An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA17-905

Filed: 21 August 2018

Cumberland County, No. 16-CVS-1521

PURA VIDA MANAGEMENT CORP., DANIEL J. CULLITON AND ASHLEY CULLITON, Plaintiffs,

v.

ADIO MANAGEMENT COMPANY, INC., JEFFREY G. HEDGES, JENNIFER HEDGES, HEDGES FAMILY CHIROPRACTIC, P.A., MARY INGRAM, PROFESSIONAL BUSINESS CENT$, LLC, SUPERIOR HEALTHCARE PHYSICAL MEDICINE, PC, and DR. VENUS PITTS, Defendants.

Appeal by Plaintiffs from order entered 8 May 2017 by Judge Douglas B. Sasser in Cumberland County Superior Court. Heard in the Court of Appeals 23 January 2018.

McCoy Wiggins Cleveland & McLean PLLC, by Richard M. Wiggins, for plaintiffs-appellants.

MURPHY, Judge.

Plaintiffs appeal an order imposing $9,647.50 in attorney fees as a sanction for their failure to comply with the terms of a consent order. The consent order was entered to enforce the terms of a prior settlement agreement between several commercial parties and the sanctions order was entered pursuant to the trial court's "inherent authority." We vacate the sanctions order because the claims between

Plaintiffs and Defendants had already been dismissed pursuant to Rule 41 when Defendants moved for sanctions, and the trial court was divested of continuing jurisdiction to award attorney fees.

BACKGROUND

This action arose out of a 12 November 2015 Purchase Sale Agreement ("Sale Agreement") between Plaintiff, Pura Vida Management Corp. (as buyer), and Defendants, ADIO Management Company, Inc. ("ADIO"), Jeffrey Hedges, and Hedges Family Chiropractic, P.A., (as sellers) for the assets of ADIO. At the time of the Sale Agreement, ADIO was a management services provider for health care practices.

After the Sale Agreement was executed, Plaintiffs received information indicating that several months prior to the November 2015 sale, Blue Cross and Blue Shield of North Carolina and Medicare had initiated investigations into ADIO and other Defendants for billing practices. Then, on 1 March 2016, Plaintiffs filed a complaint against Defendants with several claims, including Breach of Contract, Unjust Enrichment, Unfair and Deceptive Trade Practices, and Civil Conspiracy. Plaintiffs' complaint alleged that at the time of the Sale Agreement, Defendants knew they were the targets of active investigations and that ADIO's assets "were worthless."

On 16 April 2016, the parties to this appeal executed a Settlement Agreement, obligating Plaintiffs to dismiss the lawsuit and to return copies of certain billing records and insurance claim forms to Defendants. On 3 June 2016, Plaintiffs filed a Rule 41 dismissal with prejudice for their claims against five of the eight defendants: (1) ADIO, (2) Jeffrey Hedges, (3) Jennifer Hedges, (4) Hedges Family Chiropractic, and (5) Professional Business Cent$, LLC. In response to a motion to enforce the terms of the April 2016 Settlement Agreement, the trial court entered a consent order on 29 December 2016. The December 2016 consent order obligated Plaintiffs to provide ADIO, Jeffrey Hedges, and Jennifer Hedges copies of the claim forms and medical records identified in the April 2016 Settlement Agreement. Then, on 3 February 2017, Plaintiffs dismissed all of their remaining claims against the remaining three defendants: (6) Mary Ingram, (7) Superior Healthcare Physical Medicine, PC, and (8) Dr. Venus Pitts.

Over a month later, on 28 March 2017, ADIO, Jeffrey Hedges, and Jennifer Hedges filed a Motion for Sanctions that alleged that "Plaintiffs [had] not provided the requisite electronic claims" identified in the December 2016 Consent Order. The motion requested the trial court to award sanctions in the form of attorney fees "pursuant to the Court's inherent authority." The trial court subsequently entered an order for sanctions on 8 May 2017 ordering Plaintiffs to pay ADIO, Jeffrey Hedges and Jennifer Hedges $9,647.50 in attorney fees pursuant to its "inherent power" as

sanction for Plaintiffs' "refusal to abide by the December 2016 order." The order also mandated that Plaintiffs produce all electronic claims and bear the expense of said production. The decretal provisions of the May 2017 Sanctions Order are set forth below:

> 1. Within ten (10) days of the date of this Order, Pura Vida shall produce to [ADIO, Jeffrey Hedges, and Jennifer Hedges] all electronic claims submitted on behalf of Superior Healthcare Physical Medicine, PC;
>
> 2. Pura Vida shall bear the expense of said production; and
>
> 3. Pursuant to the Court's inherent power, and having considered lesser sanctions, the Court nonetheless hereby orders Pura Vida to pay [ADIO, Jeffrey Hedges, and Jennifer Hedges] their counsel fees in the amount of $9,647.50 as a sanction within ten (10) days of the date of this Order.

Plaintiffs timely appealed and argue that the trial court erred in entering the 8 May 2017 Sanctions Order. We agree.

ANALYSIS

When a plaintiff voluntarily dismisses pursuant to Rule 41, the effect of such dismissal is to "terminate[] all adversary proceedings" in the case. *Walker Frames v. Shively*, 123 N.C. App. 643, 646, 473 S.E.2d 776, 778 (1996). "Once a party voluntarily dismisses her action pursuant to [Rule 41(a)(1)] it [is] as if the suit had never been filed, and the dismissal carries down with it previous rulings and orders in the case." *Doe v. Duke University*, 118 N.C. App. 406, 408, 455 S.E.2d 470, 471 (1995) (second alteration in original) (citations, and quotation marks omitted); *see*

also Collins v. Collins, 18 N.C. App. 45, 50, 196 S.E.2d 282, 286 (1973) ("[P]laintiff's voluntary dismissal of the prior action . . . was a final termination of that action and that no valid order could be made thereafter in that cause."). "The filing of a voluntary dismissal strips the trial court of its authority to enter further orders in the adversary proceedings, except as provided by Rule 41(d) which authorizes the court to enter specific orders apportioning and taxing costs." *VSD Communications Inc. v. Lone Wolf Publishing Group*, 124 N.C. App. 642, 643, 478 S.E.2d 214, 216 (1996) (citation and quotation marks omitted).

"This broad limitation on the trial court's power to enter orders after a voluntary dismissal does not extend so far, however, as to bar the trial court from awarding attorney's fees pursuant to Rule 11(a) or [N.C.G.S. §] 6-21.5 where the plaintiff's now dismissed action was frivolously filed or maintained in the absence of a justiciable issue." *Id.* at 644, 478 S.E.2d at 216 (citing *Bryson v. Sullivan*, 330 N.C. 644, 664, 412 S.E.2d 327, 338 (1992)). In *VSD Communications*, we held that the trial court "could properly consider and rule upon defendant's motion for attorney's fees pursuant to Rule 11(a) and [N.C.G.S. §] 6-21.5" even though the motion was filed after the plaintiff voluntarily dismissed its claims. *Id.* We noted that:

> In the Rule 41(a) context, . . . a motion for attorney's fees pursuant to Rule 11(a) or [N.C.G.S. §] 6-21.5 is not a continuation of adversary proceedings. These motions have a life of their own and they address the propriety of the adversary proceedings that have previously occurred in the case without regard to whether the adversary proceedings

> in question are continuing when the motion for fees is filed.

Id. (citations omitted); *see also* N.C.G.S. § 1A-11, Rule 11 ("If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction . . . ."); N.C.G.S. § 6-21.5 (2017).

Ayers v. Patz, an unpublished decision of this court, addressed a similar issue to the present case. 152 N.C. App. 477, 567 S.E.2d 840, 2002 WL 1901906 (2002) (unpublished). In *Ayers*, the plaintiff-appellant argued that the trial court erred in granting Rule 37 discovery sanctions in favor of the defendant after the plaintiff took a voluntary dismissal pursuant to Rule 41. *Id.* at *2-3. We disagreed. Although the plaintiff took a voluntary dismissal, the dismissal occurred two weeks after the defendant moved for discovery sanctions based on the plaintiff's failure to appear at a deposition. *Id.* at *1. In reaching the result, Judge Bryant noted it is "clearly established . . . that a voluntary dismissal pursuant to Rule 41(a) 'does not deprive the court of jurisdiction to consider collateral issues such as sanctions that require consideration after the action has been terminated.'" *Id.* at *2 (citing *Bryson*, 330 N.C. at 653, 412 S.E.2d at 331).

Here, unlike *Ayers*, no action was pending before the court when ADIO, Jeffrey Hedges, and Jennifer Hedges filed their 28 March 2017 Motion for Sanctions. Since Defendants had not filed any counterclaims, the combined effect of Plaintiff's 3 June 2016 and 3 February 2017 Rule 41 dismissals was to terminate the action and carry

down with it previous rulings and orders in the case. *Doe*, 118 N.C. App. at 408, 455 S.E.2d at 471. Defendants' 24 March 2017 Motion for Sanctions could not "fan the ashes of that action into life." Walker Frames, 123 N.C. App. at 646, 473 S.E.2d at 778 (citation omitted). Moreover, the 28 March 2017 Motion for Sanctions was not a Rule 11 motion, a Rule 37 motion (as in *Ayers*), or a motion for attorney fees filed pursuant to N.C.G.S. § 6-21.5. Even after a plaintiff takes a voluntary dismissal, the trial court is still permitted to consider motions filed pursuant to these rules because such motions "address the propriety of the adversary proceedings that have previously occurred in the case." *Renner v. Hawk*, 125 N.C. App. 483, 489-90, 481 S.E.2d 370, 374 (1997) (quoting *VSD Communications*, 124 N.C. App. at 644, 478 S.E.2d at 216). Defendants' Motion for Sanctions did not assert that Plaintiffs' original complaint was frivolous[1] or allege that their conduct in the adversary proceedings was in any way improper. Rather, Defendants' sanctions motion and the subsequently entered sanctions order were premised solely on Plaintiffs' refusal to comply with the terms of the December 2016 Consent Order. While Plaintiffs' refusal to produce certain medical records may amount to a breach of contract, this refusal has nothing to do with the propriety of their conduct prior to taking a voluntary dismissal.

Next, *Bryson* provides that a voluntary dismissal pursuant to Rule 41(a)(1)

[1] In fact, we note that after Plaintiffs filed their complaint, the parties reached a settlement agreement that required Defendants to pay Plaintiff's a substantial sum of money.

"does not deprive the court of jurisdiction to consider *collateral issues* . . . that *require consideration* after the action has been terminated." *Bryson*, 330 N.C. at 653, 412 S.E.2d at 331 (emphasis added). While Plaintiffs' non-compliance with a term in the December 2016 Consent Order may be considered a "collateral issue,"[2] it is not one that *required consideration* after this action was terminated. In the Rule 11 context, trial courts retain jurisdiction to impose sanctions after a voluntary dismissal because continuing jurisdiction furthers the policy objectives of Rule 11, which are "aimed at curbing abuses of the judicial system." *Renner*, 125 N.C. App. at 490, 481 S.E.2d at 374 ("If a litigant could purge his violation of Rule 11 merely by taking a dismissal, he would lose all incentive to 'stop, think and investigate more carefully before serving and filing papers.'" (citation omitted)). Here however, unlike the Rule 11 context, there are no policy objectives furthered by continuing jurisdiction after a Rule 41 dismissal. By the time Defendants moved for sanctions and the trial court entered the sanctions order, these commercial parties had already settled their claims, and they were dismissed with prejudice. This is an outcome consistent with

[2] We note that the term "collateral issue" is not capable of a precise definition. However, it can be said that collateral issues are those issues whose determination is independent of the merits of the claims in the action. For example, in addition to Rule 11 sanctions, issues such as attorney fees and costs are deemed collateral issues. *See Duncan v. Duncan*, 366 N.C. 544, 546, 742 S.E.2d 799, 801 (2013) ("An order that completely decides the merits of an action therefore constitutes a final judgment for purposes of appeal even when the trial court reserves for later determination collateral issues such as attorney's fees and costs."); *see also In re Investigation of Death of Eric Miller*, 357 N.C. 316, 322, 584 S.E.2d 772, 779 (2003) ("Before turning to the trial court's determination and the merits of the State's position, we consider the collateral issue of whether the attorney-client privilege survives the client's death.").

our state's well-settled policy that "encourages prompt settlement of disputed claims." *Menard v. Johnson*, 105 N.C. App. 70, 73, 411 S.E.2d 825, 827 (1992).

Finally, in addition to awarding attorney fees, the 8 May 2017 Sanctions Order ordered specific performance of the December 2016 Consent Order:

> 1. Within ten (10) days of the date of this Order, Pura Vida shall produce to [ADIO, Jeffrey Hedges, and Jennifer Hedges] all electronic claims submitted on behalf of Superior Healthcare Physical Medicine, PC[.]

However, since Plaintiffs' complaint only alleged non-domestic causes of action, the terms of the consent order were not enforceable through the contempt powers of the trial court. *Ibele v. Tate*, 163 N.C. App. 779, 781, 594 S.E.2d 793, 795 (2004).

> With respect to non-domestic causes of actions, this Court has held: "A consent judgment is the contract of the parties entered upon the record with the sanction of the court. Thus, it is both an order of the court and a contract between the parties. If a consent judgment is merely a recital of the parties' agreement and not an adjudication of rights, it is not enforceable through the contempt powers of the court, but only through a breach of contract action."

Id. (citation omitted). The term in the December 2016 Consent Order requiring Plaintiffs to provide copies of certain medical records merely recited a term from the parties' April 2016 Settlement Agreement. Therefore, this term is not enforceable through the contempt powers of the court, and Plaintiffs' refusal to comply with it is not punishable for contempt. *In re Will of Smith*, 249 N.C. 563, 568-69, 107 S.E.2d 89, 93-94 (1959) (construing a consent judgment "to be nothing more than a contract"

between the parties and concluding that "[a] breach of contract is not punishable for contempt").

CONCLUSION

Accordingly, we vacate the 8 May 2017 Sanctions Order requiring Plaintiffs to pay $9,647.50 in attorney fees, produce all electronic claims, and to bear the expense of said production. Defendants' only remedy is to institute another action. *See Estate of Barber v. Guilford Cty. Sheriff's Dep't*, 161 N.C. App. 658, 662, 589 S.E.2d 433, 436 (2003) ("Defendant no longer had the option of seeking to specifically enforce the settlement agreement in the original action because the original action had been dismissed with prejudice.").

VACATED.

Judges BRYANT and BERGER concur.

Report per Rule 30(e).