

IN THE SUPREME COURT OF NORTH CAROLINA

No. 245A99

FILED: 5 November 1999

KATHARINE H. STAFFORD

v.

RENE CHARLES STAFFORD

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, ___ N.C. App. ___, 515 S.E.2d 43 (1999), dismissing a "partial judgment" entered by Roda, J., on 23 April 1998 in District Court, Buncombe County. Calendared for argument in the Supreme Court 11 October 1999; determined on the briefs without oral argument pursuant to N.C. R. App. P. 30(d) upon motion of the parties.

No plaintiff-appellee's brief.

Jackson & Jackson, by Phillip T. Jackson, for defendant-appellant.

PER CURIAM.

On 14 May 1996, plaintiff filed a complaint seeking an absolute divorce, and subsequently amended the complaint to include equitable distribution. On 3 March 1998, the absolute divorce action was severed from the remaining issues for hearing purposes with the parties' consent. After granting plaintiff an absolute divorce from defendant, the trial court reserved the remaining issues in the cause for later hearing.

In the instant case, the parties were divorced on 23 April 1998. Neither appellate party contests the validity of the final divorce judgment from which the appeal is taken. However, both parties contend this Court should determine whether the findings

of fact support the date of separation. Plaintiff contends, and the trial court found, that the date of separation is the first week of October 1992. In contrast, defendant contends the date of separation is 13 September 1991.

A basis for granting an absolute divorce is that the parties must live separate and apart for one year. See N.C.G.S. § 50-6 (1995). Regardless of the date of separation, the parties have been separated for a period far in excess of one year.

Therefore, the date of separation has no bearing in this case on the legality of the final divorce judgment. The contested fact concerning the date of separation is an issue in the equitable distribution claim, which can be raised in a later appeal, if any. Thus, this appeal is interlocutory and the decision of the Court of Appeals dismissing plaintiff's appeal is affirmed.

AFFIRMED.