

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-928

Filed 7 October 2026

Brunswick County, No. 21CVS002373-090

DANIEL PALLAN & JANET A. PALLAN, Plaintiffs,

v.

STEVEN A. WINGFIELD & DEBORAH J. WINGFIELD, Defendants.

Appeal by plaintiffs from order entered 21 March 2025 by Judge Jason C. Disbrow in Brunswick County Superior Court. Heard in the Court of Appeals 12 August 2026.

Watts Phanco Law Group PLLC, by Joshua Phanco and S. Denise Watts, for plaintiffs-appellants.

The DiGuiseppe Law Firm, P.C., by Raymond M. DiGuiseppe, for defendants-appellees.

FLOOD, Judge.

Plaintiffs Daniel and Janet Pallen appeal from the trial court's order awarding Defendants Steven and Deborah Wingfield attorney's fees. On appeal, Plaintiffs argue that the trial court erred in awarding attorney's fees pursuant to Rule 68 of the North Carolina Rules of Civil Procedure, which does not authorize attorney's fees, or pursuant to N.C.G.S. § 6-21.5, because the claims were factually and legally justiciable. Upon review, we conclude that the trial court was without authority to award attorney's fees in a private nuisance case pursuant to Rule 68; however, we

affirm the trial court's award of attorney's fees pursuant to N.C.G.S. § 6-21.5 where Plaintiffs persisted in litigating a nonjusticiable issue.

I. Factual and Procedural Background

In 2009, Plaintiffs purchased real property located at 6242 Castlebrook Way SW, Ocean Isle Beach, North Carolina. Three years later, Defendants purchased one of the undeveloped lots next to Plaintiffs. Defendants then had a property and landscaping plan approved by the Ocean Ridge Plantation Architectural Review Board, built their house, and moved in around the summer of 2015. Both parties' lots were subject to the Master Declaration of Protective Covenants and Easements for Ocean Ridge Plantation.

Two months after moving in, Defendants requested an in-person meeting with the administrator of Ocean Ridge Plantation after noticing water running off from Plaintiffs' lot into their lot. The administrator informed Defendants that their lot was properly graded while Plaintiffs' lot was not. The administrator explained that "[t]he current problem was that [Plaintiffs'] front yard was graded so as to slope towards [Defendants'] property which created ponding in a low area of [Plaintiffs'] yard and also was overflowing onto [Defendants'] property." Defendants were permitted to install a berm to prevent water from running off from Plaintiffs' lot into their own.

Later, in 2019, Plaintiffs sued Defendants, complaining that Defendants' property was causing water to run off into Plaintiffs' lot, but they voluntarily dismissed their suit in March 2021 without prejudice. Plaintiffs filed another suit in

December 2021, alleging claims of breach of contract, trespass, and nuisance, and requesting declaratory judgment and punitive damages. In their Complaint, Plaintiffs alleged that their lot was “graded in accordance with water drainage routes[,]” and they had “beg[u]n noticing an increased amount of water running off [Defendants’] lot and onto [] Plaintiffs’ lot in the Summer of 2015. The water run off increased exponentially in the Summer of 2017, eventually producing large amounts of standing water on [Plaintiffs’] lot.” They further alleged that “Defendants altered [Defendants’] lot continuously from Summer 2015 through Spring/Summer of 2017 and the present[,]” and in 2017, Defendants altered their lot by “adding dirt and fill to the property and constructing a berm[,]” which thus caused the water to run off into Plaintiffs’ lot.

Defendants filed an answer, which included a motion to dismiss and counterclaims for trespass and nuisance. Plaintiffs then filed a motion for sanctions, alleging that Defendants’ motion “is not made in good faith, in so far as the facts of the matter of this case have always been in dispute and a question of law is not at issue” and that motion “is made for the purpose of harassment and/or to increase the attorney fees of [] Plaintiff[s].” The trial court granted Defendants’ motion to dismiss as to Plaintiffs’ claims of trespass and breach of contract, and the remaining issue of nuisance proceeded to trial. At trial, Defendants introduced Plaintiffs’ landscaping plan, which showed that Plaintiffs were “not in compliance with the landscaping plan on file pertaining to their property.” This trial, however, resulted in a mistrial on the

third day of trial.

After the mistrial, Defendants made an offer of judgment to Plaintiffs pursuant to Rule 68 of the Rules of Civil Procedure, offering to settle Plaintiffs' claim for "\$15,000.00, which said amount is an all[-]inclusive amount including, but not limited to, damages, attorney's fees taxable as costs, interest and all costs presently accrued." Plaintiffs did not accept this offer, and the matter proceeded to a second trial. The jury subsequently returned verdicts that neither party was liable to the other for private nuisance.

After the jury was released, Defendants' counsel moved for costs pursuant to the previous Rule 68 offer of judgment. After some debate between Plaintiffs' counsel and Defendants' counsel as to whether Rule 68 included attorney's fees, the court stated it was going to hold its "order in abeyance" and requested the parties submit briefs. Defendants additionally argued that Plaintiffs' punitive damages claim was nonjusticiable. After hearing from both parties on the issue of attorney's fees pursuant to Rule 68 and non-justiciability, the following conversation took place after the trial judge requested further briefing:

[PLAINTIFFS' COUNSEL:] . . . Also, Your Honor, just for clarification, would you like us to brief the issue on Rule 68, just the order of judgment and the nonjusticiable issue, or would you just like it on Rule 68?

THE COURT: Just on Rule 68. I'm going to deny any claim as far as the nonjusticiable issue.

[DEFENDANTS' COUNSEL]: Yes, sir.

THE COURT: Obviously, it's moot now. And I would simply ask that you file – well, the Court is going to enter an order dismissing the claim for punitive damages as being moot.

[DEFENDANTS' COUNSEL]: Yes, sir.

THE COURT: Given the jury's verdict. So if someone will prepare an order and e-mail that to Ms. Hauser, please so I can get that filed.

Subsequently, the trial court entered an order on 18 February 2025, dismissing Plaintiffs' punitive damages claim as moot. The trial court then entered a written order awarding Defendants' attorney's fees pursuant to Defendants' Rule 68 offer of judgment. It found that, "excluding representation in the 2019 District Court lawsuit and including only fees and expenses paid to counsel subsequent to the filing of the present lawsuit, [] Defendants spent \$27,443.00 in reasonable attorney's fees and expenses" The trial court concluded as a matter of law that "there was a complete absence of a justiciable issue of either law or fact raised by [] Plaintiffs supporting a claim for punitive damages[.]" "Defendants are entitled to costs incurred subsequent to the extended and rejected Offer of Judgment as permitted by the Rules of Civil Procedure[.]" and the "attorney's fees and costs are reasonable[.]" Plaintiffs timely appealed.

II. Jurisdiction

This Court has jurisdiction to hear an appeal from a final judgment from a superior court pursuant to N.C.G.S. § 7A-27(b) (2025).

III. Analysis

On appeal, Plaintiffs argue the trial court erred in awarding attorney’s fees (A) pursuant to Rule 68, or in the alternative, (B) pursuant to N.C.G.S. § 6-21.5. We address each argument in turn.

A. Rule 68

Plaintiffs first argue that the trial court erred in awarding attorney’s fees pursuant to Rule 68, contending that Rule 68 does not authorize an award of attorney’s fees, and there are no other statutes providing an award of attorney’s fees in private nuisance claims. We agree.

“In North Carolina, parties to litigation are generally responsible for their own attorney[']s fees unless a statute provides otherwise.” *McLennan v. C.K. Josey, Jr.*, 247 N.C. App. 95, 98 (2016). “Whether a trial court has properly interpreted the statutory framework applicable to costs is a question of law reviewed *de novo* on appeal.” *Peters v. Pennington*, 210 N.C. App. 1, 25 (2011). “Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *In re S.W.*, 298 N.C. App. 39, 44 (2025) (citation omitted).

Rule 68(a) provides:

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may

then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment. An offer not accepted within 10 days after its service shall be deemed withdrawn and evidence of the offer is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer.

N.C.G.S. § 1A-1, Rule 68(a) (2025). Our courts have held that “[a]ttorney[']s fees may be awarded under Rule 68 if they are ‘part of the “costs then accrued” when defendant made his offer to plaintiff[.]’” *Lincoln v. Bueche*, 166 N.C. App. 150, 157 (2004) (quoting *Purdy v. Brown*, 307 N.C. 93, 96 (1982)). Although “[t]here is no provision in Rule 68 authorizing the trial courts to award attorney[']s fees[.]” the trial court can award attorney’s fees “in the context of Rule 68 where there exists authorization to tax them as costs under some other Rule or statute.” *Id.* “In determining the ‘costs then accrued,’ we must consider the relative positions of the parties as they existed at the time the offer was made[.]” such that the authorizing Rule or statute must come from the “substantive law involved[.]” *Purdy*, 307 N.C. at 96–98 (holding there were no attorney’s fees to be awarded under Rule 68 where, “[a]t the time [the] defendant tendered his offer to [the] plaintiff, [N.C.]G.S. [§] 6-21.1 was not applicable because the situation did not *then* involve a judgment for \$5,000 or less[.]” and “we f[ound] no other statute permitting the trial judge to award attorney’s fees to the prevailing party in a personal injury action”).

Here, at the time Defendants made the offer of judgment to Plaintiffs pursuant to Rule 68, the sole underlying claim left was private nuisance. Private nuisance claims do not have a special costs statute. *See Lincoln*, 166 N.C. App. at 157. Instead, under our civil liability statute, our legislature has provided that, “[i]n actions where allowance of costs is not otherwise provided by the General Statutes, costs may be allowed in the discretion of the court. Costs awarded by the court are subject to the limitations on assessable or recoverable costs set forth in [N.C.]G.S. [§] 7A-305(d), unless specifically provided for otherwise in the General Statutes.” N.C.G.S. § 6-20 (2025). Section 7A-305(d) provides a “complete and exclusive” list of expenses a party may include as part of the costs, which does *not* include attorney’s fees. *See* N.C.G.S. § 7A-305(d) (2025) (“The expenses set forth in this subsection are complete and exclusive and constitute a limit on the trial court’s discretion to tax costs pursuant to [N.C.]G.S. [§] 6-20[.]”). Thus, at the time Defendants made the offer of judgment to Plaintiffs, there was no rule or statute related to the substantive law of private nuisance that could have provided attorney’s fees pursuant to Rule 68 as part of the “costs then accrued.” *Lincoln*, 166 N.C. App. at 157. Accordingly, it was error for the trial court to award attorney’s fees pursuant to Rule 68.

B. N.C.G.S. § 6-21.5

Plaintiffs next argue that attorney’s fees could not have been granted pursuant to N.C.G.S. § 6-21.5. Although the trial court referenced only Rule 68 in its order, it used language from N.C.G.S. § 6-21.5, which provides for attorney’s fees when there

are nonjusticiable issues. Plaintiffs contend that, even if this Court were to conclude the trial court based its award of attorney’s fees pursuant to N.C.G.S. § 6-21.5, rather than Rule 68, this was error because their punitive damages claim was justiciable.

1. Oral Ruling

We first address whether the trial court could enter a written ruling contradicting its previous oral ruling where it provided it would deny any nonjusticiable claims.

“[T]his Court has not generally required written entered judgments to adhere to the prior non-entered, orally rendered judgments upon which they were based.” *In re O.D.S.*, 247 N.C. App. 711, 718 (2016) (citation omitted). “The announcement of judgment in open court is the mere rendering of judgment, and is *subject to change* before entry of judgment.” *Id.* (citation and internal quotation marks omitted). “A judgment is entered when it is reduced to writing, signed by the judge, and filed with the clerk of court.” *Id.* (citation and internal quotations omitted).

“What this Court has continually held[] . . . is that a notice of appeal from a judgment rendered in open court will not vest jurisdiction in this Court until that judgment is entered—meaning until a written judgment, generally conforming with the judgment rendered, is filed with the appropriate clerk.” *Id.*

The logical continuation of the reasoning of this holding is that jurisdiction will not vest in this Court if notice of appeal is given after oral rendering of the judgment but before entry of the judgment *if* the written judgment entered does not generally comply with the judgment

rendered in open court. This is an issue of appellate jurisdiction, *not a limitation* on what the trial court may include in its written order.

Id. at 719 (second emphasis added). As this Court has previously explained in *In re O.D.S.*,

the holding in *Edwards* that “[i]f the written judgment conforms generally with the oral judgment, the judgment is valid [.]” . . . does not command the converse, i.e. that any written judgment that does not generally conform with the oral judgment is necessarily *invalid*. Though there may be situations when this is true, we can find no opinion in which it has been held that the written and entered judgment must always generally conform with a prior oral rendition of that judgment in order to be valid. However, . . . there are plenary opinions in which our appellate courts have affirmed entered judgments and orders that do not conform to the associated orally rendered judgments and orders.

Id. at 720–21. This Court, however, did so hold a written order was invalid because it did not conform to the prior oral ruling in *In re J.C.*, 236 N.C. App. 558, 562–63 (2014). In *In re J.C.*,

the trial court heard arguments regarding [the] respondent’s ability to pay for supervised visitation and her objections to the imposition of those costs. DSS specifically recommended that [the] respondent continue her visits with the juveniles at a visitation center at respondent’s expense. At the conclusion of the hearing, the trial court made two statements which constituted its order regarding visitation: “I’m going to adopt the recommendations put for[th] by the Department with the exception that DSS will supervise until they can find a replacement[.]” and “I’m adopting every recommendation [by DSS] with the exception of the visitation will be at Social Services every other week.” Nonetheless, in its written order, the trial

court directly contradicted the order it rendered from the bench, instead adopting DSS's recommendation by ordering that respondent's visitation would continue to be at a visitation center at respondent's expense.

Id. In holding that the written order was invalid because it did not conform to the oral ruling, the Court reasoned "[t]he difference between the trial court's pronouncement in open court and its written order is substantive and the change in the written order cannot be said to generally conform to the court's oral statement[.]" and cited to *State v. Sellers*, 155 N.C. App. 51, 59 (2002). *In re J.C.*, 236 N.C. App. at 563. In *In re O.D.S.*, however, we explained that, the

holding in *Sellers* stands for the proposition that, when it is apparent from the transcript that a clerical error has been committed on the written order, remand is appropriate so that the trial court can correct the clerical error. *Sellers* does not stand for the proposition that the trial court is always bound by its pronouncements in open court.

247 N.C. App. at 721. Thus, we held that "[t]o the extent that *J.C.* is in conflict with prior holdings of this Court, or our Supreme Court, we are bound by the prior holdings[.]" and "[a]ssuming *arguendo J.C.* is not in conflict with prior opinions, we believe it is limited to the facts in that case." *Id.* at 722.

Our prior holdings regarding affirming a written order that differs from a prior oral order, however, do not involve *direct* contradictions between oral and written rulings. *See id.* at 722 (holding that where "the trial court did not directly contradict itself[.]" and was instead "silent on the ground of dependency at the end of the trial,

apparently unaware of its omission[]” but “included both grounds for termination argued at trial, neglect and dependency[,]” the trial court “was not bound by its oversight in rendering judgment, and that the written order, subsequently entered, controls”); *Fayetteville Publ’g Co. v. Advanced Internet Techs., Inc.*, 192 N.C. App. 419, 425 (2008) (holding the written order by a trial court controlled where, although the trial judge at trial “admitted that it did not read the entire case file, that it did not read all the law that was handed up by the parties, and that it did not read the affidavits in support of the [d]efendant[,]” the trial judge’s “comments during the hearing as to its consideration of the entire case file, evidence and law are not controlling[,] the written court order as entered is controlling” and the trial court “had ample time to review the evidence and law, as stated in the written order”).

Here, the trial court orally ruled that it would deny any nonjusticiable claims and requested briefing for attorney’s fees *only* as to Rule 68 arguments. Both parties, however, included arguments in their briefing to the trial court regarding Defendants’ request for attorney’s fees pursuant to N.C.G.S. § 6-21.5 for Plaintiffs’ punitive damages claim, and the trial court noted in the written order that it had received the briefs. *See In re O.D.S.*, 247 N.C. App. at 718 (“[T]he trial court can consider evidence presented *following* the oral rendering of the judgment in order to better inform its subsequent written judgment.” (citation omitted)). Thus, although the trial court’s written judgment is directly contradictory to its oral ruling, the trial court had the authority to change its ruling “before entry of judgment[,]” and both

parties provided additional briefing on the matter. *See id.* Therefore, we now address whether the trial court correctly ruled that Plaintiffs’ punitive damages claim was nonjusticiable.

2. Nonjusticiable Claim

Plaintiffs argue that the trial court erred by concluding their punitive damages claim was nonjusticiable. We disagree.

“[T]he presence or absence of justiciable issues in pleadings is . . . a question of law that this Court reviews de novo.” *Wayne St. Mobile Home Park, LLC v. N. Brunswick Sanitary Dist.*, 213 N.C. App. 554, 561 (2011) (citation omitted).

N.C.G.S. § 6-21.5 provides:

In any civil action, special proceeding, or estate or trust proceeding, the court, upon motion of the prevailing party, may award a reasonable attorney’s fee to the prevailing party if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party in any pleading. The filing of a general denial or the granting of any preliminary motion, such as a motion for judgment on the pleadings pursuant to [N.C.]G.S. 1A-1, Rule 12, a motion to dismiss pursuant to [N.C.]G.S. 1A-1, Rule 12(b)(6), a motion for a directed verdict pursuant to [N.C.]G.S. 1A-1, Rule 50, or a motion for summary judgment pursuant to [N.C.]G.S. 1A-1, Rule 56, is not in itself a sufficient reason for the court to award attorney’s fees, but may be evidence to support the court’s decision to make such an award. A party who advances a claim or defense supported by a good faith argument for an extension, modification, or reversal of law may not be required under this section to pay attorney’s fees. The court shall make findings of fact and conclusions of law to support its award of attorney’s fees under this section.

N.C.G.S. § 6-21.5 (2025). “A justiciable issue has been defined as an issue that is real and present as opposed to imagined or fanciful.” *Sunamerica Financial Corp. v. Bonham*, 328 N.C. 254, 257 (1991) (citations and internal quotation marks omitted). To find complete absence of a justiciable issue, “it must conclusively appear that such issues are absent even giving the pleadings the indulgent treatment they receive on motions for summary judgment or to dismiss.” *Credigy Receivables, Inc. v. Whittington*, 202 N.C. App. 646, 655 (2010) (citation omitted).

Under this deferential review of the pleadings, a plaintiff must either: (1) reasonably have been aware, at the time the complaint was filed, that the pleading contained no justiciable issue; or (2) be found to have persisted in litigating the case after the point where he should reasonably have become aware that pleading he filed no longer contained a justiciable issue. Section 6-21.5 was enacted to discourage frivolous legal action and that purpose may not be circumvented by limiting the statute’s application to the initial pleadings. Frivolous action in a lawsuit can occur at any stage of the proceeding and whenever it occurs is subject to the legislative ban.

Id.; Compare *Sunamerica Fin. Corp.*, 328 N.C. at 258 (holding that, “when [the] defendant’s answer raising the statute of limitations defense was filed and served, it should have become apparent to [the] plaintiff that, barring circumstances permitting the statute of limitations to be tolled, the complaint no longer contained a justiciable issue”) and *Burton Constr. Cleanup & Landscaping, Inc. v. Outlawed Diesel Performance, LLC*, 261 N.C. App. 317, 323 (2018) (holding there was no justiciable issue where “[a] review of the record establishe[d], at a minimum, that [the p]laintiffs

persisted in litigating the case after the point where they should have reasonably been aware that the pleadings no longer contained a justiciable issue” after one of the plaintiffs “admitted during cross-examination that he knew the truck was ‘driveable’ when it left [the d]efendants’ shop and that his statement in [his] affidavit that the truck was ‘undriveable’ was incorrect”), *with Lincoln*, 166 N.C. App. at 155 (holding a claim for a breach of implied warranty of habitability was justiciable where “[t]here was sufficient evidence contained in the relevant pleadings and documents to present a justiciable issue that [the defendant] was ‘in the business of building such dwellings’” for profit rather than building the home with intent to personally live in it).

Regarding punitive damages, “North Carolina has consistently allowed punitive damages solely on the basis of its policy to punish intentional wrongdoing and to deter others from similar behavior.” *Newton v. Standard Fire Ins. Co.*, 291 N.C. 105, 113 (1976). “They are given to the plaintiff in a proper case, not because they are due, but because of the opportunity the case affords the court to inflict punishment for conduct intentionally wrongful.” *Cavin’s Inc. v. Atl. Mut. Ins. Co.*, 27 N.C. App. 698, 701–02 (1975) (citation omitted). “Punitive damages are never awarded merely because of a personal injury inflicted nor are they measured by the extent of the injury; they are awarded because of the outrageous nature of the wrongdoer’s conduct.” *Id.*

Here, in their Complaint, Plaintiffs alleged that their lot was “graded in

accordance with water drainage routes[.]” During trial, however, Plaintiffs admitted that their property was not in compliance with their property plan and that their water ran off into Defendants’ lot:

Q. Okay. So you are aware that the HOA prohibits you from dumping water on vacant, yet-to-be-built properties?

A. Yes.

Q. But it’s been your testimony that prior to the house being built that your water was traversing part of [Defendants’] property out to their street[,] correct?

A. Correct.

Q. Are you also aware that the HOA prohibits dumping water or directing water, whatever term you want to use, onto neighbors[] at anytime, even after houses are built? Are you aware of that?

A. Yes.

....

Q. So it’s safe to say that you still want – what you want to have happen here is for your water to continue to be allowed to traverse over a portion of [Defendants’] property[,] right?

A. That is the way the water was when we bought the property.

Furthermore, during trial, Willis Aldrige, who had been in the stormwater management business for sixteen years at the time, testified that when he had met with Plaintiffs at their house, he informed them that the water could not come from Defendants’ property, as the water would have to be traveling uphill:

Q: How did the meeting ultimately – that second time you went out when you were still there at the request of [] [P]laintiffs . . . how did that meeting ultimately end?

A. I was shooting elevations. Mrs. Pallen was trying to explain to me where the water was coming from and what the issues were. And at one point she was telling me that the water was coming from [Defendants'] property onto her property. And I was – had my grade rod and my laser there, and I – it's uphill. Mrs. Pallen, it can't – water is not going to go uphill. It's just going to follow the path of least resistance. I don't see how it can come on your property.

Plaintiffs did not provide evidence at trial, outside of their own belief and testimony, that any water from Defendants' lot ran off into Plaintiffs' lot.

In concluding Plaintiffs' punitive damages claim was nonjusticiable, the trial court made several relevant findings of fact:

7. That shortly because the February 2023 hearing, [] Defendants received via a subpoena, a copy of [] Plaintiffs' Ocean Ridge Landscaping Plan that was introduced as an exhibit at trial.

8. That said landscaping plan was made available to [] Plaintiffs.

9. That said landscaping plan shows that [] Plaintiffs are not in compliance with the landscaping plan on file pertaining to their property.

10. That in April 2023, a trial commenced that ultimately resulted in a mistrial due to issues with the jury on day three of the trial.

11. That subsequent to the mistrial, [] Plaintiffs received a proposal from Rainstorm Solutions for less than \$30,000.00 that proposed a solution to [] Plaintiff[s'] long standing water problem.

12. That the creation of the Rainstorm Solutions proposal was initiated by [] Defendants who hired Rainstorm Solutions to travel to the parties' properties to assess the situation and craft a solution.

13. That [] Plaintiffs also requested and received a proposal to alleviate the ponding in their yard from their own landscaper, but ultimately did not accept the proposal either.

14. That the Ocean Ridge Governing documents state that property owners cannot cause stormwater to be drained across neighboring properties and all stormwater must drain to an approved stormwater outlet.

15. That in the present case, the approved stormwater outlet consisted of the golf course pond to the rear of the parties' homes and to an outlet in the street in from of [] Plaintiffs' home.

16. That [] Plaintiffs at all times relevant to the present lawsuit, were aware that a representative of the property owners' association granted [] Defendants permission to build a small berm in [] Defendants' yard to remain in place only until [] Plaintiffs fixed the grading to their property.

....

20. That prior to the trial, the [c]ourt dismissed [] Plaintiffs' claim for Declaratory Judgment.

21. That on February 13, 2025, the Jury deliberated for less than one hour and found in [] Defendants' favor while also not awarding [] Defendants any relief on their counterclaims.

22. That subsequent to the jury's verdict, the [c]ourt dismissed [] Plaintiffs' punitive damages claim as being moot.

From a review of the Record, transcripts, and the trial court's findings, we agree with the trial court that "there was a complete absence of a justiciable issue of either law or fact raised by [] Plaintiffs supporting a claim for punitive damages[.]" Plaintiffs continued "persist[ing] in litigating the case after the point where [they] should reasonably have become aware that [the] pleading [they] filed no longer contained a justiciable issue." *See Credigy Receivables*, 202 N.C. App. at 655. Accordingly, we affirm the trial court's decision to award attorney's fees.

IV. Conclusion

Upon review, we conclude the trial court was without authority to award attorney's fees in a private nuisance case pursuant to Rule 68; however, we affirm the trial court's award of attorney's fees pursuant to N.C.G.S. § 6-21.5 where Plaintiffs persisted in litigating a nonjusticiable issue.

AFFIRMED.

Chief Judge DILLON and Judge MURRY concur.