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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-859

Filed: 19 April 2016

Mecklenburg County, No. 10 CVD 25772

MARY KNIGHT EUBANKS, Plaintiff,

v.

DONALD (NMN) EUBANKS, SR., Defendant.

Appeal by Plaintiff from order entered 9 April 2015 by Judge Gary L. Henderson in Mecklenburg County District Court. Heard in the Court of Appeals 14 January 2016.

Kenneth T. Davies for Plaintiff.

Church Watson Law, PLLC, by Kary C. Watson, for Defendant.

STEPHENS, Judge.

Plaintiff Mary Knight Eubanks (“Mary”) appeals from the trial court’s equitable distribution order requiring her to pay a distributive award in the amount of \$42,031.00 to her former husband, Defendant Donald (NMN) Eubanks, Sr. (“Donald”). Mary contends that the trial court’s order must be vacated because the court lacked subject matter jurisdiction to hear and determine the matter. We affirm the trial court’s order.

Factual Background and Procedural History

The parties were married to each other on 1 January 2004, legally separated on 15 May 2011, and divorced on 29 June 2012. On 23 December 2010, Mary filed a complaint in Mecklenburg County District Court alleging marital misconduct and adultery by Donald and seeking divorce from bed and board, post-separation support, alimony, attorney fees, and injunctive relief. On 29 April 2011, Donald filed an answer in which he asserted several affirmative defenses and a counterclaim for equitable distribution seeking an unequal distribution of the parties' marital estate in his favor.

On 31 May 2011, Mary filed a motion to dismiss Donald's counterclaim for failure to state a claim upon which relief can be granted and lack of subject matter jurisdiction, given that his counterclaim for equitable distribution was untimely filed, approximately two weeks before the parties were legally separated. On 17 June 2011, Mary filed a motion for leave to supplement her complaint pursuant to N.C. Gen. Stat. § 1A-1, Rule 15(d), as well as a draft of her supplemental complaint in which she asserted a claim for equitable distribution of the parties' marital estate with an unequal distribution in her favor. On 12 July 2011, Mary filed a motion for a court-ordered appraisal of the parties' marital residence, as well as a motion for an order requiring the sale of that residence, noting that such a sale would be in the best

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interests of the parties in order to “ensure an equitable distribution of the marital property, without requiring a large distributive award to either party.”

On 15 August 2011, Mary filed notice of withdrawal of her previously filed motion to dismiss. That same day, the district court entered a memorandum of judgment/order noting Mary’s withdrawal of her motion to dismiss and the fact that the parties had agreed to list the marital home for sale. The court also granted Mary’s motion for leave to supplement her complaint to add her claim for equitable distribution. On 13 September 2011, Donald filed an answer to Mary’s supplemental complaint for equitable distribution in which he admitted her allegation that “[d]uring the marriage of the parties they acquired property and debt subject to equitable distribution,” requested “relief as set forth in [Donald’s original] Answer, Defenses and Counterclaims” for, *inter alia*, equitable distribution, and also asked the court to deny Mary’s request for an unequal distribution of marital and divisible property in her favor.

On 7 March 2012, Mary filed notice of voluntary dismissal with prejudice of her claim for divorce from bed and board. The next day, Mary filed notice for an initial pretrial/discovery equitable distribution hearing to be conducted on 4 May 2012. On 17 May 2012, one day after Donald filed his equitable distribution affidavit, Mary filed a complaint for absolute divorce, as well as notice of voluntary dismissal without prejudice of her claim for equitable distribution. The following day, Donald filed

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notice for an initial equitable distribution pretrial conference to be conducted on 3 August 2012. On 4 June 2012, Donald filed an answer to Mary's claim for absolute divorce in which he admitted the allegations of Mary's complaint for same, noted that he had already filed a claim for equitable distribution in a separate action, and requested that such claim be preserved upon entry of absolute divorce. Two days later, Mary filed an equitable distribution affidavit. On 29 June 2012, the trial court entered a judgment of absolute divorce in which it also stated that "[Donald's] claim for equitable distribution in another proceeding is hereby preserved." On 2 August 2012, the court entered an order for post-separation support. The next day, the court entered an initial equitable distribution pretrial conference, scheduling, and discovery order.

On 22 March 2013, the court entered a final equitable distribution pretrial order in which the parties set forth stipulations regarding the classification, valuation, and distribution of various items of marital and divisible property, and also identified issues to be resolved during the equitable distribution trial. The matter came on for hearing on 16-17 September 2014 in Mecklenburg County District Court, the Honorable Gary L. Henderson, Judge presiding. On 9 April 2015, the trial court entered an order in which it allowed the parties' respective claims for equitable distribution, found that an equal division of marital property would be equitable but an in-kind distribution would not be possible, then divided the marital estate and

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required Mary to pay a distributive award to Donald in the amount of \$42,031.00.

Mary gave notice of appeal to this Court on 7 May 2015.

Analysis

In her sole argument on appeal, Mary contends that the trial court lacked subject matter jurisdiction to enter its equitable distribution order. We disagree.

“[W]hether a trial court has subject matter jurisdiction is a question of law, which is reviewable on appeal *de novo*.” *Yurek v. Shaffer*, 198 N.C. App. 67, 75, 678 S.E.2d 738, 743 (2009) (citation and internal quotation marks omitted). “Equitable distribution is a statutory right granted to spouses under [section] 50-20 [of our General Statutes] which vests at the time of separation.” *Kroh v. Kroh*, 154 N.C. App. 198, 201, 571 S.E.2d 643, 645 (2002) (citation omitted); *see also* N.C. Gen. Stat. § 50-21(a) (2015) (“At any time after a husband and wife begin to live separate and apart from each other, a claim for equitable distribution may be filed and adjudicated[.]”). Further, “[a]n absolute divorce obtained within this State shall destroy the right of a spouse to equitable distribution under [section] 50-20 unless the right is asserted prior to judgment of absolute divorce.” *Coleman v. Coleman*, 182 N.C. App. 25, 28, 641 S.E.2d 332, 335 (2007) (quoting N.C. Gen. Stat. § 50-11(e)). While “there is nothing in the statute regarding the sufficiency of the pleadings to support a claim for equitable distribution, our Supreme Court [has] acknowledged that equitable distribution is not automatic, and that a party seeking such division of marital

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property must specifically apply for it.” *Id.* (citation, internal quotation marks, and certain brackets omitted). An action for equitable distribution may be initiated as a cross-action in an action for absolute divorce or as a separate action, and a trial court’s bare reservation of the issue of equitable distribution will preserve such a claim for either party provided they have asserted a right to equitable distribution prior to entry of a judgment for absolute divorce. *See, e.g., Lutz v. Lutz*, 101 N.C. App. 298, 303, 399 S.E.2d 385, 388, *disc. review denied*, 328 N.C. 732, 404 S.E.2d 871 (1991).

Here, the record indicates that the parties were not legally separated until 15 May 2011, approximately two weeks after Donald filed his counterclaim for equitable distribution on 29 April 2011. Mary argues that because Donald failed to comply with the express requirement of section 50-21 that a claim for equitable distribution be filed “[a]t any time after a husband and wife begin to live separate and apart,” N.C. Gen. Stat. § 50-21(a), the trial court never acquired subject matter jurisdiction over his counterclaim for equitable distribution. In support of this argument, Mary relies on our Supreme Court’s decision in *Atkinson v. Atkinson*, 350 N.C. 590, 516 S.E.2d 381 (1999).

In *Atkinson*, after the plaintiff-wife filed a complaint seeking equitable distribution of marital property, the defendant-husband filed an answer and counterclaim for equitable distribution, to which the plaintiff-wife replied. *See Atkinson v. Atkinson*, 132 N.C. App. 82, 84, 510 S.E.2d 178, 179, *reversed for the*

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reasons stated in the dissent, 350 N.C. 590, 516 S.E.2d 381 (1999). However, the trial court declined to rule on both parties' claims based on its finding that they were still living together and had not yet legally separated. *See id.* Two years later, the defendant-husband filed a complaint in a separate action for divorce in which he alleged that "all pending claims arising out of the parties' marriage including both [parties'] claims for an equitable distribution of marital property, are pending in [the prior action]." *Id.* After the plaintiff-wife admitted this allegation in her answer and joined the request for a divorce, the trial court entered a judgment of divorce in which it noted that "all pending claims arising out of the parties' marriage, including both [parties'] claims for an equitable distribution of marital property, are pending in [the earlier action]." *Id.* Thereafter, the defendant-husband filed a voluntary dismissal of his counterclaim for equitable distribution, as well as a motion to dismiss the defendant-wife's original claim for equitable distribution because the parties had not yet separated as of the date when it was filed. *Id.* When the trial court denied his motion to dismiss, the defendant-husband appealed to this Court, which dismissed his appeal as being interlocutory. *Id.* at 85, 510 S.E.2d at 179. The plaintiff-wife then voluntarily dismissed her action for equitable distribution without prejudice. *See id.* When she attempted to refile her complaint several months later, the defendant-husband filed a motion to dismiss, arguing that the parties' divorce had terminated any right of action for equitable distribution. *See id.* Although the plaintiff-wife

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argued that her claim was preserved by the admission in her answer to the defendant-husband's complaint for divorce that the parties' claims for equitable distribution remained pending, the trial court concluded the plaintiff-wife had failed to preserve her equitable distribution claim and granted the defendant-husband's motion to dismiss. *Id.* at 86, 510 S.E.2d at 180. The plaintiff-wife appealed to this Court, where the majority of a divided panel held that the trial court erred in dismissing her claim. *Id.* at 88, 510 S.E.2d at 181. The majority based its analysis in part on its conclusion that the defendant-husband's complaint for divorce

clearly allege[d] a claim for equitable distribution of the marital property when he assert[ed] that such a claim is pending. For what other reason would he include a reference to this matter in his complaint? The plaintiff answered and admitted the parties have a claim for equitable distribution of the marital property. Thus, it is apparent that when [the trial court] considered all of the pleadings in these cases, [it] determined a claim had been made for equitable distribution of the marital property and that [it] was bound to construe the pleadings in accordance with Rule 8 [of our State's Rules of Civil Procedure] so as to do substantial justice.

Id. at 87-88, 510 S.E.2d at 181 (internal quotation marks omitted). However, the dissent concluded that the defendant-husband's motion to dismiss had been properly granted because the plaintiff-wife's original claim for equitable distribution "was not asserted after the date of separation and before the entry of divorce, thus making it invalid." *Id.* at 90, 510 S.E.2d at 182 (Greene, J., dissenting). The dissent also reasoned that, rather than asserting a claim for equitable distribution in his divorce

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complaint, the defendant-husband had “simply acknowledged there were, at the time the divorce complaint was filed, pending [equitable distribution] claims filed by both [parties],” and the dissent concluded that “[t]his acknowledgment does not itself constitute an [equitable distribution] claim.” *Id.* at 91 n.1, 510 S.E.2d at 183 n.1. When the defendant-husband appealed to our Supreme Court, the Court reversed the majority’s decision for the reasons stated in the dissent. *Atkinson*, 350 N.C. at 590, 516 S.E.2d at 381.

Mary insists that the result in the present case should be controlled by *Atkinson* and that, because Donald failed to assert his counterclaim for equitable distribution after the date of separation and before the entry of absolute divorce, the trial court lacked subject matter jurisdiction to enter its equitable distribution order. However, Mary’s argument ignores a critical distinction between *Atkinson* and the instant facts. Specifically, in *Atkinson* our Supreme Court ultimately determined that the dissent was correct in its conclusion that there was never any timely or valid claim for equitable distribution filed by either party. Here, by contrast, our review of the record demonstrates that although Donald’s original counterclaim for equitable distribution was untimely filed, Mary filed her own supplemental complaint alleging a claim for equitable distribution after the parties separated and before the entry of absolute divorce. In his timely filed answer to Mary’s supplemental complaint, Donald admitted Mary’s allegation that “[d]uring the marriage of the parties they

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acquired property and debt subject to equitable distribution” and also prayed “for relief as set forth in his Answer, Defenses and Counterclaims,” in which he first asserted his untimely claim for equitable distribution.

Our decision in *Coleman* illustrates that although “a spouse’s pleading asserting an interest in a specific piece of property, or to proceeds generated from an interest in a specific piece of property, is insufficient to state a claim for equitable distribution,” no magic language is required to state a valid claim for equitable distribution so long as the claimant’s pleading is sufficiently clear to put the opposite party on notice that the claimant is “requesting the court to enter an order distributing the parties’ assets in an equitable manner.” 182 N.C. App. at 28, 641 S.E.2d at 336 (citations omitted). Given the procedural posture of this case, we find it difficult to discern how there could be any doubt that Mary had ample notice of Donald’s intention to assert a claim for equitable distribution of the parties’ marital property, and we therefore conclude that, in light of N.C.R. Civ. P. 8 and our State’s approach to notice pleading, Donald’s answer to Mary’s supplemental complaint sufficiently stated a claim for equitable distribution, which—despite Mary’s subsequent dismissal of her own claim—the trial court explicitly preserved in its judgment of absolute divorce. We therefore conclude that Mary’s argument that the court lacked subject matter jurisdiction to enter an order for equitable distribution is without merit. Accordingly, the trial court’s order is

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AFFIRMED.

Judges HUNTER, JR., and INMAN concur.

Report per Rule 30(e).