

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

2022-NCCOA-665

No. COA22-99

Filed 4 October 2022

Guilford County, No. 18CVS1024

STEPHEN LAWING and DONNA LAWING, Plaintiffs,

v.

CHADWICK P. MILLER, C.P. MILLER, INC., DANNY EDWARD EATON, II, and
DANNY EATON PLUMBING, LLC, Defendants.

Appeal by plaintiffs from orders and judgment entered 22 October 2021 and 5
November 2021 by Judge John O. Craig III in Guilford County Superior Court. Heard
in the Court of Appeals 23 August 2022.

Stephen E. Lawing for plaintiffs-appellants, pro se.

*Roberson Haworth & Reese, PLLC, by Shane T. Stutts, for defendants-
appellees.*

GORE, Judge.

¶ 1

Plaintiffs Stephen and Donna Lawing raise four issues on appeal from the trial court's Supplemental Order and Judgment ("Supplemental Order") and Clarifying Order Denying Plaintiff's Objections and Denial of Stay ("Clarifying Order"), respectively filed on 22 October 2021 and 5 November 2021. Despite plaintiffs' continuing attempts to relitigate the underlying case, the only issue properly before

us is whether the trial court complied with the mandate of this Court in determining the “reasonableness” of its award for attorney’s fees. We affirm.

I.

¶ 2

This is the third appeal from the underlying case, 18-CVS-1024. Plaintiffs commenced this action by filing a Complaint on 28 September 2018, alleging claims for unfair and deceptive trade practices pursuant to N.C. Gen. Stat. § 75-16.1, and defective construction of plaintiffs’ home under N.C. Gen. Stat. § 1-50(a)(5)(e). The trial court dismissed the Complaint pursuant to Rule 12(b)(6) by Order entered 7 December 2018 and denied plaintiff’s Rule 59 Motion on 16 January 2019. Plaintiffs’ appeal from the Rule 59 Motion was dismissed for failure to file timely notice of appeal. The trial court entered an Order on 28 January 2020 awarding attorney’s fees to defendant Miller. Plaintiffs appealed from that award.

¶ 3

In a decision filed 15 June 2021, this Court held the trial court was authorized to enter an award for attorney fees but vacated and remanded the judgment for further findings as to the reasonableness and amount of the award. *Lawing v. Miller*, 278 N.C. App. 148, 2021-NCCOA-283, ¶ 13 (unpublished). On remand, the trial court entered a Supplemental Order, which contained additional findings in support of its award. After objection from plaintiffs challenging the lack of verification and untimely filing of the client ledger, the trial court entered its Clarifying Order, which struck the client ledger from the record and overruled plaintiffs’ remaining objections.

Plaintiffs again filed Notice of Appeal on 18 November 2021.

II.

¶ 4

“On the remand of a case after appeal, the mandate of the reviewing court is binding on the lower court, and must be strictly followed, without variation and departure from the mandate of the appellate court.” *Collins v. Simms*, 257 N.C. 1, 11, 125 S.E.2d 298, 306 (1962). “Findings of fact by the trial court in a non-jury trial have the force and effect of a jury verdict and are conclusive on appeal if there is evidence to support those findings.” *Shear v. Stevens Bldg. Co.*, 107 N.C. App. 154, 160, 418 S.E.2d 841, 845 (1992).

¶ 5

In the case *sub judice*, plaintiffs raise the issue of whether the trial court failed to follow this Court’s mandate without variation or departure because, in their own words, “it failed to make findings of fact as to the ‘reasonableness’ of the attorney fee.” Both Orders from which plaintiffs appeal contain findings of fact. Specifically, the Supplemental Order contains findings of fact pertaining to the “reasonableness” of the trial court’s award. However, plaintiffs implicitly argue, without taking exception to any specific finding of fact in the body of their argument, that there is no competent evidence to support the trial court’s findings.

¶ 6

“It is fundamental that appellate review depends on specific exceptions and proper assignments of error presented in the record on appeal.” *Wade v. Wade*, 72 N.C. App. 372, 375, 325 S.E.2d 260, 265-66 (1985) (citations omitted); *see also* N.C.R.

App. P. 10. “It is well established by this Court that where a trial court’s findings of fact are not challenged on appeal, they are deemed to be supported by competent evidence and are binding on appeal.” *Juhnn v. Juhnn*, 242 N.C. App. 58, 63, 775 S.E.2d 310, 313 (2015) (citation omitted). “A single assignment generally challenging the sufficiency of the evidence to support numerous findings of fact, as here, is broadside and ineffective. The sufficiency of the evidence is accordingly not before us.” *Wade*, 72 N.C. App. at 375-76, 325 S.E.2d at 266 (citation omitted).

¶ 7

Plaintiffs offer one sentence in their brief, placed outside the body of their argument, and buried in a conclusion over four pages long, challenging specific findings and conclusions. Our Rules of Appellate Procedure require the argument section “to contain the contentions of the appellant with respect to each issue presented[,]” N.C.R. App. P. 28(b)(6), and “[a] short conclusion stating the precise relief sought[,]” N.C.R. App. P. 28(b)(7). Additionally, on the subject of non-jurisdictional rule violations, plaintiffs omit “[a] full and compete statement of facts[,]” N.C.R. App. P. 28(b)(5), and their eight-page statement of the case is a far cry from the “concise statement of the procedural history of the case . . . summariz[ing] the course of proceedings . . . ” as contemplated by N.C.R. App. P. 28(b)(3).

¶ 8

The trial court’s Supplemental Order contains the following findings of fact and conclusions of law pertinent to the instant appeal:

Findings of Facts

. . .

7. Based upon the affidavit of Shane T. Stutts and the Client Ledger referenced herein [(later stricken by Clarifying Order)], the court finds that counsel for Miller Defendants spent 77.85 hours (attorney and paralegal time) and incurred \$150.69 in costs working on their matter between November 2018 and November 2019.

8. The time and labor expended by counsel for Miller Defendants responding to lawsuit, Plaintiff's Notice of Appeal, and ultimately securing the Court of Appeals decision affirming the trial court's dismissal of the lawsuit were reasonable and necessary.

9. Attorney Shane T. Stutts was licensed in 1997 and billed \$250.00 hourly rate in this matter between November 2018 and November 2019.

10. Attorney Shane T. Stutts has appeared numerous times before this Court and possesses the necessary skill and proficiency to handle civil litigation matters involving construction and specifically provide the services rendered herein.

11. The Court is familiar with hourly rates in comparable litigation based on its consideration of other fee requests submitted in other civil litigation matters.

12. The Court is aware of the range . . . of hourly rates charged in Guilford County and other North Carolina municipalities for comparable litigation, including among other sources, from fee applications filed with this Court. The Court finds that the hourly rate of \$250 is fair and reasonable, and conforms to or is less than hourly rates charged in and around Guilford County by attorneys with a similar experience level handling matters of comparable litigation complexity.

13. Based on the evidence submitted and in its discretion to provide some relief to Plaintiffs from the \$17,632.80 amount sought by Miller Defendants, the Court determines that Miller Defendants should be awarded the sum of \$12,000 for fees and expenses reasonably incurred related to defending Plaintiff's lawsuit in the trial court and North Carolina Court of Appeals. The Court finds that the Miller Defendants' efforts, through counsel, were reasonable and necessary to secure the dismissal of the lawsuit and those efforts were of the appropriate nature and scope with requisite skill and experience and that the fees for the time expended was computed at hourly rates at or below the customary hourly rates of Guilford County and appropriate for litigation of comparable complexity.

Conclusions of Law

...

16. As a result of Plaintiffs' actions, Defendants as the prevailing party are entitled, in the discretion of the Court, to a reasonable attorney fee. Miller Defendants have adequately documented that the fees and expenses awarded were necessarily and reasonably incurred, and the time and labor expended was reasonable, necessary, and appropriately matched the time and experience necessary to handle the underlying civil litigation.

17. The expenses and fees incurred were appropriate and matched the skill and experience required to address the nature and complexity of the matters at issue.

18. The fees and expenses requested are customary for work of a like nature.

Here, the trial court complied with the mandate of this Court by including additional findings of fact in its Order awarding reasonable attorney's fees by "specifying time and labor expended, the skill required to perform the services

rendered, the customary fee for like work, and the experience and ability of the attorney.” *Lawing*, 278 N.C. App. at *8, 2021-NCCOA-283, ¶ 11 (unpublished) (quotation marks and citation omitted).

¶ 10 Plaintiffs argue no record evidence supports the trial court’s determination of reasonableness because both the affidavit and the client ledger were stricken from the record (an incorrect assertion, only the client ledger was stricken by Clarifying Order). However, plaintiffs also fail to challenge any specific findings in the body of their argument. Thus, the trial court’s findings of fact are deemed binding on appeal, *Juhnn*, 242 N.C. App. at 63, 775 S.E.2d at 313, and we do not address the sufficiency of the evidence to support them. *Wade*, 72 N.C. App. at 375-76, 325 S.E.2d at 266.

III.

¶ 11 We hold the findings of fact support the conclusions of law, and the trial court complied with the mandate of this Court on remand. We decline to address the remainder of plaintiffs’ arguments, which impermissibly renew their challenge to the trial court’s authority to enter the underlying award for attorney’s fees and are not subject to the instant appeal.

AFFIRMED.

Judges DILLON and CARPENTER concur.

Report per Rule 30(e).