

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA01-1468

NORTH CAROLINA COURT OF APPEALS

Filed: 3 September 2002

LAVERNE ELLERBE-CHISOLM,
Plaintiff

v.

Mecklenburg County
No. 98 CVD 14066

JOSEPH FRANKLIN CHISOLM,
Defendant

Appeal by plaintiff from order entered 11 July 2001 by Judge Louis A. Trosch, Jr. in District Court, Mecklenburg County. Heard in the Court of Appeals 26 August 2002.

Pamela A. Hunter for plaintiff-appellant.

No brief for defendant-appellee.

WYNN, Judge.

This appeal arises from an equitable distribution judgment that divided the marital estate equally, and ordered the plaintiff-wife, Laverne Ellerbe-Chisolm pay to her defendant-husband, Joseph Franklin Chisolm \$10,987.73 as a distributional payment within 60 days. From the denial of plaintiff's motions for relief from that judgment under Rules 59 and 60(b) of the North Carolina Rules of Civil Procedure, plaintiff appeals. We affirm the trial court's judgment.

From the outset, we point out that while plaintiff seeks to

argue the merits of the equitable distribution judgment, she did not notice appeal from that judgment. Instead, plaintiff noticed appeal from the order denying her post-trial motion for relief from the equitable distribution judgment. Accordingly, the only issue presently before this Court is whether the trial court abused its discretion in denying plaintiff's Rules 59 and 60(b) motions.

It is well settled that motions for relief under Rules 59 and 60(b) are "addressed to the sound discretion of the trial court and appellate review is limited to determining whether the court abused its discretion." *Vuncannon v. Vuncannon*, 82 N.C. App. 255, 258, 346 S.E.2d 274, 276 (1986). Plaintiff raises no argument that the trial court abused its discretion in denying her post-trial motions, and after a thorough review of the record, we conclude no such abuse occurred.

Indeed, in this case, District Court Judge Louis A. Trosch, Jr., who originally heard this matter and entered the equitable distribution judgment, was also the judge who heard plaintiff's post-trial motions for relief from the equitable judgment. Judge Trosch found no merit in plaintiff's arguments--that it was error for the court to consider defendant's health at the time of the equitable distribution hearing in making his distributional decision, and that it was error for the court not to consider the price break plaintiff received on the marital home in valuing the marital estate. The judge then concluded: "There are no grounds for a New Trial, Amendment of Judgment or Relief from Judgment or Order."

On appeal, plaintiff in essence challenges the trial court's consideration of defendant's health at the time of the hearing as a distributional factor. However, in *Harris v. Harris* this Court stated,

The factors listed under [G.S. 50-20](c) indicate that the legislature intended to grant the trial court the authority to consider the *future prospects of the parties, as well as their status at the time of the hearing*, in determining whether an equal division of marital assets would be equitable. The statute directs the court to consider, among other things, obligations for support arising out of prior marriages, *the age and health of the parties*, the need of the custodial parent to own or occupy the marital residence, expectations of nonvested pension or retirement rights, and contributions to the development of the other spouse's career potential. All of these factors relate, in part, to future prospects and responsibilities of the parties.

84 N.C. App. 353, 359, 352 S.E.2d 869, 873 (1987) (emphases added). In light of *Harris*, we hold that the trial court did not abuse its discretion in denying plaintiff's Rules 59 and 60(b) motions for relief from the trial court's equitable distribution judgment.

Affirmed.

Judges MCGEE and CAMPBELL concur.

Report per Rule 30(e).