

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-720

NORTH CAROLINA COURT OF APPEALS

Filed: 3 April 2007

DONNA NELSON SHATLEY,
Plaintiff-Appellant,

v.

Caldwell County
No. 04 CVD 849

LARRY TIMOTHY SHATLEY,
Defendant-Appellee.

Appeal by Plaintiff from order entered 10 November 2005 by Judge Sherri W. Elliott in District Court, Caldwell County. Heard in the Court of Appeals 24 January 2007.

Wesley E. Starnes, Trustee for the practice of W.C. Palmer, Attorney at Law, PLLC, for Plaintiff-Appellant.

Bruce L. Cannon for Defendant-Appellee.

McGEE, Judge.

Donna Nelson Shatley (Plaintiff) appeals from an order denying her motion for relief from judgment pursuant to N.C. Gen. Stat. § 1A-1, Rule 60(b)(6), and her motion to compel entry of a consent order. We affirm the trial court's decision.

Plaintiff filed a verified complaint on 21 June 2004 seeking a divorce from bed and board from Larry Timothy Shatley (Defendant). Plaintiff also sought post-separation support and alimony, custody of their minor child, child support, attorneys fees, and an equitable distribution of the marital property.

Defendant filed an answer, requesting that Plaintiff's claims be dismissed, and that Defendant be awarded custody of their minor child, along with child support. In an order entered 10 September 2004, the trial court ordered Defendant to file an equitable distribution affidavit by 24 September 2004 or the trial court would accept Plaintiff's equitable distribution affidavit as the final pretrial order. The trial court also ordered the parties to prepare a pretrial order by 4 October 2005 and gave Plaintiff responsibility for obtaining judicial signature. The trial court further ordered the parties to complete alternative dispute resolution by 15 December 2004. Defendant filed his equitable distribution affidavit on 24 September 2004. No pretrial order was filed by 4 October 2005, and the parties did not complete alternative dispute resolution by 15 December 2004.

On 18 January 2005, the trial court ordered Defendant to file an alimony and post-separation support affidavit by 28 February 2005. The trial court ordered Plaintiff to prepare a pretrial order for submission to the trial court no later than 14 March 2005. The order specified that a sanction of fifty dollars per day would be imposed for any deadline not met.

A pretrial conference was held 15 March 2005. The trial court determined that the parties had not complied with the trial court's order of 18 January 2005. The trial court ordered Plaintiff, Defendant, and their attorneys to appear on 20 April 2005 "to determine whether the fines accrued shall be remitted or imposed against the parties for failure to comply."

Defendant, Defendant's attorney, and Plaintiff's attorney appeared on 20 April 2005. However, Plaintiff did not appear. Plaintiff's attorney moved to withdraw due to irreconcilable differences with Plaintiff, and the trial court entered an order allowing his motion. The trial court found that Defendant had complied with the trial court's order. The trial court further found that Plaintiff had failed to complete the pretrial order and had refused to sign a consent order prepared by Plaintiff's attorney at Plaintiff's direction. The trial court found good cause to sanction Plaintiff and proceeded to disposition of the remaining issues.

In an order filed 27 June 2005, the trial court dismissed Plaintiff's claims for post-separation support, alimony, attorneys fees, and divorce from bed and board. The trial court also struck Plaintiff's equitable distribution affidavit from the record and ordered that Defendant's equitable distribution affidavit be taken as the only valid equitable distribution document for the trial court. The trial court ordered the marital property divided according to Defendant's equitable distribution affidavit. Finally, the trial court struck the monetary sanctions imposed on Plaintiff in lieu of the other sanctions imposed.

In a motion filed 14 July 2005, Plaintiff moved to set aside the trial court's 27 June 2005 order pursuant to N.C. Gen. Stat. § 1A-1, Rule 60(b)(6). Plaintiff also moved to compel entry of the consent order which Plaintiff's attorney had prepared. In her motion, Plaintiff stated that her attorney had not informed her of

the 20 April 2005 hearing, so she did not know to appear. Plaintiff also contended that she was not informed that her attorney intended to withdraw from the case. Plaintiff prayed that the trial court's 20 April 2005 order be set aside and that the trial court enter the consent order.

The trial court heard arguments on Plaintiff's motions on 25 October 2005. The trial court dismissed Plaintiff's motion to set aside the 27 June 2005 order and dismissed Plaintiff's motion to compel entry of the consent order. Plaintiff appeals.

Plaintiff argues the trial court abused its discretion by denying Plaintiff's motion to set aside the 27 June 2005 order. "A trial court's ruling on a Rule 60(b) motion is reviewable only for an abuse of discretion. The trial court's findings of fact are conclusive on appeal, if supported by competent evidence. However, those conclusions of law made by the court are reviewable on appeal." *Coppley v. Coppley*, 128 N.C. App. 658, 663, 496 S.E.2d 611, 616, *disc. review denied*, 348 N.C. 281, 502 S.E.2d 846 (1998) (internal citations omitted). To set aside a judgment pursuant to Rule 60(b)(6), a trial court must find (1) that extraordinary circumstances exist and (2) that justice demands relief be granted. *Thacker v. Thacker*, 107 N.C. App. 479, 481, 420 S.E.2d 479, 480, *disc. review denied*, 332 N.C. 672, 424 S.E.2d 407 (1992) (internal citations omitted). Additionally, the moving party must also show a meritorious defense. *Sides v. Reid*, 35 N.C. App. 235, 237, 241 S.E.2d 110, 111 (1978).

We conclude the trial court did not abuse its discretion by

denying Plaintiff's Rule 60(b)(6) motion. Plaintiff has not shown that extraordinary circumstances existed which would support the trial court's grant of Plaintiff's Rule 60(b)(6) motion. The record reflects that Plaintiff did not comply with numerous orders made by the trial court. Further, we note that in her brief, Plaintiff argues that the circumstances of this case demonstrate excusable neglect pursuant to N.C.G.S. § 1A-1, Rule 60(b)(1). In Plaintiff's motion to set aside the trial court's 27 June 2005 order, Plaintiff did not rely on excusable neglect as a ground for relief, and the trial court's order does not reflect a ruling based on that argument. Accordingly, we decline to address that argument now. *Creasman v. Creasman*, 152 N.C. App. 119, 123, 566 S.E.2d 725, 728 (2002) (finding that a contention not raised before the trial court may not be raised for the first time before the appellate court). We see no abuse of discretion by the trial court when it denied Plaintiff's motion to set aside the 27 June 2005 order.

Affirmed.

Judges BRYANT and ELMORE concur.

Report per Rule 30(e).