

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-353

Filed 5 March 2024

Mecklenburg County, No. 20-CVD-7321

MEREDITH H. STRICKLAND, Plaintiff,

v.

CHARLES K. STRICKLAND, Defendant.

Appeal by Defendant from order entered 11 May 2021 by Judge Tracy H. Hewett in Mecklenburg County District Court. Heard in the Court of Appeals 1 November 2023.

*Sodoma Law, P.C., by David E. Simmons, for Plaintiff-Appellee.*

*Dozier Miller Law Group, by Robert P. Hanner, II, and Kelly A. Nash, for Defendant-Appellant.*

COLLINS, Judge.

Charles K. Strickland (“Defendant”) appeals from an Order and Judgment Regarding Equitable Distribution (“equitable distribution order”) entered after a bench trial at which he was not present. Defendant also asks this Court to review the trial court’s advisory opinion that it would have denied Defendant’s Rule 60(b) motion had Defendant not appealed the equitable distribution order before the trial

# STRICKLAND V. STRICKLAND

## *Opinion of the Court*

court's ruling on the Rule 60(b) motion. Defendant argues that service of the summons and complaint was not proper and that the equitable distribution order was erroneous in various ways. We hold that Defendant was properly served, but that the equitable distribution order is null and void due to the absence of necessary parties. Accordingly, we vacate the equitable distribution order and remand the case.

### **I. Background**

Meredith H. Strickland ("Plaintiff") and Defendant were married on 22 January 2017 and separated on 6 May 2020. Plaintiff filed a verified complaint on 21 May 2020 for, among other things, equitable distribution, which included a motion for a temporary restraining order and preliminary injunction enjoining Defendant from withdrawing funds from a home equity line of credit secured by the parties' marital residence. Summons was issued on that date. An ex parte temporary restraining order ("TRO") was entered on 22 May 2020 and a hearing on Plaintiff's motion for a preliminary injunction was set for 1 June 2020.

On 22 May 2020, Plaintiff sent the summons and file-stamped copies of her complaint and the TRO via certified mail addressed to Defendant at his private post office box, located within a UPS store, at 338 South Sharon Amity Road, #105, Charlotte, North Carolina 28211. The motion for preliminary injunction came on for hearing on 1 June 2020. At that hearing, Plaintiff's counsel informed the court that Defendant had not yet been served with the complaint and the TRO and asked for a continuance. The trial court entered an order continuing the TRO in full force and

STRICKLAND V. STRICKLAND

*Opinion of the Court*

effect and scheduling a hearing for 9 June 2020.

The motion for preliminary injunction again came on for hearing on 9 June 2020. Plaintiff's counsel informed the court that Defendant had not yet been served with the complaint and the TRO and again asked for a continuance. The trial court entered an order continuing the TRO in full force and effect and scheduling a hearing for 24 June 2020.

Also on 9 June 2020, Plaintiff sent the summons and file-stamped copies of her complaint, certificate of service, the TRO, and the orders continuing the TRO via certified mail addressed to Defendant at his private post office box at 338 South Sharon Amity Road, #105, Charlotte, North Carolina 28211.

On 23 June 2020, Plaintiff filed an Affidavit of Service by Certified Mail wherein Plaintiff averred, in pertinent part, as follows:

On 22 May 2020, Plaintiff deposited the complaint and TRO with the United States Postal Service via first-class certified mail, return receipt requested, addressed to Defendant at 338 South Sharon Amity Road, #105, Charlotte, North Carolina 28211. Wilburn Sanders, an employee of the UPS Store wherein Defendant's post office box is located, received the correspondence on 26 May 2020, as shown by the signature on the Domestic Return Receipt, attached as "Exhibit A." Upon receipt, Mr. Sanders placed the correspondence directly into Defendant's post office box. "It is standard practice of UPS employees to sign for all certified mail received by UPS and then timely place such mail into the addressee's respective Post Office Box." On

STRICKLAND V. STRICKLAND

*Opinion of the Court*

9 June 2020, Plaintiff deposited the complaint and TRO with the United States Postal Service via first-class certified mail, return receipt requested, addressed to Defendant at 338 South Sharon Amity Road, #105, Charlotte, North Carolina 28211. Mr. Sanders received the correspondence on 12 June 2020, as shown by the signature on the Domestic Return Receipt, attached as “Exhibit C.” Upon receipt, Mr. Sanders placed the correspondence directly into Defendant’s post office box. Attached as “Exhibit B” is an affidavit of Mr. Sanders.

The Domestic Return Receipt in Exhibit A indicates that the correspondence was received by “W. Sanders” on “05/26” and contains his signature. The Domestic Return Receipt in Exhibit C indicates that the correspondence was received by “W. Sanders” on “06/12” and contains his signature.

In his affidavit, Mr. Sanders averred, in pertinent part, as follows: He received and signed for a certified letter on 26 May 2020 and 12 June 2020 addressed to Mr. Charles K. Strickland and placed the letters directly into Defendant’s private post office box #105. In order to use a post office box at a UPS facility, individuals are required to sign a Mailbox Service Agreement. Attached as exhibits were copies of the signed Domestic Return Receipts and a copy of a Mailbox Service Agreement.

Paragraph 12 of the Mailbox Service Agreement states as follows:

As Customer’s authorized agent for receipt of mail, the Center will accept all mail, including registered, insured, and certified items, and, if authorized on Form 1583, restricted mail (i.e., mail where the sender has paid a fee to direct delivery only to an individual addressee or

STRICKLAND V. STRICKLAND

*Opinion of the Court*

addressee's authorized agent). Unless prior arrangements have been made, the Center shall only be obligated to accept mail or packages delivered by commercial carrier services, which require a signature from the Center as a condition of delivery. Customer must accept and sign for all mail and packages upon the request of the Center. Packages not picked up within 5 days of notification will be subject to a storage fee of \$0.00 per day per package, which must be paid before Customer receives the package. In the event Customer refuses to accept any mail or package, the Center may return the mail or package to the sender and Customer will be responsible for any postage or other fees associated with such return. C.O.D. items will be accepted ONLY if prior arrangements have been made and payment in advance is provided to the Center. In those states where the Center is required by law to act as Customer's agent for service of process, Customer hereby authorizes the Center to act as Customer's agent for service of process, and this authorization shall remain in effect for as long as this Agreement is in effect, or as long as required by state law, whichever is later. The Center agrees to follow its standard procedures for the timely placement of mail received at the Center and addressed to Customer into Customer's Mailbox, and Customer hereby releases and agrees to protect, indemnify, defend, and hold harmless the Center from any and all liability that may arise at any time in connection with the Center's actions or status as Customer's agent for service of process.

The motion for preliminary injunction came on for hearing on 24 June 2020. The trial court noted that Plaintiff was present and represented by her attorney but that "Defendant[,] although served, did not appear for the scheduled hearing." The trial court proceeded with the hearing and entered an order finding, in relevant part, that Plaintiff's "Affidavit of Service sets forth that [Defendant] was properly served with the initial Complaint, Motion and Order on May 26, 2020." The trial court

STRICKLAND V. STRICKLAND

*Opinion of the Court*

granted Plaintiff a preliminary injunction, prohibiting Defendant from withdrawing funds from a home equity line of credit secured by the parties' marital residence.

Thereafter, all future correspondence, subsequent pleadings, notices of hearings, subpoenas, orders, and other documents in this action were sent via U.S. mail to Defendant's private post office box at 338 South Sharon Amity Road, #105, Charlotte, North Carolina 28211. Defendant did not file an answer or other responsive pleading and did not appear at any hearings conducted during the course of the case. The trial court held an equitable distribution trial on 19 March 2021 in Defendant's absence. The trial court entered an Order and Judgment Regarding Equitable Distribution on 11 May 2021.

In the equitable distribution order, the trial court found that certain property was marital property, including the following: Strickland Building Group, LLC ("Strickland Building Group"), Strickland Building Group's bank account, and a property purchased by Strickland Building Group located at Hopedale Avenue ("Hopedale Property"). The trial court distributed Strickland Building Group, its bank account, and the Hopedale Property to Defendant, and distributed most of the remainder of the marital property to Plaintiff.

On 11 May 2021, Plaintiff put a copy of the equitable distribution order in the mail for delivery to Defendant at his post office box at 338 South Sharon Amity Road, #105, Charlotte, North Carolina 28211. Additionally, Plaintiff's counsel emailed a copy of the equitable distribution order to Attorney Robert P. Hanner, II, which

STRICKLAND V. STRICKLAND

*Opinion of the Court*

Defendant later alleged to be the first time he learned an equitable distribution trial had taken place. On 12 May 2021, Attorney Hanner filed a Notice of Appearance in this matter, giving notice to the court and to Petitioner that he would be appearing for and representing Defendant in this action.

Defendant filed a motion pursuant to Rules 52, 59, and 60 of the North Carolina Rules of Civil Procedure on 24 May 2021 seeking a new trial or, in the alternative, asking the court to consider additional evidence and enter a new equitable distribution order. Defendant then appealed the equitable distribution order to this Court on 25 May 2021. Defendant filed an amended motion pursuant to Rules 12, 52, 59, and 60 on 12 August 2021 seeking an order dismissing the equitable distribution action as an alternative basis for relief prayed for in his 24 May 2021 motion.

Defendant filed a motion in this Court on 16 August 2021 asking this Court to release jurisdiction to the trial court for its consideration of Defendant's Rule 12, 52, 59, and 60 motion. This Court entered an order on 30 August 2021 deciding as follows:

The motion filed in this cause on the 16th of August 2021 and designated 'Defendant/Appellant's Motion to Release Jurisdiction' is allowed. This matter is remanded to the trial court to conduct an evidentiary hearing on the Rule 60(b) motion pending before it.<sup>[1]</sup> Following the taking of evidence, the trial court shall reduce its findings of fact and

---

<sup>1</sup> The Court did not rule on Defendant's request for the trial court to consider his motion based on Rules 12, 52, and 59.

# STRICKLAND V. STRICKLAND

## *Opinion of the Court*

conclusions of law to writing and shall indicate what action it would be inclined to take were an appeal not pending before this Court. The appeal shall be held in abeyance pending the trial court's certification of its findings and conclusions to this Court. The proposed record on appeal shall be served within forty-five days of the trial court's certification to this Court.

The trial court held a hearing on Defendant's Rule 60(b) motion on 22 September 2022 wherein the parties presented evidence in the form of testimony and exhibits. The trial court entered an "Advisory Opinion Regarding Defendant's Amended Rule 60(b) Motion" on 22 December 2022, stating that it would deny Defendant's motion had Defendant not appealed the equitable distribution order. *See Bell v. Martin*, 43 N.C. App. 134, 142, 258 S.E.2d 403, 409 (1979) (describing a procedure whereby a trial court may "consider a Rule 60(b) motion filed while the appeal is pending for the limited purpose of indicating, by a proper entry in the record, how it would be inclined to rule on the motion were the appeal not pending"), *rev'd on other grounds*, 299 N.C. 715, 264 S.E.2d 101 (1980). Defendant filed a "Notice of Objection" to the Advisory Opinion with the clerk of superior court of Mecklenburg County on 6 January 2023. The trial court's Advisory Opinion was filed in this Court on 23 January 2023. The Notice of Objection was included in the settled Record on Appeal filed in this Court on 19 April 2023.

## **II. Jurisdiction**

The trial court's equitable distribution order is a final judgment and appellate jurisdiction therefore lies in this Court pursuant to N.C. Gen. Stat. § 7A-27(b). We



## STRICKLAND V. STRICKLAND

### *Opinion of the Court*

treat Defendant's Notice of Objection as a petition for writ of certiorari to review the trial court's Advisory Opinion on Defendant's Rule 60(b) motion and allow the petition. *See Morgan v. Nash Cnty.*, 224 N.C. App. 60, 735 S.E.2d 615 (2012) (reviewing the trial court's advisory opinion on a Rule 60(b) motion on a petition for writ of certiorari).

### **III. Discussion**

Defendant argues that the trial court abused its discretion by denying 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). "A judge is subject to reversal for abuse of discretion only upon a showing by a litigant that the challenged actions are manifestly unsupported by reason." *Clark v. Clark*, 301 N.C. 123, 129, 271 S.E.2d 58, 63 (1980) (citation omitted). The trial court's findings of fact are binding on appeal if supported by competent evidence. *Briley v. Farabow*, 348 N.C. 537, 547, 501 S.E.2d 649, 656 (1998). We review conclusions of law de novo. *Moore v. Deal*, 239 N.C. 224, 228, 79 S.E.2d 507, 510 (1954).

#### **A. Service of Process**

Defendant first argues that the equitable distribution order is void and that the trial court lacked personal jurisdiction over Defendant because Plaintiff failed to serve Defendant with the summons and complaint.

STRICKLAND V. STRICKLAND

*Opinion of the Court*

A defendant may be relieved from a final judgment if the judgment is void. N.C. Gen. Stat. § 1A-1, Rule 60(b)(4) (2023). “A defect in service of process is jurisdictional, rendering any judgment or order obtained thereby void.” *In re Shermer*, 156 N.C. App. 281, 291, 576 S.E.2d 403, 410 (2003) (citation omitted).

Rule 4(j)(1)(c) of our Rules of Civil Procedure permits service by certified mail “by mailing a copy of the summons and of the complaint, . . . return receipt requested, addressed to the party to be served, and delivering to the addressee.” N.C. Gen. Stat. § 1A-1, Rule 4(j)(1)(c) (2023). Once service by certified mail is complete, the serving party shall make proof of service by filing an affidavit in accordance with N.C. Gen. Stat. § 1-75.10. *Id.* § 1A-1, Rule 4(j)(2) (2023). Under N.C. Gen. Stat. § 1-75.10, the affidavit must aver:

- a. That a copy of the summons and complaint was deposited in the post office for mailing by registered or certified mail, return receipt requested;
- b. That it was in fact received as evidenced by the attached registry receipt or other evidence satisfactory to the court of delivery to the addressee; and
- c. That the genuine receipt or other evidence of delivery is attached.

*Id.* § 1-75.10(4) (2023). Such an affidavit, filed along with a return receipt signed by the individual who received the mail, “raises a presumption that the person who received the mail or delivery and signed the receipt was an agent of the addressee authorized by appointment or by law to be served or to accept service of process[.]” *Id.* § 1A-1, Rule 4(j)(2); *see also Granville Med. Ctr. v. Tipton*, 160 N.C. App. 484,

STRICKLAND V. STRICKLAND

*Opinion of the Court*

490-91, 586 S.E.2d 791, 796 (2003); *Fender v. Deaton*, 130 N.C. App. 657, 663, 503 S.E.2d 707, 710 (1998).

By filing a copy of the signed return receipt along with an affidavit that comports with N.C. Gen. Stat. § 1-75.10, Plaintiff is entitled to a rebuttable presumption of valid service. In its Advisory Opinion, the trial court made the following findings of fact:

44. During the September 22<sup>nd</sup> hearing, the Court considered whether Husband was properly served with process pursuant to the North Carolina Rules of Civil Procedure.

45. At the September 22<sup>nd</sup> hearing, the UPS Mailbox Service Agreement (hereinafter the “Mailbox Service Agreement”) for Husband’s Post Office Box, located at 338 South Sharon Amity Road, #105, Charlotte, North Carolina 28211, was entered into evidence.

46. The Mailbox Service Agreement clearly identifies “Charles Kelly Strickland” as the customer of Post Office Box #105.

47. Husband signed the Mailbox Service Agreement on February 1, 2013. Since that time, Husband has continued to use the Post Office Box. As of the date of the hearing on Husband’s Amended Rule 60(b) Motion, Husband was still in possession of the Post Office Box, and continued to use the Post Office Box to receive his mail.

48. Husband has used and continues to use the Post Office Box to receive both personal and professional mail since February 1, 2013.

49. Paragraph 12 of the Mailbox Service Agreement sets forth as follows:

“As Customer’s authorized agent for receipt of mail, Center will accept all mail, including registered, insured, and certified items, and, if authorized on

STRICKLAND V. STRICKLAND

*Opinion of the Court*

Form 1583, restricted mail (i.e., mail where the sender has paid a fee to direct delivery only to an individual addressee or addressee's authorized agent). . . .”

50. In addition to the Mailbox Service Agreement Husband executed on February 1, 2013, Husband also executed UPS Form 1583. Paragraph 5 of Form 1583 states as follows, “This authorization is extended to include restricted delivery mail for the undersigned(s):” Under paragraph 5 of Form 1583, Husband stated “No.”

51. The Mailbox Service Agreement clearly establishes that the UPS Store shall act as an agent for Husband for purposes of accepting certified mail. Husband's designation of “No” on Form 1583, only relates to restricted delivery. Certified mail is not restricted mail.

52. At the September 22<sup>nd</sup> hearing, this Court heard testimony from Wilburn Sanders, the owner of the UPS store located at 338 South Sharon Amity Road, Charlotte, North Carolina 28211, where Husband maintains his Post Office Box.

53. Mr. Sanders confirmed the accuracy of his Affidavit, filed herein on June 23, 2020. Mr. Sander's Affidavit set forth that he accepted and signed for the certified mail addressed to Husband, which was received by Mr. Sanders on May 26, 2020 and June 12, 2020. Thereafter, Mr. Sanders promptly placed the certified letters into Husband's Post Office Box.

54. As an employee of UPS, and under the authority granted to him by the Mailbox Service Agreement, Mr. Sanders acted as Husband's agent in accepting service of the certified mail addressed to Husband on May 26, 2020, and again on June 12, 2020, which contained Wife's Complaint and Motion for TRO.

55. Though Husband indicated on Form 1583 that he did not desire to extend UPS' agency authority to include restricted delivery mail, the letters sent by counsel for Wife, which included Wife's Complaint and Motion for TRO were addressed to Husband and sent by certified mail,

STRICKLAND V. STRICKLAND

*Opinion of the Court*

return receipt requested, and not restricted delivery. Form 1583 does not define “restricted delivery mail.”

56. When Wife’s Complaint and Motion for TRO were delivered to the UPS Store located at 338 South Sharon Amity Road, Charlotte, North Carolina 28211, Mr. Sanders accepted those items, and signed the return receipt as the agent of Husband, authorized under the Mailbox Service Agreement to accept Husband’s certified mail. As the agent, Mr. Sanders, then placed the certified mail in Husband’s mailbox.

57. Mr. Sanders testified, and the Court so finds, that Husband rented a small Post Office Box at his UPS Store, and at no time since the inception of this action was Husband’s mailbox ever overflowing with mail, nor was Husband required to upgrade to a larger Post Office Box due to the volume of mail received.

58. Mr. Sanders further testified, and the Court so finds, that between May 2020 and September 2022, Husband regularly checked and collected his mail, although Mr. Sanders could not testify to the frequency in which Husband picked up his mail, and during such time, Husband’s Post Office Box was never considered abandoned by Husband.

59. Mr. Sanders further testified, and the Court so finds, that though the UPS Store is unable to accept hand-delivered service by law enforcement on behalf of its customers (i.e., the Sheriff’s Department who is charged with service of process), the UPS Store regularly accepts and signs for certified mail for its customers.

60. In the past, Mr. Sanders has accepted certified mail as agent for Husband prior to the certified mail at issue, and Husband continues to do business with his agent.

61. Mr. Sanders acknowledged that he had no direct knowledge of Husband’s receipt of the Summons and Complaint, or of any other mail sent to the UPS Post Office Box #105.

62. For over 9.5 years, Husband has utilized the services of the UPS store, and Mr. Sanders has remained as

Husband's agent throughout that time.

63. Although Husband asserts that he did not pick up his mail on a regular basis, the Court finds that Husband had, as stated above, a small mailbox, and that Mr. Sanders never had to call Husband to come pick up mail, nor did he have to switch Husband to a larger mailbox due to overflowing as the Mailbox Service Agreement allows.

These findings of fact are not challenged by Defendant and are nonetheless amply supported by the record evidence. These findings of fact support a conclusion that Defendant failed to rebut the presumption of valid service and support the trial court's following conclusions of law:

2. As an employee of UPS, and under the authority granted to him by the Mailbox Service Agreement, Mr. Sanders acted as Husband's agent in accepting service of the certified mail addressed to Husband on May 26, 2020, and again on June 12, 2020, which contained Wife's Complaint and Motion for TRO.

3. Husband was properly served with Wife's Complaint and Motion, pursuant to Rule 4(j)(1)(c) . . . of the North Carolina Rules of Civil Procedure.

4. As a result of Husband being properly served with Wife's Complaint and Motion, this Court has personal jurisdiction over Defendant.

Defendant makes several specific arguments challenging these conclusions.

We address and reject each argument in turn.

***1. Valid Contract***

Defendant argues that the Mailbox Service Agreement is not a valid contract because it is not signed by a UPS Store representative.

“The object of a signature to a contract is to show assent, but the signing of a

## STRICKLAND V. STRICKLAND

### *Opinion of the Court*

written contract is not necessarily essential to its validity. Assent may be shown in other ways, such as acts or conduct or silence.” *Burden Pallet Co. v. Ryder Truck Rental, Inc.*, 49 N.C. App. 286, 289, 271 S.E.2d 96, 97 (1980) (citations omitted); *see also Fid. & Cas. Co. of N.Y. v. Charles W. Angle, Inc.*, 243 N.C. 570, 575-76, 91 S.E.2d 575, 579 (1956) (holding that an agreement that was not executed by plaintiff was enforceable and noting that a “signature is not always essential to the binding force of an agreement” and that “mutuality or assent . . . may be shown in other ways” such as whether it “is delivered and acted on” (citations omitted)); *W.B. Coppersmith & Sons, Inc. v. Aetna Ins. Co.*, 222 N.C. 14, 17, 21 S.E.2d 838, 840 (1942) (“The signing of a written contract is not necessarily essential to its validity. It is equally efficacious if a written contract is prepared by one party and delivered to the other party, and acquiesced in by the latter without objection.”); *Walker v. Goodson Farms, Inc.*, 90 N.C. App. 478, 487, 369 S.E.2d 122, 127 (1988) (holding that “the parties’ failure to execute a written contract does not preclude the creation of an enforceable agreement”). Moreover, “where one having the right to accept or reject a transaction or instrument takes and retains benefits thereunder, he ratifies it, and cannot avoid its obligation or effect by taking a position inconsistent with it.” *Carolina Medicorp, Inc. v. Bd. of Trs.*, 118 N.C. App. 485, 492-93, 456 S.E.2d 116, 120 (1995) (quotation marks, brackets, and citations omitted).

Here, the Service Agreement was prepared by the UPS Store and delivered to Defendant, who signed it on 1 February 2013. Since 1 February 2013, Defendant and

the UPS Store have behaved as though a valid contract existed: Defendant has picked up his mail at his post office box and received personal mail at his post office box, and Defendant has never abandoned his mailbox. Defendant's mailbox has remained active, and Defendant has regularly paid a fee to renew the Mailbox Service Agreement and retain his mailbox. During this time, the UPS Store has continued to make Defendant's mailbox available to him. These actions evidence a contract between Defendant and the UPS Store. Furthermore, by using his mailbox for years following the execution of the Mailbox Service Agreement, Defendant ratified his contract with the UPS Store, and cannot deny the existence of the contract.

Accordingly, the Mailbox Service Agreement is a valid contract, and the authority granted to the UPS Store—"to accept all mail, including . . . certified items"—remained effective in May and June of 2020 when Plaintiff served Defendant.

## ***2. Restricted Mail***

Defendant further argues that even if the Mailbox Service Agreement was a valid contract, paragraph 12 makes clear that authorization for the UPS Store to accept mail "that is only to be delivered to him or his authorized agent" must be provided on an additional form, Form 1583, and Defendant did not give such authorization.

Paragraph 12 states, in pertinent part:

As Customer's authorized agent for receipt of mail, the Center will accept all mail, including registered, insured, and certified items, and, if authorized on Form 1583,



STRICKLAND V. STRICKLAND

*Opinion of the Court*

restricted mail (i.e., mail where the sender has paid a fee to direct delivery only to an individual addressee or addressee's authorized agent). . . .

Form 1583, "United States Postal Service Application for Delivery of Mail Through Agent," was executed by Defendant on 1 February 2013. Defendant responded "No" to line item 5, which states, "This authorization is extended to include restricted delivery mail for the undersigned(s)."

In the Mailbox Service Agreement, Defendant provided his express consent to the UPS Store to accept certified mail on his behalf. Paragraph 12 of the Mailbox Service Agreement and line item 5 of Form 1583 relate to "restricted mail," defined in the Mailbox Service Agreement as mail for which "the sender has paid a fee to direct delivery only to an individual addressee or addressee's authorized agent[.]" As certified mail is not restricted mail and Rule 4(j)(1) does not require service via restricted mail, Defendant's refusal to allow the UPS store to accept restricted mail on his behalf is irrelevant.

We therefore conclude that the Rule 4(j)(1)<sup>2</sup> requirements of service of process were met. Furthermore, because service of process was proper, Defendant's argument that the trial court lacked personal jurisdiction over him because service was not properly effectuated is without merit.

**B. Joinder**

---

<sup>2</sup> Based on our conclusion, we need not address whether service was proper under Rule 4(j)(1)(b).

STRICKLAND V. STRICKLAND

*Opinion of the Court*

Defendant next argues that the equitable distribution order is void because the trial court failed to join his father, Charles E. Strickland, and the Strickland Building Group as necessary parties to the action.

We first address Plaintiff's contention that Defendant waived this issue by failing to raise it in the trial court. "A judgment which is determinative of a claim arising in an action in which necessary parties have not been joined is null and void." *Rice v. Randolph*, 96 N.C. App. 112, 113, 384 S.E.2d 295, 297 (1989) (citation omitted); *see also* N.C. Gen. Stat. § 1A-1, Rule 19 (2023). This Court has stated that "[a] party does not waive the defense of failure to join a necessary party; an objection on this basis can be raised at any time." *Commonwealth Land Title Ins. Co. v. Stephenson*, 97 N.C. App. 123, 125, 387 S.E.2d 77, 79 (1990) (citation omitted). Consequently, Defendant's argument has not been waived.

"When a person is so vitally interested in the controversy that a valid judgment cannot be rendered in the action completely and finally determining the controversy without his presence, such person is a necessary party to the action." *Strickland v. Hughes*, 273 N.C. 481, 485, 160 S.E.2d 313, 316 (1968) (citations omitted); *see* N.C. Gen. Stat. § 1A-1, Rule 19(a) (2023). It thus follows that

when a third party holds legal title to property which is claimed to be marital property, that third party is a necessary party to the equitable distribution proceeding, with their participation limited to the issue of the ownership of that property. Otherwise the trial court would not have jurisdiction to enter an order affecting the title to that property.

STRICKLAND V. STRICKLAND

*Opinion of the Court*

*Upchurch v. Upchurch*, 122 N.C. App. 172, 176, 468 S.E.2d 61, 63-64 (1996) (citations omitted).

Here, the trial court made the following relevant findings of fact, supported by the evidence presented at the hearing:

69. During the September 22<sup>nd</sup> hearing, the Court considered whether Wife misrepresented the owners of Strickland Building Group, LLC or whether Wife failed to join Husband's Father as a necessary party to this litigation.

70. Husband entered into evidence various documents filed with the North Carolina Secretary of State including an Amendment of Articles of Organization for Strickland Building Group, LLC, dated March 24, 2014. The documents introduced into evidence by Husband give no indication that Husband's Father was or is an owner or partner of Strickland Building Group, LLC.

71. The March 24, 2014 Amendment of Articles of Organization, which set forth the name change of Husband's business from The Colville Company, LLC to Strickland Building Group, LLC, was signed by Husband as the sole member of the company.

72. Throughout the course of this action, Wife has issued subpoenas to various financial institutions where Wife believed Husband and/or Strickland Building Group, LLC had an account. The documents produced in response to such subpoenas reflected that either Husband and/or Strickland Building Group, LLC, was the owner of such accounts. Nothing in the bank account or credit card statements indicated that Husband's Father was affiliated with any of the Strickland Building Group, LLC bank or credit card accounts. Further, none of the financial statements available to Wife indicated that Husband's Father had an interest in Strickland Building Group, LLC or any of its properties.

73. The only document that set out that Husband's Father

STRICKLAND V. STRICKLAND

*Opinion of the Court*

had a 49% interest in Strickland Building Group, LLC was an Operating Agreement, dated April 4, 2014, that was not a public document, and of which this Court finds Wife had no knowledge.

74. Husband testified that 338 South Sharon Amity Road, #105, Charlotte, North Carolina 28211 was the primary address for his business. However, Strickland Building Group, LLC (previously the Colville Company) is not included in the line labeled “Company” on the Mailbox Service Agreement.

75. Box 12 of Form 1583 (which is titled “Application for Delivery of Mail Through Agent” and is part of the Mailbox Services Agreement that was admitted into evidence) states, “If applicant is a firm, name each member whose mail is to be delivered.” The only name listed is Husband’s name, Charles Strickland.

....

78. Nothing on Form 1583 would reasonably lead Wife to believe that Husband’s Father was a part owner of Strickland Building Group, LLC.

79. On August 11, 2020, a Complaint was filed against Strickland Building Group, LLC, and Charles K. Strickland. Allegation number ten (10) in that Complaint states: “The Defendant Charles Kelly Strickland (“Strickland”) executed the Authorization and the Agreement on behalf of the Defendant, Strickland Building.” Further, Allegation number eleven (11) in that same Complaint states: “The Defendant Strickland, upon information and belief, is the sole member of Strickland Building and is a Manager, if not the sole Manager of the Company.”

80. In his deposition, Husband testified that there was a lot that Wife did not know about Strickland Building Group, LLC. Husband testified that he had no reason to tell Wife, during the marriage, that Husband’s Father was a business partner. Husband’s sworn statement corroborates Wife’s testimony that she did not know of Husband’s Father’s involvement in Strickland Building

STRICKLAND V. STRICKLAND

*Opinion of the Court*

Group, LLC.

81. There was no evidence presented to this Court that would support Husband's contentions that Wife intentionally misrepresented the ownership of Strickland Building Group, LLC to this Court.

82. There was no evidence presented to this Court that would support Husband's contentions that Husband's Father was a necessary party to this Equitable Distribution action.

....

87. At the March 19, 2021 Equitable Distribution trial, Wife presented evidence and testimony which supported her contention that the residence, located at 2021 Hopedale Avenue, Charlotte, North Carolina 28207 (hereinafter the "Hopedale Property") was marital property.

88. Husband, through Strickland Building Group, LLC, purchased the Hopedale Property during the marriage. On November 7, 2019, a North Carolina General Warranty Deed was signed granting title of the Hopedale Property to Strickland Building Group, LLC.

89. Husband contends that the Hopedale Property is his separate property, with a divisible component.

90. Based on the public documents presented and Wife having no knowledge of anyone other than Husband being the sole owner and operator of Strickland Building Group, LLC, the Court finds that Strickland Building Group, LLC had only one member, Charles Kelly Strickland. The Court acknowledges the Operating Agreement as being the only piece of evidence that shows Husband's Father as having a share of the company. This document alone does not overcome the presumption that property accumulated during the marriage is marital.

These findings of fact are supported by competent evidence, and the findings in turn support the trial court's conclusion that "[t]here was no credible evidence presented that showed Wife believed, or had reason to believe, that Husband's Father

STRICKLAND V. STRICKLAND

*Opinion of the Court*

was a part owner of Strickland Building Group, LLC.”

However, the trial court’s conclusions failed to address whether the Strickland Building Group should have been joined as a party. Indeed, the findings support the conclusion that Strickland Building Group was a third party holding legal title to a bank account and the Hopedale Property which Plaintiff claimed to be marital property. Accordingly, Strickland Building Group is a necessary party to the equitable distribution proceeding.

Although Strickland Building Group is, for the purposes of this litigation, purportedly wholly owned by Defendant, “[a] corporation, even one closely held, is recognized as a separate legal entity . . . [even when its members are] engaged in litigation which is personal in nature[.]” *Quick v. Quick*, 305 N.C. 446, 460, 290 S.E.2d 653, 662 (1982), *superseded in part by statute on other grounds*, N.C. Gen. Stat. § 50-13.4(f)(9) (1983). And as with a corporation, our courts “are not free, for the sake of convenience, to completely ignore the existence of a legal entity, such as [an] LLC.” *Keith v. Wallerich*, 201 N.C. App. 550, 558, 687 S.E.2d 299, 304 (2009) (citation omitted). As this Court has held,

where a separate legal entity has not been made a party to an action, the trial court does not have the authority to order that entity to act. Moreover, even where a named party to an action is a member-manager of an LLC, the assets of which are contested in a pending equitable distribution action, the trial court exceeds its authority when it orders that named party to transfer the assets of the LLC without first adding the LLC as a party to the action.

## STRICKLAND V. STRICKLAND

### *Opinion of the Court*

*Campbell v. Campbell*, 241 N.C. App. 227, 231-32, 773 S.E.2d 93, 96 (2015) (quotation marks, brackets, and citations omitted). Thus, although Strickland Building Group was an LLC owned by Defendant, the trial court was not free to ignore the corporate form nor the existence of the LLC when entering the equitable distribution order. See *Geoghagan v. Geoghagan*, 254 N.C. App. 247, 251, 803 S.E.2d 172, 175 (2017). Furthermore, “[w]hen there is an absence of necessary parties, the trial court should correct the defect *ex mero motu* upon failure of a competent person to make a proper motion. A judgment which is determinative of a claim arising in an action in which necessary parties have not been joined is null and void.” *Boone v. Rogers*, 210 N.C. App. 269, 271, 708 S.E.2d 103, 105 (2011) (citation omitted). Accordingly, it was necessary for the trial court in this matter to *ex mero motu* join the Strickland Building Group and make findings as to whether it was marital or separate property before distributing it and its assets and determining that an unequal distribution of marital assets was equitable. Therefore, the equitable distribution order is “null and void” due to the absence of necessary parties. *Id.* Thus, the trial court’s conclusion that Defendant is not entitled to an order setting aside the equitable distribution order is not supported.

#### **IV. Conclusion**

For the reasons stated, the trial court’s equitable distribution order is vacated. We decline to address Defendant’s alternative arguments as to why the equitable distribution order was entered in error. See *McCraw v. Aux*, 205 N.C. App. 717, 721,

STRICKLAND V. STRICKLAND

*Opinion of the Court*

696 S.E.2d 739, 741 (2010) (“As a necessary party was not properly joined we refuse to deal with the merits of the action until the necessary party is brought into the action.” (quotation marks and citation omitted)). This case is remanded for ex mero motu joinder of Strickland Building Group, LLC, as a necessary party. Following joinder of the necessary party, the trial court shall conduct further proceedings, as appropriate, regarding Defendant’s Rule 12, 52, and 59 motion, the parties’ marital and separate property, and the equitable distribution claims. This opinion is without prejudice to Charles E. Strickland petitioning to intervene to assert and protect his interest, if any, in Strickland Building Group.

VACATED AND REMANDED.

Judges TYSON and MURPHY concur.

Report per Rule 30(e).