

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA11-547
NORTH CAROLINA COURT OF APPEALS

Filed: 1 November 2011

JANE N. SUTTON,
Plaintiff,

v.

Onslow County
No. 07 CVD 1225

CARL L. SUTTON, JR.,
Defendant.

Appeal by plaintiff from order entered 4 January 2011 by Judge Sarah C. Seaton in Onslow County District Court. Heard in the Court of Appeals 12 October 2011.

Collins, Maready & Surles, PA, by George L. Collins, for plaintiff-appellant.

Ward and Smith, P.A., by Alexander C. Dale, and by M. Lynn Smith, for defendant-appellee.

STEELMAN, Judge.

The trial court properly found plaintiff to be in contempt of court for failing to execute stock certificates transferring her interest in a corporation to defendant in violation of a judgment of equitable distribution.

I. Factual and Procedural Background

Jane Sutton (plaintiff) and Carl Sutton, Jr. (defendant) were married, but separated on 3 January 2007. There were no children born of the marriage. The parties entered into a written Property Settlement Agreement dated 4 December 2009. Subsequently, the Property Settlement Agreement was incorporated into a consent judgment entered 7 December 2009. The Property Settlement Agreement provided that defendant was to be the sole owner of Sutton's Tree Service, Inc. and that plaintiff "hereby transfers and assigns all of her right, title and interest" in this business to defendant. Plaintiff further agreed to "sign any and all documents necessary to transfer any interest" in this business to defendant, "including but not limited to stock certificates." Defendant agreed to pay plaintiff a cash distributive award in the amount of \$50,000.00 to finalize the division of the parties' marital and divisible estate.

On 10 December 2009, defendant forwarded stock certificates in Sutton's Tree Services, Inc. to plaintiff's attorney for execution by plaintiff to effectuate the terms of the agreement. On the same day, defendant sent to plaintiff a check in the amount of \$50,000.00, representing the distributive award. Plaintiff refused to execute the stock certificates.

On 30 July 2010, defendant filed a motion requesting plaintiff be held in contempt for her refusal to abide by the provisions of the 7 December 2009 judgment. Defendant also requested that the court order plaintiff to immediately execute the stock certificates. On 19 August 2010, plaintiff filed a contempt motion against defendant based upon his alleged failure to pay the \$50,000.00 cash distributive award. Plaintiff had received defendant's check on 10 December 2009, but returned the check in 2010 after plaintiff filed her contempt motion.

On 27 September 2010, the contempt motions were heard by the trial court. On 4 January 2011, *nunc pro tunc* 29 September 2010, the trial court entered an order holding (1) that defendant had complied with terms and conditions of the agreement with regard to the cash distributive award; and (2) that plaintiff was in civil contempt for her failure to abide by the provisions of the 7 December 2009 judgment. The trial court ordered plaintiff to execute the stock certificates on or before 14 October 2010. The trial court further ordered that after plaintiff signed the stock certificates, defendant "shall re-release his check for the cash distributive award in the amount of \$50,000.00 that he originally gave to the plaintiff on

December 10, 2009." Plaintiff was ordered to reimburse defendant \$1,000.00 for attorney fees within sixty days.

Plaintiff appeals.

II. Date of Transfer of Ownership

In her sole argument on appeal, plaintiff contends that the trial court erred in finding plaintiff's ownership of stock in Sutton's Tree Service, Inc. was transferred to defendant as of 4 December 2009. We disagree.

The only portion of the trial court's order plaintiff challenges is the following finding of fact: "8. That the ownership of the corporation, Sutton's Tree Service, Inc., was transferred to the defendant as of December 4, 2009, and the defendant was the owner of Sutton's Tree Service, Inc. as of this date." Plaintiff contends that her stock in Sutton's Tree Service, Inc. was not transferred until the day the certificate was both signed and delivered to defendant pursuant to N.C. Gen. Stat. § 25-8-301. Plaintiff's argument is spurious.

The Property Settlement Agreement was signed by both parties on 4 December 2009. This agreement was entered into to "settle all their marital affairs and divide all their property[.]" Section 8 entitled "Businesses," states the following:

It is understood and agreed that Husband is the owner of Sutton's Tree Service and one-third or thirty-three percent (33%) of Space Place, Inc. *Wife hereby transfers and assigns all of her right, title and interest to said ownership interests in said*

businesses and releases all claim and demand thereto to Husband. The Wife releases her interest to all inventory, equipment, accounts receivable, goodwill, structures, real property, and any other part of any of the two businesses. Further, Wife agrees to sign any and all documents necessary to transfer any interest in these two businesses, including but not limited to stock certificates. Husband hereby agrees to assume his portion of any and all indebtedness associated with the operation of said business, including loan and contractual obligations and to save Wife harmless by reason of his assumption thereof.

(Emphasis added.)

By the express terms of the agreement, plaintiff transferred her interest in Sutton's Tree Service, Inc. to defendant when she signed the Property Settlement Agreement on 4 December 2009. See *Hill v. Hill*, 94 N.C. App. 474, 480, 380 S.E.2d 540, 545 (1989) ("A valid property settlement agreement which waives rights to equitable distribution will be honored by the courts and *will be binding upon the parties.*" (quotation omitted) (emphasis added)).

We note that plaintiff does not attack the Property Settlement Agreement or the trial court's conclusion that she was in civil contempt for failing to abide by the provisions of the judgment. Plaintiff cannot now argue that her willful violation of the agreement, *i.e.* refusal to execute the stock

certificates, affects the date of transfer of her interest to defendant. Plaintiff relinquished any right or interest in the business as of 4 December 2009, and obligated herself to execute "any and all documents necessary to transfer any interest" in the business, "including but not limited to stock certificates."

AFFIRMED.

Judges ERVIN and MCCULLOUGH concur.

Report per Rule 30(e).