

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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-748

No. COA22-212

Filed 15 November 2022

Cumberland County, No. 20CVS359

A & M REAL ESTATE DEV. CO. LLC, Plaintiff,

v.

G-FORCE CHEER, LLC, Defendant.

Appeal by defendant from judgment and order entered 17 June 2021 and 19 August 2021 by Judge William D. Wolfe in Cumberland County Superior Court. Heard in the Court of Appeals 21 September 2022.

Gray, Layton, Kersh, Solomon, Furr & Smith, P.A., by William E. Moore, Jr., for defendant-appellant.

Yarborough, Winters & Neville, by Timothy C. Smith, for plaintiff-appellee.

GORE, Judge.

¶ 1

This matter arises from a summary ejectment action filed by plaintiff A & M Real Estate Development Company, LLC, in December 2019 against defendant G-Force Cheer, LLC, in the small claims division of Cumberland County District Court. The presiding magistrate ruled in favor of plaintiff, ordering summary ejectment of defendant and awarding judgment in certain unpaid rent, late fees, and costs.

Defendant timely filed notice of appeal to district court, and plaintiff subsequently moved to transfer to superior court division. However, defendant failed to stay execution on appeal and was evicted from the subject property on 18 February 2020.

¶ 2 The hearing of these pending matters was delayed due in part to COVID-19 restrictions limiting and postponing court hearings in Cumberland County. In August 2020, the trial court granted plaintiff's motion for transfer of the underlying action to superior court. In April 2021, the trial court granted partial summary judgment to plaintiff, dismissing defendant's counterclaims for conversion and unjust enrichment.

¶ 3 This matter was called for bench trial in April 2021, and the trial court entered an Amended Final Judgment on 17 June 2021 awarding plaintiff damages of \$67,200.00 for breach of contract under one of the two commercial lease agreements attached to the amended complaint and denying defendant's counterclaim for unfair and deceptive trade practices. Defendant timely filed post-trial motions under N.C. R. Civ. P. 52(b), 59(a), and 60(b) on 29 June 2021, which were denied by Order entered 19 August 2021. Defendant timely filed notice of appeal to this Court on 13 September 2021.

¶ 4 This Court has jurisdiction pursuant to N.C. Gen. Stat. § 7A-27(b)(1) and (4). On appeal, defendant argues: (i) findings of fact 14, 16, 19, 21, 29, and 38 are not supported by competent evidence; (ii) conclusions of law 4, 6, and 10 are unsupported

by competent findings of fact; (iii) the trial court abused its discretion by denying defendant's post-trial motion for relief; and (iv) the trial court prejudicially erred: by excluding evidence of plaintiff's trade practices; refusing to allow closing arguments of counsel; and failing to carry over the civil term of court for an ongoing trial. We affirm the trial court's Final Amended Judgment and Order denying post-trial relief.

I.

¶ 5

"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 (2002) (quotation marks and citation omitted). "A trial court's findings of fact are binding on appeal if supported by competent evidence." *E. Carolina Reg'l Hous. Auth. v. Lofton*, 369 N.C. 8, 11, 789 S.E.2d 449, 452 (2016) (quotation marks and citation omitted). "We review *de novo* the trial court's conclusions of law." *Town of Green Level v. Alamance Cnty.*, 184 N.C. App. 665, 669, 646 S.E.2d 851, 854 (2007) (citation omitted).

¶ 6

Generally, we review a trial court's ruling on post-trial motions under an abuse of discretion standard. *See Davis v. Davis*, 360 N.C. 518, 523, 631 S.E.2d 114, 118 (2006). "A trial court may be reversed for abuse of discretion only upon a showing that its actions are 'manifestly unsupported by reason.'" *Id.* (citations omitted). "A ruling committed to a trial court's discretion is to be accorded great deference and

will be upset only upon a showing that it was so arbitrary that it could not have been the result of a reasoned decision.” *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985).

II.

¶ 7

Defendant challenges the trial court’s findings of fact 14, 16, 19, 21, 29, and 38 as unsupported by competent evidence. Additionally, defendant asserts the trial court’s conclusions of law 4, 6, and 10 are unsupported by competent findings of fact. We disagree.

¶ 8

Upon careful review, we determine that each of the challenged findings of fact are supported by competent evidence in the record. Where there is competent evidence to support the trial court’s findings of fact, it is not the duty of this Court to reweigh the evidence on appeal. *See Camp v. Camp*, 75 N.C. App. 498, 503, 331 S.E.2d 163, 166 (citations omitted), *disc. rev. denied*, 314 N.C. 663, 335 S.E.2d 493 (1985) (“Where the court sits as judge and juror, its findings of fact have the effect of a jury verdict and are conclusive on appeal if there is evidence to support them. Contradictions and discrepancies are to be resolved by the trier of facts.”); *see also Markham v. Markham*, 53 N.C. App. 18, 22, 279 S.E.2d 905, 908 (1981) (citations omitted) (The trial court’s “judgment will not be disturbed on appeal if there is any evidence to support its findings of fact and those findings support the judgment, even though the evidence might sustain findings to the contrary.”).

¶ 9

Defendant challenges the following conclusions of law:

4. The document presented in evidence as Plaintiff's exhibit 17 and 52 is a valid, binding, and enforceable contract. Defendant G Force Cheer breached this contract by failing to pay rent.

6. Plaintiff A&M made no misrepresentation upon which Defendant relied and did not engage in any fraud or unfair and deceptive trade practices for which relief can be granted for Defendant G Force Cheer on its counter claim for same, and those claims should be dismissed.

10. Defendant's claim for Unfair and Deceptive Trade Practices, while not persuasive to the Court, was not 'frivolous or malicious' within the meaning of NCGS 75.16-1(2).

Regarding conclusion of law 4, the trial court made several uncontroverted findings of fact, uncontested and binding on appeal, supporting its conclusion that a valid contract existed between G-Force Cheer and A&M, which G-Force Cheer breached by failing to pay the rent. As to conclusions of law 6 and 10, this Court cannot determine based on defendant's proffered reasoning and generalized argument, why conclusions of law 6 and 10 are erroneous under the applicable standard of review. Accordingly, each of the above challenged conclusions of law remain undisturbed on appeal.

III.

¶ 10

Defendant argues the trial court abused its discretion by denying its motion to amend findings, to set aside judgment, and/or to grant a new trial. *See* N.C. R. Civ. P. 52(b), 60(b), and 59(a). We disagree.

¶ 11 Defendant asserts the trial court erred in denying its motion seeking various relief pursuant to N.C. R. Civ. P. 52(b), 60(b), and 59(a), but omits any discussion of Rules 52 and 60. Under Rule 59, a new trial may be granted based on any one of nine causes and grounds as specified by statute. *See* N.C. R. Civ. P. 59(a)(1)-(9). “[A]n appellate court should not disturb a discretionary Rule 59 order unless it is reasonably convinced by the cold record that the trial judge’s ruling probably amounted to a substantial miscarriage of justice.” *Worthington v. Bynum*, 305 N.C. 478, 487, 290 S.E.2d 599, 605 (1982).

¶ 12 Contrary to defendant’s assertions, the parties consented to a bench trial and agreed to various COVID-19 procedures. They had the opportunity to present relevant documentary evidence and witness testimony, and the parties agreed when evidence would be closed without further objection from defendant. Defendant contends plaintiff withheld certain lease documents in discovery and/or engaged in spoliation of evidence, but defendant neglected to issue any discovery request for the third-party lease documents referenced. Plaintiff timely produced said documents under subpoena at trial, and the trial court excluded these documents upon plaintiff’s objection. Further, the trial court’s findings of fact provide a sufficient basis to support a conclusion that damages were reasonably calculated. We discern no abuse of discretion in the trial court’s denial of defendant’s Rule 59 Motion.

¶ 13 Defendant also argues the trial court prejudicially erred by: (i) excluding

evidence of plaintiff's other lease agreements (trade practices) pertaining to the real property at issue; (ii) refusing to allow closing arguments of counsel; and (iii) failing to carry over the civil term of court for an ongoing trial. Defendant's contentions rely upon copied and pasted portions of the trial transcript, without any stated argument, reason, or citation to authority in support thereof. These issues are deemed abandoned pursuant to N.C.R. App. P. 28(b)(6).

IV.

¶ 14 For the foregoing reasons, we affirm the trial court's Amended Final Judgment entered 17 June 2021 and Order denying post-trial relief entered 19 August 2021.

AFFIRMED.

Judges ARROWOOD and HAMPSON concur.

Report per Rule 30(e).