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NO. COA02-361

NORTH CAROLINA COURT OF APPEALS

Filed: 31 December 2002

JOSEPH M. GURGANUS,
Plaintiff,

v.

Camden County
No. 00 CVS 35

KELLY ANN CARTWRIGHT,
Defendant.

Appeal by defendant from judgment filed 26 October 2001 by Judge James R. Vosburgh in Camden County Superior Court. Heard in the Court of Appeals 30 December 2002.

D. Keith Teague, P.A., by Danny Glover, Jr., for plaintiff appellee.

Hornthal, Riley, Ellis & Maland, L.L.P., by Donald C. Prentiss, for defendant appellant.

GREENE, Judge.

Kelly Ann Cartwright (Defendant) appeals a judgment filed 26 October 2001 ordering her to pay Joseph M. Gurganus (Plaintiff) damages, costs, and attorney's fees.

On 19 April 2000, Plaintiff brought suit against Defendant seeking damages for injuries sustained in an automobile accident on Highway 158 in Camden, North Carolina, when Defendant rear-ended the vehicle in which Plaintiff was a passenger. A year after the

lawsuit was filed, Defendant, on 5 April 2001, tendered an offer of judgment in the amount of \$5,111.86 plus all accrued costs up to the time of the offer. Two weeks later, Defendant made an informal offer to settle the entire claim for \$6,720.00 but noted that any attempt to mediate would be a waste of time. No settlement agreement was reached between the parties.

On 24 October 2001, a jury awarded Plaintiff \$5,217.00 in damages. Plaintiff, by verified motion filed 25 October 2001, moved to recover costs and attorney's fees from Defendant pursuant to N.C. Gen. Stat. § 6-21.1. The motion and the attachments thereto set forth that, prior to the initiation of this lawsuit, Plaintiff had attempted to settle his claim with Defendant's insurer but was advised the insurer "would never pay more than \$1,000.00." Furthermore, after Plaintiff's attorney sent Defendant's insurer a settlement package including \$4,556.40 in medical bills and \$5,200.00 in loss of income, Plaintiff was told the insurer was not willing to offer "'much of anything'" because Plaintiff was "'a crook.'"

The trial court allowed Plaintiff's motion and, on 26 October 2001, entered judgment awarding Plaintiff \$5,862.50 in attorney's fees and \$1,139.00 in costs.

The dispositive issue is whether, based on the evidence in the record, the trial court properly considered and applied the factors outlined in *Washington v. Horton*, 132 N.C. App. 347, 513 S.E.2d 331 (1999).

In a personal injury action where the plaintiff recovers damages of \$10,000.00 or less, the trial court may allow reasonable attorney's fees as part of the costs taxed against the defendant. N.C.G.S. § 6-21.1 (2001). An award of attorney's fees under section 6-21.1 is reviewed for abuse of discretion and will be reversed only when it is completely arbitrary or "'manifestly unsupported by reason.'" See *Davis v. Kelly*, 147 N.C. App. 102, 106, 554 S.E.2d 402, 405 (2001) (quoting *Blackmon v. Bumgardner*, 135 N.C. App. 125, 130, 519 S.E.2d 335, 338 (1999)). In exercising its discretion, the trial court must enter findings, based on the entire record, as to the following factors:

(1) settlement offers made prior to the institution of the action . . . ; (2) offers of judgment pursuant to Rule 68, and whether the "judgment finally obtained" was more favorable than such offers; (3) whether defendant unjustly exercised "superior bargaining power"; (4) in the case of an unwarranted refusal by an insurance company, the "context in which the dispute arose"¹; (5) the timing of settlement offers; [and] (6) the amounts of the settlement offers as compared to the jury verdict

Washington, 132 N.C. App. at 351, 513 S.E.2d at 334-35 (citations omitted). Although the trial court's findings, supported by competent evidence, must be sufficient to allow for meaningful appellate review, detailed findings as to each factor are not necessary. See *Tew v. West*, 143 N.C. App. 534, 537, 546 S.E.2d 183, 185 (2001); *Fortune Ins. Co. v. Owens*, 351 N.C. 424, 428, 526

¹We note that the fourth *Washington* factor is inapplicable to this case because the action was not brought by an insured or beneficiary against an insurance company defendant. See *Washington*, 132 N.C. App. at 350, 513 S.E.2d at 334.

S.E.2d 463, 466 (2000).

I

Settlement Offers Prior to Lawsuit

Defendant asserts several errors by the trial court in evaluating Plaintiff's fee request under the factors prescribed by *Washington v. Horton*. As one of her assignments of error, Defendant claims the trial court should have given "little weight" to the assertion that her insurer offered Plaintiff only \$1,000.00 prior to the filing of the complaint.

In its discussion of the first factor of the *Washington* analysis, the trial court found Plaintiff sought a settlement, but Defendant's insurer "never offered to pay more than \$1,000 to settle [Plaintiff's] claim" prior to this lawsuit. The trial court further found an adjuster for the insurer announced his intention to take a "'hard line'" with Plaintiff because he was "'a crook.'" Defendant claims the representations made by Plaintiff's counsel at the motion hearing regarding the pre-litigation settlement activity are insufficient to provide evidentiary support for the trial court's findings of fact. The record, however, also contains Plaintiff's verified motion for costs and fees, which sets forth the alleged pre-litigation statements of Defendant's insurance adjuster. Moreover, this Court has recognized the trial court's authority to consider the entire record, including the arguments of counsel, in exercising its discretion under N.C. Gen. Stat. § 6-21.1. See *Stilwell v. Gust*, 148 N.C. App. 128, 132, 557 S.E.2d 627, 630 (2001), *disc. review denied*, 355 N.C. 500, 563 S.E.2d 191

(2002); see also *Blackmon*, 135 N.C. App. at 130, 519 S.E.2d at 338. Accordingly, the trial court's findings are supported by competent evidence.

II

Offers of Judgment

Defendant next asserts the evidence does not support the trial court's finding as to the second *Washington* factor because her offer of judgment of \$5,111.86 plus accrued costs was only \$105.14 less than the jury verdict and was thus a reasonable settlement offer that should have been accepted. We disagree.

The trial court found that, on 5 April 2001, Defendant made an offer of judgment in the amount of \$5,111.86 plus all accrued costs. Based on the jury's damages award of \$5,217.00 plus the \$7,001.50 in costs and fees subsequently awarded under section 6-21.1, the trial court properly found the judgment finally obtained was greater than the offer of judgment. See *Roberts v. Swain*, 353 N.C. 246, 250-51, 538 S.E.2d 566, 569 (2000).

III

Superior Bargaining Power

Defendant further excepts to the trial court's finding that her insurer had unjustly exercised superior bargaining power.

In addressing the third *Washington* factor, the trial court found Defendant and her insurer had "unjustly exercised 'superior bargaining power.'" The trial court noted the insurer's "hard line" pre-litigation posture, its position that mediation would be "a waste of time," its refusal to move beyond a \$6,720.00

settlement offer in response to Plaintiff's offer of \$8,720.00, and Defendant's denial of her negligence until 1 June 2001. In light of the broad discretion enjoyed by the trial court, we cannot say the trial court erred in finding an exercise of superior bargaining power by the insurer based on these facts. Accordingly, this assignment of error is also overruled.

IV

Timing of Settlement Offers

As to the fifth *Washington* factor, Defendant argues the trial court failed to fully consider the timing of her settlement offers. We disagree.

The trial court in this case entered detailed findings as to the timing and amount of the parties' settlement offers both prior to and throughout the litigation. Although Defendant avers the trial court refused to consider her insurer's \$6,720.00 settlement offer on the ground that it was not a formal offer of judgment under Rule 68, the trial court's written findings contradict her claim. The trial court found Defendant's insurer made a \$6,720.00 settlement offer on 19 April 2001 and reiterated the offer by letter dated 5 October 2001 in response to Plaintiff's 25 September 2001 settlement offer of \$8,700.00. The trial court noted Defendant's offer of \$6,720.00 expressly foreclosed any additional recovery for pre-judgment interest, costs, and fees. The trial court further found that Defendant's insurer withdrew the offer seven days before trial on 15 October 2001. Accordingly, the trial court fully considered the timing of Defendant's settlement offers.

Comparison of Settlement Offer with Jury Verdict

Finally, Defendant asserts the trial court failed to compare the settlement offers to the jury verdict as required by the sixth *Washington* factor. Because the trial court entered a finding reflecting the jury's verdict of \$5,217.00 and also engaged in a full consideration of the parties' settlement offers, we reject this argument as well. See *Davis*, 147 N.C. App. at 108, 554 S.E.2d at 406 ("[i]t is clear from the [trial] court's findings of fact that it considered the amount of the settlement offer as compared to the jury verdict since the court cited the settlement offer and jury verdict within the findings").

Conclusion

As illustrated above, the trial court's detailed findings demonstrate its review of the entire record in accordance with *Washington*. Defendant's contention that the trial court merely recited the *Washington* factors without applying them is therefore without merit.

Affirmed.

Judges TIMMONS-GOODSON and TYSON concur.

Report per Rule 30(e).