IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1253

Filed: 16 July 2019

Buncombe County, No. 17CVD003901

LISA RHODES, Plaintiff,

v.

JUSTIN ROBERTSON, Defendant.

Appeal by Plaintiff from judgment entered 26 June 2018 by Judge Edwin Clontz in Buncombe County District Court. Heard in the Court of Appeals 25 April 2019.

Lisa Rhodes, pro se.

Barnwell & Long, PLLC, by Stephen Barnwell, for the Defendant-Appellee.

BROOK, Judge.

Plaintiff appeals an order imposing sanctions in the form of attorneys' fees from Buncombe County District Court. We affirm the ruling of the trial court.

I. Background

This case arises from a property dispute concerning damage to a driveway culvert and the removal of a tree blocking Lisa Rhodes's ("Plaintiff") right-of-way on property owned by Justin Robertson ("Defendant"). Plaintiff alleges that a written document exists in which Defendant promised to pay for half of the repairs to the

driveway and for the tree to be removed. Defendant did not pay Plaintiff for the portion he purportedly promised. On 17 April 2017, Plaintiff, proceeding *pro se*, filed a complaint for money owed with the magistrate in Buncombe County Small Claims Court. Defendant answered on 8 May 2017, asserting various counterclaims. The magistrate dismissed the complaint for improper venue, determining Defendant's residence to be Madison County rather than Buncombe. Plaintiff then appealed to Buncombe County District Court. Subsequently, Defendant voluntarily dismissed his counterclaims.

On 24 October 2017, Plaintiff moved for a venue transfer from Buncombe to Madison County District Court. Plaintiff later moved for leave to amend her pleadings and to refer the case to arbitration. The trial court denied the venue motions, ruling that Defendant consented to venue in Buncombe County and to the court's jurisdiction over the case through his voluntary dismissal, waiving these issues. The trial court also denied the motion to refer the case to arbitration.

On 30 January 2018, Plaintiff filed a Reply addressing the counterclaims that were voluntarily dismissed earlier by Defendant. In response, Defendant filed a motion *in limine* to prevent Plaintiff from presenting witnesses at trial to testify on the matters of jurisdiction or residency. The trial court granted the motion *in limine*. Plaintiff, however, failed to comply with the trial court's ruling on this motion *in limine* at trial.

Following a two-day trial, the court entered a directed verdict in favor of Defendant. Defendant had filed motions for Rule 11 sanctions against Plaintiff on two separate occasions during the litigation. The trial court awarded Defendant sanctions on 20 June 2018, finding and concluding that Plaintiff's Reply regarding the voluntarily dismissed counterclaims, and motions for Change of Venue, Leave to Amend the Pleadings, and Referral to Arbitration were without factual or legal basis, and finding that Plaintiff violated the court's ruling on Defendant's motion *in limine*, all in violation of Rule 11. The court ordered Plaintiff to pay $3,750, half of Defendant's attorneys' fees incurred defending the matter.

Plaintiff noticed her appeal to our Court from the trial court's award of Rule 11 sanctions against her. However, Plaintiff has failed to include transcripts documenting court proceedings related to the venue motion, her motion for leave to amend her pleadings and refer the case to arbitration, and her Reply regarding Defendants' voluntarily dismissed counterclaims, as well as the trial itself. In fact, the record contains only one sixteen-page transcript. Based on this record, Defendant has filed a motion to dismiss Plaintiff's appeal. We deny Defendant's motion to dismiss. However, we affirm the trial court's award of sanctions.

II. Appellate Jurisdiction

The North Carolina Rules of Appellate Procedure require that the record on appeal contain "so much of the litigation . . . as is necessary for an understanding of

all issues presented on appeal, or a statement specifying that the verbatim transcript of proceedings is being filed with the record." N.C. R. App. P. 9(a)(1)(e) (2019). This Court has therefore held:

> [t]he burden is on an appealing party to show. . . [and] present[] a full and complete record. . . . [T]he North Carolina Rules of Appellate Procedure require[] the inclusion in the record of all of the evidence necessary for an understanding of all errors assigned. For failure to comply with the rules, an appeal is subject to dismissal.

Dolbow v. Holland Industrial, Inc., 64 N.C. App. 695, 696, 308 S.E.2d 335, 336 (1983) (citations omitted). However, we enjoy discretion to "suspend . . . the requirements . . . of . . . the[] rules . . . [on] [our] own initiative," under Rule 2 of the North Carolina Rules of Appellate Procedure and, as we did in *Dolbow*, we elect to do so now, despite the deficiencies of the record before us. N.C. R. App. P. 2 (2019).

III. Sanctions

Rule 11, which governs the behavior and conduct of attorneys, also applies to those navigating the legal system without the representation of an attorney. Rule 11(a) states in part,

> [a] party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address. . . . The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any

> improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation.

N.C. Gen. Stat. § 1A-1, Rule 11(a) (2019). Our Supreme Court has held that under Rule 11, "the signer certifies that three distinct things are true: the pleading is (1) well grounded in fact; (2) warranted by existing law, 'or a good faith argument for the extension, modification, or reversal of existing law' (legal sufficiency); and (3) not interposed for any improper purpose." *Bryson v. Sullivan*, 330 N.C. 644, 655, 412 S.E.2d 327, 332 (1992).

Our review of a trial court's award of sanctions is *de novo*. *Turner v. Duke University*, 325 N.C. 152, 165, 381 S.E.2d 706, 714 (1989). In reviewing an award of sanctions, "the appellate court will determine (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." *Id.* at 165, 381 S.E.2d at 714. If all three of these questions are answered in the affirmative, we must uphold the trial court's ruling. *See id.* at 165, 381 S.E.2d at 714.

The last step determines the propriety of a trial court's award of sanctions. *Id.* at 165, 381 S.E.2d at 714. "[I]n reviewing the appropriateness of the particular sanction imposed, an abuse of discretion standard is proper because the rule's provision that the court shall impose sanctions for motions abuses . . . concentrates the court's discretion on the *selection* of an appropriate sanction rather than on the

decision to impose sanctions." *Id.* at 165, 381 S.E.2d at 714 (emphasis in original) (internal marks and citation omitted). An abuse of discretion occurs where "the court's ruling is manifestly unsupported by reason or so arbitrary that it could not have been the result of a reasoned decision." *Thorpe v. Perry-Riddick*, 144 N.C. App. 567, 570, 551 S.E.2d 852, 855 (2001) (internal marks and citation omitted).

Applying the *Turner* factors demonstrates that the trial court's decision to impose sanctions was supported by the record before this Court. We therefore hold that the trial court did not abuse its discretion by imposing sanctions.

A. *Turner* Factors

The first factor articulated in *Turner* is "whether the trial court's conclusions of law support its judgment or determination." 325 N.C. at 165, 381 S.E.2d at 714. The trial court concluded that Plaintiff violated Rule 11 "in filing pleadings that were not well founded in fact and warranted by existing law or a good faith argument for extension, modification, or reversal of the existing law." This conclusion of law directly supports the imposition of sanctions. *See id.* at 165, 381 S.E.2d at 714. Therefore, the trial court's conclusion that Plaintiff's pleadings were not founded in fact, warranted by existing law, or argued in good faith for changing existing law supports its ultimate determination to impose sanctions.

The second factor under *Turner* is "whether the trial court's conclusions of law are supported by its findings of fact." *Id.* at 165, 381 S.E.2d at 714. The trial court's

findings of fact supporting the imposition of sanctions span five paragraphs of its order, stating as follows:

> 4. On or about [24 October 2017], the Plaintiff caused to be filed a Motion for Change of Venue which motion does not set forth any basis in fact or in law for a change of venue but rather reiterates the disposition of her complaint in Small Claims Court and makes irrelevant arguments questioning the county of Defendant's residency and location of the Madison/Buncombe County boundary. . . .
>
> 8. The Motion to Amend Pleadings did not set forth allegations in the form of an amendment to pleadings but rather amounted to a reiteration of matters that had been previously addressed by the Court with reference to the irrelevancy of the Buncombe/Madison County line and whether or not Defendant was a resident of Buncombe County and/or Madison County.
>
> 9. The Motion to Amend Pleadings also sought damages that had been allegedly incurred by the Plaintiff in seeking the advice of counsel as to the research and advice on the Buncombe/Madison County boundary issue, which was irrelevant and which had been previously ruled upon by the Court.
>
> 10. Plaintiff's Motion for Referral to Arbitration was without a factual and/or basis in law. . . .
>
> 12. On [30 January 2018], the Plaintiff filed a reply to the counterclaims of Defendant in which she essentially repeated issues as to the Madison/Buncombe County line, county of the residency of the Defendant, and other matters all of which the Court had previously advised the Plaintiff that same were irrelevant. Such reply was essentially an evidentiary argument not responding directly to the allegation as set forth in Defendant's counterclaims.

In short, the trial court found that Plaintiff repeatedly advanced irrelevant, previously adjudicated, or baseless arguments that required Defendant to incur legal expenses. These findings support the conclusion that Plaintiff engaged in sanctionable conduct, satisfying the second factor articulated in *Turner*.

The third and final factor of the *Turner* test is "whether the findings of fact are supported by a sufficiency of the evidence." *Id.* at 165, 381 S.E.2d at 714. Where, as here, "[t]he record does not contain the oral testimony" heard by the trial court, "the court's findings of fact are presumed to be supported by competent evidence." *Fellows v. Fellows*, 27 N.C. App. 407, 408, 219 S.E.2d 285, 286 (1975) (citations omitted).

Nothing in the record before us rebuts the presumption that the trial court's findings are supported by competent evidence. The absence of a complete record in this case gives rise to a presumption that the trial court's findings are supported. Furthermore, the documentary evidence in the record supports the trial court's assertion that Plaintiff made arguments that were irrelevant, duplicative, or not well-founded in law. For example, Plaintiff filed a reply to counterclaims that had already been voluntarily dismissed by Defendant earlier in the case. Not only had the trial court previously concluded that Defendant's voluntary dismissal of his counterclaims amounted to his consent to the court's jurisdiction and to venue, waiving these issues, the magistrate had already previously rejected a similar argument, earlier in the

case. We therefore have little difficulty concluding that the trial court's order is supported by sufficient evidence.

On the record before us, we must uphold the trial court's imposition of sanctions. The trial court's determination that Plaintiff violated Rule 11 follows logically from its findings of fact and conclusions of law.

B. Propriety of Sanction Imposed

This brings us to the last step in the review of the trial court's judgment for sanctions: appropriateness. As stated previously, the appropriateness of the sanction is reviewed under an abuse of discretion standard. *See Turner*, 325 N.C. at 165, 381 S.E.2d at 714.

We hold that the trial court did not abuse its discretion by awarding Defendant attorneys' fees. Defense counsel billed his time at $250/hr. He spent more than 30 hours on this case. More than half of this time was spent responding to baseless motions and a reply brief related to claims his client had already voluntarily dismissed. Because these filings increased the cost of litigation by forcing defense counsel to log more than 15 unnecessary hours, and the filings had no legal basis, we hold that the trial court did not abuse its discretion by imposing a sanction of $3,750.[1]

[1] Rule 11 sanctions were not applicable to Plaintiff's failure to abide by the court order granting Defendant's motion *in limine*. *See Ward v. Lyall*, 125 N.C. App. 732, 735, 482 S.E.2d 740, 742 (1997). But the trial court's incorrect inclusion of this misconduct as a basis for sanctions does not render the sanction imposed so arbitrary or manifestly unreasonable that it cannot withstand abuse of discretion review. *See Smith v. Barbour*, 195 N.C. App. 244, 253, 671 S.E.2d 578, 585 (2009).

IV. Conclusion

We hold that the trial court did not err in its order awarding Rule 11 sanctions, and did not abuse its discretion awarding Defendant attorneys' fees. Plaintiff's conduct unduly increased the cost of litigation; nothing in the record calls that conclusion into question.

AFFIRMED.

Judges INMAN and ARROWOOD concur.

Report per Rule 30(e).