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NO. COA13-91  
NORTH CAROLINA COURT OF APPEALS

Filed: 3 September 2013

VONDA W. MOOREFIELD  
Plaintiff

v.

Guilford County  
No. 09 CVD 11346

DAVID H. MOOREFIELD  
Defendant

Appeal by defendant from order entered 22 June 2012 by Judge Polly D. Sizemore in Guilford County District Court. Heard in the Court of Appeals 21 May 2013.

*McKinney, Perry & Coalter, P.A. by Rebecca Perry, for plaintiff-appellant.*

*Kirkman Attorneys at Law, by Adam W. Arthur, for defendant-appellee.*

HUNTER, JR., Robert N., Judge.

Vonda W. Moorefield ("Plaintiff") appeals from an order granting David H. Moorefield's ("Defendant") motion to dismiss Plaintiff's claims for post-separation support and alimony. On appeal, Plaintiff argues the trial court erred in dismissing her claims for post-separation support and alimony. Upon review, we affirm.

**I. Factual & Procedural History**

Plaintiff and Defendant were married on 14 February 1987. On 30 January 1990, the couple entered into a separation agreement (the "Separation Agreement"), which contained a release of the parties' rights to seek temporary and permanent alimony and equitable distribution. In the years following the execution of the Separation Agreement, the parties separated and reconciled on numerous occasions. On 25 April 2009, the couple separated for a final time. On 1 September 2009, Plaintiff filed a complaint in Guilford County District Court seeking post-separation support, alimony, and equitable distribution.

Defendant filed an answer on 17 November 2009. The answer included a Motion for Declaratory Judgment asking the court to adjudge the Separation Agreement in full force and effect. In his motion, Defendant asked that the court adjudge the Separation Agreement to be a valid release of post-separation support and alimony. On 23 March 2010, a hearing was held on Defendant's motion before the Honorable Wendy Enochs. On 26 March 2010, the trial court granted Defendant's motion, finding the Separation Agreement to be in full force and effect. The order stated that Plaintiff was barred from pursuing a claim for

equitable distribution, but did not directly address Plaintiff's claims for post-separation support and alimony.

Plaintiff gave notice of appeal to this Court on 10 May 2010. Our Court held in an unpublished opinion that the "trial court did not err by declaring that the Separation Agreement remained valid and enforceable and that it barred Plaintiff's equitable distribution claim." *Moorefield v. Moorefield*, COA10-886, 212 N.C. App. 420, 713 S.E.2d 791, 2011 WL 2206844 at \*5 (2011) ("Moorefield I"). Further, in footnote 2 of our opinion, we clarified that

[a]lthough the trial court's order does not make any reference to Plaintiff's claim for post[-]separation support and alimony, the effect of the trial court's decision to uphold the validity of the Separation Agreement is to preclude Plaintiff from asserting her spousal support claims as well. As a result, we conclude that, taken in context, the trial court's order has the effect of barring Plaintiff's claims for post[-]separation support and alimony as well as her claim for equitable distribution.

*Id.* at \*2 n.2 (internal citation omitted).

On 7 March 2012, Defendant filed a Motion to Dismiss Plaintiff's post-separation support and alimony claims pursuant to Rule 12(b)(6) of our Rules of Civil Procedure. The motion to dismiss was treated as a summary judgment motion under Rule 56.

On 6 June 2012, a hearing was held on the motion before Judge Polly D. Sizemore. On 22 June 2012, the trial court granted summary judgment and dismissed Plaintiff's claims with prejudice, finding that the issue had been previously litigated. On 25 July 2012, Plaintiff filed notice of appeal.

## II. Jurisdiction & Standard of Review

Defendant asserts that this is an interlocutory appeal based on our analysis in *Moorefield I*. See *Moorefield I*, 2011 WL 2206844 at \*2 n.1. It is unclear from the record whether the circumstances referenced in our prior opinion have been resolved. Defendant filed a Motion to Dismiss with this Court on 5 February 2013. In Plaintiff's Amended Response in Opposition to Defendant-Appellee's Motion to Dismiss, filed 25 February 2013, Plaintiff specifically requests that this Court treat the record and Plaintiff's amended response as a petition for writ of certiorari. For the same reasons as stated in *Moorefield I*, we deny Defendant's Motion to Dismiss and grant Plaintiff's petition for writ of certiorari. See *id.*

The standard of review on appeal from an order granting summary judgment is *de novo*. *Woods v. Mangum*, 200 N.C. App. 1, 5, 682 S.E.2d 435, 438 (2009).

### III. Analysis

On appeal, Plaintiff argues that the trial court erred in granting summary judgment for Defendant because the explanation in footnote two of our prior opinion addressing these issues is dicta and not the "law of the case." Upon review, we affirm the decision of the trial court.

Under North Carolina's "law of the case" doctrine, "[a] decision of this Court on a prior appeal constitutes the law of the case, both in subsequent proceedings in the trial court and on a subsequent appeal." *Lea Co. v. N.C. Bd. of Transp.*, 323 N.C. 697, 699, 374 S.E.2d 866, 868 (1989); *see also Tennessee-Carolina Transp., Inc. v. Strick Corp.*, 286 N.C. 235, 239, 210 S.E.2d 181, 183 (1974). "[T]he law of the case applies only to issues that were decided in the former proceeding, whether explicitly or by necessary implication, but not to questions which might have been decided but were not." *Goldston v. State*, 199 N.C. App. 618, 624, 683 S.E.2d 237, 242 (2009). According to this doctrine, "the mandate of the reviewing court is binding on the lower court, and must be strictly followed." *Couch v. Private Diagnostic Clinic*, 146 N.C. App. 658, 667, 554 S.E.2d 356, 363 (2001) (quotation marks and citation omitted).

Defendant's Motion for Declaratory Judgment asked the trial court to find the Separation Agreement valid and in full force and effect, releasing all marital rights including post-separation support and alimony. The trial court granted Defendant's motion, finding the Separation Agreement to be in full force and effect.

In our prior opinion, this Court held that the Separation Agreement is in full force and effect and that Plaintiff is barred from seeking equitable distribution. *Moorefield I*, 2011 WL 2206844 at \*5. In footnote two, we clarified that the result of the trial court's ruling and our affirmation of that ruling also "barr[ed] Plaintiff from seeking post[-]separation support and alimony." *Id.* at \*2 n.2.

Plaintiff argues that footnote 2 constituted dicta, not the "law of the case."

[T]he doctrine of the law of the case contemplates only such points as are actually presented and necessarily involved in determining the case. The doctrine does not apply to what is said by the reviewing court, or by the writing [judge], on points arising outside of the case and not embodied in the determination made by the court. Such expressions are *obiter dicta* and ordinarily do not become precedents in the sense of settling the law of the case.

*Hayes v. City of Wilmington*, 243 N.C. 525, 536, 91 S.E.2d 673, 682 (1956).

The point actually presented on Plaintiff's prior appeal was whether or not the trial court erred in finding the Separation Agreement to be in full force and effect. We agreed with the trial court and clarified in footnote two that the effect of finding the Separation Agreement to be in full force and effect was that Plaintiff would be barred from pursuing post-separation support and alimony. The explanation in the footnote was within the issue decided on appeal and was not *obiter dicta*.

To the extent Plaintiff had additional arguments regarding why the Separation Agreement was not in full force and effect, particularly the provisions regarding post-separation support and alimony, those arguments should have been raised before the trial court in the 23 March 2010 hearing and the subsequent appeal. As the trial court and this Court have found the Separation Agreement to be in full force and effect, Plaintiff cannot now argue that certain provisions of that agreement are not enforceable.

**IV. Conclusion**

For the foregoing reasons, we

AFFIRM.

Judges MCGEE and STEPHENS concur.

Report per Rule 30(e).