An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1148

Filed: 15 May 2018

Watauga County, No. 13-CVD-579

TAMMY DUNNIGAN and ADVANCED REALTY PROPERTY MANAGEMENT AND REFERRAL, INC., Plaintiffs,

v.

KAROLYN MACK, Defendant/Third Party Plaintiff,

v.

ADVANCED REALTY PROPERTY MANAGEMENT AND REFERRAL, INC., Third Party Defendant.

Appeal by plaintiffs and third-party defendant from judgment entered 19 April 2017 by Judge F. Warren Hughes in Watauga County District Court. Heard in the Court of Appeals 8 March 2018.

Deal, Moseley & Smith, LLP, by Bryan P. Martin, for plaintiffs-appellants and third-party defendant-appellant.

Jeffery M. Hedrick for defendant-appellee.

DIETZ, Judge.

Plaintiff Tammy Dunnigan and Plaintiff/Third-Party Defendant Advanced Realty Property Management and Referral, Inc. appeal from the denial of their

request for attorneys' fees. Following a bench trial, the trial court rejected Defendant Karolyn Mack's unfair and deceptive trade practices claim, and Dunnigan and Advanced Realty sought attorneys' fees under N.C. Gen. Stat. § 75-16.1, which permits the trial court, in its discretion, to award attorneys' fees if "[t]he party instituting the action knew, or should have known, the action was frivolous and malicious." As explained below, the trial court acted within its sound discretion in denying attorneys' fees, and it was not required to make any specific fact findings with respect to that discretionary decision. Accordingly, we affirm the trial court's judgment.

Facts and Procedural History

Tammy Dunnigan sued Karolyn Mack for breach of contract, and Mack countersued both Dunnigan and Advanced Realty Property Management and Referral, a business Dunnigan owned, asserting a Chapter 75 claim for unfair and deceptive trade practices.

After trial, the court entered judgment in favor of Dunnigan and Advanced Realty on Mack's unfair and deceptive trade practices claim, concluding that Mack "has failed to offer any evidence that would support a finding that any acts by the Plaintiff or her agent were immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers."

Dunnigan and Advanced Realty sought attorneys' fees under N.C. Gen. Stat. § 75-16.1, but the court denied the claim. All three parties timely appealed the trial court's judgment, but the only issue briefed by the parties on appeal is the denial of the request for attorneys' fees.

Analysis

I. Denial of motion for attorneys' fees

Dunnigan and Advanced Realty first argue that the trial court abused its discretion in denying their motion for attorneys' fees under N.C. Gen. Stat. § 75-16.1.

Section 75-16.1 of the General Statutes provides, in relevant part:

> In any suit instituted by a person who alleges that the defendant violated G.S. 75-1.1, the presiding judge may, *in his discretion*, allow a reasonable attorney fee . . . upon a finding by the presiding judge that:
>
> . . .
>
> (2) The party instituting the action knew, or should have known, the action was frivolous and malicious.

N.C. Gen. Stat. § 75-16.1 (emphasis added).

As the statutory language expressly indicates, "[a]ward of attorney fees under this section rests with the sound discretion of the trial judge." *Varnell v. Henry M. Milgrom, Inc.*, 78 N.C. App. 451, 457, 337 S.E.2d 616, 620 (1985). Ordinarily, when a trial court's denial of attorneys' fees under this statute "simply reads in relevant part that [the litigant's] claim 'is hereby denied' . . . we must presume that the order was correctly made, that is, in the discretion of the court." *Id.* This Court will find an

abuse of discretion "only upon a showing that [the trial court's] actions are manifestly unsupported by reason." *E. Brooks Wilkins Family Med., P.A. v. WakeMed*, 244 N.C. App. 567, 580, 784 S.E.2d 178, 187 (2016).

Here, although the trial court ultimately concluded that Mack was unable to meet her burden of proof on her unfair and deceptive trade practices claim, the record on appeal—including the trial court's denial of a motion to dismiss Mack's claim—demonstrates that the court's decision not to award attorneys' fees on the ground that the claim was frivolous or malicious was a reasoned decision and well within the court's sound discretion. Accordingly, we reject this argument.

II. Challenge to trial court's findings concerning attorneys' fees

Dunnigan and Advanced Realty next argue that the trial court erred in failing to make specific findings concerning the denial of attorneys' fees. This Court already has addressed—and rejected—this argument. We held that "[w]e are aware of no prior appellate decision in this state expressly addressing the issue of whether a trial court that denies a motion to award attorneys' fees is required to apply the factual analysis specified in N.C. Gen. Stat. § 75-16.1. Based on the language of the statute, we hold that the trial court is not required to make such findings in any order declining to award attorneys' fees." *E. Brooks Wilkins Family Med., P.A.*, 244 N.C. App. at 581, 784 S.E.2d at 187. Accordingly, we reject this argument as well.

Conclusion

For the reasons discussed above, we affirm the trial court's denial of attorneys' fees.

AFFIRMED.

Judges HUNTER, JR. and ZACHARY concur.

Report per Rule 30(e).