IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-713

No. COA21-81

Filed 21 December 2021

Graham County, No. 17 CVS 153

REID GOLDSBY MILLER, Plaintiff,

v.

GRAHAM COUNTY, TAJUANA LEDWELL, and ERMA PHILLIPS, Defendants.

Appeal by Plaintiff from order entered 23 September 2020 by Judge Steven Warren in the Graham County Superior Court. Heard in the Court of Appeals 2 November 2021.

Reid Goldsby Miller, pro se, for plaintiff-appellant.

Coward, Hicks & Siler, P.A., by J. K. Coward, Jr., for defendants-appellees.

MURPHY, Judge.

¶ 1 Plaintiff Reid Goldsby Miller appeals from an order of the trial court granting in part her *Motion for Entry of Summary Judgment on Remand* and awarding her the return of money held in escrow by Defendant Graham County pending resolution of the property tax dispute at issue in *Miller v. Graham County*, COA18-1310, 268 N.C. App. 466, 834 S.E.2d 450, 2019 WL 6133845 (2019) (unpublished) ("*Miller I*"). On remand, the trial court returned Miller's escrowed funds, less the amount of

outstanding property taxes Miller owed Graham County and interest thereon. Miller argues the trial court erred in failing to award her interest, purportedly required by statute, on the amount returned from escrow. Meanwhile, Graham County argues the trial court properly deducted outstanding taxes with interest from the amount to be returned to Miller. However, we need not examine the merits of either argument as, in *Miller I*, we unambiguously instructed the trial court that "Miller [was] entitled to summary judgment and the return of her escrowed funds." *Id.* at *5.

BACKGROUND

¶ 2 This appeal arises from an order entered on 23 September 2020 in Graham County Superior Court granting Miller's *Motion for Entry of Summary Judgment on Remand* as directed by our opinion in *Miller I*. This case's relevant history, as discussed in *Miller I*, is as follows:

> Through the end of 2016, Miller owned five tracts of land in Graham County, all of which had been taxed under Graham County's [present-use value ("PUV")] program ("the Program") for forestland prior to 2013. The Program allows owners of "[l]and that is a part of a forest unit that is actively engaged in the commercial growing of trees under a sound management program" to be taxed at lowered yearly rates in comparison to the otherwise-applicable tax rate, or true value. N.C.G.S. § 105-277.2(2) (2017). Miller's properties were subject to logging requirements under her management program.
>
> During the summer of 2013, the Graham County Board of Equalization and Review ("the Board") removed four of Miller's five tracts from the Program, allegedly for her

failure to sufficiently comply with logging requirements pending sale of the properties. Upon their removal from the PUV program, the tracts were to be taxed at their true value, which was significantly higher than the PUV. Miller appealed this removal to the [North Carolina Property Tax Commission ("the Commission")] under N.C.G.S. § 105-290(b), arguing the Board erred when it determined that four of her properties no longer qualified for the Program.

On 27 April 2016, the Commission heard Miller's case. In each of the three years between Miller filing her appeal and the hearing before the Commission, Miller received tax assessment notices to which she did not respond. Miller did not reapply to the Program for any of those years. At the conclusion of the April 2016 hearing, the Commission held in favor of Miller, reasoning she had sufficiently complied with her management program in 2013 to remain in the Program. As a result, the Commission remarked in its conclusions of law entered 16 December 2016 that the tracts that had been removed were "entitled to continued deferred taxation on the basis of the value of the land at its [PUV.]" Neither party appealed the Commission's Order.

Between the April hearing and December order—in July 2016—Graham County garnished $31,429.68 in back taxes from Miller. This garnishment was for tax years 2014, 2015, and 2016 on the basis that, despite the unresolved matter of the tracts' later-determined improper removal from the Program in 2013, Miller's tax assessments for those years were properly based on the tracts' (higher) true value rather than their PUV. On 22 December 2016—six days after the Commission released its decision—the parties agreed to hold the garnished $31,429.68 and an additional $13,879.99 Graham County alleged Miller owed for the 2016 tax year in escrow to be disbursed according to the final decision of a court of competent jurisdiction.

Miller . . . argued she was entitled to declaratory judgment under our Declaratory Judgment Act on the bases that (1)

> Graham County failed to remove her properties from the Program for 2014, 2015, and 2016, which meant she was entitled to the lower tax rate in all three years; and (2) Graham County failed to release the garnished funds.

Id. at *1-2 (footnotes omitted). We held Miller was "entitled to summary judgment and the return of her escrowed funds" because her reinstatement to the Program in 2013 also reinstated her in 2014, 2015, and 2016 absent a separate determination from the Board disqualifying her property in those years. *Id.* at *5.

¶ 3 On remand, Miller filed her *Motion for Entry of Summary Judgment on Remand* arguing she was entitled to the return of the escrowed funds plus "statutorily-mandated interest" accrued since the date the respective sums were either garnished on 13 July 2016 or placed in the *Agreement for Reserve Fund as Escrow Account* she entered into with Graham County on 22 December 2016. In response, Graham County submitted, *inter alia*, affidavits of (1) an attorney for Graham County stating the county did not have access to the escrowed funds pending resolution of Miller's case; (2) the former Graham County Tax Assessor, Defendant Erma Phillips, stating she acted "in good faith, without wrongful intent, [and] with the belief [she] was complying with the laws of the State of North Carolina" at all times relevant to Miller's claim; and (3) the Graham County Assistant Tax Assessor stating Miller still owed the county an outstanding amount in property taxes

comprised of the Program tax rates for 2013 through 2016, interest accrued since their original due dates, and miscellaneous fees.

¶ 4 The trial court granted in part Miller's *Motion for Entry of Summary Judgment on Remand* in an order entered on 23 September 2020. However, in its order, the trial court concluded that "[t]he amount of taxes due is to be figured at the corrected Present Use Value rate" and deducted from the escrowed funds before their return to Miller, with "delinquencies and fees for non payment . . . collected as by law required." Miller now appeals from the trial court's order, arguing the trial court erred in (1) deducting an amount reflecting her outstanding property taxes plus interest and fees from the funds to be returned to her from escrow and (2) failing to order the return of her escrowed funds *with interest* from Graham County.

ANALYSIS

¶ 5 In addressing Miller's substantive claims, we must first determine whether, in light of our holding in *Miller I*, the trial court had the authority to award Miller an amount other than the full amount held in escrow. "It is well established that the mandate of an appellate court is binding upon the trial court and must be strictly followed without variation or departure. No judgment other than that directed or permitted by the appellate court may be entered." *In re S.M.M.*, 374 N.C. 911, 914, 845 S.E.2d 8, 11 (2020) (marks omitted).

¶ 6 In *Miller I*, we held "the trial court erred in granting summary judgment for Graham County and denying summary judgment for Miller" and decreed, without qualification, that "Miller [was] entitled to summary judgment and the return of her escrowed funds." *Miller I*, 2019 WL 6133845 at *5. In her original *Motion for Summary Judgment*, Miller did not specify what amount she believed she was entitled to, only that "[she] believe[d] that the [2013 reinstatement] entitle[d] [her] to continued deferred taxation for 2014, 2015 and 2016 . . . ."[1] Graham County's motion for summary judgment also made no such specification. The only informative language in the escrow agreement between Miller and Graham County states that "these funds will be held in the reserve fund to be held in escrow until . . . there is a final determination by . . . a [c]ourt of competent jurisdiction as to how said funds should be disbursed." Miller's *Complaint* did, however, specify that she sought "an immediate release of the funds being held in escrow by Graham County in the amount of $45,309.67[,]" and Graham County likewise specified in its *Answer and Counterclaim* that it sought a declaration it was "entitled to have said funds held in reserve disbursed to it . . . ."

[1] Miller's original *Motion for Summary Judgment* does not appear in the Record on the current appeal. However, because "a court may take judicial notice of its own records in another interrelated proceeding where the parties are the same," relevant records in *Miller I* inform our decision in this second appeal. *West v. G. D. Reddick, Inc.*, 302 N.C. 201, 202, 274 S.E.2d 221, 223 (1981).

¶ 7 Given this background, our holding in *Miller I* unambiguously ordered the release of the *whole* amount held in escrow to Miller, not an amount to be adjusted based on future arguments of the parties. *See id.* Both parties had sought the full amount of Miller's funds held in escrow, and our holding that "Miller [was] entitled to . . . the return of her escrowed funds" was unqualified. *Id.* While we have previously held that a trial court may, when not in conflict with our holdings on remand, award fees associated with issues not addressed on appeal, a trial court must precisely follow our holdings regarding relief we *did* address.[2] *McKinney v. McKinney*, 228 N.C. App. 300, 303, 305, 745 S.E.2d 356, 358-59, 360 (2013) (holding that "[b]ecause we did not address appellate attorney's fees, the trial court's award of appellate attorney's fees was not 'inconsistent and at variance with, contrary to, and modified, corrected, altered or reversed' our mandate," while also holding "[t]he trial court was bound by our specific instructions to award costs" where we specifically addressed an issue), *disc. rev. denied*, 367 N.C. 288, 753 S.E.2d 678 (2014).

¶ 8 We addressed what Miller was entitled to unambiguously in *Miller I*: "[T]he return of her escrowed funds." *Miller I*, 2019 WL 6133845 at *5. Any deviation from that holding on remand constitutes error. *In re S.M.M.*, 374 N.C. at 914, 845 S.E.2d

[2] Graham County's *Answer and Counterclaim* did not alternatively seek outstanding taxes at the deferred rate in the event we held Miller's property had been restored to the Program for the years 2014, 2015, and 2016.

at 11. Our holding does not preclude Graham County from using other legitimate channels to collect any outstanding taxes Miller may still owe for 2013, 2014, 2015, and 2016; the trial court may not, however, contravene our prior decision in the name of judicial efficiency. Similarly, Miller may not now seek from the trial court an amount in excess of that specified in *Miller I*.

CONCLUSION

¶ 9 The trial court may not deviate from our holding in *Miller I*. Miller is entitled to the full return of the amount held in escrow.

AFFIRMED IN PART; REVERSED AND REMANDED IN PART.

Judges GRIFFIN and JACKSON concur.

Report per Rule 30(e).