for $65,000 once plaintiff moved. Between August and November 2019, defendant made payments to plaintiff totaling $243,715.

On 3 December 2019, plaintiff filed a "Complaint to Recover Joint Interest in Real Estate." In her complaint, plaintiff requested that the trial court (1) "enter a decree declaring that [d]efendant holds the real estate that is the subject of this action in constructive trust for [p]laintiff[,]" (2) award damages of $74,265 for unpaid invoices and credits owed by defendant to plaintiff for labor she completed while "doing business as" her interior design business, J. Burleson Design, (3) impress a

lien upon the marital home in favor of plaintiff, (4) "declare a partition of the real estate and improvements of 'Home' thereon, and the same be sold and the proceeds divided between the parties according to the separate amounts found due each of them[,]" (5) award costs to plaintiff, and (6) grant any further relief to plaintiff that the trial court deems "just and proper." Due to plaintiff's complaint, the title insurance company defendant used while seeking to sell the home required him to post a $74,265 cash bond.

On 12 March 2020, defendant moved for summary judgment, arguing that, under both the Memorandum and Agreement, plaintiff "contracted away, conveyed and waived any right to the relief requested in her Complaint[.]" In response, plaintiff submitted an affidavit stating that "my business known as J Burleson Design has designed, managed, purchased, hired, labored, and updated the property . . . through November 27, 2019 . . . until I no longer resided at the property."

On 7 October 2020, the trial court granted summary judgment for all claims that existed as of 14 October 2019 (the date of the separation agreement) but denied defendant's motion relating to claims from 15 October to 27 November 2019. Further, as a result of plaintiff's misunderstanding about "doing business as" (or "DBA") operations, the trial court took judicial notice that "a trade name is not a separate legal entity and that a trade name is another name for a person." Defendant submitted interrogatories and requests for production aimed at determining the basis

for plaintiff's remaining claims, but plaintiff failed to respond, and defendant moved to compel. Plaintiff then moved for summary judgment on 2 September 2021.

On 2 December 2021, Judge Thomas R. Wilson held a WebEx hearing on plaintiff's motion for summary judgment and defendant's motion to compel. At the hearing, when discussing the partial summary judgment and claims from 15 October to 27 November 2019, plaintiff stated, "[t]here was not any work being done, and so honestly . . . it should've been completed." The trial court then asked, "but what you've just stated is that there was no money owed after October?" In response, plaintiff stated, "I believe there is money owed, but not new invoices." On 27 January 2022, the trial court granted summary judgment for defendant, dismissing the plaintiff's remaining claims with prejudice based on plaintiff's statements that no work was done after 14 October 2019.

Defendant moved for sanctions on 25 July 2022. The trial court judge granted defendant's motion and entered a thirty-four-page order imposing sanctions against plaintiff. Specifically, the trial court judge found that plaintiff's claims had an insufficient basis in law or fact; plaintiff submitted her complaint and affidavit for improper purposes, such as to harass, cause unnecessary delay, or increase the cost of litigation; and plaintiff's actions required defendant to hire an attorney, thus incurring $47,775 in attorney fees and $732.21 in costs. On 19 September 2022, plaintiff filed her notice of appeal from the 18 August 2022 order. This appeal follows.

II. Jurisdiction

This Court has jurisdiction to review plaintiff's appeal by N.C. Gen. Stat. §§ 7A-27(b) and 1-277(a) (2023).

III. Analysis

Plaintiff raises these issues on appeal: (1) whether the trial court erred in finding that plaintiff's claims for work performed before 15 October 2019 subjected plaintiff to sanctions; (2) whether the trial court erred in finding that plaintiff's claims for work performed after 15 October 2019 subjected plaintiff to sanctions; (3) whether the trial court erred in taking judicial notice of underwriting practices and in making assumptions about plaintiff's knowledge of the law; (4) whether the trial court erred in calculating the amount of attorney's fees awarded; and (5) whether the trial court erred in calculating the amount of costs.

"This Court exercises de novo review of the question of whether to impose Rule 11 sanctions. If we determine that the sanctions were warranted, we must review the actual sanctions imposed under an abuse of discretion standard." *Page v. Roscoe, L.L.C.*, 128 N.C. App. 678, 680–81, 497 S.E.2d 422, 424 (1998) (internal quotation marks and citation omitted). In reviewing an order imposing sanctions, this Court determines:

> (1) whether the trial court's conclusions of law support its judgment or determination, (2) whether the trial court's conclusions of law are supported by its findings of fact, and (3) whether the findings of fact are supported by a sufficiency of the evidence. If the appellate court makes

> these three determinations in the affirmative, it must uphold the trial court's decision to impose or deny the imposition of mandatory sanctions under N.C. [Gen. Stat.] § 1A-1, Rule 11(a).

Batlle v. Sabates, 198 N.C. App. 407, 425, 681 S.E.2d 788, 800 (2009) (citations omitted). "A Rule 11 analysis includes three parts: whether the document is (1) factually sufficient; (2) legally sufficient; and (3) filed for an improper purpose. A violation of any one of these requirements mandates the imposition of sanctions under Rule 11." *Kassel v. Rienth*, 289 N.C. App. 173, 193, 888 S.E.2d 682, 698 (2023) (internal citations and quotation marks omitted).

Moreover, the trial court "may award a reasonable attorney's fee to the prevailing party if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party in any pleading." N.C. Gen. Stat. § 6-21.5 (2023). The presence or absence of justiciable issues is a question of law that this Court reviews *de novo*. *Wayne St. Mobile Home Park, L.L.C. v. N.B. Sanitary Dist.*, 213 N.C. App. 554, 561, 713 S.E.2d 748, 753 (2011). This Court must review all relevant pleadings and documents to determine whether "(1) the pleadings contain 'a complete absence of a justiciable issue of either law or fact,' . . . or (2) whether the losing party persisted in litigating the case after a point where he should reasonably have become aware that the pleading he filed no longer contained a justiciable issue." *Credigy Receivables, Inc. v. Whittington*, 202 N.C. App. 646, 652, 689 S.E.2d 889, 893 (2010) (internal quotation marks and citation omitted).

A. Plaintiff's Claims for Work Completed Before 15 October 2019

Plaintiff first argues that the trial court erroneously found that her claims for work performed before 15 October 2019 were not well-grounded in fact and law and were filed for an improper purpose. In partially granting defendant's motion for sanctions, the trial court made the following conclusion of law consistent with several of its findings of fact:

> Plaintiff's claim for money and damages was without a basis in fact or law, as determined by the summary judgments by Judges Shirley and Wilson. Plaintiff was seeking recovery for labor and material to improve the subject property before and after the execution of the separation agreement. Judge Shirley's summary judgment established that Plaintiff's claims for the period before the separation agreement could not be sustained. . . . As for the period before October 14, 2019, plaintiff knew or reasonably should have known the unambiguous and comprehensive language of the separation agreement precluded her claim.

On 1 October 2020, the trial court granted defendant's motion for summary judgment in part and denied plaintiff's claims for alleged work or improvements for the period before 14 October 2019. At the hearing on this matter, the trial court informed plaintiff that this is not "a place or a form to relitigate . . . any agreements that were reached between the parties upon the dissolution of their marriage[.]" The trial court continued: "[F]or the purposes of the DBA, there's no separate identity . . . as a matter of law between a DBA and the individual. It would be different if the business were a separate legal entity such as an LLC or a corporation." In this order,

the trial court took judicial notice "that a trade name is not a separate legal entity and that a trade name is another name for a person[.]" It then decreed that any claim that existed prior to 14 October 2019 "shall provide no basis or grounds for relief to the Plaintiff against the Defendant[.]" Subsequently, concerning the matter here, the trial court formulated findings of fact consistent with the trial court's order.

The trial court's additional findings support that plaintiff knew or reasonably should have known the language of the Agreement precluded her claim. Within the Agreement, plaintiff agreed to fully release all claims involving "[a]ny conduct on the part of either party occurring prior to the execution of this Agreement . . . which may have constituted a basis for any legal claim by either party against the other. . . ." The trial court noted that "[b]efore filing the Complaint herein, plaintiff did not file any action to disclaim, disavow, or set aside directly or indirectly, the Memorandum, the Separation Agreement, the North Carolina Special Warranty Deed, or the parties' divorce judgment." The record shows that plaintiff was familiar with the terms of the Agreement and the Memorandum—her complaint discusses several provisions of the Agreement.

Moreover, plaintiff cannot claim she is working to recover such funds for her interior design business, J. Burleson Design, as she failed to file the complaint in the name of her DBA. By making improvements to the marital home, she was acting to benefit herself. As a result, any work on the house before the Agreement arose from the marriage and was therefore covered by the mutual release she signed in the

Agreement. *See Taylor v. Collins*, 128 N.C. App. 46, 51–52, 493 S.E.2d 475, 479 (1997). Nonetheless, plaintiff persisted in litigating while being aware that the pleading no longer contained a justiciable issue after receiving defendant's answers and motions and after the trial court explained that a trade name is not a separate legal entity. *See Credigy Receivables, Inc.*, 202 N.C. App. at 652, 689 S.E.2d at 893.

B. Plaintiff's Claims for Work Completed After 15 October 2019

Next, plaintiff argues that the trial court improperly imposed sanctions for plaintiff's claims for work after 15 October 2019. She contends that the trial court mischaracterized her statements from a prior hearing. But first, both the Memorandum and the Agreement forbade plaintiff from completing any further work on the house without defendant's express permission. Those portions of the Agreement are as follows:

> (2) Ownership. [Plaintiff] relinquishes, waives, and releases any and all ownership, claim, right, title, and interest she had, now has, or may hereafter acquire in [the marital home], subject to [plaintiff's] residential rights as set forth above. As required by the parties' Memorandum of August 8, 2019, [plaintiff] executed a North Carolina Special Warranty Deed in favor of [defendant]. . . . [i]n exchange for [defendant's] first lump sum property settlement payment in the amount of $50,000 on August 12, 2019.
>
> (3) Other Terms. No additional improvements or repairs will be made without [defendant's] express permission.

These provisions, along with others containing comparable directives regarding home maintenance, suggest that the parties anticipated potential issues regarding

housework on the marital home post-separation and reached an amicable agreement. Plaintiff cannot present or point to any evidence showing that defendant allowed her to perform any work after they entered into the Agreement. Thus, in the event she completed work after 15 October 2019, it was done in breach of the Agreement. Alongside other evidence in the record, plaintiff's statements support that she did not complete work on the house after the Agreement.

In relevant part, the colloquy between plaintiff and the trial court during the 2 December 2021 hearing following the trial court's partial grant of summary judgment for defendant is as follows:

> [Plaintiff]: Yes sir, I felt it was necessary to tell the story because at the first summary judgment there were many things shared, though I did not get an opportunity to share. I did mention in my statement today that I have not submitted and do not plan to send anything after October. I was in boxes and moving. I was crying every day and leaving my home. There was not any work being done, and so honestly, that – it should've been completed. It should not have had a partial summary judgment. I thought this case was complete because I didn't understand the word "partial," but I had that explained to me by one of the court administrators. So I will just continue with my summary and then –
>
> THE COURT: Well, let me – let me interrupt you one second again . . . but what you've just stated is that there was no money owed after October?
>
> [Plaintiff]: There were not any new invoices, no new invoices. I believe there is money owed, but no new invoices.

Plaintiff claims these statements were misunderstood and alleges that she did not reject that she was owed money but rather lacked documentation for the work in question. She alleges more weight should be given to her affidavit in which she states, in part: "That my business known as J Burleson Design had designed, managed, purchased, hired, labored, and updated the [marital] property . . . through November 27, 2019 . . . until I no longer resided at the property[.]" In making her argument on claims after the Agreement, plaintiff is essentially arguing that the trial court should have found that her statements within her affidavit were more credible than those given in front of the trial court. Yet "[b]ecause [t]he trial court is in the best position to weigh the evidence, determine the credibility of witnesses and the weight to be given to their testimony, we refuse to re-weigh the evidence on appeal." *Williamson v. Williamson*, 217 N.C. App. 388, 392, 719 S.E.2d 625, 628 (2011) (internal quotation marks and citation omitted).

Thus, notwithstanding plaintiff's statements to the contrary, the trial court's findings acknowledging the above-referenced exchange support its conclusion that "plaintiff admitted that there were no improvements or materials in the post-Separation Agreement period that would support her claims." As a result, we hold that the trial court properly found plaintiff's claims for work after 14 October 2019 subjected her to sanctions because such claims were well-founded in law or fact.

C. Judicial Notice of Underwriting Procedures and Knowledge of the Law

Third, plaintiff alleges the trial court erred in taking judicial notice of insurance underwriting procedures and making assumptions about her legal knowledge. She challenges the following finding of fact in the trial court's order:

> [T]he Court can and does take judicial notice that upon application for new or renewed professional liability insurance, an attorney usually is required to report every grievance or complaint to the State Bar, or risk non-coverage in the event the underlying circumstances of that grievance or complaint result in a claim. The attorney ordinarily must include such a report in every such insurance application for as long as the claim could be made. As plaintiff is a certified paralegal and has worked for lawyers as a paralegal, it is reasonable to believe that she was familiar with the procedures for making such a complaint and responding thereto, as well as the consequences that would ensue from the same.

"[A] trial court's decision concerning judicial notice will not be overturned absent an abuse of discretion." *Muteff v. Invacare Corp.*, 218 N.C. App. 558, 568, 721 S.E.2d 379, 386 (2012) (citation omitted). "A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." N.C. R. Evid. 201(b).

"[A] fact judicially noticeable by a trial court, 'must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by

resort to sources whose accuracy cannot reasonably be questioned.'" *Smith v. Beaufort Cnty. Hosp. Ass'n*, 141 N.C. App. 203, 211, 540 S.E.2d 775, 780 (2000) (quoting N.C. Gen Stat. § 8C-1, Rule 201 (2023)). This Court has held that because the number of highly skilled attorneys within a specific practice area in North Carolina is generally known within the trial courts own jurisdiction and because types of information supplied by the North Carolina State Bar about a particular law firm are capable of accurate and ready determination by other sources, trial courts may take judicial notice of such information. *See Id.* at 211–12, 540 S.E.2d at 780–81. Where here, as in *Smith*, the first prong is satisfied because the trial court generally knows facts about professional responsibility and the practices of attorneys within its own jurisdiction. *Id.* Second, if needed, the trial court could have consulted the North Carolina State Bar to collect more information on how much information attorneys are required to report to insurance. *Id.* Accordingly, the trial court did not abuse its discretion in taking judicial notice of the above-referenced finding.

In regard to plaintiff's legal knowledge and her experience as a paralegal, a reading of the trial court's order, along with a review of plaintiff's complaint, reveals that the trial court was merely making observations and reasonable inferences based on the evidence it reviewed, rather than taking judicial notice of the training and knowledge of paralegals. Plaintiff's complaint provided that "[u]nless Defendant is enjoined from selling the real estate and improvements thereon, the interest of the Plaintiff therein or 'Quantum Meruit' will be loss and Plaintiff will suffer irreparable

injury and damage and will be unable to obtain legal and just interest in the real estate improvement thereon." From that, the plaintiff requested, among other things, that the trial court "impress a lien upon the real property of 'Home' in favor of Plaintiff" and "declare a partition of the real property of 'Home' thereon, and the same be sold and the proceeds divided between the parties according to the separate amounts found due each of them[.]" Based on the complaint and other evidence presented, the trial court made these conclusions within its order:

> 17. Even allowing for the amateurish inadequacies of a pro se pleading, plaintiff's Complaint included enough legalistic verbiage to cause very real consequences for defendant.
>
> 18. Because plaintiff was a certified paralegal, had worked many years in her prior husband's construction business, and had worked for lawyers, plaintiff knew or reasonably should have known that filing a complaint with legalistic verbiage about materialman's liens, constructive trusts, and disputed real estate titles would, more likely than not, have a seriously chilling effect on a potential sale of the subject property.

By incorporating the foregoing in its order, the trial court did not make improper assumptions about plaintiff's knowledge of the law.

D. Amount of Attorney's Fees

Plaintiff next claims the trial court erred in awarding $47,775 in attorney's fees because "[i]n view of the excessive nature of some of these charges, the trial court should have given a more detailed explanation of its award." This Court reviews a trial court's award of attorney's fees for abuse of discretion. *Hill v. Hill*, 173 N.C.

App. 309, 315, 622 S.E.2d 503, 508 (2005) (citation omitted). Although this standard "is intended to give great leeway to the trial court," it is nevertheless "fundamental to the administration of justice that a trial court not rely on irrelevant or improper matter in deciding issues entrusted to its discretion." *Id.* (internal quotation marks and citations omitted).

Here, the trial court based its award of attorney's fees on the affidavit of defendant's attorney. The affidavit contains dates, times, and descriptions of services performed by defendant's attorney. The trial court made several findings in its order granting attorney's fees, including:

> 33. This Court has reviewed the Affidavit of . . . defendant's attorney. . . . The Affidavit covers [defendant's attorney's] time and costs through April 28, 2022. In connection with the defense of plaintiff's Complaint and plaintiff's Affidavit against defendant's Motion for Summary Judgment, [defendant's attorney] reasonably spent the following amount of time: 147 hours; and, as a result, defendant incurred $47,775.00 in attorney's fees and costs of $732.21 to defend against plaintiff's Complaint herein.

From this finding, the trial court concluded the award of $47,775 was sufficient given plaintiff's "perpetuat[ing] this litigation in the face of proof that her pleadings no longer presented a justiciable controversy[.]" This finding, in concert with several others, establishes that the trial court carefully "scrutinized the time and monies expended" by defendant. *Woodcock v. Cumberland Cnty. Hosp. Sys. Inc.*, 384 N.C. 171, 179, 884 S.E.2d 633, 639 (2023). Moreover, the "findings of fact and conclusions of law establish that from the initiation of this suit, there was never any factual or

legal basis" for the allegations contained in plaintiff's complaint. *Brooks v. Giesey*, 334 N.C. 303, 313, 432 S.E.2d 339, 345 (1993). Accordingly, the trial court's award of attorney's fees was proper.

E. Amount of Costs

Finally, plaintiff contends the trial court erred by awarding defendant court costs of $732.21 because, similar to the amount of attorney's fees, the trial court entered the amount "without any explanation of what these costs consist of, and how they relate to the [p]laintiff's filings." This Court considers costs incurred by a party as part of its attorney's fees analysis. *See Woodcock*, 384 N.C. at 179, 884 S.E.2d at 639 (concluding "the trial court did not abuse its discretion by granting defendant's motion for award of attorney's fees as part of their costs under Rule 41(d) of the North Carolina Rules of Civil Procedure pursuant to [N.C. Gen. Stat.] § 6-21.5[.]"). Like the attorney's fees, the trial court found that defendant incurred costs of $732.21 "[i]n connection with the defense of plaintiff's Complaint and plaintiff's Affidavit against defendant's Motion for Summary Judgment. . . ." Considering the foregoing, the trial court did not abuse its discretion in its grant of attorney's fees or costs in favor of defendant.

IV. Conclusion

For the reasons set forth above, we hold that the trial court did not err in imposing sanctions, taking judicial notice of certain facts, and awarding attorney's fees and costs.

AFFIRMED.

Judges HAMPSON and THOMPSON concur.

Report per Rule 30(e).