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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-483

Filed 6 February 2024

New Hanover County, No. 21 CVS 4244

THE VENABLE GROUP, LLC, Plaintiff,

v.

CHARLES A. SNOW, Defendant.

Appeal by defendant from order entered 7 December 2022 by Judge Phyllis M. Gorham in Superior Court, New Hanover County. Heard in the Court of Appeals 23 January 2024.

Perry & Brandt, by Holden K. McLemore, for plaintiff-appellee.

Sharp, Graham, Baker, & Varnell, L.L.P., by Casey C. Varnell, for defendant-appellant.

ARROWOOD, Judge.

Charles A. Snow (“defendant”) appeals from order granting summary judgment for The Venable Group, LLC (“plaintiff”). On appeal, defendant argues the trial court erred by granting summary judgment, by awarding plaintiff attorney’s fees without proper findings and conclusions, and by awarding plaintiff attorney’s fees in the amount of \$8,109.32. For the following reasons, we affirm.

I. Background

Defendant was the sole member of two LLCs, Outer Banks Air Charters, LLC and Outer Banks Aviation, LLC. On or around 23 September 2021, plaintiff and defendant entered into Membership Interest Purchase Agreements (“Agreements”) wherein defendant agreed to sell his membership interest in both LLCs to plaintiff. As a result, the Agreements provided that plaintiff would acquire defendant’s “entire Right, title, and interest in, to and under the Business, as a going concern, and, indirectly, all assets, or Rights in assets, owned by the Company at the Closing Date.” The Agreements further provided that at the closing of the sale, defendant would “deliver to the Buyer all Documents and Other Papers relating to the Interests, the Business, or the Business Assets[.]”

Defendant did not provide plaintiff with access to the businesses’ various accounts upon the closing of the sale, and plaintiff sent defendant a demand and cease and desist letter requesting the assets on 28 October 2021. When defendant did not comply with the letter, plaintiff filed a complaint on 9 November 2021 alleging breach of contract and requesting specific performance and a preliminary injunction. Plaintiff also filed a motion for summary judgment on 13 October 2022. Defendant later provided the assets, and the hearing on the motion for summary judgment solely related to the alleged breach of contract.

The hearing on the motion occurred on 5 December 2022 in Superior Court, New Hanover County, Judge Phyllis Gorham presiding. Plaintiff’s counsel argued

that defendant did not provide business assets, namely domain names, social media accounts, and QuickBooks accounts, at the close of the sale. Plaintiff's counsel informed the court that defendant did not provide information to access these accounts until five or six months after the closing. When the trial court asked defendant whether he denied "that [he] withheld these items in this contract that said [he] must turn them over when [he] sold the businesses[.]" defendant admitted that he withheld the assets "per [his previous] attorney[.]"

The trial court granted plaintiff's motion for summary judgment. In the order, the trial court made the following relevant findings of fact:

2. That Defendant . . . and Plaintiff . . . entered into valid and enforceable Membership Interest Purchase Agreements ("Agreements"). . . . The Agreements were duly signed by both Parties on September 23, 2021.
3. By virtue of Plaintiff's purchase of the Interests from [Defendant], Plaintiff acquired [Defendant's] entire right, title, and interest in the Businesses, which include the Businesses' Assets. The Business Assets included, among others, the rights to all of the Businesses' accounts, domain names, websites, and social media sites.
4. Pursuant to the Agreements, [Defendant] agreed to timely deliver to Plaintiff all Business Assets. Shortly after executing the Agreements, Plaintiff requested that [Defendant] deliver the login information for the Businesses' websites, website domains, social media accounts, and QuickBooks account.
5. Without justification, [Defendant] did not deliver the login information to Plaintiff for the Businesses' websites, website domains, or social media accounts until in or around February 2022. Without justification, [Defendant]

did not deliver the login information to Plaintiff for the Businesses' QuickBooks account until March 2022.

6. Plaintiff has performed its duties and obligations pursuant to the Agreements.

7. As a result of [Defendant's] actions, Plaintiff had to hire counsel to pursue its rights under the Agreements and incurred \$8,109.32 in reasonable legal fees as a result thereof.

The trial court made the following relevant conclusions of law:

3. The Court concludes that Defendant breached the Agreements with Plaintiff.

4. The Court concludes that the \$8,109.32 Plaintiff incurred in legal fees were reasonable and necessary in order for Plaintiff to secure the Business Assets from Defendant. The Court further concludes that the aforementioned legal fees constitute damages to Plaintiff for Defendant's breach.

5. The Court does not find any genuine issues of material facts as to Defendant's breach and the damages incurred by Plaintiff. Therefore, the Court finds that Plaintiff is entitled to judgment as a matter of law.

The order did not contain a certification of service to all parties. Defendant entered notice of appeal 19 January 2023.

II. Discussion

On appeal, defendant argues that the trial court erred in granting summary judgment for plaintiff and in awarding plaintiff \$8,109.32 in attorney's fees. We address each argument in turn. As a preliminary matter, absent proof that defendant was served with the appealed order, defendant's notice of appeal is presumptively

timely. *See Brown v. Swarn*, 257 N.C. App. 417, 422 (2018) (“[W]e hold that where, as here, there is no certificate of service in the record showing *when* appellant was served with the trial court judgment, appellee must show that appellant received actual notice of the judgment more than thirty days before filing notice of appeal in order to warrant dismissal of the appeal.” (emphasis in original)).

A. Summary Judgment

Defendant argues that the trial court erred in granting plaintiff’s motion for summary judgment. We disagree.

This Court reviews an appeal from an order granting summary judgment de novo. *Bryan v. Kittinger*, 282 N.C. App. 435, 437 (2022). “Summary judgment is proper where ‘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 judgment as a matter of law.’” *Integon Nat. Ins. Co. v. Maurizzio ex rel. Langley*, 240 N.C. App. 38, 40 (2015) (citing N.C.G.S. § 1A-1, Rule 56(c)).

In this case, it was not disputed that the parties entered into a valid and enforceable agreement that required defendant to provide business assets to plaintiff at the close of the sale. Neither party disputed that defendant did not provide access to the businesses’ domain names, websites, social media accounts, or QuickBooks at the time the contract required. In fact, defendant admitted during the motion hearing to the trial court that he withheld access to those assets. Accordingly, there

existed no genuine issue of material fact as to whether defendant breached the contract, and summary judgment for plaintiff was proper.

B. Attorney's Fees

Defendant next argues that the trial court erred in awarding plaintiff attorney's fees in the amount of \$8,109.32. We disagree.

1. Statutory Authority

“According to well-established North Carolina law, to overturn the trial judge’s determination on the issue of attorneys’ fees, the defendant must show an abuse of discretion.” *Reynolds-Douglass v. Terhark*, 381 N.C. 477, 487 (2022) (cleaned up). “The general rule in North Carolina has long obtained that a successful litigant may not recover attorneys’ fees, whether as costs or as an item of damages, unless such a recovery is expressly authorized by statute.” *Id.* (cleaned up) (citing *Stillwell Enters., Inc. v. Interstate Equip. Co.*, 300 N.C. 286, 289 (1980)). As such, we will decide any statutorily authorized award of attorney’s fees for an abuse of discretion.

Our law is clear that statutory authorization is required to award attorney’s fees even when a contract provides for the allocation of fees. *See Stillwell*, 300 N.C. at 289. “Even in the face of a carefully drafted contractual provision indemnifying a party for such attorneys’ fees as may be necessitated by a successful action on the contract itself, our courts have consistently refused to sustain such an award absent statutory authority therefor.” *Id.*

North Carolina statute authorizes the recovery of attorney’s fees when a

business contract contains a “reciprocal attorney’s fees” provision, meaning that “each party to the contract agrees . . . to pay or reimburse the other parties for attorneys’ fees and expenses incurred by reason of any suit, action, proceeding, or arbitration involving the business contract.” N.C.G.S. § 6-21.6(a)(4) (2023). The statute also provides that “[r]eciprocal attorneys’ fees provisions in business contracts are valid and enforceable for the recovery of reasonable attorneys’ fees and expenses only if all of the parties to the business contract sign by hand the business contract.” *Id.* § 6-21.6(b).

Defendant argues that here, neither he nor plaintiff signed the Agreements, and thus the trial court did not have the authority to award attorney’s fees under § 6-21.6. However, the trial court found in its order that “[t]he Agreements were duly signed by both Parties on September 23, 2021.” “Unchallenged findings of fact are presumed correct and are binding on appeal.” *In re Schiphof*, 192 N.C. App. 696, 700 (2008) (citations omitted). Defendant does not challenge this finding of fact on appeal. Accordingly, the trial court’s finding that the Agreements were signed by both parties granted the trial court authority to award attorney’s fees under § 6-21.6.

2. Findings of Fact and Conclusions of Law

Defendant also argues that the trial court erred by awarding the amount of attorney’s fees without the necessary findings of fact and conclusions of law. Given we review an award for attorney’s fees for an abuse of discretion, the trial court’s decision must be “manifestly unsupported by reason or one so arbitrary that it could

not have been the result of a reasoned decision.” *Venters v. Albritton*, 184 N.C. App. 230, 234 (2007) (citation omitted).

“In order for the appellate court to determine that the award of counsel fees is reasonable, the record must contain findings of fact as to the time and labor expended, the skill required, the customary fee for like work, and the experience or ability of the attorney.” *Davis v. Kelly*, 147 N.C. App. 102, 108–109 (2001) (cleaned up). “The scope of appellate review is strictly limited to determining whether the trial judge’s underlying findings of fact are supported by competent evidence, in which event they are conclusively binding on appeal, and whether those factual findings in turn support the judge’s ultimate conclusions of law.” *Overton v. Purvis*, 162 N.C. App. 241, 246 (2004) (citation and internal quotation marks omitted).

Here, the trial court found that “Plaintiff had to hire counsel to pursue its rights under the Agreements and incurred \$8,109.32 in reasonable legal fees as a result thereof.” The record contains two affidavits: one from plaintiff’s attorney with an attached Client Activity Report, and one from a partner at plaintiff’s attorney’s law firm. The affidavits state that plaintiff’s attorney billed plaintiff at a rate of \$225.00 per hour for a total of \$8,109.32 based on the tasks completed. The affidavits also contain statements that this rate is “comparable or below rates charged by lawyers similarly situated considering the skills required and services rendered with respect to this case” and that “those fees are reasonable for the work necessary to prosecute this lawsuit.” These affidavits and the itemized Client Activity Report

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provide adequate support in the record for the trial court's finding that the \$8,109.32 in legal fees were reasonable, and this finding supports the trial court's conclusion that the fees "were reasonable and necessary in order for Plaintiff to secure the Business Assets from Defendant." Therefore, the trial court made sufficient findings and conclusions and did not err in granting attorney's fees to plaintiff.

III. Conclusion

For all the foregoing reasons, the trial court's order granting summary judgment and awarding attorney's fees to plaintiff is affirmed.

AFFIRMED.

Judges COLLINS and FLOOD concur.

Report per Rule 30(e).