

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA19-720

Filed: 4 February 2020

Wake County, No. 15 CVS 016972

MARGARET ANN LIGHT, Plaintiff,

v.

VENKAT L. PRASAD, M.D., AND UNC PHYSICIANS NETWORK, L.L.C,  
d/b/a REX FAMILY PRACTICE OF WAKEFIELD, FAN DONG, P.A. AND  
FASTMED URGENT CARE, P.C., Defendants.

Appeal by Plaintiff from order entered 3 October 2018 by Judge Orlando Hudson and judgment entered 8 February 2019 by Judge Allen Baddour in Wake County Superior Court. Heard in the Court of Appeals 7 January 2020.

*Knott & Boyle, PLLC, by W. Ellis Boyle and Joe Knott, for Plaintiff-Appellant.*

*Yates, McLamb & Weyher, L.L.P., by John W. Minier and Mindi L. Schulze, for Defendants-Appellees.*

COLLINS, Judge.

Plaintiff appeals the trial court's order granting Defendants' motion for a protective order, precluding Plaintiff from deposing either of Defendants' expert witnesses prior to trial, and overruling Plaintiff's objection to Defendants' expert

witnesses testifying at trial. Because the trial court did not abuse its discretion by granting the protective order or allowing the expert witnesses to testify at trial, we affirm.

### **I. Background**

Plaintiff Margaret Ann Light filed a medical malpractice suit against Venkat L. Prasad, M.D., and Rex Family Practice of Wakefield (collectively, “Defendants”) on 22 December 2015. On 23 March 2016, Defendants filed their answer denying liability. On 20 July 2016, the trial court entered a consent discovery scheduling order, setting the case for trial on 5 June 2017. Plaintiff amended her complaint on 3 January 2017, adding two additional defendants (“Additional Defendants”). The Additional Defendants filed their answers on 24 March 2017.<sup>1</sup>

On 30 October 2017, the trial court entered an amended consent discovery scheduling order (“Discovery Scheduling Order”). The Discovery Scheduling Order included the following relevant provisions:

1. On or before November 15, 2017, Plaintiff must designate all expert witnesses . . . .

. . . .

2. All persons designated pursuant to paragraph one shall be made reasonably available for discovery deposition no later than January 15, 2018.

3. On or before February 15, 2018, or thirty (30) days after the deposition of the last of Plaintiff’s experts, whichever is

---

<sup>1</sup> The answers in the Record are not file stamped. The Certificate of Service for each answer indicates a date of 24 March 2017.

LIGHT V. PRASAD  
*Opinion of the Court*

later, Defendants shall designate . . . all expert witnesses, including treating physicians, they might call at trial.

4. All persons designated pursuant to paragraph three shall be made reasonably available for discovery deposition on or before April 16, 2018, or 60 days after such designation, whichever is later.

. . . .

9. No discovery depositions shall be taken in that thirty (30) days immediately prior to the date set for trial to commence . . . . This paragraph does not modify paragraph eight.

. . . .

14. This case will be peremptorily set for trial on July 30, 2018.

On 9 March 2018, Defendants designated Dr. Kerry Willis in Beaufort, North Carolina, as an expert in family medicine and a standard of care witness, and Dr. Domenic Sica in Richmond, Virginia, as an expert in nephrology. On 8 April 2018, Defendants' counsel sent an email to Plaintiff's counsel stating, "I haven't heard from you regarding any request to depose our experts. Do you want dates for these folks?" Plaintiff's counsel did not respond.

On 22 May 2018, the parties participated in a mediated settlement conference, which ended in an impasse. On 8 June 2018, the parties jointly moved for a continuance from the 30 July 2018 trial date. This motion was granted on 14 June 2018, and the trial was continued to 24 September 2018. Plaintiff voluntarily dismissed the Additional Defendants on 30 July 2018.

LIGHT V. PRASAD  
*Opinion of the Court*

On 2 August 2018, Plaintiff asked Defendants to provide dates for depositions of their expert witnesses. On 9 August 2018, Defendants filed a motion for protective order, requesting “discovery not be had with respect to Plaintiff’s request for the depositions of Defendants’ experts.” On 20 August 2018, the trial court heard arguments on Defendants’ motion for protective order and granted the requested relief in open court, thus precluding Plaintiff from deposing either of Defendants’ expert witnesses prior to trial.

The case came on for trial on 24 September 2018. Plaintiff objected to Defendants’ expert witnesses testifying because Plaintiff had not been allowed to depose them; the trial court overruled those objections. Plaintiff cross-examined Dr. Willis but did not cross-examine Dr. Sica. On 3 October 2018, the jury found that Plaintiff was not injured by Defendants’ negligence. Also on 3 October 2018, the trial court entered a written order granting the motion for protective order (“Protective Order”).

On 8 February 2019, the trial court entered judgment in favor of Defendants upon the jury’s verdict, allowed Defendants’ motion for costs in part in the amount of \$10,673.29, and denied Plaintiff’s motion for judgment notwithstanding the verdict and alternative motion for a new trial. Plaintiff timely appealed to this Court.

## **II. Discussion**

LIGHT V. PRASAD  
*Opinion of the Court*

Plaintiff argues that the trial court erred by allowing Defendants' motion for a protective order, prohibiting Plaintiff from deposing Defendants' expert witnesses, and subsequently allowing Defendants' expert witnesses to testify at trial.

"It is well-established that, because the primary duty of a trial judge is to control the course of the trial so as to prevent injustice to any party, the judge has broad discretion to control discovery[.]" *Capital Res., LLC v. Chelda, Inc.*, 223 N.C. App. 227, 234, 735 S.E.2d 203, 209 (2012) (internal quotation marks and citations omitted). Accordingly, Rule 26 of the North Carolina Rules of Civil Procedure provides, in pertinent part:

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the judge of the court in which the action is pending may make any order which justice requires to protect a party or person from unreasonable annoyance, embarrassment, oppression, or undue burden or expense . . . .

N.C. Gen. Stat. § 1A-1, Rule 26(c) (2018). Among the orders that Rule 26(c) authorizes a trial court to enter is "that the discovery not be had[.]" *Id.* § 1A-1, Rule 26(c)(i).

A Rule 26(c) protective order "is discretionary and is reviewable only for abuse of that discretion." *Patterson v. Sweatt*, 146 N.C. App. 351, 356, 553 S.E.2d 404, 408 (2001) (quotation marks and citation omitted). "Under an abuse of discretion standard, this Court may only disturb a trial court's ruling if it was manifestly unsupported by reason or so arbitrary that it could not have been the result of a reasoned decision." *Crosmun v. Trs. of Fayetteville Tech. Cmty. College*, 832 S.E.2d

223, 233 (N.C. Ct. App. 2019) (quotation marks and citations omitted). “Findings of fact are conclusive on appeal if they are supported by competent evidence.” *Point Intrepid, LLC v. Farley*, 215 N.C. App. 82, 86, 714 S.E.2d 797, 800 (2011) (citation omitted).

In its Protective Order, the trial court found as follows:

After duly considering the pleadings, including the Amended Consent Discovery Scheduling Order, discovery, and arguments of counsel, the Court finds that Plaintiff’s request to take the depositions of Defendants’ designated expert witnesses was untimely and allowing such discovery would subject Defendants to unreasonable annoyance, oppression, and undue burden.

Further, Plaintiff’s untimely request is inconsistent with the Discovery Scheduling Order agreed to by the parties and entered by the Court, which established the timeframe for taking expert depositions as March 9, 2018 through May 8, 2018.

The Discovery Scheduling Order can be construed to establish the timeframe for Plaintiff to have taken Defendants’ expert witnesses’ depositions as 9 March 2018 through 8 May 2018. Paragraph 1 of the Discovery Scheduling Order required Plaintiff to designate all expert witnesses by 15 November 2017. Paragraph 2, which states that Plaintiff’s expert witnesses “shall be made reasonably available for discovery deposition no later than January 15, 2018[,]” established a 60-day timeframe for Defendants to take depositions of Plaintiff’s expert witnesses. Similarly, Paragraph 3 required Defendants to designate all expert witnesses by “February 15, 2018, or thirty (30) days after the deposition of the last of Plaintiff’s

LIGHT V. PRASAD  
*Opinion of the Court*

experts, whichever is later . . . .” Paragraph 4, which states that Defendants’ expert witnesses “shall be made reasonably available for discovery deposition on or before April 16, 2018, or 60 days after such designation[,]” established a 60-day timeframe for Plaintiff to take depositions of Defendants’ expert witnesses. Paragraph 9 prohibited the parties from taking discovery depositions of individuals other than expert witnesses, in the “30 days immediately prior to the date set for trial to commence.”

Thus, pursuant to the trial court’s construction of the Discovery Scheduling Order, the timeframe for Plaintiff to have taken Defendants’ expert witnesses’ depositions was 9 March 2018 through 8 May 2018. As Defendants designated their expert witnesses on 9 March 2018, the time frame for Plaintiffs to take depositions of those expert witnesses was 9 March 2018 through 8 May 2018. Because Plaintiff’s request to depose Defendants’ expert witnesses was made for the first time on 2 August 2019, Plaintiff’s request fell outside of the timeframe for taking those depositions. The trial court’s finding that “Plaintiff’s untimely request is inconsistent with the Discovery Scheduling Order” was thus supported by competent evidence. *See Point Intrepid*, 215 N.C. App. at 86, 714 S.E.2d at 800.

Plaintiff argues that Paragraph 4 merely establishes the date by which Defendants must have made their expert witnesses available for discovery, while Paragraph 9 established the date after which neither party could take a discovery deposition. However, the fact that the Discovery Scheduling Order could be construed

LIGHT V. PRASAD  
*Opinion of the Court*

differently does not render the trial court's finding unsupported, and this Court, when applying an abuse of discretion standard, has no authority to reweigh the evidence. *See, e.g., Fayetteville Publ'g Co. v. Advanced Internet Techs., Inc.*, 192 N.C. App. 419, 426, 665 S.E.2d 518, 523 (2008).

Additionally, Plaintiff's request to depose the expert witnesses came almost three months after the time frame for taking their depositions had closed, and a little more than seven weeks before the trial was set to begin. Defendants argued at the hearing as follows:

But we're simply asking the Court for a protective order that discovery not be had since we are in a period of time when we're trying to prepare for trial.

Because of the location of both of those experts, it -- it would require a trip to Beaufort to prepare them for their deposition. Another trip to Beaufort to have the deposition. And the same with Dr. Sica in Richmond, which is obviously taking huge chunks out of our trial preparation time, and then including time that we would actually be prepping them for trial, which is what we should be doing at this point.

Thus, the trial court's finding that Plaintiff's request to depose the expert witnesses was "untimely" and that "allowing such discovery would subject Defendants to unreasonable annoyance, oppression, and undue burden" was supported by competent evidence. *See Point Intrepid*, 215 N.C. App. at 86, 714 S.E.2d at 800.

On an abuse of discretion review, the question before this Court is not whether we would make the same decision as the trial court, or even whether we agree with



LIGHT V. PRASAD  
*Opinion of the Court*

the trial court's decision. Our sole determination is whether the trial court's decision "was manifestly unsupported by reason or so arbitrary that it could not have been the result of a reasoned decision." *Crosmun*, 832 S.E.2d at 233 (quotation marks and citations omitted). In light of the facts and circumstances considered by the trial court, we cannot say the trial court's Protective Order was manifestly unsupported by reason or so arbitrary that it could not have been the result of a reasoned decision. *See id.*

Plaintiff argues she was denied her right to adequately prepare for trial and is thus entitled to a new trial, citing as support *Prince v. Duke University*, 326 N.C. 787, 392 S.E.2d 388 (1990); *Green v. Maness*, 69 N.C. App. 292, 316 S.E.2d 917 (1984); *Willoughby v. Kenneth W. Wilkins, M.D., PA*, 65 N.C. App. 626, 310 S.E.2d 90 (1983); and *Lovendahl v. Wicker*, 208 N.C. App. 193, 702 S.E.2d 529 (2010).

These cases do not support Plaintiff's position as, unlike in this case, they all involve action on the part of a defendant that deprived a plaintiff of the opportunity to depose an expert witness and adequately prepare for trial. *See Prince*, 326 N.C. at 790, 392 S.E.2d at 389 (defendant failed to identify the challenged physician as an expert witness); *Green*, 69 N.C. App. at 301, 316 S.E.2d at 922 (defendant's supplemental response to plaintiffs' interrogatories was inadequate in content and came too close to trial time to allow plaintiffs adequate time to prepare a response to the newly disclosed information); *Willoughby*, 65 N.C. App. at 639, 310 S.E.2d at 98 (defendants failed to seasonably supplement their responses to interrogatories

LIGHT V. PRASAD  
*Opinion of the Court*

requesting the list of their experts, and plaintiff was thereby prejudiced because of inadequate time to prepare to cross examine those expert witnesses at trial); *Lovendahl*, 208 N.C. App. at 207-08, 702 S.E.2d at 538-39 (the trial court did not abuse its discretion by striking defendant's affirmative defenses where, during his deposition, defendant invoked his Fifth Amendment rights and refused to answer questions).

In this case, Defendants timely designated their expert witnesses and even inquired of Plaintiff whether she planned to depose those witnesses. Five months elapsed between the time the expert witnesses were designated and the time Plaintiff's counsel requested dates for depositions, and Plaintiff's request was made almost three months outside the timeframe established in the Discovery Scheduling Order for Plaintiff to take Defendant's expert witnesses' depositions, as found by the trial court. Plaintiff's inability to depose the expert witnesses in this case was not a result of Defendants' action of filing a motion for a protective order before the close of discovery, as argued by Plaintiff, but was, instead, a result of Plaintiff's own failure to timely schedule those depositions, and the resulting Protective Order entered by the trial court.

As the trial court did not abuse its discretion in precluding Plaintiff from deposing Defendants' expert witnesses prior to trial, we overrule Plaintiff's argument to the contrary.

Plaintiff also argues that the trial court erred by allowing the expert witnesses to testify at trial, because she did not have the opportunity to depose the expert witnesses. A trial court's decision to admit or exclude expert testimony "will not be reversed on appeal absent a showing of abuse of discretion." *State v. McGrady*, 368 N.C. 880, 893, 787 S.E.2d 1, 11 (2016). The trial court did not abuse its discretion in this case by allowing the expert witnesses to testify at trial where Plaintiff's own failure to timely schedule those depositions was the basis of the trial court's Protective Order, and the trial court did not abuse its discretion by entering the Protective Order, precluding Plaintiff from deposing the expert witnesses.

### **III. Conclusion**

The trial court did not abuse its discretion in granting Defendants a protective order, precluding Plaintiff from deposing their expert witnesses. Moreover, the trial court did not abuse its discretion by allowing Defendants' expert witnesses to testify at trial. The trial court's Protective Order and judgment entered upon the jury verdict are affirmed.

AFFIRMED.

Judges BRYANT and ZACHARY concur.

Report per Rule 30(e).