

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA24-139

Filed 5 November 2024

Craven County, No. 20 CVS 1497

STUBBS & PERDUE, P.A., Plaintiff,

v.

BANNOR MICHAEL MACGREGOR, Defendant.

Appeal by defendant from order entered 27 September 2023 by Judge Imelda J. Pate in Craven County Superior Court. Heard in the Court of Appeals 12 June 2024.

*Chesnutt & Clemmons, P.A., by Gary H. Clemmons and T.R. Cook, IV, for plaintiff-appellee.*

*Harris Sarratt & Hodges, LLP, by Donald J. Harris, for defendant-appellant.*

THOMPSON, Judge.

Bannor Michael MacGregor (defendant) appeals the order of the trial court denying his amended motion for sanctions against Stubbs & Perdue, P.A. (plaintiff) and Trawick H. “Buzzy” Stubbs, Jr. (Stubbs), arising from plaintiff’s filing of a civil action against defendant for unpaid legal fees and costs. After careful review of the record and briefs, we affirm the trial court’s ruling.

## **I. Factual Background and Procedural History**

On 28 December 2019, plaintiff contracted with defendant to provide legal services in connection with defendant’s membership interest in an LLC’s Chapter 11 bankruptcy case then pending in North Carolina’s Eastern District. Their legal services contract (Letter Agreement) incorporated an attached requirement to submit any “dispute . . . over attorney fees and costs” to a mutually agreed-upon mediator “*before* filing any court action” (Mediation Agreement). (Emphasis added.) The Mediation Agreement further waived “any and all claims” raised by a complainant who “refuse[d] to participate in good faith in the mediation process” prior to filing in court. Plaintiff served as defendant’s counsel in the bankruptcy proceeding from 28 December 2019 through approximately 10 September 2020, after which the bankruptcy court allowed plaintiff to withdraw as counsel.

On 20 October 2020, plaintiff’s Collections Manager, Wendy Karam (Karam), notified defendant that a balance of \$147,816.05 in “outstanding fees and expenses” was due under their Letter Agreement. The notification also served to “advise [defendant] . . . of the State Bar’s program of fee dispute resolution at least 30 days prior to initiating legal proceedings” in accordance with the North Carolina State Bar’s Rules of Professional Conduct. When defendant contested this amount, plaintiff sued defendant to recover in full. Paragraph 10 of both plaintiff’s original and amended complaints alleged that notification of “[d]efendant’s right to participate in the [State Bar’s] fee dispute and resolution program” also met the requirements for

“notice of mediation provided in” the Letter and Mediation Agreements. Acrimonious litigation between the parties continued apace.

More specifically, defendant’s counsel emailed to the trial court a letter implying that plaintiff’s complaint either “failed to correct a false statement of material fact it previously made to” the trial court or otherwise “offered evidence that it knew to be false” (2021 Letter). N.C. Rules of Prof. Conduct r. 3.3(a)(1), (3) (N.C. State Bar 1997) (brackets and ellipsis omitted). Through the 2021 Letter, defendant sought to push back against plaintiff’s claim that Karam’s communications met the Agreements’ requirements. The parties filed numerous claims, counterclaims, and supplemental amendments not at issue here over the next two years. These filings culminated in a 6 February 2023 trial court order that (1) granted summary judgment for defendant, (2) granted partial summary judgment *sua sponte* for plaintiff on defendant’s breach of contract counterclaim, and (3) denied plaintiff’s motion to amend its complaint again.

On 16 January 2023, defendant filed his original motion to sanction plaintiff under Rule 11 of North Carolina’s Rules of Civil Procedure, alleging that plaintiff dishonestly represented to the trial court compliance with the Mediation Agreement’s mediation notice requirement (Original Motion). In between this initial filing and its calendared hearing date of 14 August 2023, defendant filed on 5 August 2023 an amended motion for sanctions based on purported additional verification of plaintiff’s dishonesty. The trial court heard the motions as scheduled and denied both in a 27

September 2023 order. Defendant timely appealed this order on 26 October 2023.

## **II. Jurisdiction.**

Under N.C. Gen. Stat. § 7A-27, this Court has jurisdiction to hear defendant’s appeal of the trial court’s denial of the amended Rule 11 motion because the denial “[d]iscontinues the action” for sanctions. N.C. Gen. Stat. § 7A-27(b)(3)(c) (2023).

## **III. Analysis.**

On appeal, defendant raises two core issues for this Court to consider—whether the trial court erred (1) by denying defendant’s amended motion for Rule 11 sanctions based on numerous challenges to specific findings, and (2) by expressly refusing to assess Rule 11’s applicability to one of defendant’s amended affidavits. As plaintiff correctly notes, however, we need not address these specific issues because defendant failed to file his “Rule 11 motion for sanctions . . . within a reasonable amount of time” after discovering plaintiff’s alleged impropriety. *Griffin v. Sweet*, 136 N.C. App. 762, 764, 525 S.E.2d 504, 506 (2000) (citing N.C.R. Civ. P. 11). We review *de novo* a trial court’s imposition of Rule 11 sanctions. *Id.* at 765, 525 S.E.2d at 506–07 (citing *Renner v. Hawk*, 125 N.C. App. 483, 491, 481 S.E.2d 370, 375 (1997)).

North Carolina’s Civil Procedure Rule 11 mimics its federal counterpart by permitting a trial court “upon motion or upon its own initiative” to address counsel or party misconduct with “an appropriate sanction” at bar. N.C.R. Civ. P. 11(a); *cf.* Fed. R. Civ. P. 11(c)(1) (“[T]he court may impose an appropriate sanction on any attorney, law firm, or party that violated [Rule 11(b)] or is responsible for the

violation.”). Our courts require a sanctioning party to only “‘make a Rule 11 motion within a *reasonable* time’ after he discovers an alleged impropriety” by opposing counsel. *Renner*, 125 N.C. App. at 491, 481 S.E.2d at 374 (emphasis added) (quoting *Muthig v. Brant Point Nantucket, Inc.*, 838 F.2d 600, 604 (1st Cir. 1988)). We have consistently refused to proscribe explicit time limits for these motions but do find persuasive analogous state and federal cases that address contextual reasonability.<sup>1</sup> *See Rice v. Danas, Inc.*, 132 N.C. App. 736, 741, 514 S.E.2d 97, 100 (1999) (“We find the reasoning in *Cooter* persuasive and decline to impose any time limits contrary to the plain language of the rules.” (citing *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 110 S. Ct. 2447 (1990))); *see also Renner*, 125 N.C. App. at 490, 481 S.E.2d at 374 (“The North Carolina Rules of Civil Procedure, including Rule 11, are, for the most part, verbatim recitations of the federal rules.”).

*Griffin v. Sweet* is particularly instructive. From 1994 to 1996, the *Griffin* defendants lost multiple summary judgments and appeals in a home construction contract dispute with their plaintiff contractor. *See Griffin*, 136 N.C. App. at 764, 525 S.E.2d at 506. Their litigation culminated in a 22 February 1996 denial of a petition for discretionary review from our Supreme Court. *Id.* (citing *Griffin v. Sweet*, 120 N.C.

---

<sup>1</sup> We also note that the federal Seventh Circuit is the only jurisdiction nationwide that recognizes any hard deadline to file Rule 11 sanction motions. *Compare, e.g., Sullivan v. Hunt*, 350 F.3d 664, 666 (7th Cir. 2003) (“90 days . . . represents ‘the outer parameters of the timeliness for sanctions claims.’”), *with Hunter v. Earthgrains Co. Bakery*, 281 F.3d 144, 152 (4th Cir. 2003) (“Rule 11 does not establish a deadline for the imposition of sanctions . . .”), *Gen. Motors Accept. Corp. v. Bates*, 954 F.2d 1081, 1086 (5th Cir. 1992) (requiring only “a time frame that has a nexus to the behavior sought to be deterred”), and *Rice v. Danas, Inc.*, 132 N.C. App. 736, 741, 514 S.E.2d 97, 100 (1999).

App. 166, 461 S.E.2d 32 (1995), *petition for discr’y rev. denied mem.*, 342 N.C. 655, 467 S.E.2d 712 (1996)) Despite the defendants’ alleged legal frivolity over the previous two years, the plaintiff did not file its Rule 11 sanctions motion until 27 March 1997—more than a year after that final adjudication. *Id.* In reversing the trial court’s sanction of the defendants, this Court reasoned that “thirteen months after our Supreme Court denied [their] petition” far surpassed any “reasonable time of detecting the alleged impropriety.” *Id.* at 767–68, 525 S.E.2d at 508 (citing *Rice*, 132 N.C. App. 736, 514 S.E.2d 97).

Here, defendant filed an unreasonably delayed motion for sanctions regardless of whether we measure the 2021 Letter to his original or amended motions. He expressly relies on the 2021 Letter in both filings to document his longstanding concern for plaintiff’s allegedly sanctionable conduct. The Letter documents in his own words the precise moment he “discover[ed] an alleged impropriety” by plaintiff’s counsel. *Renner*, 125 N.C. App. at 491, 481 S.E.2d at 374. Eighteen and twenty-four months, respectively, elapsed from the 2021 Letter to defendant’s original and amended motions. Rule 11 may afford our courts and litigants latitude in determining a “reasonable time” to pursue sanctions; however, a year and a half falls far outside that discretion. *Id.* Thus, this Court holds that defendant failed to file either of his motions for sanctions within the Rule 11 timeframe as a question of law.

#### **IV. Conclusion.**

For the reasons discussed above, this Court holds that the trial court did not

STUBBS & PERDUE, P.A. v. MACGREGOR

*Opinion of the Court*

err by denying defendant's motions to sanction plaintiff because defendant failed to file either motion within a reasonable period of time under N.C.R. Civ. P. 11.

AFFIRMED.

Chief Judge DILLON and Judge GORE concur.

Report per Rule 30(e).