IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-923

Filed 18 November 2026

Wake County, No. 21CVS014022-910

POLINA VORONSKY, Plaintiff,

v.

LUCIUS S. JONES, SR. (a/k/a LUCIUS S. JONES), an individual, Defendant.

Appeal by plaintiff from order entered 13 March 2025 by Judge Hoyt G. Tessener in Wake County Superior Court. Heard in the Court of Appeals 24 March 2026.

John M. Kirby for plaintiff-appellant.

Burns Day & Presnell, PA, by James J. Mills, for defendant-appellee.

FREEMAN, Judge.

Polina Voronsky, plaintiff, appeals the trial court's order granting defendant's motion for directed verdict and the trial court's decision to exclude witness testimony. Plaintiff argues that the trial court erred by granting directed verdict in defendant's favor because she produced sufficient evidence to submit the claims to the jury. Plaintiff also argues that the trial court abused its discretion by excluding plaintiff's witness testimony regarding the costs of repairs. After careful review, we reverse the trial court's order and remand for a new trial.

I. Procedural and Factual Background

On 14 April 2014, plaintiff purchased the property subject to this appeal for $46,000 and received a general warranty deed. The property was partitioned from an eleven-acre parcel.

Plaintiff testified as follows: Before she purchased the property, her significant other, Sergey Kesel (Mr. Kesel), inspected the property. When plaintiff purchased the property in 2014, there were "no issues of any water on the property." Because this was plaintiff's second property, she only visited twice a month to maintain it. Mr. Kesel visited the property at least three or four times a week to work on the property. In late 2018 or early 2019, plaintiff started noticing "water issues" on the property. Specifically, plaintiff was having persistent flooding, which caused standing water "up to the ankle" at the property entrance, on the driveway, in the back yard, and in the crawlspace beneath the house. The flooding caused the property to remain "spongy" and resulted in Mr. Kesel's truck getting stuck in the mud various times. The flooding prevented plaintiff from using the driveway or garage to park vehicles on the property.

Plaintiff believed the development of the adjacent eleven-acre lot (Wendell Crossings) was causing her property to flood, due to its higher elevation. Plaintiff contacted several city officials to report the flooding. City officials held a meeting on plaintiff's property and decided to place a catch basin between Wendell Crossings and plaintiff's property, which ultimately did not solve the problem.

In an attempt to fix the water problems herself, plaintiff placed a retaining wall between her property and her neighbor's property and purchased approximately sixty loads of dirt to raise the elevation of her yard in or around May of 2019. Plaintiff was invoiced $12,000 for the dirt. On 22 April 2020 and 9 June 2020, plaintiff received notices of land violations from the Wake County Department of Environmental Services for "land disturbances" caused by the dirt and retaining wall, and plaintiff was eventually fined $3,047.50 by the town of Wendell to remove the retaining wall.

In February 2017, Lucius Jones, Jr. owned the adjacent eleven-acre tract, which was being developed into Wendell Crossings beginning in late 2018. Plaintiff testified that Lucius S. Jones, Sr. (defendant) was also involved in developing Wendell Crossings and that she saw him at the job site and town council meetings. On 27 February 2020, defendant became the owner of Wendell Crossings after his son passed away. Defendant transferred the property of Wendell Crossings to True Homes, LLC (True Homes) and Dependable Development, Inc. (Dependable) by general warranty deed on 19 March 2020.

On 15 October 2021, plaintiff filed a complaint against True Homes, Dependable, and defendant, asserting claims for negligence, trespass, recurring trespass, nuisance, recurring nuisance, negligence per se, injunctive relief, the North Carolina Sediment Pollution Act (SPCA), and punitive damages.

On 23 April 2024, the parties consented to a scheduling order (Scheduling

Order), requiring plaintiff to disclose expert witnesses by 7 August 2024 and providing for the closure of discovery on 16 September 2024. In May of 2024, plaintiff retained James Spangler (Mr. Spangler) as an expert in water flow analysis and disclosed Mr. Spangler as an expert to defendant. Plaintiff also retained Adam Conover (Mr. Conover), a licensed general contractor, to estimate the cost of repairing plaintiff's property. Plaintiff identified Mr. Conover as a witness on 4 November 2024 and produced Mr. Conover's estimate of repair through supplemental discovery on 20 November 2024.[1] On 12 November 2024, defendant filed a motion in limine, arguing that any documents, materials, and witnesses disclosed after the discovery period froze on 16 September 2024 should be excluded from evidence pursuant to the Scheduling Order.

Plaintiff settled the action with True Homes and Dependable before trial. The remaining matter against defendant came on for trial on 3 February 2025. At trial, Mr. Spangler testified as an expert in water flow analysis. He testified that in June 2024, he inspected plaintiff's property for approximately three hours and inspected Wendell Crossings for six to seven hours. Based upon Mr. Spangler's inspection, he concluded "there were at least three layers of material that were from the [Wendell

[1] At trial, plaintiff's attorney alleged that Mr. Conover was merely a fact witness. The trial court, however, concluded that providing testimony regarding the estimated cost of repair was an opinion that required Mr. Conover to be designated as an expert witness. Plaintiff does not challenge this conclusion. Thus, we review this appeal under the presumption that Mr. Conover was a proposed expert witness instead of a lay witness.

Crossings] development site" on plaintiff's property, which indicated there was "a chronic ongoing issue season after season of material flowing through stormwater" and "uncontrolled across the property boundary."

Plaintiff attempted to call Mr. Conover as a witness to testify about the estimated costs to repair plaintiff's property. The trial court precluded Mr. Conover from testifying due to plaintiff's failure to disclose the witness and produce his estimate by 16 September 2024 per the Scheduling Order. At the close of plaintiff's evidence, defendant moved for directed verdict, which the trial court granted. In the trial court's order, entered 13 March 2025, the trial court found plaintiff had "failed to present sufficient evidence that this [d]efendant caused or contributed to the alleged water intrusion during his short duration of ownership," "did not introduce sufficient evidence" for any of her claims, and did not present sufficient evidence of damages. Plaintiff filed written notice of appeal on 13 April 2025.

II. Jurisdiction

Plaintiff timely appealed from a final order of a superior court. This Court has jurisdiction to review plaintiff's appeal pursuant to N.C.G.S. § 7A-27(b)(1) (2025).

III. Discussion

Plaintiff presents two arguments on appeal. Plaintiff first argues that the trial court erred by granting defendant's motion for directed verdict. Second, plaintiff argues that the trial court abused its discretion by excluding Mr. Conover's testimony regarding the cost of repairs. We address each argument in turn.

A. Directed Verdict

Plaintiff argues the trial court erred by granting defendant's motion for directed verdict on all of plaintiff's claims because there was "more than a scintilla of evidence" to submit the claims to the jury. Specifically, plaintiff contends that she presented sufficient evidence that defendant had caused or contributed to the alleged flooding on her property "as a result of the development at Wendell Crossings," that defendant is "liable for trespass and nuisance," and that plaintiff suffered damages. Because plaintiff only argues error regarding her claims of trespass and nuisance, we will not address plaintiff's other claims for relief. *See Thompson v. Bass*, 261 N.C. App. 285, 292 (2018) ("[I]t is not the role of this Court to create an appeal for an appellant or to supplement an appellant's brief with legal authority or arguments not contained therein.").

"[T]he trial court's ruling on a motion for a directed verdict addressing the sufficiency of the evidence presents a question of law" which this Court reviews de novo. *Maxwell v. Michael P. Doyle, Inc.*, 164 N.C. App. 319, 323 (2004). On appeal, this Court must determine whether "the evidence is sufficient to be submitted to the jury." *Springs v. City of Charlotte*, 209 N.C. App. 271, 274–75 (2011) (quoting *Shelton v. Steelcase, Inc.*, 197 N.C. App. 404, 410 (2009)).

> When considering a motion for a directed verdict, a trial court must view the evidence in the light most favorable to the non-moving party, giving that party the benefit of every reasonable inference arising from the evidence. Any conflicts and inconsistencies in the evidence must be

> resolved in favor of the non-moving party. If there is more than a scintilla of evidence supporting each element of the non-moving party's claim, the motion for a directed verdict should be denied.

Maxwell, 164 N.C. App. at 322 (internal quotations and citations omitted). In other words, if the plaintiff provides even slight evidence to support each element of the claim, the trial court should deny the motion for directed verdict and submit the claim to the jury. *Id.*; *see Hayes v. Waltz*, 246 N.C. App. 438, 442–43 (2016) ("A scintilla of evidence is defined as very slight evidence.").

1. Nuisance

To recover in nuisance, a plaintiff must show (1) an "unreasonable interference with the use and enjoyment of its property" and (2) substantial damage resulting from such interference. *The Shadow Group, LLC, v. Heather Hills Home Owners Ass'n*, 156 N.C. App. 197, 200 (2003); *Whiteside Estates, Inc. v. Highlands Cove, LLC*, 146 N.C. App. 449, 456 (2001), *superseded on other grounds by statute*, N.C.G.S. § 106-702. This includes a persistent and "unreasonable interference with the flow of surface water causing substantial damage . . . ." *Pendergrast v. Aiken*, 293 N.C. 201, 216 (1977). "Most nuisances of this kind are intentional, usually in the sense that 'the defendant has *created or continued* the condition causing the nuisance with full knowledge that the harm to the plaintiff's interests is substantially certain to follow.' " *Id.* at 217 (quoting William L. Prosser, Law of Torts § 87 (4th ed. 1971)).

The unreasonableness of an invasion is a question of fact to be determined by the jury on a case-by-case basis "by weighing the gravity of the harm to the plaintiff against the utility of the conduct of the defendant." *Id.*; *Watts v. Pama Mfg. Co.*, 256 N.C. 611, 618 (1962) ("[T]he unreasonableness of intentional invasion is a problem of relative values to be determined by the jury in the light of the circumstances of the case."). When determining the gravity of the harm, the following factors should be considered: "the extent and character of the harm to the plaintiff, the social value which the law attaches to the type of use which is invaded, the suitability of the locality for that use, the burden on plaintiff to minimize the harm, and other relevant considerations arising upon the evidence." *Pendergrast*, 293 N.C. at 217.

Here, plaintiff presented more than a scintilla of evidence of an unreasonable interference by defendant, which caused substantial harm to her property. Viewed in the light most favorable to plaintiff, the evidence tended to show the following: When plaintiff purchased the property on 14 April 2014, there were no water or flooding issues on her property. When the development of Wendell Crossings began in late 2018, plaintiff started experiencing flooding on her property. Plaintiff's expert witness testified that the development of Wendell Crossings contributed to the increase of water flowing onto plaintiff's property. This flooding persisted for multiple years—from 2018 until at least 2021 when this action was filed.

Plaintiff's evidence further tended to show the flooding caused plaintiff's yard to remain "spongy," which prevented plaintiff from driving in the yard or using the

driveway or garage to park vehicles. City officials merely placed a catch basin between plaintiff's property and Wendell Crossings, then abandoned all efforts, although the catch basin did not fix the issues. Plaintiff spent approximately $12,000 in attempting to fix the issues herself and was fined $3,047.50 by the town of Wendell for land violations.

Although the evidence showed the value of plaintiff's property increased due to the development of Wendell Crossings, an increase of property value is not dispositive when "the resulting interference with another's use and enjoyment of land is greater than it is reasonable to require the other to bear under the circumstances without compensation." *Pendergrast*, 293 N.C. at 218. Thus, viewing the facts in the light most favorable to plaintiff, plaintiff presented more than a scintilla of evidence that the persistent flooding was an unreasonable interference with her use and enjoyment of the property and that it caused substantial harm.

Further, plaintiff presented more than a scintilla of evidence that defendant was personally liable for such nuisance. Defendant owned Wendell Crossings from 27 February 2020 to 19 March 2020. Defendant testified that at the time he sold Wendell Crossings to True Homes and Dependable, the property had already been developed into subdivided lots, which were "prepared to build on." Defendant also testified that he had hired third parties to obtain permits and develop Wendell Crossings. Defendant's name appears on documents admitted into evidence regarding the development of Wendell Crossings. Further, plaintiff testified that

defendant was involved in developing Wendell Crossings before he owned the property, and she had seen him at the job site and at town council meetings regarding the subdivision's development.

Although defendant's son owned Wendell Crossings when the flooding issues started, and defendant only owned Wendell Crossings for less than a month, defendant's legal ownership is not necessary to establish liability. *See Kaplan v. Prolife Action League of Greensboro*, 111 N.C. App. 1, 22 (1993) ("[T]he fact that a defendant stands upon property other than his own does not preclude a claim for private nuisance."), *overruled on other grounds by Sharpe v. Worland*, 351 N.C. 159, 166 (1999). After all, defendant's conduct, control, and involvement in the development process that created the nuisance is the true inquiry as to defendant's personal liability. *See Baker v. Rushing*, 104 N.C. App. 240, 247 (1991) ("[A] person is personally liable for all torts committed by him, notwithstanding that he may have acted as an agent for another or as an officer for a corporation."). Furthermore, plaintiff, as the non-moving party, must be given "the benefit of every reasonable inference arising from the evidence." *Maxwell*, 164 N.C. App. at 322. Thus, viewing the evidence in the light most favorable to plaintiff, plaintiff produced more than a scintilla of evidence of defendant's partial responsibility for the development of Wendell Crossings and alleged nuisance on plaintiff's property.

Plaintiff produced sufficient evidence of the elements of nuisance and defendant's liability, and her nuisance claim should have been submitted to the jury. The trial court erred by granting directed verdict for plaintiff's nuisance claim.

2. Trespass

"[T]o establish a trespass to real property, a plaintiff must show: (1) his possession of the property at the time the trespass was committed; (2) an unauthorized entry by the defendant; and (3) resulting damage to the plaintiff." *Shadow Group*, 156 N.C. App. at 201. The defendant must either negligently or intentionally enter another's land to constitute trespass. *Rainey v. St. Lawrence Homes, Inc.*, 174 N.C. App. 611, 614 (2005). However, "the defendant need not have contemplated any damage to the plaintiff to incur liability." *Id.* at 615.

A defendant's "action of causing water to flow onto another's property can constitute such a trespass." *Shadow Group*, 156 N.C. App. at 201. In *Shadow Group*, water flowed from the common areas of a subdivision into the basement of the plaintiff's townhome, causing standing water and flood damage. *Id.* at 198. The defendant, who owned all common areas in the subdivision, was aware of flooding issues and attempted to remedy the issues years before the plaintiff purchased the townhouse. *Id.* at 198–99. Evidence tended to show the defendant's actions "actually exacerbated the flow of water onto [the] plaintiff's property from the common areas . . . ." *Id.* at 201. Although the plaintiff notified the defendant of the water issues, the "defendant did not stop the flow of water onto [the] plaintiff's property,"

resulting in the plaintiff spending $2,480 to fix the problem. *Id.* We held that such facts were "sufficient to establish each necessary element of a claim for trespass" to survive summary judgment. *Id.* We further noted that although the "defendant's initial exacerbation of the water flow onto [the] plaintiff's property" allegedly occurred before the plaintiff owned the property, "because the nature of the water flow was recurrent, every subsequent incidence, of water flowing onto the property after [the] plaintiff's possession could constitute a trespass in and of itself." *Id.*

Similarly, in *Rainey*, the plaintiff's testimony indicated that "she owned property that was damaged by an increase in surface water run-off resulting at least in part from" the development of an adjacent subdivision. 174 N.C. App. at 615. The plaintiff specifically experienced "erosion, flooding[,] and other damage." *Id.* at 612. After the plaintiff's water problems began, the subdivision was transferred to the defendant owner[2] for further development. *Id.* No evidence suggested the defendant owner "contemplated or intended" to damage the plaintiff's property. *Id.* at 615. However, the plaintiff presented evidence showing the owner had intended to develop the subdivision, which the plaintiff's expert "testified was likely a cause of the increased surface water run-off onto [the] plaintiff's property." *Id.* We held that these

[2] The facts and holding in this paragraph only pertain to the defendant owner. There are two other defendants in *Rainey*: the prior owner, and the grading company. The plaintiff did not present *any* evidence connecting the prior owner and the grading company to the subdivision's development or surface water runoff; thus, this Court affirmed summary judgment as to those two defendants. *Rainey*, 174 N.C. App. at 615.

facts provided sufficient evidence of each element of trespass to survive summary judgment regarding the defendant owner of the subdivision. *Id.*

The present case is similar to *Shadow Group* and *Rainey*. Here, plaintiff presented evidence that she purchased and received a general warranty deed for the relevant property on 14 April 2014 and was the owner of the property when it began having water issues in 2018. The evidence tends to show that plaintiff's property was damaged by an unauthorized increase of water flow onto her property, which plaintiff's expert witness attributed to the development of Wendell Crossings. Defendant owned Wendell Crossings from 27 February 2020 to 19 March 2020. Plaintiff testified that even before defendant's ownership, defendant was actively involved in the development of Wendell Crossings, including attending town council meetings and visiting the development site. Further, plaintiff spent $12,000 to fix the constant flooding caused by water runoff and was fined $3,047.50 by the town of Wendell for her attempts to remedy the issues. Taking these facts in the light most favorable to plaintiff and giving plaintiff every reasonable inference arising from the facts, plaintiff presented sufficient evidence of the elements of trespass and defendant's personal responsibility.

Defendant argues plaintiff failed to present evidence that defendant himself entered plaintiff's property. This argument is without merit. It is well established that a defendant *himself* needs not enter another's property to establish a trespass. *See Shadow Group*, 156 N.C. App. at 201; *see Rainey*, 174 N.C. App. at 615. Rather,

a defendant's "action of causing water to flow onto another's property can constitute such a trespass." *Shadow Group*, 156 N.C. App. at 201. Defendant also argues he did not own Wendell Crossings at the time plaintiff began experiencing water issues on her property. However, "every subsequent incidence[ ] of water flowing onto [plaintiff's] property . . . could constitute a trespass in and of itself." *Id.* The essential inquiry is not whether defendant was the owner of Wendell Crossings, but rather, whether defendant's intentional conduct in connection to the development of Wendell Crossings contributed to the increase in water on plaintiff's property. *See Rainey*, 174 N.C. App. at 615; *see Baker*, 104 N.C. App. at 247 ("[A] person is personally liable for all torts committed by him, notwithstanding that he may have acted as an agent for another or as an officer for a corporation."); *see also Kaplan*, 111 N.C. App. at 22 ("[T]he fact that a defendant stands upon property other than his own does not preclude a claim for private nuisance.").

We conclude that plaintiff introduced sufficient evidence of the elements of trespass and defendant's responsibility for such trespass to submit the claim to the jury. Accordingly, the trial court erred by granting directed verdict for plaintiff's trespass claim.

B. Exclusion of Testimony

Plaintiff's next issue on appeal arises from the trial court's exclusion of Mr. Conover's testimony based on plaintiff's failure to disclose the witness as an expert and produce his estimated repair costs before the discovery deadline passed. Plaintiff

argues that the "discovery deadline merely sets the time for the *issuance* of discovery" and that the witness testimony was merely a supplemental response to discovery to which the deadline did not apply. Plaintiff also argues that the trial court abused its discretion by excluding Mr. Conover "from testifying about the cost to remediate the damage" to plaintiff's property because the trial court automatically excluded the testimony without considering prejudice.

We review a trial court's decisions regarding discovery and sanctions for an abuse of discretion. *Aman v. Nicholson*, 288 N.C. App. 1, 13 (2023) (quoting *Myers v. Myers*, 269 N.C. App. 237, 240 (2020)); *see In re Pedestrian Walkway Failure*, 173 N.C. App. 254, 264 (2005). "An abuse of discretion is a decision manifestly unsupported by reason or one so arbitrary that it could not have been the result of a reasoned decision." *Myers*, 269 N.C. App. at 240 (quoting *Briley v. Farabow*, 348 N.C. 537, 547 (1998)). "An abuse of discretion may arise if there is no record evidence which indicates that [the party] acted improperly, or if the law will not support the conclusion that a discovery violation has occurred." *In re Pedestrian Walkway Failure*, 173 N.C. App. at 264. Further, we review issues of statutory interpretation de novo. *Myers*, 269 N.C. App. at 241. "Where the language of a statute is clear, we need not construe the statute and must simply apply the plain meaning of the statute." *Id.*

Rule 26 of the North Carolina Rules of Civil Procedure governs pre-trial discovery. *See generally* N.C.G.S. § 1A-1, Rule 26 (2025). Under Rule 26, a party is

required to disclose any expert witness before trial. N.C.G.S. § 1A-1, Rule 26(b)(4)(a)(1). Rule 26 does not, however, specify a procedure or timing requirement for the disclosure of expert witnesses. *Myers*, 269 N.C. App. at 247. Thus, in instances where the parties do not have a discovery order setting the times for disclosure, the trial court is required to "make a discretionary determination of whether [the party's] failure to disclose the expert sufficiently in advance of the trial gave her an 'unfair tactical advantage' at trial or defeated the purpose of 'providing openness' as contemplated by Rule 26(b)." *Id.* at 255.

Upon either a motion of the parties or a court order requiring a discovery conference, the trial court may enter a discovery plan under Rule 26(f), detailing the schedule of discovery and when discovery should be completed. N.C.G.S. § 1A-1, Rule 26(f). "[I]f a party fails to obey an order entered under Rule 26(f) . . . the court in which the action is pending may make such orders in regard to the failure as are just," including "prohibiting the party from introducing designated matters in evidence." N.C.G.S. § 1A-1, Rule 37(b)(2)(b) (2025). The exclusion of testimony for the failure to abide by a scheduling order under Rule 37 is a discretionary sanction rather than an automatic consequence. *In re Pedestrian Walkway Failure*, 173 N.C. App. at 264. Thus, a trial court abuses its discretion by failing to exercise its discretion under the misapprehension that the exclusion of testimony is required. *Myers*, 269 N.C. App. at 255–56.

In the present case, plaintiff argues the trial court erroneously determined that plaintiff failed to meet the discovery deadline because the "discovery deadline merely sets the time for the issuance of discovery" and the excluded witness testimony was merely a supplemental discovery response to which the deadline did not apply. Plaintiff cites no authority in support of these propositions. Rule 28(b)(6) of the North Carolina Rules of Appellate Procedure requires an appellant's brief to "contain citations of the authorities upon which the appellant relies." N.C. R. App. P. 28(b)(6). "[I]t is not the role of this Court to create an appeal for an appellant or to supplement an appellant's brief with legal authority or arguments not contained therein." *Thompson*, 261 N.C. App. at 292. Arguments consisting of "conclusory sentences that fail to apply any legal authority to the evidence presented below or to explain how the trial court's order was inconsistent with the law" are deemed abandoned. *K2HN Constr. NC, LLC v. Five D Contractors, Inc.*, 267 N.C. App. 207, 214 (2019). Because plaintiff did not cite any authority supporting the proposition that the witness testimony was merely a supplemental response to discovery in which the deadline did not apply, we deem the argument abandoned and thus will not consider it on appeal.

Further, plaintiff argues the trial court abused its discretion by not considering prejudice to defendant and excluding Mr. Conover's testimony solely on the basis that plaintiff had not disclosed Mr. Conover as an expert and provided his report prior to the discovery deadline. In her argument, plaintiff relies heavily on our Court's holdings in *Myers* and *Aman*.

In *Myers* and *Aman*, there were no stipulations, discovery plans, or orders designating the dates by which experts had to be disclosed. *Myers*, 269 N.C. App. at 249, 256; *Aman*, 288 N.C. App. at 18. Absent such a discovery schedule, this Court emphasized that Rule 26 does not set out a specified procedure or timing requirement for the disclosure of expert witnesses and that Rule 37 does not specifically provide for sanctions for the late disclosure of expert witnesses without an order. *Myers*, 269 N.C. App. at 247; *Aman*, 288 N.C. App. at 17. Thus, we held that when there is no case management order designating the discovery schedule, the trial court is not required to exclude evidence solely for the untimely disclosure of expert witnesses but instead should "make a discretionary determination of whether [the party's] failure to disclose the expert sufficiently in advance of the trial gave her an 'unfair tactical advantage' at trial or defeated the purpose of 'providing openness' as contemplated by Rule 26(b)." *Myers*, 269 N.C. App. at 255; *see Aman*, 288 N.C. App. at 18–19.

However, unlike in *Myers* and *Aman*, the parties in the present case had a scheduling order designating the time by which experts had to be disclosed and when the discovery period ended. Rule 37 leaves it within the trial court's discretion to exclude testimony for failure to abide by a case management order entered into under Rule 26(f). N.C.G.S. § 1A-1, Rule 37(b)(2)(b) (2025). No language contained in Rule 37 requires a showing of prejudice before the trial court imposes sanctions. *See Clark v. Penland*, 146 N.C. App. 288, 291 (2001) ("Rule 37 does not require the [movant] to show that it was prejudiced by the [nonmovant's] actions in order to obtain sanctions

for abuse of discovery."). Thus, while prejudice is a permissible factor for the trial court to consider in making a discretionary determination to impose sanctions, analyzing prejudice is not a requirement when a party has violated a Rule 26(f) case management order. *See Batlle v. Sabates*, 198 N.C. App. 407, 421 (2009) ("Although the trial court could have appropriately considered the issue of prejudice in making a sanctions-related decision . . . it was not required to find prejudice as a precondition for dismissing [the] Plaintiff's complaint."). Plaintiff has failed to show that the trial court abused its discretion by failing to consider prejudice before excluding Mr. Conover's opinion testimony.

Further, nothing in the record indicates that the trial court's decision to exclude Mr. Conover's opinion testimony was "manifestly unsupported by reason" or "so arbitrary that it could not have been the result of a reasoned decision." *Myers*, 269 N.C. App. at 240 (quoting *Briley*, 348 N.C. at 547). As mentioned above, the trial court has authority to issue sanctions for a party's failure to abide by a scheduling order. N.C.G.S. § 1A-1, Rule 37(b)(2)(b). The scheduling order required plaintiff to disclose expert witnesses by 7 August 2024 and that discovery close on 16 September 2024. Plaintiff did not identify Mr. Conover as a witness until 4 November 2024 and did not produce Mr. Conover's estimate of repair until 20 November 2024. Thus, plaintiff clearly violated the scheduling order consented to by the parties.

When ruling on the exclusion of Mr. Conover's testimony, the trial court stated, "I made it clear when we entered the scheduling order that the dates were going to

be final for the trial. So there's nothing coming in that is after September 16 per the discovery scheduling order." The trial court later stated:

> We had this discussion back when we entered the scheduling order about the timing of this case . . . .
>
> . . . .
>
> So I made it very clear that, and everyone signed off on what the deadlines were. And so we're not extending the deadlines. So he's not going to be able to give any opinions as an expert.

The trial court's ruling was supported by its reasoning: (1) it notified the parties of the importance of disclosing expert witnesses by the time specified in the scheduling order, (2) the parties consented to and understood the importance of the disclosure requirements, and (3) plaintiff still disclosed Mr. Conover as a witness late. Therefore, the trial court's decision to exclude Mr. Conover from testifying was not "manifestly unsupported by reason" or "so arbitrary that it could not have been the result of a reasoned decision." *Myers*, 269 N.C. App. at 240 (quoting *Briley*, 348 N.C. at 547).

The trial court did not abuse its discretion by excluding Mr. Conover from testifying about the cost to remediate the damage to plaintiff's property.

IV. Conclusion

We hold that the trial court erred by granting directed verdict on plaintiff's nuisance and trespass claims. Therefore, we reverse and remand for a new trial. However, we hold that the trial court did not abuse its discretion by excluding Mr.

Conover's opinion testimony under the previous scheduling order.

REVERSED AND REMANDED.

Judges TYSON and COLLINS concur.