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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-810

Filed 06 June 2023

Iredell County, No. 20 CVS 2471

CHRISTOPHER G. CHAGARIS, Plaintiff,

v.

NICHOLAS SHANE HARDEN, Defendant.

Appeal by Plaintiff from order entered 24 March 2022 by Judge Mark E. Klass in Iredell County Superior Court. Heard in the Court of Appeals 21 March 2023.

Plumides, Romano & Johnson, PC, by Richard B. Johnson, for plaintiff-appellant.

Arnold & Smith, PLLC, by Peter E. McArdle, for defendant-appellee.

MURPHY, Judge.

We review an appeal from an order granting summary judgment *de novo* to determine if the forecasted evidence, when viewed in the light most favorable to the non-moving party, contains a genuine issue as to any material fact. Plaintiff has established that a genuine issue of material fact exists as to his claims for criminal conversation and alienation of affection; however, Plaintiff failed to address his claims of intentional infliction of severe emotional distress and negligent infliction of

severe emotional distress. We therefore affirm the trial court's order granting summary judgment on Plaintiff's claims for intentional infliction of severe emotional distress and negligent infliction of severe emotional distress and reverse and remand on the claims for criminal conversation and alienation of affection.

BACKGROUND

On or about 26 June 1996, Plaintiff Christopher G. Chagaris and his wife, Angela G. Chagaris, married in Augusta, Georgia. Plaintiff and Ms. Chagaris resided together in their North Carolina marital residence with their children from December 2001 until January 2019. In early fall of 2018, Ms. Chagaris admitted to Plaintiff that she had engaged in an extramarital affair beginning in the fall of 2017 and ending in December 2017. Ms. Chagaris described her paramour as a younger man who worked in finance, had a military background, and was married with young children. She stated that she met him on Ashley Madison. On 21 October 2018, Ms. Chagaris sent an email to her family, stating she and Plaintiff would divorce as the result of her infidelity. On or about 1 February 2019, Plaintiff and his wife physically separated, and divorce proceedings ensued.

During her deposition in the divorce case, Ms. Chagaris admitted that she and her paramour engaged in sexual intercourse in various hotels on four separate occasions between approximately October and December 2017. Ms. Chagaris

described her paramour as being a bald white man of medium height.¹ She stated that this paramour, as well as a second man with whom she had extramarital sexual intercourse, was aware that she was married and that she and both men had discussed their respective spouses during the affairs.

During discovery in the divorce case, Plaintiff found that Ms. Chagaris and Defendant Nicholas Shane Harden contacted one another several times between 17 October 2017 and 19 October 2017. On 18 October 2017, Ms. Chagaris made several calls to the Hyatt Place Hotel-Airport; and, on 19 October 2017, she checked into the hotel.² Ms. Chagaris and Defendant also contacted one another approximately five times on 3 November 2017, the date which corresponds to Ms. Chagaris's stay at a second hotel, the Renaissance Charlotte Suites Hotel.

In Plaintiff's affidavit, presented to the trial court without objection, he affirms that, because Defendant was the only individual whom he did not recognize from Ms. Chagaris's phone records on 3 November 2017, he presumed Defendant to be Ms. Chagaris's paramour. Plaintiff's affidavit further affirms that, when Plaintiff confronted Ms. Chagaris with this theory, she admitted to having an affair with Defendant, stated that Defendant's wife was unaware of their affair, and asked

¹ Defendant is also a bald white man of medium height.

² Ms. Chagaris's financial statements contained in this Record do not reflect any charges corresponding to 19 October 2017, but Ms. Chagaris and Plaintiff's divorce counsel reference a charge from this hotel on 19 October 2017 in Ms. Chagaris's deposition.

Plaintiff not to alert Defendant's wife.³ Plaintiff brought this case against Defendant on 5 October 2020, alleging that Defendant was the man whom Ms. Chagaris met on Ashley Madison and with whom she had sexual intercourse at various hotels on four occasions between approximately October 2017 and December 2017.

After discovery, Defendant filed a *Motion for Summary Judgment* on all claims raised by Plaintiff, a *Rule 11 Motion*, and an *Amended Motion for Summary Judgment*. On 23 February 2022, the trial court heard Plaintiff's and Defendant's arguments with regard to the motion for summary judgment. On 24 March 2022, the trial court granted Defendant's *Motion for Summary Judgment* and denied Defendant's *Rule 11 Motion*. Plaintiff timely appealed.

ANALYSIS

Plaintiff argues on appeal that the trial court erred in granting Defendant's motion for summary judgment because there are genuine issues of material fact in the forecasted evidence. Plaintiff's original cause brought four separate claims against Defendant—criminal conversation, alienation of affection, intentional infliction of severe emotional distress, and negligent infliction of severe emotional distress. However, Plaintiff abandons his claims for intentional infliction of severe

³ Defendant maintains that his relationship with Ms. Chagaris was exclusively professional in nature. In his responses to Plaintiff's interrogatories, Defendant stated he met Ms. Chagaris at a networking event, expressed interest in working for her company, exchanged contact information with her, exchanged texts and phone calls with her regarding potential employment opportunities at her company, and met her for coffee to discuss these opportunities.

emotional distress and negligent infliction of severe emotional distress by failing to argue them in his appellate brief. *See* N.C. R. App. P. 28(b)(6) (2022) (“Issues not presented in a party’s brief, or in support of which no reason or argument is stated, will be taken as abandoned.”); *see also Forbis v. Neal*, 361 N.C. 519, 525 (2007) (“Although the original complaint alleged various causes of action including fraud, undue influence, and breach of fiduciary duty, plaintiffs did not brief the undue influence and breach of fiduciary duty claims before this Court and thereby abandoned them.”). Accordingly, we review the trial court’s order granting summary judgment on the claims for criminal conversation and alienation of affection alone.

A. Criminal Conversation

To prevail on his claim for criminal conversation, Plaintiff must show (1) that he was married to Ms. Chagaris and (2) that Defendant had sexual intercourse with Ms. Chagaris during her marriage to Plaintiff. *See Coachman v. Gould*, 122 N.C. App. 443, 446 (1996). Sexual intercourse requires “actual contact of the sexual organ of a man and woman, and an actual penetration into the body of the latter,” no matter how slight. *State v. Richardson*, 307 N.C. 692, 693 (1983); *State v. Murray*, 277 N.C. 197, 203 (1970).

To support the second and third elements of his claim, Plaintiff relies on circumstantial evidence, including records showing Defendant and Ms. Chagaris exchanged messages on the days Ms. Chagaris rented hotel rooms and the days leading up to them, and Ms. Chagaris’s statements about her paramour’s appearance,

career, and family life. A plaintiff may rely on circumstantial evidence to prove sexual intercourse occurred between the defendant and the plaintiff's spouse for the purposes of criminal conversation when direct evidence is not available. *Rodriguez v. Lemus*, 257 N.C. App. 493, 497 (*disc. rev. denied*, 371 N.C. 447) (2018); *see also In re Estate of Trogdon*, 330 N.C. 143, 148 (1991) (noting that acts of adultery “are nearly always proved by circumstantial evidence, . . . as misconduct of this sort is usually clandestine and secret”). To survive a motion for summary judgment, Plaintiff need not provide any direct evidence; he need only support his claims with relevant evidence which is sufficient enough that a reasonable mind might accept it as adequate to support his conclusion. *In re Will of Allen*, 371 N.C. 665, 668 (2018).

There is no dispute as to whether Plaintiff satisfied the first element of criminal conversation, as it is well established that Plaintiff and Ms. Chagaris were married during the time Defendant and Ms. Chagaris communicated with one another. However, Defendant argues the second element—that Defendant and Ms. Chagaris had sexual intercourse during Plaintiff's marriage—is supported only by “mere conjecture” and does not meet the minimum standard for circumstantial evidence. Defendant attempts to rely on the “opportunity and inclination” doctrine to argue that Plaintiff's forecasted evidence could not support a finding that Defendant had an adulterous inclination or disposition. Under this doctrine, “adultery is presumed if the following can be shown: (1) the adulterous disposition,

or inclination, of the parties and (2) the opportunity created to satisfy their mutual adulterous inclinations.” *Trogdon*, 330 N.C. at 148.

Defendant misconstrues the “opportunity and inclination” doctrine as a formulaic minimum threshold which circumstantial evidence must meet to demonstrate adultery. However, opportunity and inclination should not be construed as the sole means by which a party may demonstrate adultery, even when relying solely upon circumstantial evidence; opportunity and inclination are a sufficient, not a necessary, means by which a plaintiff may demonstrate adultery for the purposes of ruling on a motion for summary judgment. To survive summary judgment, Plaintiff’s evidence must be—as with all instances of summary judgment—such that “a reasonable mind might accept as adequate to support a conclusion and is more than a scintilla or a permissible inference.” *Will of Allen*, 371 N.C. at 668 (marks omitted). The opportunity and inclination doctrine does not alter that standard.

Defendant further argues that, because the forecasted evidence does not provide any indication as to the content of the conversations between himself and Ms. Chagaris, Plaintiff’s claim that the phone records evidence an extramarital sexual relationship between Defendant and Ms. Chagaris is “purely speculative.” However, while the time, date, and duration of a phone call do not indicate its substance, a reasonable mind could conclude, when considered alongside Plaintiff’s other evidence, that the content of these phone calls was adulterous in nature. Phone records indicate that Defendant called Ms. Chagaris on 17 October 2017 at 6:43 p.m. for 17

minutes and 21 seconds; Ms. Chagaris called Defendant on 18 October 2017 at 2:44 p.m. for 12 seconds, at 3:07 p.m. for 10 seconds, and at 3:21 p.m. for 1 minute and 3 seconds; Ms. Chagaris called Hyatt Place Hotel on 18 October 2017 at 7:31 p.m., 7:33 p.m., and 7:39 p.m.; and Ms. Chagaris sent three text messages to Defendant on 19 October 2017 between 7:17 p.m. and 7:18 p.m. The fact that Plaintiff cannot personally attest to the content of these phone calls and text messages does not negate the surrounding context.

In the light most favorable to Plaintiff, a reasonable mind may infer from the evidence that Defendant was Ms. Chagaris's paramour, even if that evidence is circumstantial. By his own admission, Defendant and Ms. Chagaris met in Fall of 2017, a time period during which Ms. Chagaris began engaging in an extramarital affair. According to Ms. Chagaris, her paramour in this affair was a white, bald man of medium height. By his own admission, Defendant fits this description. Ms. Chagaris confirmed that she slept with the same white, bald man of medium height at four different hotels on four different occasions, including 19 October 2017 and 3 November 2017, the dates on or around which Plaintiff provides evidence of contact between Defendant and Ms. Chagaris. Ms. Chagaris stated that she met her paramour on Ashley Madison and met him at a coffee shop. Ms. Chagaris also stated in an interrogatory that she and Defendant "had coffee once." In his response to Plaintiff's interrogatories in the present case, Defendant confirmed that he met with

Ms. Chagaris “for coffee,” though he maintained this was a business meeting to discuss potential job opportunities at her company.

The timeline during which Ms. Chagaris and Defendant met, conversed, and ceased contact, together with her admission to having sexual intercourse with a paramour matching Defendant’s description and Defendant and Ms. Chagaris’s contact within hours of Ms. Chagaris’s hotel stays on 19 October 2017 and 3 November 2017, provide sufficient evidence that Defendant was Ms. Chagaris’s paramour to raise a genuine issue of material fact. Accordingly, the jury is the best judge of credibility and the weight of all the evidence. Summary judgment was improper on this claim.

B. Alienation of Affection

To prevail on a claim for alienation of affection, Plaintiff must show that (1) a marriage with love and affection existed between Plaintiff and his spouse, Ms. Chagaris; (2) that love and affection was alienated; and (3) Defendant produced the loss of love and affection between Plaintiff and Ms. Chagaris through malicious acts. *See Nunn v. Allen*, 154 N.C. App. 523, 533 (2002) (*disc rev. denied*, 356 N.C. 675 (2003)). In his verified complaint, Plaintiff stated that, prior to their separation, he and Ms. Chagaris “were happily married, and genuine love and affection existed between them” which they expressed through—among other things—spending quality time with one another. Plaintiff and Ms. Chagaris’s love and affection were alienated, as evidenced by their separation and Chapter 50 proceedings. According

to both Plaintiff and Ms. Chagaris, Plaintiff's marriage to Ms. Chagaris ended because Ms. Chagaris engaged in an extramarital affair. Thus, the only fact in meaningful controversy is whether Defendant himself produced the loss of love and affection between Plaintiff and Ms. Chagaris through malicious acts.

"[A]ny intentional conduct that would probably affect the marital relationship" may constitute malice, and malice is conclusively presumed where Plaintiff shows that Defendant engaged in sexual intercourse with his spouse. *Rodriguez*, 257 N.C. App. at 495-96. As discussed above, *see supra Part A*, Plaintiff's evidence was sufficient to raise a genuine issue as to whether Defendant engaged in sexual intercourse with Ms. Chagaris. Thus, as in the criminal conversation claim, Plaintiff presents sufficient evidence to constitute a genuine issue of material fact with respect to this issue, rendering summary judgment inappropriate.

CONCLUSION

Plaintiff abandoned his claims for intentional infliction of severe emotional distress and negligent infliction of severe emotional distress on appeal by failing to address them in his brief. However, the evidence in the Record supports a finding of several genuine issues of material fact in Plaintiff's briefed claims, criminal conversation and alienation of affection, which render the trial court's order of summary judgment for Defendant inappropriate. Accordingly, we affirm the trial court's order of summary judgment for Defendant on Plaintiff's intentional infliction of severe emotional distress and negligent infliction of severe emotional distress

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claims and reverse and remand on Plaintiff's claims for criminal conversation and alienation of affection.

AFFIRMED IN PART; REVERSED AND REMANDED IN PART.

Judges CARPENTER and RIGGS concur.

Report per Rule 30(e).