An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA19-389

Filed: 3 December 2019

Cabarrus County, No. 15 CVD 3917

RICHARD JORDAN, Plaintiff,

v.

JEFF H. ALBERS, Defendant,

v.

JOHN HATLEY, Cross-Defendant.

Appeal by defendant from order entered 14 December 2018 by Judge William G. Hamby, Jr. in Cabarrus County District Court. Heard in the Court of Appeals 31 October 2019.

John M. Lewis for plaintiff-appellee.

Hartsell & Williams, PA, by Austin "Dutch" Entwistle III, for defendant-appellant.

No brief filed for cross-defendant-appellee.

YOUNG, Judge.

Where the trial court's findings were supported by evidence in the record, the trial court did not err in entering its findings of fact. However, where one of the trial court's conclusions of law was not supported by the findings, the trial court erred in its conclusion, and we remand that portion of the order for additional findings. Where defendant took no title of the stolen vehicle, he did not possess "voidable" title that he could transfer, and the trial court did not err in declining to find otherwise. We affirm in part and reverse and remand in part.

I. Factual and Procedural Background

On 18 December 2015, Richard Jordan (plaintiff) filed a verified complaint against Jeff Albers (defendant), alleging that plaintiff agreed to purchase a refurbished 1970 Chevrolet Camaro (the vehicle) from defendant, that the agreement was reduced to a writing and signed by the parties, that plaintiff paid the agreed price, and that defendant produced the vehicle, but without the agreed-upon refurbished engine. Plaintiff further alleged that when he attempted to obtain new title after the vehicle was delivered, he was informed that it was stolen, and the vehicle was taken from him and returned to its rightful owner. Plaintiff alleged claims for unfair trade practices, fraud, and breach of contract against defendant, and sought punitive damages.

On 24 February 2016, defendant filed his verified answer, cross claim, and motion to dismiss. Specifically, he denied plaintiff's allegations, filed a cross claim

against Paul Flantos (Flantos), from whom he purchased the vehicle previously, and moved to dismiss plaintiff's complaint pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure, for failure to state a claim.

On 26 July 2016, Flantos filed his response to defendant's cross claim. Flantos admitted that he sold the body of the vehicle to defendant, which Flantos acquired as scrap. Flantos instead alleged that the paperwork to acquire title was completed by John Hatley (Hatley). Flantos therefore sought dismissal of the cross claim against him.

Subsequently, defendant moved for, and was granted, leave to amend his answer. On 19 July 2017, defendant filed his amended answer and cross claim, joining Hatley as cross-defendant, and alleging that Hatley obtained the title paperwork for defendant, that Hatley informed defendant that the vehicle was not stolen, that Hatley's representations were false, and that defendant reasonably relied upon those representations in selling the vehicle to plaintiff. Defendant then voluntarily dismissed his cross claim against Flantos without prejudice.

On 6 December 2017, Hatley filed his answer and motions to dismiss. Hatley denied defendant's allegations, and moved to dismiss pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure, for failure to state a claim, and under the statute of limitations, given that the incident allegedly occurred in January of 2012 and would be subject to a three-year statute of limitations.

On 14 December 2018, the trial court entered its written order in the matter. The court found that plaintiff sought to obtain the vehicle from defendant; that the agreement specified that the vehicle would be transferred "with clean title[;]" that defendant, suspicious about the vehicle's title, asked Hatley to check its records; that Hatley only checked the "most recent five years or so," which did not reveal that the vehicle was stolen some fifteen years prior; that defendant nonetheless relied upon this incomplete information and proceeded with the transaction; and that the State subsequently repossessed the vehicle from plaintiff, as it was stolen. The court concluded that there was "an express warranty of title presented by the Defendant," and that defendant "breached his warranties when the Camaro was repossessed by the State[.]" The court held that the facts failed to show intentional conduct by defendant, and therefore "do not support a claim for unfair and deceptive trade practices." Moreover, the court found that, inasmuch as Hatley was acting as Flantos' agent, Hatley's liability terminated with Flantos' dismissal, and inasmuch as Hatley acted on his own behalf, his liability was limited to any amount of money that defendant paid him for the incomplete title information. The court therefore ordered that plaintiff would collect $11,000 in damages from defendant, plus court costs; that defendant would recover from Hatley any funds paid for Hatley's incomplete title information; and that plaintiff's claim for unfair trade practices was denied and dismissed.

Defendant appeals.

II. Standard of Review

"The standard of review on appeal from a judgment entered after a non-jury trial is 'whether there is competent evidence to support the trial court's findings of fact and whether the findings support the conclusions of law and ensuing judgment.' " *Cartin v. Harrison*, 151 N.C. App. 697, 699, 567 S.E.2d 174, 176 (quoting *Sessler v. Marsh*, 144 N.C. App. 623, 628, 551 S.E.2d 160, 163 (2001)), *disc. review denied*, 356 N.C. 434, 572 S.E.2d 428 (2002). "[F]indings of fact made by the trial judge are conclusive on appeal if supported by competent evidence, even if . . . there is evidence to the contrary." *Tillman v. Commercial Credit Loans, Inc.*, 362 N.C. 93, 100-01, 655 S.E.2d 362, 369 (2008) (citation and quotation marks omitted).

III. Findings of Fact

In his first argument, defendant contends that the trial court erred in entering several of its findings of fact. We disagree.

Defendant contends that several of the trial court's findings of fact were not supported by competent evidence. Defendant specifically challenges the following of the trial court's findings:

> 6. The Cross-Defendant Hatley is alleged to have acted as the agent of a previous party cross-defendant from whom Albers obtained possession of the vehicle. The Court does not find that Cross-Defendant Hatley was an agent of the former Cross-Defendant. Further, that previous Cross-Defendant party is no longer a part of this suit.

> 7. Cross-Defendant Hatley was not personally in the business of providing title information, but as a retired public employee, Cross-Defendant Hatley acknowledged that he knew individuals with access to vehicle title records who could make at least a cursory check on those records to see if there were any obvious problems with the vehicle title.
>
> 8. The Cross-Defendant Hatley agreed to ask an undetermined friend to make such a cursory check of the vehicle title.
>
> . . .
>
> 13. Although the Defendant did not have a title at the time of the conveyance, Defendant was subsequently able to provide Plaintiff with a Certificate of Title from the MVA that showed no liens or encumbrances on the Camaro, due to an apparently forged signature on the application for title purporting to be from the previous owner of the Camaro from whom it had been stolen years before.
>
> . . .
>
> 16. There is no evidence that any party to this action was aware that the Camaro had been stolen in the previously unresolved theft from over a decade earlier.

With regard to finding of fact 6, defendant concedes that he has no issue with the court's determination that Hatley was not an agent of Flantos, or that Flantos was no longer a party to the suit. Rather, defendant argues that "no one in this lawsuit ever alleged that John Hatley was an agent of the prior cross defendant, Paul Flantos." However, this detail is not relevant to the trial court's ultimate determination. The fact that somebody may or may not have alleged Hatley to be an

agent of Flantos has no bearing on defendant's ultimate liability to plaintiff, and given the trial court's determination that Hatley was not an agent of Flantos, no bearing on Hatley's liability to defendant. We hold that the inclusion of this finding, as mere surplusage, was not error.

With regard to finding of fact 7, defendant contends that the record does not show that Hatley conducted a "cursory" check; rather, defendant claims, Hatley's own testimony suggests that he provided Flantos with "all the information that he needed." Once again, however, defendant misconstrues the trial court's finding. The court found that Hatley "knew individuals with access to vehicle title records who could make at least a cursory check on those records[.]" The court did not, despite defendant's contentions otherwise, find that Hatley "limit[ed] his screening of the vehicle's title to being only a 'cursory check.' " Instead, the court's finding combined several pieces of evidence revealed in Hatley's testimony: that Hatley had his acquaintances perform the record search, that the records were purged every five years, and that therefore Hatley's acquaintances could perform "at least a cursory check" on the records. This is all supported by Hatley's testimony. Of particular note is the fact that the trial court did not find the search was *only* cursory; rather, the court found it was *at least* cursory. We hold that this finding was supported by the evidence, and not in error.

With regard to the trial court's finding of fact 8, defendant's argument is the same. Defendant takes issue with the use of the word "cursory." For the same reasons stated above, we hold that this was not error. Defendant also challenges the trial court's finding that Hatley asked an "undetermined friend" to conduct the search. While defendant is correct that Hatley testified as to two possible people who might have performed the record search on his behalf, Hatley himself did not identify which actually performed the search, and defendant cites no other evidence of that person's identity. As such, the trial court's finding that this person was "undetermined" was supported by the evidence, and this finding as a whole was not in error.

With regard to finding of fact 13, defendant contends that the trial court erroneously found that defendant lacked title to the vehicle at the time that he conveyed it to plaintiff. Notwithstanding defendant's contentions to the contrary, it is undisputed that the vehicle was stolen. This finding was supported by testimony at trial, which indicated that the vehicle's original owner, from whom it was stolen, was the lawful owner, as opposed to defendant. This is reinforced by the trial court's finding of fact 15, in which the court specifically found that the vehicle "did not have clean title and had, in fact, been stolen more than 15 years prior." This finding, unchallenged by defendant on appeal, is presumed supported by competent evidence, and binding upon this Court. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729,

731 (1991). Given the unchallenged finding that the vehicle did not have clean title and was in fact stolen, we hold that it was not error for the trial court to find that defendant lacked title to the vehicle.

Defendant further contends that this finding "implies that it is not proper for a title to be delivered at the time two parties contract for the sale of a motor vehicle." Yet again, defendant misconstrues the trial court's finding. The court did not find that defendant's conduct in agreeing to the sale without possessing title was improper; rather, the court found that *subsequent* to lacking title, defendant was able to furnish a certificate, later determined to be forged, which purported to show that the vehicle was without liens or encumbrances. This was the crux of the court's finding, and is supported by both the testimony before the trial court, and the presence of the certificate itself in the record. As such, we hold that the trial court did not err in entering this finding.

Finally, with respect to finding of fact 16, defendant challenges the trial court's determination that "[t]here is no evidence that any party to this action was aware that the Camaro had been stolen[.]" Defendant notes that plaintiff testified that he spoke with Hatley, and that Hatley told plaintiff "there was a little problem in the . . . 1980s, but it had been settled." Notwithstanding defendant's contentions, however, this does not suggest that either plaintiff or Hatley were aware that the vehicle had been stolen. Nor, indeed, does defendant present any evidence, aside from this

comment, to suggest otherwise. Rather, it merely suggests that Hatley informed plaintiff of some issues with the vehicle's title, and that those issues, to Hatley's knowledge, had been resolved. We hold that this finding was supported by the evidence, and that therefore the trial court did not err in entering it.

IV. Conclusions of Law

In his second argument, defendant contends that the trial court erred in entering several of its conclusions of law. We agree in part.

Defendant contends that several of the trial court's conclusions of law were not supported by its findings. Defendant specifically challenges the following of the trial court's conclusions:

> 3. In this case, in addition to the implied warranty [of good title], there was also an express warranty of title presented by the Defendant, in that Defendant's handwritten note constituted an express warranty that guaranteed Plaintiff good title of the Camaro to the Plaintiff.
>
> 4. Defendant breached his warranties when the Camaro was repossessed by the State due to the previous unresolved theft of the Camaro.
>
> . . .
>
> 7. To the extent that Cross-Defendant Hatley may have been an agent of a previous party cross-defendant, which the Court specifically does not find, even had that been so, the prior cross-defendant party, and alleged principal of Hatley, is no longer a party to this case, Cross-Defendant Hatley's agency would make Hatley's actions attributable to the principal and previous party, who is no

> longer a party to this action.
>
> 8. To the extent that Cross-Defendant Hatley may have acted on his own behalf, Cross-Defendant Hatley is not apparently in the actual business of providing title information, but merely provides such information occasionally as a favor for acquaintances, the Cross-Defendant's liability for damages is limited to any amount of money that the Defendant Albers may have paid Cross-Defendant Hatley for such information, even though such information was incomplete and not correct.

With regard to conclusions of law 3 and 4, defendant contends that the trial court "improperly determined that [defendant] drafted the contract between the parties. Plaintiff admitted that he was the one to draw up the agreement." Once again, however, defendant misconstrues the language of the trial court. The trial court did not find that defendant drafted the contract; rather, the trial court found, in its finding of fact 12, that defendant provided plaintiff "with a handwritten and signed note" agreeing to sell the vehicle with clean title. Defendant does not challenge this finding on appeal, and it is presumed supported by competent evidence, and binding upon this Court. *Koufman*, 330 N.C. at 97, 408 S.E.2d at 731. This finding, in turn, supports the trial court's conclusions of law 3 and 4, which provided that defendant's "handwritten note constituted an express warranty that guaranteed Plaintiff good title[,]" and that defendant breached these warranties when the State repossessed the vehicle. We hold that the trial court's unchallenged findings in turn support these conclusions, and that the trial court did not err in entering them.

With regard to conclusions of law 7 and 8, defendant concedes that Hatley was correctly determined to not be an agent of Flantos. However, defendant contends that the trial court erroneously limited Hatley's liability, determining that Hatley was "not apparently in the actual business of providing title information, but merely provides such information occasionally as a favor for acquaintances[.]" Defendant further argues that the trial court, "implicitly concluded that Hatley was liable to Albers [for] negligence and/or negligent misrepresentation here."

Defendant's original cross claim against Flantos alleged that defendant was a "good faith purchaser as defined by the Uniform Commercial Code and the North Carolina General Statute § 25-2-403," and that if plaintiff had any claim, it would lie against Flantos. This language seems to place defendant's cross claim squarely within the Uniform Commercial Code (UCC) and contract law. By contrast, in defendant's amended cross claim, defendant alleged that "the information supplied by Hatley to Albers was false and Hatley failed to exercise reasonable care" in communicating it, and that defendant justifiably relied on that information. Defendant did not cite the UCC in his amended cross claim.

In its order, the trial court found that Hatley provided incomplete information, upon which defendant relied. The court further found that there was no evidence that any of the parties knew that the vehicle was stolen. The court then concluded, in conclusion of law 8, that Hatley was "not apparently in the actual business of

providing title information," and that Hatley's liability for damages was "limited to any amount of money that [defendant] may have paid . . . Hatley for such information[.]"

Notwithstanding defendant's contention, the trial court did not explicitly state that Hatley was liable for negligence. Nor, indeed, did defendant's cross claim explicitly assert a claim for negligence or negligent misrepresentation. However, it is clear that defendant did not assert damages on a contractual basis against Hatley, and the court did not enter any findings that a contract existed between the two.

With respect to the measure of damages for negligent misrepresentation, this Court has held that:

> The damages recoverable for a negligent misrepresentation are those necessary to compensate the plaintiff for the pecuniary loss to him of which the misrepresentation is a legal cause, including (a) the difference between the value for what he has received in the transaction and its purchase price . . . and (b) pecuniary loss suffered otherwise as a consequence of the plaintiff's reliance upon the misrepresentation.

Middleton v. Russell Grp., Ltd., 126 N.C. App. 1, 29, 483 S.E.2d 727, 743 (1997) (citation omitted). Thus, the damages to which defendant would have been entitled for Hatley's negligent misrepresentation would have been "those necessary to compensate [him] for the pecuniary loss to him of which the misrepresentation is a legal cause" – that is, the cost he paid for the faulty information. Moreover, this Court

has held that those damages are limited – they do not include punitive damages or damages for emotional distress. *Id*.

In the instant case, defendant contends that, relying upon the incomplete search, he purchased the vehicle from Flantos for $3,500, and spent over $8,000 worth of investments upgrading the vehicle. Certainly, one could argue that defendant incurred these losses as a result of his reliance upon Hatley's incomplete title search. However, the trial court did not find this.

Indeed, upon review of the trial court's order, as concerns defendant's cross claim against Hatley, we find the order deficient. As we have stated, the court did not find that an enforceable contract existed between defendant and Hatley. However, the court also did not find that Hatley's title search – which the court held to be "incomplete, and thus incorrect" – was the result of negligence. Nor did the court find that this constituted negligent misrepresentation as to the vehicle's purportedly clean title. As such, in the absence of such findings or conclusions, we cannot comprehend the basis upon which the trial court found Hatley liable to defendant for damages, let alone whether the court's measure of damages was appropriate.

Generally speaking, an order of the trial court awarding damages "must explain why the particular award is appropriate and how the court arrived at the particular amount." *Dunn v. Canoy*, 180 N.C. App. 30, 49, 636 S.E.2d 243, 255 (2006)

(concerning attorney's fees); *see also Nicks v. Nicks*, 241 N.C. App. 487, 508, 774 S.E.2d 365, 380 (2015) ("the court is also obligated to explain its reasoning for granting or denying such an award [of postseparation support] through adequate factual findings"). Where the court fails to do so, the proper remedy is to remand that portion of the order for the entry of additional findings. *See e.g. Nicks*, 241 N.C. App. at 508, 774 S.E.2d at 380.

We hold, therefore, that the trial court's conclusion of law 8, holding Hatley liable for damages "limited to any amount of money that [defendant] may have paid . . . Hatley for such information," was not supported by its findings of fact, and was therefore erroneous. Accordingly, we reverse the portion of the trial court's order awarding defendant damages from Hatley. We remand this portion of the order to the trial court for the entry of more complete findings.

V. Voidable Title

In his third argument, defendant contends that the trial court erred in its application of the law of voidable title. We disagree.

Defendant contends that the agreement between himself and plaintiff was a contract for the sale of goods, which brought this dispute under the purview of the UCC. Defendant relies upon the UCC for his argument that, as a good faith purchaser for value, he cannot be held liable for the stolen status of the vehicle.

The UCC provides, in relevant part, that:

> A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though
>
> (a) the transferor was deceived as to the identity of the purchaser, or
>
> (b) the delivery was in exchange for a check which is later dishonored, or
>
> (c) it was agreed that the transaction was to be a "cash sale," or
>
> (d) the delivery was procured through fraud punishable as larcenous under the criminal law.

N.C. Gen. Stat. § 25-2-403(1) (2017). Defendant contends that Flantos possessed voidable title, as he was in possession of stolen goods, but because defendant was a good faith purchaser for value, he was able to receive good title. By contrast, defendant contends that plaintiff, with knowledge of prior title issues, would not have been a good faith purchaser.

However, despite defendant's contentions, this issue is not governed by the UCC. It is instead governed by the Motor Vehicle Act, Chapter 20, Article 3 of our General Statutes (MVA). Our Supreme Court has held that the MVA, as a more specific statute, supersedes the UCC with respect to motor vehicles in cases of tort law and insurance liability. *See generally Nationwide Mut. Ins. Co. v. Hayes*, 276

N.C. 620, 174 S.E.2d 511 (1970); *compare North Carolina Nat'l Bank v. Robinson*, 78 N.C. App. 1, 11, 336 S.E.2d 666, 672 (1985) (holding that "[t]he UCC should control over the MVA when automobiles are used as collateral and are held in inventory for sale"). The MVA provides that the Division of Motor Vehicles "shall rescind and cancel the certificate of title to any vehicle which has been erroneously issued or fraudulently obtained or is unlawfully detained by anyone not entitled to possession." N.C. Gen. Stat. § 20-110(d) (2017).

In the instant case, the question for the trial court was whether defendant was liable to plaintiff for conveying a vehicle later found to be stolen, and repossessed as such. Defendant contends that he was able to transfer "good title" to plaintiff, and therefore that defendant did not breach his warranty or any agreement. However, this is demonstrably false; under the MVA, defendant was unable to transfer any title, and in fact the Division of Motor Vehicles was obligated to cancel the certificate of title to the vehicle. Defendant's title was not "voidable" per the UCC, but "void," in that he possessed no title to the stolen vehicle. Defendant had no means to cure this error in title; the UCC would not permit him to override the provisions of the MVA and sell a stolen vehicle. As such, we hold that the trial court did not err in declining to apply the doctrine of voidable title.

VI. Conclusion

The trial court's findings of fact were supported by evidence in the record, and the trial court did not err in entering them. Likewise, there was no basis upon which the trial court could have applied the doctrine of voidable title, and thus the trial court did not err in declining to do so. However, the trial court did not establish upon what basis it found Hatley liable to defendant, nor the basis for the limited amount of its award. Thus, we reverse that portion of the order, and remand to the trial court for the entry of additional findings of fact on the basis for Hatley's liability, and the basis for the amount of damages, if any.

AFFIRMED IN PART, REVERSED AND REMANDED IN PART.

Judges DILLON and DIETZ concur.

Report per Rule 30(e).