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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-365

Filed 17 December 2024

Craven County, No. 20 CVD 961

COREY ALEXANDER THOMAS, Plaintiff,

v.

E&J AUTOMOTIVE, INC. AND MARTIN EDWARDS AND ASSOCIATES, INC.,  
Defendants.

Appeal by Corey A. Thomas from orders entered 7 March 2024 by Judge J.  
Alexander Pully in Craven County District Court. Heard in the Court of Appeals 25  
September 2024.

*Corey A. Thomas, plaintiff-appellant, pro se.*

*Chestnutt & Clemmons, P.A., by Parker Chesnutt Honeycutt, for defendant-  
appellee, no brief filed.*

THOMPSON, Judge.

Corey A. Thomas (plaintiff) appeals the Craven County District Court's (trial  
court) orders granting E&J Automotive, Inc.'s (defendant) motions for summary  
judgment and attorney's fees against him. After careful review of the record and

briefs, we affirm the trial court's rulings but remand the summary judgment order with instructions to the trial court to remove the extraneous findings of fact.

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

On 19 April 2023, Sheriff's Deputy Matthew D. Hepburn (Deputy Hepburn) of the Craven County Sheriff's Office (CCSO) responded to a report of a domestic disturbance where plaintiff's son and his mother lived. Plaintiff allegedly came to their house drunk to see his son in a "belligerent and aggressive" mood. Both the mother and a friend of Ms. Fisher's informed Deputy Hepburn on his arrival that plaintiff "forced his way into the house, left with his son, and was still drunk" as he got into his 1998 Dodge Ram truck to drive off. Both witnesses then pointed the Deputy in the direction the plaintiff drove. Deputy Hepburn caught up to plaintiff and "initiated a traffic stop," but plaintiff did not stop for another mile until he reached his cousin's property.

Upon arrival, Deputy Hepburn saw plaintiff's son on his lap in the driver's seat and smelled "a strong odor of alcohol" on plaintiff's breath. He then detained plaintiff in the back of a police car. Other Deputies who later arrived on scene advised Deputy Hepburn to contact defendant, a local commercial towing company, "to have [plaintiff's] vehicle seized" on suspicion of felony speeding to elude arrest. Defendant promptly towed the vehicle to a designated location nearby around 2:00 AM that same night.

On 22 June 2023, plaintiff filed an action for conversion damages against

defendant with the trial court, which the court summarily denied in a 20 July 2023 order for defendant. Plaintiff's subsequent appeals eventually brought the case before the trial court again for a 13 February 2024 trial *de novo*. After its conclusion, the trial court granted defendant's motions for summary judgment and attorney's fees in two separate 8 March 2024 rulings. The order for summary judgment documented in relevant part:

**FINDINGS OF FACT**

1. Plaintiff filed a Small Claims action on 22 June 2023 against defendant alleging conversion of [his] property.

....

12. Defendants' Motion for Award of Attorney's Fees and Motion for Sanctions are addressed in a separate order.

**CONCLUSIONS OF LAW**

21. As the result of plaintiff being charged with Felony Flee/Elude Arrest W/Motor Vehicle pursuant to N.C. Gen. Stat. § 20-141.5(b), his vehicle was towed by defendant on 19 April 2023 pursuant to N.C. Gen. Stat. § 20-28.3, and ultimately was possessed by unrelated third party in accordance with the laws of North Carolina.

22. Plaintiff's alleged claim of conversion against defendant is not appropriate where plaintiff has failed to allege any facts or provide any evidence of his ownership of the property in question.

23. Nor is plaintiff's alleged claim of conversion against defendant appropriate where the possession of the vehicle in question by defendant is not only not wrongful, but is and was in fact justified by and in furtherance of the laws of North Carolina.

(Brackets and ellipses omitted.)

The concurrent order for attorney's fees also documented in relevant part:

**FINDINGS OF FACT**

1. Plaintiff operated a motor vehicle on the streets and/or highways of North Carolina on 18–19 April 2023. After an altercation with the mother of his child, during which he was alleged to be drunk and threatening, plaintiff left the scene of the incident in a motor vehicle and the victim contacted local law enforcement. Law enforcement responded to the scene. Plaintiff left, this time taking with him in the vehicle his son. Law enforcement began efforts to locate plaintiff and his son.

....

3. Deputy Hepburn activated his blue lights and siren, but the suspect vehicle did not stop. Once the suspect vehicle eventually stopped, plaintiff was identified as the driver of the vehicle in question, and was found by Deputy Hepburn to be clutching the minor child in his arms.

4. Plaintiff failed to follow commands from law enforcement to release the minor child, and ultimately, law enforcement detected a strong odor of alcohol on his breath.

....

18. At the hearing of this matter, [plaintiff] was pro se and represented himself.

### **CONCLUSIONS OF LAW**

4. The trial court’s review is to determine if either: (1) the pleadings contain a complete absence of a justiciable issue of either law or fact; or (2) the losing party “persisted in litigating the case after a point where he should reasonably have become aware that the pleading he filed no longer contained a justiciable issue.” *Sunamerica Fin. Corp. v. Bonham*, 328 N.C. 254, 258, 400 S.E.2d 435, 437 (1991).

5. An award of counsel fees pursuant to N.C. Gen. Stat. § 6-21.5 for defendant and reimbursement of out-of-pocket expenses incurred by its counsel in this matter is both reasonable and justified.

(Brackets and ellipses omitted.)

Plaintiff timely appealed both orders to this Court.

### **II. Jurisdiction**

Under N.C. Gen. Stat. § 7A-27, this Court has jurisdiction to hear plaintiff’s

appeal of its two orders because they are both “final judgment[s] of a district court in a civil action.” N.C. Gen. Stat. § 7A-27(b)(2) (2023).

### **III. Analysis**

On appeal, plaintiff asks this Court to consider whether the trial court erred by granting both of defendant’s motions for summary judgment and attorney’s fees against him. We review *de novo* the conclusions of law in a summary judgment ruling but review an award of attorney’s fees only for an abuse of discretion. *See Reynolds-Douglass v. Terhark*, 381 N.C. 477, 487, 873 S.E.2d 552, 562 (2022). For the reasons discussed below, this Court holds that the trial court erroneously documented irrelevant findings of fact but properly reached sound conclusions of law in granting defendant’s motion for summary judgment. Similarly, this Court also holds that the trial court did not err in granting defendant’s motion for attorney’s fees.

#### **A. Summary Judgment**

First, plaintiff argues that defendant lacked the authority to take custody of his car by towing it away from private property after his arrest. Because we can affirm the trial court’s summary judgment on these grounds alone, we need not address defendant’s secondary argument over the proper interpretation of N.C. Gen. Stat. § 141.5. Defendant challenges this order on both procedural and substantive grounds, respectively, by asserting that the trial court made extraneous factual findings and erroneous legal conclusions.

Generally, summary judgment is appropriate if the record *sub judice* shows “no

genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.” N.C.R. Civ. P. 52(c). More specifically, a defendant deserves summary judgment if either the plaintiff’s claim is “utterly baseless in fact” or the “undisputed facts” imply “only a question of law.” *Kessing v. Nat’l Mortg. Corp.*, 278 N.C. 523, 533, 180 S.E.2d 823, 820 (1971) (brackets omitted). When reviewing a summary judgment ruling, we “take as true” “all facts asserted by the adverse party” and reach all resulting inferences “in the light most favorable to that party”—here, plaintiff. *Dobson v. Harris*, 352 N.C. 77, 83, 530 S.E.2d 829, 835 (2000) (brackets omitted). With those principles in mind, we disagree with plaintiff to the extent that the trial court’s errors would merit reversal of the final ruling; however, we do pause to admonish the “entry of an order containing detailed findings of fact” in response to *only* a summary judgment motion. *War Eagle, Inc. v. Belair*, 204 N.C. App. 548, 551, 694 S.E.2d 497, 400 (2010) (discussing N.C.R. Civ. P. 56).

### ***1. Findings of Fact***

Despite the legal harmlessness, the trial court erred in documenting any findings not expressly “denominated as ‘*uncontested* facts,’” *War Eagle*, 204 N.C. App. at 552, 694 S.E.2d at 400 (emphasis added), because summary judgment logically entails no “triable issues of material fact.” *Hyde Ins. Agency v. Dixie Leasing Corp.*, 26 N.C. App. 138, 142, 215 S.E.2d 162, 165 (1975). As this Court has repeatedly stressed, findings of fact are “not appropriate when granting a motion for summary judgment” under North Carolina’s Civil Procedure Rule 56, *id.* at 551, even where a

party requests them in accordance with Rule 52. *See Hodges v. Moore*, 205 N.C. App. 722, 723, 697 S.E.2d 406, 407 (2010) (distinguishing conclusory logic of summary judgment rulings from the fact-finding requirement of N.C.R. Civ. P. 52(a)). Here, the trial court’s summary judgment order purports to document twelve findings of fact en route to twenty-three conclusions of law. It needed only the latter. The trial court erred by compiling findings of fact not clearly labeled as “uncontested” or the like. Because those findings are “immaterial to its decision,” however, this Court holds the error ultimately harmless and remands the order to the trial court for clerical correction of the findings’ documentation. *Harden v. First Union Nat. Bank of N.C.*, 28 N.C. App. 75, 79, 220 S.E.2d 136, 138 (1975) (brackets omitted).

## **2. Conclusions of Law**

The trial court’s legal conclusions withstand our review because the CCSD had the authority to “assume and exercise the right of ownership over” plaintiff’s vehicle by requesting that defendant tow it. *Gadson v. Toney*, 69 N.C. App. 244, 246, 316 S.E.2d 320, 322 (1984) (brackets omitted). North Carolina common law conversion is “(1) the *unauthorized* assumption and exercise of the right of ownership; (2) over the goods or personal property; (3) of another; (4) to the exclusion of the rights of the true owner.”<sup>1</sup> *Di Frega v. Pugliese*, 164 N.C. App. 499, 509, 596 S.E.2d 456, 463 (2004) (emphasis added). Law enforcement officials have black-letter legal authority to take

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<sup>1</sup> Neither plaintiff, defendant, nor the State contest that plaintiff legally owned the vehicle as his personal property; thus, we address here only the first element of this tort.

possession of a private citizen's personal property according to circumstantial due process—here, probable cause to suspect felony speeding to avoid arrest. *See* N.C. Gen. Stat. § 20-28.3(a1) (2023); *State v. Richardson*, 23 N.C. App. 33, 37, 208 S.E.2d 274, 276 (1974) (“Courts have consistently upheld as constitutional statutes that provide for the immediate seizure or forfeiture of vehicles that have been used in violation of the law.” (brackets omitted)); *accord Florida v. White*, 526 U.S. 559, 119 S. Ct. 1555 (1999) (holding that probable cause allows for similarly lawful vehicle seizure under federal Search and Seizure Clause).

Legal seizure of a criminalized vehicle in this context requires only “a reasonable ground to believe” that its owner committed a crime, not that he “actually” did so. *State v. Thomas*, 127 N.C. App. 431, 492 S.E.2d 41 (1997). North Carolina law further requires its sheriffs to effect lawful vehicle seizures with third-party help. *See* N.C. Gen. Stat. § 20-28.3(d) (“The seized motor vehicle *shall* be towed by a commercial towing company designated by the law enforcement agency that seized it.” (emphasis added) (brackets omitted)); *id.* § 162-24 (“The sheriff may employ others to assist him in performing his official duties.” (ellipsis omitted)).

Here, defendant did not tortiously convert plaintiff's vehicle because it operated under the cloak of the CCSO's seizure authority. This authorization stems from Deputy Hepburn's probable cause to suspect plaintiff's felony-fleeing offense. Plaintiff acknowledges that Deputy Hepburn pursued him that night “in relation to an alleged domestic violence” incident reported by his son's mother. This report and



her subsequent direction toward plaintiff and their son gave Deputy Hepburn “reasonable ground to believe” that plaintiff committed a domestic violence crime at that point in his pursuit. *State v. Clapp*, 259 N.C. App. 839, 846, 817 S.E.2d 222, 227 (2018). Plaintiff does not dispute either his inebriation or the presence of his young son within the vehicle as of the actual arrest—two of the “aggravating factors” necessary for a felony speeding charge. N.C. Gen. Stat. § 20-141.5(b).

This cumulative probable cause vested Deputy Hepburn with the duty, not the discretion, to “seize the motor vehicle and have it impounded” after arresting plaintiff for “the offense of felony speeding to elude arrest.” *Id.* § 20-28.3(a1)–(b) (ellipsis omitted). Contrary to defendant’s assertions, Deputy Hepburn “had probable cause to believe both that the vehicle was subject to forfeiture and that it was the instrument of a crime.” *State v. Chisholm*, 135 N.C. App. 578, 582, 521 S.E.2d 487, 490 (1999) (brackets omitted) (citing *White*, 526 U.S. 559, 119 S. Ct. 1555). This probable cause alone mitigated any need for a seizure warrant. The Deputy could not seize the vehicle himself; instead, he designated defendant as the statutorily mandated “commercial towing company” responsible for actual transportation. N.C. Gen. Stat. § 20-28.3(d). Although defendant “assumed and exercised the right of ownership” in a vehicle that “belonged to” plaintiff, it did so fully “authorized” by both the charging officer and state law. *Gadson*, 69 N.C. App. at 246, 316 S.E.2d at 321 (brackets and ellipsis omitted). Even with “careful scrutiny” of defendant’s asserted facts in “the light most favorable to” plaintiff, we cannot discern a “genuine issue as

to any material” or undisputed fact shown in the record here. *Dobson*, 352 N.C. at 83, 530 S.E.2d at 835 (brackets omitted). Thus, this Court holds that the trial court did not err in reaching its ultimate conclusions of law in favor of defendant’s summary judgment motion.

## **B. Attorney’s Fees**

Second, plaintiff argues that he alleges a sufficiently justiciable issue that vitiates the payment of attorney’s fees. We disagree because both his pleadings and the trial court’s findings of fact run contrary to the express letter of his arresting statutes. Under N.C. Gen. Stat. § 6-21.5, an aggrieved defendant may move for an “award of reasonable attorney’s fees if the court finds a complete absence of any justiciable issue raised by” a plaintiff in the course of litigation. N.C. Gen. Stat. § 6-21.5 (2023) (brackets and ellipses omitted). Justiciable issues “must conclusively disappear” from the record *sub judice* “even after giving the pleadings the indulgent treatment they receive on motions for summary judgment or to dismiss.” *Sunamerica Fin. Corp. v. Bonham*, 328 N.C. 254, 258, 400 S.E.2d 435, 437 (1991) (brackets omitted). A trial court may also award § 6-21.5 attorney’s fees if it determines that “the losing party persisted in litigating the case after a point where he should reasonably have become aware that his pleading” did not assert a justiciable issue. *Credigy Receivables, Inc. v. Whittington*, 202 N.C. App. 646, 652, 689 S.E.2d 889, 893 (2010) (brackets omitted) (quoting *Sunamerica*, 328 N.C. at 258, 400 S.E.2d at 438).

Within the bounds of its sound discretion, a trial court must expressly

document both its “findings of fact and conclusions of law to support its award of attorney’s fees” in light of this non-justiciability. *Id.* at 260, 400 S.E.2d at 439 (quoting N.C. Gen. Stat. § 6-21.5). Furthermore, our courts impute reasonable awareness of both statutory law and our civil procedure rules to all parties practicing before them—including *pro se* litigants. See *State v. Vestal*, 34 N.C. App. 610, 611, 239 S.E.2d 275, 276 (1977) (“A defendant who makes a voluntary and knowledgeable decision to represent himself is deemed to know the law that governs the trial of his case.” (brackets and ellipses omitted)); *Goins v. Puleo*, 350 N.C. 277, 281, 512 S.E.2d 748, 751 (1999) (“The Rules of Civil Procedure apply equally to all parties to a lawsuit without regard to their representation by counsel.” (Brackets and ellipses omitted)).

Here, defendant fundamentally mistakes a criminal conviction needed for a permanent *forfeiture* of personal property with mere probable cause needed for a temporary *seizure*. Compare N.C. Gen. Stat. § 20-141.5(k) (“Upon conviction, the motor vehicle driven by the defendant as of the offense of felony speeding to elude arrest becomes property subject to forfeiture.” (brackets and ellipses omitted)), with *id.* § 20-28.3(b) (“If the charging officer has probable cause to believe that a motor vehicle driven by the defendant may be subject to forfeiture, the officer shall seize the motor vehicle and have it impounded.” (Ellipsis omitted)). Prior to plaintiff’s eventual conviction, Deputy Hepburn merely effected “a necessary step in arrest procedure” by “impounding the automobile subsequent to the arrest of” plaintiff. *State v. Carr*, 20 N.C. App. 619, 291, 202 S.E.2d 289, 622 (1974) (brackets omitted).

In its order for attorney’s fees, the trial court found that plaintiff “operated a motor vehicle” with his son in the backseat after “an altercation with his [son’s] mother” in which she “alleged his drunkenness.” (Brackets and ellipsis omitted). The order also documents that Deputy Hepburn confirmed his reasonable suspicions of these two aggravating factors for a felony arrest when he saw plaintiff “clutching the minor child in his arms” with a “strong odor of alcohol on his breath.” (Brackets omitted). As noted above, plaintiff conceded in his *pro se* pleadings that defendant “secured and towed [his] 1998 Dodge Ram on *request* of” Deputy Hepburn—acts statutorily required of both defendant and the Deputy. (Capitalization, boldface and underline omitted.) Both the uncontested facts in the record and plaintiff’s own filings support the trial court’s findings of fact, which in turn demonstrate a lack of defendant’s threshold liability for conversion as a matter of law. Thus, this Court holds that the trial court did not err by awarding defendant attorney’s fees under N.C. Gen. Stat. § 6-21.5 because plaintiff raises no justiciable issue of law or fact in his pleadings.

#### **IV. Conclusion**

For the above reasons, this Court holds that the trial court harmlessly erred by documenting extraneous findings of fact in its order for summary judgment but did not err in reaching its order for attorney’s fees. This Court remands the order for summary judgment back to the trial court so it may redocument its findings of fact and conclusions of law in a manner not inconsistent with this opinion.

THOMAS V. E&J AUTOMATIVE, INC.

*Opinion of the Court*

AFFIRMED AS MODIFIED AND REMANDED.

Chief Judge DILLON and Judge MURPHY concur.

Report per Rule 30(e).