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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-181

Filed 3 December 2024

Forsyth County, No. 22 CVS 2853

WARREN D. MITCHELL, Plaintiff,

v.

HORTENCIA D. RICE, MOSÉ DELAINE BELTON, and GLORIA S. LOYD,
Defendants.

Appeal by Plaintiff from order entered 11 July 2023 by Judge Stanley L. Allen
in Forsyth County Superior Court. Heard in the Court of Appeals 25 September 2024.

Herman L. Stephens for plaintiff-appellant.

*Hortencia D. Rice, Mosé Delaine Belton, and Gloria S. Loyd, pro se, as
defendants-appellees.*

MURPHY, Judge.

The trial court failed to make sufficient findings of fact to allow for meaningful appellate review, as required by Rule 52(a)(1) of the North Carolina Rules of Civil Procedure. Remand of the matter for additional factfinding on the record before us is unavailable, as the trial court judge who presided over the case has passed away,

and we vacate the trial court's order awarding judgment in favor of Defendants and remand for a new trial.

BACKGROUND

Plaintiff Warren D. Mitchell initiated this action by complaint filed on 17 June 2022 alleging that Defendant Hortencia D. Rice, Defendant Mosé Delaine Belton, and Defendant Gloria S. Loyd conspired to deprive him of his rights in a parcel of property known as Lot 8 for their own benefit by forging the quitclaim deed that conveyed Plaintiff's interest, along with Defendant Rice's interest, in Lot 8 to Defendant Belton.

Years prior to the filing of the complaint, Plaintiff and Defendant Rice were in the business of buying and selling real estate and building houses together. Through a limited liability company ("LLC"), Plaintiff and Defendant Rice built and owned a residential development known as Desiree Acres which was subdivided into 18 lots. The LLC conveyed the parcels known as Lot 1 and Lot 8 to Plaintiff and Defendant Rice as tenants in common.

On 19 March 2019, Plaintiff and Defendant Rice conveyed Lot 1 to Defendant Belton by quitclaim deed notarized by Defendant Loyd (the "Lot 1 Deed"). Plaintiff alleged in the complaint that, without his knowledge, Defendants Rice and Belton then created a second quitclaim deed on 19 June 2019 which represented by forgery that Plaintiff joined Defendant Rice in conveying Lot 8 to Defendant Belton (the "Lot 8 Deed"). Plaintiff alleged Defendants accomplished the forgery by incorporating the signature page from the Lot 1 Deed as the signature page for the Lot 8 Deed, having

Defendant Loyd notarize the Lot 8 Deed in Plaintiff's absence, and recording the Lot 8 Deed with the Forsyth County Register of Deeds without Plaintiff's knowledge.

On 21 November 2022, Defendants collectively filed a *pro se* response denying Plaintiff's allegations and claims.

The trial court conducted a non-jury trial in the case on 10 and 11 July 2023. By the date of the trial, Lot 8 was owned by Defendant Rice and her husband after it had been conveyed several additional times.

At trial, the parties put forth contradicting evidence regarding the execution of the Lot 8 Deed. Plaintiff testified he did not sign the Lot 8 Deed and did not appear with Defendants Rice and Belton for the notarization of the deed by Defendant Loyd; he was unaware of the transaction until months after it was recorded; and he never intended to convey his interest in Lot 8 to Defendant Belton. Plaintiff also introduced the Lot 1 Deed and the Lot 8 Deed into evidence and testified that when the signature pages of the deeds are compared, "you can lay one on top of the other, and [his] signature was exactly, exactly the same[]"; in fact, all signatures on the deeds "were the same."

By contrast, Defendants denied any forgery related to the Lot 8 Deed. Defendant Loyd testified that Plaintiff was present during her notarization of the Lot 8 Deed on 19 June 2019, and that she witnessed Plaintiff and Defendant Rice sign the Lot 8 Deed. Defendant Rice testified that Plaintiff "walked away" from Lot 8 and refused to put any more money into the property, and that the Lot 8 Deed was

executed because Plaintiff “wanted [Lot 8] out of his name.” Defendant Rice denied completing the paperwork in Defendant Belton’s office alone on 19 June 2019 and denied forging Plaintiff’s signature on the Lot 8 Deed. Defendant Belton testified that she agreed to accept Lot 8 by way of the Lot 8 Deed “to give [Defendant Rice] time to do some refinancing[.]” Defendant Belton testified that, pursuant to the agreement, “[Plaintiff] and [Defendant] Rice came to [her] office and [Defendant] Loyd notarized the paperwork.” Defendant Belton was certain Plaintiff was in her office to do the paperwork on 19 June 2019 because she recalled that he was talking about an upcoming fishing trip and wanted to make sure his insurance policy on his boat was up to date. With respect to the alleged identical signatures, Defendant Belton acknowledged the signatures on the Lot 1 Deed and the Lot 8 Deed “look sort of alike” and “[s]ort of” appear in the same places on both documents; but she explained, “I write the same all the time. My signature is my signature[.]”

Upon conclusion of the parties’ evidence and arguments, the trial court announced its ruling in favor of Defendants in open court. On 11 July 2023, the trial court entered an order with its judgment that “Plaintiff have and recover nothing from [D]efendants” and “[e]ach party should bear his or her own costs.” Plaintiff appealed.

ANALYSIS

Plaintiff’s sole contention on appeal is that “[t]he trial court erred as a matter of law by failing to make findings of fact necessary to resolve the issues raised by the

pleadings, presented in the Final Pretrial Order[,] and arising from the evidence.”
We agree.

Rule 52 of the North Carolina Rules of Civil Procedure mandates that, “[i]n all actions tried upon the facts without a jury[,] . . . the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment.” N.C.G.S. § 1A-1, Rule 52(a)(1) (2023). As we have recognized,

[t]he purpose of the requirement that the trial court make findings of those specific facts which support its ultimate disposition of the case is to allow a reviewing court to determine from the record whether the judgment—and the legal conclusions which underlie it—represent a correct application of the law. The requirement for appropriately detailed findings is thus not a mere formality or a rule of empty ritual; it is designed instead to dispose of the issues raised by the pleadings and to allow the appellate courts to perform their proper function in the judicial system.

. . . .

In the absence of such findings, this Court has no means of determining whether the order is adequately supported by competent evidence. It is not enough that there may be evidence in the record sufficient to support findings which could have been made. The trial court must itself determine what pertinent facts are actually established by the evidence before it, and it is not for an appellate court to determine de novo the weight and credibility to be given to evidence disclosed by the record on appeal.

D.C. v. D.C., 279 N.C. App. 371, 375 (2021) (quoting *Coble v. Coble*, 300 N.C. 708, 712-14 (1980)) (brackets and emphasis omitted).

The primary factual issue raised by the pleadings and the evidence in this case was whether Plaintiff signed the Lot 8 Deed conveying his interest in Lot 8 to Defendant Belton, or whether his signature was a forgery perpetrated by Defendants.

Based upon the opposing evidence put on by Plaintiff and Defendants at trial, the trial court found, in pertinent part:

5. Plaintiff alleges, and [D]efendants deny, that he did not appear before [Defendant] Loyd on 19 June 2019 and sign [the Lot 8 Deed], and that the signature page from a previous transaction on 19 March 2019 . . . , which [P]laintiff did sign, was attached instead. Plaintiff presented no other evidence that his signature was forged.

6. Defendant Belton clearly remembered [P]laintiff coming into her office on 19 June 2019, because, in addition to signing [Lot 8 Deed], he also wanted to discuss his boat insurance.

7. Defendant Loyd clearly remembered that [P]laintiff and Defendant Rice both appeared before her and signed [the Lot 8 Deed], which she would not have notarized otherwise. She has also quit practicing as a Notary because of this controversy.

8. All parties had a full and fair opportunity to present evidence and to make opening and closing statements.

9. The [c]ourt has had full opportunity to view each witness and to judge his or her credibility[.]

10. [Plaintiff] has failed to meet his burden of proof in regard to each claim.

The trial court then issued separate conclusions of law that Plaintiff had not met his burden of proof for civil conspiracy, unfair and deceptive trade practices, damages, and attorney's fees. Accordingly, the trial court ordered that "Plaintiff have and

recover nothing of [D]efendants[]” and that “[e]ach party should bear his or her own costs.”

Though the trial court’s findings recount the parties’ arguments and evidence at trial, the court’s findings do not resolve the factual issues raised by the evidence. The trial court made no factual findings that answered whether Plaintiff’s signature was forged on the Lot 8 Deed, whether the signature pages attached to the Lot 1 Deed and the Lot 8 Deed were identical, or whether Plaintiff executed the Lot 8 Deed on 19 June 2019. In fact, the trial court failed to make any findings of fact to support its conclusions of law that Plaintiff failed to meet his burden of proof for his claims. The only explanation for the trial court’s ruling was provided in open court when the trial court stated:

[I]t’s just come down to that I believe both sides equally. And when that occurs, that means the party with the burden of proof has not met his or her burden of proof, so I found in favor of the defendants.

“Because the trial judge failed to make findings of fact determinative of the issues raised at trial, we cannot ascertain whether he applied appropriate principles of law in entering the order appealed from.” *Lowe’s of Winston-Salem, Inc. v. Thompson*, 26 N.C. App. 198, 199 (1975). Under normal circumstances, a case could be remanded to the trial court for additional factfinding that complies with the requirements of Rule 52(a)(1). *See D.C.*, 279 N.C. App. at 376. However, remand for further factfinding on the record before us is unavailable in this case as the trial judge

presiding over this matter has since passed. Accordingly, remand for a new trial on the issues raised by the pleadings is appropriate. *See Traber v. Crawford*, 28 N.C. App. 694, 698–99 (1976).

CONCLUSION

The trial court failed to make any findings of fact sufficient to allow for meaningful appellate review of its conclusions of law. Due to the intervening death of the trial court judge who presided over the non-jury trial, we must vacate the judgment and remand for a new trial.

VACATED AND REMANDED.

Chief Judge DILLON and Judge THOMPSON concur.

Report per Rule 30(e).