

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA03-1257

NORTH CAROLINA COURT OF APPEALS

Filed: 17 August 2004

DONNIE DIANNE STARON,
(Formerly Clodfelter),
Plaintiff-Appellee,

v.

Guilford County
No. 96 CvD 11358

ROGER DEAN CLODFELTER, SR.,
Defendant-Appellant.

Appeal by defendant from order entered 28 July 2003 by Judge Joseph E. Turner in District Court, Guilford County. Heard in the Court of Appeals 9 June 2004.

Marilyn Cahoon and Robert S. Cahoon, for plaintiff-appellee.

Woodruff & Associates, P.A., by Carolyn J. Woodruff, for defendant-appellant.

McGEE, Judge.

This appeal involves the same facts as an unpublished opinion by this Court filed 17 August 2004 (COA03-1256). In this case, defendant is specifically appealing from the domestic relations order filed 28 July 2003 that ordered that plaintiff be awarded "\$109,758.20, effective April 2, 2002, plus or minus gains or losses on that amount[.]" This amount of \$109,758.20 represents one-half of defendant's 401(k), being \$95,637.50, plus the ten percent post-separation appreciation of the 401(k), \$14,120.70, that the trial court awarded to plaintiff.

The specific issue is whether the trial court erred in including the post-separation appreciation of defendant's 401(k) in the amount of the marital estate. In the related opinion, we held that the trial court erred in considering this amount as part of the marital estate. Thus, the amount awarded to plaintiff in this domestic relations order is flawed. Accordingly, we vacate this order and remand to the trial court.

Vacated and remanded.

Judges McCULLOUGH and ELMORE concur.

Report per Rule 30(e).