

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA03-1258

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This appeal involves the same facts as an unpublished opinion by this Court filed 17 August 2004 (COA03-1256).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 qualified domestic relations order filed 28 July 2003 that purports to divide defendant's pension plan between the parties.

The specific issues are whether the trial court erred in classifying defendant's pension plan as marital property and whether the trial court erred in not including the value of the pension plan in the marital estate. In the related opinion, we

held that the trial court did not err in classifying the pension plan as marital because the parties stipulated that it was marital. However, we held that the trial court did err in failing to include the amount of the pension plan in the value of the marital estate. Accordingly, the trial court erred in its calculation of the marital estate. Thus, we vacate this qualified domestic relations order and remand to the trial court so that the marital estate can be recalculated using the appropriate figures.

Vacated and remanded.

Judges McCULLOUGH and ELMORE concur.

Report per Rule 30(e).