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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-273

Filed: 17 October 2017

Henderson County, No. 11 CVD 2201

CONSTANCE CLEMENT DRURY, Plaintiff,

v.

RONALD CHARLES DRURY, et al., Defendants.

Appeal by defendant from order entered 26 October 2016 by Judge Peter Knight in Henderson County District Court. Heard in the Court of Appeals 6 September 2017.

Prince, Youngblood & Massagee, PLLC, by B. B. Massagee, III, and Sharon B. Alexander, for plaintiff-appellee.

Donald H. Barton, for defendant-appellant.

ELMORE, Judge.

Ronald Drury (defendant) appeals from an order granting his Rule 60(b) motion to set aside an interim distribution order as void for lack of subject-matter jurisdiction over the parties' equitable distribution ("ED") claims. The interim distribution order declared, in part, that 858 of 1000 shares of Exxon Mobile stock in the parties' joint E*Trade account were Constance Drury's (plaintiff) separate

property and directed that those shares of stock be distributed to her. As a result, that stock was transferred into an E*Trade account owned solely by Constance.

Later, the district court dismissed the parties' ED claims after concluding that it lacked jurisdiction over the subject matter of ED between the parties, since these claims were asserted before the parties had separated and were never timely reasserted before entry of an absolute divorce judgment. Ronald then moved under Rule 60(b) to set aside the interim distribution order as void, and for relief in the form of restoring the "status quo ante" and ordering that Constance return the stock to the parties' joint E*Trade account. The district court granted Ronald's motion to set aside the interim distribution order but it denied Ronald's requests for relief.

On appeal, Ronald argues the district court erred by declaring the stock to be Constance's separate property and refusing to reinstate the *status quo ante* by declaring the stock to be jointly owned by the parties. Because we conclude the district court never legally declared the stock to be Constance's separate property, and because it lacked authority to grant Ronald's requests, we affirm its order.

I. Background

On 6 December 2011, Constance filed a complaint against Ronald, seeking divorce from bed and board, post-separation support, alimony, and ED ("2011 Complaint"). On 2 February 2012, Ronald filed his answer and asserted a counterclaim for ED. On 20 September 2012, Constance filed a motion seeking an

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injunction and an interim distribution of her alleged separate property of shares of Exxon Mobile stock and a gold coin collection. After a hearing, the district court entered an order on 10 December 2012 declaring that the gold coins and 858 of the 1000 shares of Exxon Mobile stock held in the parties' E*Trade account were Constance's separate property, and ordering that those assets be transferred and distributed to Constance ("2012 Interim Distribution Order").

On 25 July 2013, Constance filed another complaint against Ronald, this time seeking absolute divorce ("2013 Complaint"). In her complaint, Constance alleged that the parties had separated on 4 July 2011. She later amended her complaint to reflect a 9 September 2011 separation date. On 19 August 2013, Ronald filed his answer, alleging the parties separated on 5 July 2012 but conceding they had been properly separated for over one year since the filing of the 2013 Complaint and thus were entitled to an absolute divorce judgment. On 29 August 2013, the court entered a judgment of absolute divorce, finding the parties had been separated for over one year but never identifying a separation date, and ordering that "all issues presently pending in [the 2011 Complaint] are reserved for determination by the Court in that action"

On 30 October 2014, Ronald filed motions under Rules 12(b)(1) and 12(b)(6) to dismiss Constance's ED claim, alleging that "at no time between the actual separation of the [parties] and the parties' subsequent divorce judgment did

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[Constance] properly assert a claim for [ED].” Ronald alleged that when Constance filed the 2011 Complaint and asserted her ED claim, the parties were still cohabiting, and did not separate until 5 July 2012. Ronald further alleged that Constance never asserted an ED claim in the 2013 Complaint. On 17 August 2015, the district court entered an order establishing that the actual separation date was 5 July 2012.

Meantime, on 21 September 2015, Constance moved under Rule 60(b) for relief from the judgment of absolute divorce arising from the 2013 Complaint, alleging in part that it denied her “the right to proceed through the court system for an [ED] of the parties’ marital property” No ruling on this motion was included in the appellate record, and it is unclear whether it remains pending.

On 21 December 2015, the court entered an order dismissing the parties’ ED claims because neither party asserted an ED claim between the expiration of the one-year separation period on 5 July 2013 and entry of the absolute divorce judgment on 29 August 2013. On 15 March 2016, Ronald moved under Rules 60(b)(4) and (b)(5) to set aside the 2012 Interim Distribution Order as void for lack of subject-matter jurisdiction and because, he alleged, it was inequitable for the order to have prospective application. In his motion, he requested the following relief: “That status quo ante be restored in this case, and that the Court order [Constance] to return the 858 shares of Exxon Mobile stock distributed to her by the [2012 Interim Distribution Order] to [the] Parties’ joint E*Trade account.”

After a hearing, the trial court entered an order on 26 October 2016 granting Ronald's Rule 60(b) motion to the extent it set aside the 2012 Interim Distribution Order as void but refusing to grant his requested relief of ordering Constance to return the stock ("Rule 60(b) Order"). Ronald appeals.

II. Analysis

On appeal, Ronald agrees with the district court's Rule 60(b) Order to the extent it declared the 2012 Interim Distribution Order void. He disagrees to the extent he contends the court improperly (1) declared the stock and gold coins were Constance's separate property and (2) refused to return those assets to their status as jointly owned by the parties. We conclude his arguments are meritless.

Under Rule 60(b), a trial court may "relieve a party . . . from a final . . . order" if that order was "void." N.C. Gen. Stat. § 60(b)(4) (2015). But the only relief afforded under Rule 60(b) is relief "from the effect of [the judgment or] order.'" *Duplin Cnty. Dep't of Soc. Servs. Ex rel. Pulley v. Frazier*, 230 N.C. App. 480, 482, 751 S.E.2d 621, 623 (2013) (quoting *Charns v. Brown*, 129 N.C. App. 635, 639, 502 S.E.2d 7, 10 (1998)).

We review a trial court's Rule 60(b) ruling for abuse of discretion. *See Davis v. Davis*, 360 N.C. 518, 523, 631 S.E.2d 114, 118 (2006) (citing *Sink v. Easter*, 288 N.C. 183, 198, 217 S.E.2d 532, 541 (1975)). "A trial court may be reversed for abuse of discretion only upon a showing that its actions are manifestly unsupported by

reason.” *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985) (citing *Clark v. Clark*, 301 N.C. 123, 271 S.E.2d 58 (1980)).

A. Classifying Assets as Separate Property

Ronald’s first argument that the district court erred by declaring the stock and gold coins to be Constance’s separate property is meritless because the court never made a legal declaration of these assets. He points to the following language from the Rule 60(b) Order he argues amounted to a classification of these assets:

The Defendant’s motion also requests that the undersigned do “equity” in this Rule 60 motion, by ordering the return of the personal property to the joint possession and ownership of the parties. The subject December 10, 2012 order was entered only after a full hearing on whether the subject personal property was subject to equitable distribution, or alternatively, was in fact the separate property of the Plaintiff. *The result of the hearing was a finding by this court that the subject property was the separate property of the Plaintiff, and that the subject personal property had maintained this status notwithstanding its comingling with the marital property of the parties, and that no agreements, actions or gifts existed as between the parties that had changed that status. Notwithstanding the setting aside of the subject order, equity would require that the undersigned not disregard such a determination, and therefore, declines to enter any order in equity which does not recognize such.*

(Emphasis added.) As reflected and contrary to Ronald’s assertion, the court never legally “declare[d] the 858 shares . . . to be [Constance]’s separate property”; rather, it merely recited the 2012 Interim Distribution Order’s classification. Accordingly, this argument is meritless.

B. Refusing to Classify Assets as Jointly Owned Property

Ronald's second argument that the court erred by "refus[ing] to return [the] assets to their status as jointly owned by the parties" is meritless because the court lacked jurisdictional authority to classify or distribute the property, and, further, it lacked statutory authority to grant his requested relief.

"A court's subject matter jurisdiction over a particular case is invoked by the pleading." *Boseman v. Jarrell*, 364 N.C. 537, 546, 704 S.E.2d 494, 501 (2010) (citing *In re K.J.L.*, 363 N.C. 343, 346–47, 677 S.E.2d 835, 837 (2009)). It is undisputed that the district court lacked subject-matter jurisdiction over the parties' ED claim and, therefore, the district court lacked jurisdictional authority to classify or distribute these assets. Moreover, "[s]ubject matter jurisdiction is '[j]urisdiction over the nature of the case and *the type of relief sought.*' " *Banks v. Hunter*, ___ N.C. App. ___, ___, 796 S.E.2d 361, 365 (2017) (emphasis added) (quoting *In re T.R.P.*, 360 N.C. 588, 590, 636 S.E.2d 787, 790 (2006)).

Here, Ronald moved under Rule 60(b) for relief in the form of restoring the *status quo ante* and ordering that Constance return the stock to the parties' joint E*Trade account. This type of relief is not afforded under Rule 60(b), and the court thus had no authority to grant it. *Cf. Banks*, ___ N.C. App. at ___, 796 S.E.2d at 365 ("Because a court's subject matter jurisdiction is invoked by the pleadings, plaintiff failed to invoke the trial court's subject matter jurisdiction over the relief sought by

seeking a type of foreclosure which is not allowed for by our foreclosure statutes.” (citing *Boseman*, 364 N.C. at 546, 704 S.E.2d at 501)). Accordingly, we overrule this argument.

III. Conclusion

The district court in its Rule 60(b) Order never legally declared the stock or gold coins to be Constance’s separate property, but merely recited the 2012 Interim Distribution Order’s classification of these assets as her separate property. Because the district court lacked jurisdiction over the subject matter of ED between the parties, it lacked authority to classify or distribute these assets. Further, because the court lacked authority under Rule 60(b) to grant Ronald’s requested relief, it properly refused to do so. The issues presented by these alleged errors amounted to no abuse of discretion. We thus affirm.

AFFIRMED.

Judges STROUD and TYSON concur.

Report per Rule 30(e).