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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-355

Filed: 17 November 2015

Rowan County, No. 13 CVD 1883

JENNIFER DENISE DIXON, Plaintiff,

v.

BILL DIXON, Defendant.

Appeal by Defendant from order entered 24 September 2014 by Judge Beth Dixon in Rowan County District Court. Heard in the Court of Appeals 23 September 2015.

Richard D. Locklear for Plaintiff.

Defendant Bill Dixon, pro se.

STEPHENS, Judge.

This matter arises from Defendant's failure to make the spousal support payments required by a separation agreement incorporated into an absolute divorce judgment, which ultimately led to entry of a contempt order against him. We dismiss as not properly before us Defendant's arguments regarding alleged errors in the divorce judgment and contempt order, and we affirm the trial court's denial of Defendant's motion to "vacate, amend or correct" the absolute divorce judgment.

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Factual and Procedural Background

Plaintiff Jennifer Denise Dixon and Defendant Bill Dixon were married on 25 March 1995 and separated on 1 January 2012. On 30 April 2012, they entered into a separation agreement and property settlement (“the agreement”) which resolved all matters between them. On 8 August 2013, Jennifer filed a complaint in Rowan County District Court for absolute divorce, asking that the agreement be incorporated into the divorce decree. On 9 September 2013, Bill, acting *pro se*, filed a paper with the court which states verbatim (errors in original): “I Bill Dixon disagree with The papers I recive and cannot pay 1,800 a month I only make \$800.00 wk before my truck payment and deduction come out. I dont have a place to stay rite now I live in my truck. Thanks [signed] Bill Dixon.” On 19 September 2013, Jennifer moved for summary judgment on her claim for absolute divorce. The matter came on for hearing at the 1 October 2013 civil, non-jury session of Rowan County District Court, the Honorable Beth Dixon, Judge presiding.

Following the hearing, the trial court entered an absolute divorce summary judgment (“the divorce judgment”) which contained the following findings of fact:

1. That the plaintiff is a citizen and resident of Cabarrus County, North Carolina and has been for more than six (6) months prior to bringing this action for absolute divorce based on one (1) years [sic] separation.
2. That the defendant is a citizen and resident of Charlotte, Mecklenburg County, North Carolina.

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3. That the plaintiff filed in this action a verified Complaint on August 8, 2013, which the Court accepts as a verified pleading in support of the plaintiff's Motion for Absolute Divorce Summary Judgment.

4. That the defendant was served by the Gaston County Sheriff's Department on August 19, 2013 "by delivering to the defendant named above a copy of the summons and complaint[.]"

5. That the defendant was notified that unless an Answer or other responsive pleading, which denies the material allegations of the plaintiff's Complaint, is filed within thirty (30) days following service of the Complaint, that the plaintiff would move the Court to enter a judgment of absolute divorce without further notice or hearing.

6. That no responsive pleadings have been filed which deny the material allegations of the plaintiff's Complaint.

7. That the plaintiff filed with this Court a Motion for Absolute Divorce Summary Judgment more than thirty (30) days after the commencement of this action.

8. That the Motion for Absolute Divorce Summary Judgment was served on the defendant in this action more than ten (10) days before this hearing in accordance with the provisions of G.S. 1A-1, Rule 56.

9. That as alleged in the Complaint, the plaintiff and defendant were lawfully married on March 25, 1995 in Orangeburg, South Carolina.

10. That the plaintiff and defendant have lived continuously separate and apart from each other for more than one (1) year next preceding the institution of this action, and since January 1, 2012.

11. That there was one child born of the marriage, namely: Faith D. Dixon, born January 13, 1997.

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12. That the parties entered into a Separation Agreement and Property Settlement on April 30, 2012; said agreement resolved all matters.

On the basis of those findings of fact, the court concluded that it had jurisdiction in the matter and over the parties, that no issue of material fact existed, and that Jennifer was entitled to an absolute divorce as a matter of law. The court then granted Jennifer an absolute divorce from Bill and decreed that the agreement would be incorporated into the divorce judgment. The record on appeal contains no notice of appeal from the divorce judgment.

On 1 May 2014, Jennifer filed a motion in the cause for contempt, alleging that Bill had failed to comply with the child support and spousal support provisions of the agreement incorporated into the divorce judgment. A hearing on the contempt motion was continued until August 2014. On 13 July 2014, Bill filed a motion in the cause to terminate spousal support, in which he alleged that Jennifer was living with a man to whom she was engaged and asking that Jennifer's spousal support payment be terminated, retroactive to the date when the alleged cohabitation began, pursuant to section 50-16.9(b) of our State's General Statutes. On 12 August 2014, Bill filed a motion for a new trial, alleging that he had not been "properly served for trial based on the factors listed in N.C.G.S. 1A-1 RULE 5(a)" in Jennifer's action for absolute divorce. On the following day, Bill moved for relief from judgment, citing N.C. Gen. Stat. § 1A-1, Rule 60(b)(1)-(3), and (6).

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Following a hearing on 7 August 2014 on Jennifer's motion in the cause for contempt, on 16 September 2014, the court entered an order denying Bill's motion to terminate spousal support, finding him in willful contempt of court for failing to comply with the divorce judgment, and providing that Bill could purge himself of contempt by paying \$9,427.00 in past-due spousal support to Jennifer on a specified schedule. The record on appeal contains no notice of appeal from the contempt order.

The trial court held a hearing on Bill's Rule 60(b) motion on 9 September 2014, and, by order entered 24 September 2014 ("the Rule 60(b) order"), denied the motion, finding, *inter alia*,

[t]hat the Separation Agreement did include the following language[:] "Should an absolute divorce be decreed in any action or proceeding between the parties, this Agreement shall be submitted to the Court for its approval and the provisions hereof shall, if the Court approves, be incorporated in, merged with, and become a part of such decree, and shall be enforceable as part thereof."

Bill filed a notice of appeal from the Rule 60(b) order on 22 October 2014.

Discussion

On appeal, Bill argues that the trial court abused its discretion by incorporating the agreement into the divorce judgment and in denying his Rule 60(b) motion. He also contends that the trial court failed to make adequate findings of fact in the contempt order. We dismiss in part and affirm in part.

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We begin by noting that Bill proceeded *pro se* at trial and on appeal. We observe that many of his arguments on appeal and our resolution thereof result from that choice. This Court has “emphasize[d] that even *pro se* appellants must adhere strictly to the Rules of Appellate Procedure” *Strauss v. Hunt*, 140 N.C. App. 345, 348-49, 536 S.E.2d 636, 639 (2000) (citing N.C.R. App. P. 25(b)). Much, if not all, of Bill’s argument on appeal pertains to alleged error in the trial court’s entry of the divorce judgment, although, as noted *supra*, Bill did not appeal from the divorce judgment. Further, although he brings forward an argument that the contempt order lacked sufficient findings of fact, Bill did not appeal from that order either. Thus, those arguments are not properly before this Court, and we do not consider them.

Bill *has* appealed from the trial court’s denial of his Rule 60(b) motion. “[A] motion for relief under Rule 60(b) is addressed to the sound discretion of the trial court and appellate review is limited to determining whether the court abused its discretion.” *Sink v. Easter*, 288 N.C. 183, 198, 217 S.E.2d 532, 541 (1975) (citations omitted). Rule 60(b) provides:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) Mistake, inadvertence, surprise, or excusable neglect;
- (2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

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(3) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; [or]

...

(6) Any other reason justifying relief from the operation of the judgment.

N.C. Gen. Stat. § 1A-1, Rule 60(b) (2013). In his brief, Bill acknowledges that his basis for the Rule 60(b) motion was that he did not realize he needed to be present at the trial on Jennifer's motion for absolute divorce in order to raise his objections to incorporating the agreement into the divorce judgment. Bill does not argue how this misunderstanding on his part falls under Rule 60(b), and we see no basis under Rule 60(b)(1)-(3) or (6) for Bill's motion. Bill does not suggest either newly discovered evidence or fraud as grounds for his Rule 60(b) motion. At best, he implies that he did not understand the legal import and requirements of the proceedings. However, mistakes of law do not constitute excusable neglect under Rule 60. *See Couch v. Private Diagnostic Clinic*, 133 N.C. App. 93, 103, 515 S.E.2d 30, 38, *affirmed per curiam without precedential value*, 351 N.C. 92, 520 S.E.2d 785 (1999). We find no error in the trial court's Rule 60 order, and, accordingly, we overrule Bill's argument to the contrary.

DISMISSED IN PART AND AFFIRMED IN PART.

Judges MCCULLOUGH and ZACHARY concur.

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Report per Rule 30(e).