

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

2021-NCCOA-545

No. COA20-922

Filed 5 October 2021

Wake County, No. 18 CVS 13036

MILONE & MACBROOM, INC., Plaintiff,

v.

KYLE V. CORKUM, ET AL., Defendants.

Appeal by Defendant from Order entered 28 May 2020 by Judge Michael J. Denning in Wake County District Court. Heard in the Court of Appeals 11 August 2021.

Smith, Debnam, Narron, Drake, Saintsing & Myers, LLP, by Byron L. Saintsing and Thomas A. Gray, for plaintiff-appellee.

Akins, Hunt, Atkins, P.C., by Donald G. Hunt, Jr., and Kristen Atkins Lee, for defendants-appellants.

HAMPSON, Judge.

Factual and Procedural Background

¶ 1 Kyle Corkum (Defendant) appeals from the trial court's Order Awarding Attorney's Fees to Milone & MacBroom, Inc. (Plaintiff) under N.C. R. Civ. P. 11 related to Plaintiff's Motion to Compel responses to Plaintiff's post-judgment discovery requests in supplemental proceedings and Defendant's Motion for a

Protective Order. By prior Order of this Court, this appeal was consolidated for the “purpose of hearing only” under N.C.R. App. P. 40 with Defendant’s prior appeal in COA20-921 from the trial court’s underlying Order granting Plaintiff’s Motion to Compel, denying Defendant’s Motion for a Protective Order, and indicating the trial court’s intent to award Plaintiff attorneys’ fees as a Rule 11 sanction against Defendant. *See Milone & McBroom, Inc. v. Kyle Corkum, et al.*, 2021-NCCOA- ____ (*Milone I*).

¶ 2 The underlying factual and procedural background in this case is the same as in *Milone I*. Subsequent to the events in *Milone I*, on 28 May 2020, the trial court entered a further Order Awarding Attorney’s Fees to Plaintiff under N.C. R. Civ. P. 11 requiring Defendant to pay Plaintiff attorneys’ fees in the amount of \$8,500.00 within 5 days of entry of the Order. Defendant filed written Notice of Appeal from the trial court’s 28 May 2020 Order Awarding Attorney’s Fees on 26 June 2020.

¶ 3 In *Milone I*, we concluded the trial court lacked subject-matter jurisdiction over these supplemental proceedings. Thus, we granted certiorari for purposes of vacating the trial court’s underlying 5 March 2020 Order granting Plaintiff’s Motion to Compel, denying Defendant’s Motion for a Protective Order, and indicating the trial court’s intent to award Plaintiff attorneys’ fees as a Rule 11 sanction against Defendant. Therefore, because the trial court lacked jurisdiction to conduct supplemental proceedings and enter the underlying 5 March 2020 Order, for the same

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reasons it also lacked jurisdiction to enter the award of attorneys' fees under N.C. R. Civ. P. 11 against Defendant in those same supplemental proceedings. Consequently, for the reasons set forth in our opinion in *Milone I*, we employ N.C.R. App. P. 2 to vary the requirements of N.C.R. App. P. 21 in order to treat Defendant's appeal as a Petition for Writ of Certiorari and issue the Writ of Certiorari for purposes of vacating the trial court's 28 May 2020 Order awarding attorneys' fees. Accordingly, the trial court's 28 May 2020 Order is vacated.

VACATED.

Judges ZACHARY and JACKSON concur.

Report per Rule 30(e).