

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA16-1282

Filed: 3 October 2017

Swain County, No. 15 CVS 246

WILLIAM T. TAYLOR, JR. and wife, KATHRYN C. TAYLOR, Plaintiffs

and

THOMAS GEORGE HAUBNER, MARY ELLEN HAUBNER, THOMAS T. SCHREIBER, AKA THOMAS TREVETT SCHREIBER, MELISSA I. SCHREIBER, AKA MELISSA A. SCHREIBER, THOMAS M. ANDERSON, JR., AKA THOMAS MARTIN ANDERSON, JR., GEOFFREY M. BECKER, RICHARD HUNTER, AKA RICHARD F. HUNTER, ARTHUR S. LAZARUS, PERRY POLSINELLI, DORI POLSINELLI, AKA DORI DANIELSON, LAURENCE W. HARWOOD, JR., ELIZABETH HARWOOD, ANDREW JUBY, STEPHEN M. REED, DIANNE B. REED, JAMES D. TOLSON, REBECCA J. TOLSON, FRED YATES, AKA FRED R. YATES, and KARON K. YATES, Nominal Plaintiffs

v.

MYSTIC LANDS, INC., Defendant

v.

AMI SHINITZKY, NANTAHALA LIVING CORPORATION, MYSTIC LANDS INTERNATIONAL, INC., WINSFORD HOLDING, LLC AND MYSTIC LANDS RIVER, INC., COREY BOTT, RODRIGO L. CUNHA, SUMIT DHINGRA, ANUPAMA BHATIA, MARK WARE EDWARDS, MARTHA EDWARDS, HELENE ELBEIN, AKA HELENE FISCHER ELBEIN, DAVID GOLDSMITH, JAMES M. HALL, MELISSA C. HALL, KUMUDHALASKSHMI SAMPATHKUMAR, HARRY RANDALL MAYO, LINDA ELY MAYO, RANDY REAGAN, CYNTHIA REAGAN, MATTHEW ROBERTSON, KATHRYN ROBERTSON, JAMES DAVID STORY, MICHAEL FRANCIS IGNASIAK, EMORY EVAN SULLIVAN, VICKIE J. SULLIVAN, DIANA MARIE WHITAKER, RUSSELL T. ABNEY, AILEEN SAYA NAKAMURA, OSCAR ACHARANDIO, LUZ DIVINA ACHARANDIO, SCOTT F. AUER, RICHARD D. BARKER, JR., TRUSTEE OF THE RICHARD D. BARKER, JR.

Opinion of the Court

LIVING TRUST DATED NOVEMBER 28, 2006, JON MICHAEL BARKER, TRUSTEE OF THE RICHARD D. BARKER, JR. LIVING TRUST DATED NOVEMBER 28, 2006, BAYWAY INVESTMENT FUND, MARVIN BEASLEY, WARNELLE BEASLEY, VICKI BITZIS, CHARLES N. BITZIS, CYNTHIA L. BRADY, JEFF R. BRADY, LARISSA BRADY, JAYNE E. BYSTROM, MIRTA CHANGE, KEVIN COFFEY, JULIE COFFEY, SUSAN C. CONWAY, DARREN S. CUMMINGS, STAFFORD C. DAVIS, DOROTHY L. DAVIS, RAMON DELACABADA, DIANNE DELACABADA, GREGORY FRANK DIEHL, MICHELLE D. HEDDEN, DILLON FRANK DIEHL, DANIELLE ALEXIS DIEHL, CHRISTOPHER DOERRER, KENNETH DOERRER, PAUL FINKS, MARSHELLE FINKS, MICHAEL FOLEY, SHAYNE FOLEY, BARBARA FREID, NORMAN FREID, GREG GILROY, KEISHA GILROY, PAMELA G. GLAZE, REYNOLD J. GOBRIS, NANCY M. GOBRIS, MICHAEL J. GRAHAM, CATHY L. GRAHAM, STUART A. HALL, LINDA B. HALL, RICK A. HARRIS, MARIE L. DARMANIAN, CYNTHIA HULBERT, GAIL L. PETERS, TIM IVEY, MARTHA R.G. IVEY, RICHARD JESSUP, BARBARA A. JESSUP, DAVID L. MCDONALD, MARK A. KNOTT, BETTY JO KNOTT, EUGENE R. LAGE, PAMELA M. LAGE, JOSEPH LAPINSKY, NANCY L. LAPINSKY, PAUL C. LAVELLE, CHRISTEL S. LAVELLE, CHRIS LECHNER, AKA CHRIS T. LECHNER, JANA I. LECHNER, VINCENT C. LOVETTO, JR., LISA H. LOVETTO, SCOTT A. LYDEN, TRUSTEE OF THE SCOTT A. LYDEN REVOCABLE TRUST UNDER TRUST DATE OF MAY 31, 1998, MPEMS INVESTMENTS NC, LLC, RICHARD H. MARBUT, SARA L. MARBUT, MIKE MARR, NANCY MARR, JANET MASON, JIMMY F. MAXWELL, KATHY F. MAXWELL, WILLIAM MILLER, PATRICIA MILLER, RANDY E. MILLS, LINDA F. MILLS, JAMES MONDAY, LAURA MONDAY, STEVE E. MOODY, DEBORAH S. MOODY, JASON H. MOORE, IV, VIVIAN S. MOORE, J. ROSS MYNAT, AKA ROSS MYNATT, VICTORIA M. MYNATT, AKA VICTORIA MYNATT, HENRY E. PAGE, SUSAN M. PAGE, CHARLES PORTER, JR., CAROLYN PORTER, ANDREW PRIDDY, BARBARA S. PARRETT, 2 D RANDOLPH PROPERTIES, LLC, JAMES M. ROUSE, JR., JOANN SOEDER, STEPHEN STEINBOCK, CAROL STEINBOCK, FREDERICK S. SUMMERS, BARBARA G. SUMMERS, TD BANK, N.A., NOONDAY SUN PROPERTIES, LLC, WILLIAM C. WEST, TWILA M. WILLIS, ROBERT WUNDERLE, AKA DR. ROBERT WUNDERLE, ENTRUST CAROLINAS, LLC, TRUSTEE FBO WILLIAM E. LEE, TED G. CHRONIS, DIANE B. CHRONIS, KEVIN PORTER, MYSTIC RIVER 23, LP, A NC LIMITED, Nominal Defendants

Appeal by plaintiffs from orders entered 12 August 2016 by Judge Marvin P.

Pope in Swain County Superior Court. Heard in the Court of Appeals 16 May 2017.

Cannon Law, P.C., by William E. Cannon, Jr., Christopher Castro-Rappl, and Martha S. Bradley, for plaintiff-appellants.

Van Winkle, Buck, Wall, Starnes and Davis, P.A., by Craig D. Justus, for defendant-appellees.

CALABRIA, Judge.

William T. Taylor, Jr. and Kathryn C. Taylor (collectively, “plaintiffs”) appeal from the trial court’s orders (1) granting summary judgment based on mootness to Mystic Lands, Inc.; Ami Shinitzky; Nantahala Living Corporation; Mystic Lands International, Inc.; Winsford Holding, LLC; Mystic Lands River, Inc; and Mystic River 23, LP (collectively, “defendants”), and (2) denying plaintiffs’ motion to amend their complaint on the grounds of futility and undue delay and prejudice. After careful review, we affirm.

I. Background

Mystic Lands, Inc. (“MLI”) is the owner and developer of the Mystic River, Mystic Forest, and Mystic Ridge subdivisions (collectively, “Mystic Lands”) located in Swain and Macon Counties. Plaintiffs, nominal plaintiffs, and nominal defendants are owners of real property in the Mystic Lands subdivisions. Mystic Lands are subject to the North Carolina Planned Community Act, N.C. Gen. Stat. Chapter 47F (2015).

The development of Mystic Lands commenced in 2005. On 10 June 2005, MLI formed Mystic River by recording a “Declaration of Covenants, Restrictions &

Easements” in the Swain County Register of Deeds. The declaration provided that MLI would retain certain control rights over the community’s Property Owners Association (“POA”) for specific periods of time, including the

right to appoint and remove at any time and from time to time any or all members of the Board of the Association and any or all officers of the Association until fifteen (15) days after the first of the following events shall occur: (i) the expiration of twenty (20) years after the date of the recording of this Declaration; (ii) the date upon which 95% of the Residences and/or Lots have been conveyed to third parties other than the builders thereof; or (iii) the surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to this Declaration executed and recorded by Declarant.

When MLI’s period of declarant control expired, these rights would automatically pass to the Mystic River owners.

Mystic Forest was the second Mystic Lands community developed, followed by Mystic Ridge. Mystic Forest was formed on 28 October 2005 by recordation of a declaration similar to Mystic River’s. Due to “an administrative oversight,” no declaration unique to Mystic Ridge was ever recorded.

Originally, the Mystic Lands subdivisions operated independently, with each community subject to its own POA. However, in October 2012, the three Boards of Directors unanimously voted to consolidate the individual POAs into one master association: the Mystic Lands Property Owners Association, Inc. (“the Mystic Lands POA”). On 26 October 2012, MLI notified Mystic Lands property owners that a

member vote would be held on the proposal. MLI explained that the Mystic Lands POA would be created by new covenants applicable to all of Mystic Lands (“the 2012 Declarations”), which would replace – but make “no material changes” to – the existing covenants.

Mystic Lands members adopted the 2012 Declarations by a unanimous vote. In November 2012, MLI recorded the 2012 Declarations in Macon and Swain Counties. Plaintiffs’ title to Mystic Ridge Lot 29 was subject to the 2012 Declarations when they purchased the property in July 2013.

Without obtaining members’ approval, in November 2014, MLI recorded an “Amended Declaration of Covenants, Restrictions, and Easements for Mystic Lands” (“the 2014 Amendments”). On 30 October 2015, plaintiffs filed a declaratory judgment action, challenging the following provisions from the 2014 Amendments: (1) Section 3.09(a)(i), extending the expiration date of MLI’s declarant control period from 11 November 2025 to 4 November 2027; (2) Section 4.04(c), decreasing the number of votes required to raise property assessments from two-thirds of all members to a simple majority; and (3) Section 6.02, permitting MLI “at any time” to designate a specific area for construction of multi-family buildings on lots previously designated as single-family use only. Plaintiffs alleged that the specified amendments “materially and unreasonably altered and changed the rights . . . and burdens” of Mystic Lands property owners without their written consent, in violation

of Section 9.02 of the 2012 Declarations. Accordingly, plaintiffs requested that the trial court declare the described portions of the 2014 Amendments “invalid and unenforceable.”

On 7 December 2015, defendants filed an answer and a motion to dismiss asserting various affirmative defenses. On 28 December 2015, defendants recorded another amendment in Macon and Swain Counties (“the 2015 Amendment”). The 2015 Amendment removed the challenged language from the three sections identified in plaintiffs’ complaint and restored the provisions to their content under the 2012 Declarations.

Defendants subsequently amended their answer, asserting mootness as an additional affirmative defense. On 30 December 2015, defendants sent plaintiffs a letter requesting a voluntary dismissal, since “the matter is now resolved based on mootness.” After plaintiffs failed to respond, on 11 January 2016, defendants filed a motion for summary judgment based on mootness. On 13 January 2016, plaintiffs filed a motion to continue, asserting that defendants’ motion for summary judgment was “premature” and requesting “a reasonable period to conduct discovery of [defendants] . . . to ascertain the grounds for any and all claims or defenses alleged in the pleadings.”

On 19 January 2016, the trial court held a hearing on motions filed in the instant case as well as a related case, *Anderson v. Mystic Lands, Inc.* (Swain County,

15 CVS 36). At the hearing, plaintiffs questioned the validity of the 2015 Amendment, because their investigation of the land records indicated that MLI lost the right to unilaterally amend the covenants several years prior, when 95% of Mystic Lands lots were sold. Accordingly, plaintiffs requested that “the determination on mootness be continued for a period of 60 days” to allow them to investigate and assert claims related to the 95% threshold for declarant control.

On 8 February 2016, the trial court granted plaintiffs’ motion to continue. The court scheduled the summary judgment hearing for 18 April 2016. In its order, the trial court specifically instructed plaintiffs to “file any motion to amend on [the declarant control] issue no later than March 21, 2016.”

On 28 March 2016, plaintiffs filed a motion to amend the complaint along with a proposed amended complaint. Contrary to their original pleading, in the proposed amended complaint, plaintiffs alleged that MLI’s declarant control period had actually expired before the 2012 Declarations were ever recorded. Plaintiffs sought declaratory and injunctive relief to prevent MLI from exercising further declarant rights.

On 18 April 2016, the trial court held a hearing on defendants’ motion for summary judgment and plaintiffs’ motion to amend. On 12 August 2016, the trial court entered two orders: (1) granting defendants’ motion for summary judgment

based on mootness; and (2) granting defendants' motion for summary judgment based on mootness and denying plaintiffs' motion to amend the complaint.¹

The trial court made the following relevant findings of fact related to plaintiffs' motion to amend:

1. On October 30, 2015, this action originated with the filing and subsequent service of a Complaint, challenging therein three provisions of a November, 2014 amendment to a set of Declaration of covenants applicable to the Mystic Lands development in Swain and Macon Counties, North Carolina. The challenge primarily asserts that the amendment constituted an unreasonable change to the expectations of the parties as established by covenants for Mystic Lands recorded in November, 2012 in their respective counties ("2012 Mystic Declarations").
2. In response to that Complaint, Defendant later recorded in December, 2015 an amendment to the Declaration of covenants removing the challenged three provisions and restoring those sections to the language in the 2012 Mystic Declarations ("2015 Mystic Amendments").
3. After Defendant filed its motion for summary judgment based on the grounds of mootness, the Plaintiffs and Nominal Plaintiffs moved this Court for a continuance to allow time for said parties to investigate grounds for amending their Complaint regarding an issue of whether or not the Declarant Control Period had expired, which, if so, may draw into question whether the Defendant could unilaterally record the 2015 Mystic Amendments.

¹ On 12 August 2016, the trial court also granted the *Anderson* defendants' motion for partial summary judgment on the plaintiffs' claims for declaratory and injunctive relief. Although several of the parties' claims remained pending, the plaintiffs appealed, asserting that the trial court's interlocutory order affected a substantial right. We disagreed, and on 9 May 2017, we granted the defendants' motion to dismiss the interlocutory appeal in *Anderson v. Mystic Lands, Inc.* (COA16-1278).

Opinion of the Court

4. The Court granted Plaintiffs'/Nominal Plaintiffs' motion to continue by Order signed on February 3, 2016 to allow counsel for those parties additional time to complete investigation of any grounds for amending the Complaint regarding the 95% threshold for Declarant Control.

5. After completing their investigation, including taking the deposition of the Rule 30(b)(6) witness of Defendant, the Plaintiffs/Nominal Plaintiffs moved to amend their Complaint ("Proposed Amended Complaint") and tendered to this Court the Affidavit of Kenneth W. Fromknecht, II dated April 13, 2016 in support thereof.

6. In the Proposed Amended Complaint, the Plaintiffs/Nominal Plaintiffs sought relief that would terminate or invalidate the 2012 Mystic Declarations, undermining the integrity of the Mystic Lands Property Owners Association, Inc. ("Mystic Lands POA"), an entity created by said 2012 Mystic Declarations. These claims are diametrically opposite to and inconsistent with the claims set forth in their original pleading.

7. In an interrelated case, *Thomas M. Anderson et al. v. Mystic Lands, Inc. et al.* . . . ("Anderson Case"), many of the Nominal Plaintiffs sought relief to terminate Defendant Control – i.e. developer's right to appoint and remove directors and officers of the Mystic Lands POA.

8. Nominal Plaintiffs who owned property in Mystic Lands prior to the recording of the 2012 Declarations supported, by way of affirmative votes in their respective neighborhood associations, the replacement of said neighborhood associations with Mystic Lands POA and the replacement of the older neighborhood covenants with the new set reflected in the 2012 Declarations.

. . .

12. The Plaintiffs have not set forth sufficient facts of

Opinion of the Court

how they are injured, and an injury suffered, if any, would be by their own actions for purchasing property with the 2012 Declaration in their chain of title.

...

15. This case and the *Anderson* Case involve substantially the same parties and seek substantially similar claims or results.

...

18. The Plaintiffs/Nominal Plaintiffs had failed to amend their Complaint within the time period allowed by right in Rule 15 of the North Carolina Rules of Civil Procedure.

Based on its findings of fact, the trial court concluded that plaintiffs' motion to amend should be denied on the following grounds:

1. Futility, due to:
 - i. Plaintiffs' lack of standing;
 - ii. The doctrine of estoppel;
 - iii. Application of either N.C. Gen. Stat. § 47F-2-117's one-year statute of limitations for actions challenging the validity of an amendment under the North Carolina Planned Community Act, or N.C. Gen. Stat. § 1-50(a)(3)'s six-year statute of limitations for restrictive covenant actions;
 - iv. The doctrine of laches;
 - v. The prior pending case doctrine, because "Plaintiffs and Nominal Plaintiffs are seeking two bites at the apple in challenging Declarant control issues" [in this case and the *Anderson* Case];
2. Undue delay and prejudice.

Plaintiffs appeal.

II. Analysis

A. Defendants' Motion for Summary Judgment

Plaintiffs first contend the trial court erred in granting defendants' motion for summary judgment on mootness grounds. We disagree.

We review a trial court's order granting summary judgment *de novo*. *In re Will of Jones*, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008). "[S]uch judgment is appropriate only when the record shows that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." *Id.* (citation and quotation marks omitted).

It is well established that courts typically will not decide a moot case. *In re Peoples*, 296 N.C. 109, 147, 250 S.E.2d 890, 912 (1978), *cert. denied*, 442 U.S. 929, 61 L. Ed. 2d 297 (1979). "A case is considered moot when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy." *McAdoo v. Univ. of N.C. at Chapel Hill*, 225 N.C. App. 50, 52, 736 S.E.2d 811, 815 (citation omitted), *disc. review denied*, 366 N.C. 581, 740 S.E.2d 465 (2013). Accordingly,

[w]henver, during the course of litigation it develops that the relief sought has been granted or that the questions originally in controversy between the parties are no longer at issue, the case should be dismissed, for courts will not entertain or proceed with a cause merely to determine abstract propositions of law.

Peoples, 296 N.C. at 147, 250 S.E.2d at 912.

In federal courts, the mootness doctrine has jurisdictional implications. *Id.* In state courts, however, “the exclusion of moot questions from determination is not based on a lack of jurisdiction but rather represents a form of judicial restraint.” *Id.* In North Carolina, declaratory judgment actions “are subject to traditional mootness analysis.” *McAdoo*, 225 N.C. App. at 52, 736 S.E.2d at 815 (citation omitted).

The instant case presents a very similar procedural posture to that in *Chicora Country Club, Inc. v. Town of Erwin*, 128 N.C. App. 101, 493 S.E.2d 797 (1997), *disc. review denied*, 347 N.C. 670, 500 S.E.2d 84 (1998). We find our Court’s decision instructive. In *Chicora Country Club*, the Town Board of Erwin adopted an ordinance on 7 March 1996 which extended the Town’s corporate limits by annexing land owned by the plaintiff-country club (“the Club”). 128 N.C. App. at 104, 493 S.E.2d at 799. On 1 April 1996, the Club petitioned for judicial review of the ordinance. *Id.*

Prior to the superior court’s review and unbeknownst to the Club, on 20 March 1996, the Town Board held a special meeting to discuss the ordinance. *Id.* After removing “certain conditional language” that the Board believed invalid, the Board readopted the annexation ordinance. *Id.* After learning of the special meeting, on 22 April 1996, the Club petitioned the superior court for review of the 20 March ordinance. *Id.* at 104-05, 493 S.E.2d at 799.

After the Town moved to dismiss the Club’s second petition as untimely, on 30 May 1996, the Club filed an “amended and supplemental petition” seeking to contest

Opinion of the Court

both the 7 March and 20 March annexation ordinances. *Id.* at 105, 493 S.E.2d at 799. Since leave of court was required for such amendment, on 2 July 1996, the Club filed a motion to amend its original petition to include both ordinances. *Id.* On 21 May 1996, the Town Board rescinded the 7 March ordinance. *Id.* at 105, 493 S.E.2d at 800. The Town of Erwin subsequently moved for summary judgment, contending that the Board's rescission of the 7 March ordinance mooted the Club's petition. *Id.* Following a hearing, the trial court granted the Town's motion for summary judgment and denied the Club's motion to amend its 1 April petition. *Id.*

On appeal, the Club argued that its action was not moot because it raised the issue of the 20 March ordinance's validity prior to the trial court's hearing on the Town's motion for summary judgment. *Id.* at 110, 493 S.E.2d at 802. We disagreed and explained:

[T]he Town of Erwin rescinded the 7 March annexation ordinance. Therefore, when ruling upon the Town's Motion for Summary Judgment, the trial court had before it no issues upon which to rule and no facts upon which to decide. Indeed, Chicora Country Club received the relief that it had requested in this particular action—a withdrawal of the 7 March annexation ordinance. The trial court was therefore correct in granting the Town's Motion for Summary Judgment.

The fact that Chicora Country Club filed an amended petition seeking review of the March 20 annexation ordinance does not alter the above conclusion where, as here, Chicora Country Club's amendment to their original petition was not evidence which the trial court was obliged to consider when deciding upon the

Opinion of the Court

Town's Motion for Summary Judgment. . . . [U]nder Rule 15[(a)], "if the pleading is one [to] which no responsive pleading is permitted, and the action has not been placed on the trial calendar," a party may amend his complaint as a matter of right at any time within thirty (30) days after it was served; otherwise, a party is required to request leave of court in order to amend. In this case, Chicora Country Club had no right under Rule 15[(a)] to amend the petition of the annexation ordinance because it did not file the amended petition within the required 30 days after the original petition was filed; and, the trial court did not abuse its discretion in not allowing Chicora Country Club to amend the petition by leave of court. Under these circumstances, it is clear that Chicora Country Club exhausted all avenues in which the amended petition could have been properly considered by the court as admissible evidence. As such, Chicora Country Club's attempt to amend the petition was not material which would have been admissible in evidence and therefore, the trial court was not obliged to consider it when ruling upon the Town's Motion for Summary Judgment.

Id. at 110-11, 493 S.E.2d at 803 (internal citation and quotation marks and original emphasis and brackets omitted).

In the instant case, plaintiffs filed a declaratory judgment action alleging that three specific provisions in the 2014 Amendments were "invalid and unenforceable" under Section 9.02 of the 2012 Declarations. On 28 December 2015, MLI recorded the 2015 Amendment removing the disputed language and restoring the provisions' content as they existed under the 2012 Declarations. Therefore, when ruling on defendants' motion for summary judgment on mootness grounds, "the trial court had before it no issues upon which to rule and no facts upon which to decide." *Id.* at 110,

493 S.E.2d at 803. Indeed, plaintiffs received the relief that they sought in their original complaint—a restoration of the challenged provisions’ prior content. *See id.* “[T]he questions originally in controversy between the parties [we]re no longer at issue[.]” *Peoples*, 296 N.C. at 147, 250 S.E.2d at 912.

On appeal, plaintiffs assert that their action is not moot due to the declarant control issues raised in their proposed amended complaint. Specifically, plaintiffs contend that their action falls within the “voluntary cessation of a challenged practice” exception to mootness, “which provides for review of cases where a defendant voluntarily ceases its illegal conduct during the pendency of the appeal.” *Thomas v. N.C. Dep’t of Human Res.*, 124 N.C. App. 698, 706, 478 S.E.2d 816, 821 (1996), *aff’d per curiam*, 346 N.C. 268, 485 S.E.2d 295 (1997). However, plaintiffs fail to explain how their *original* complaint falls within the exception, arguing that

in this case, there is no specific “violation” that has ceased: Plaintiffs still require judicial intervention to declare their obligations under the covenants, and Defendants’ actions make it clear there is a dispute over the period of declarant control. Without a judicial determination of the parties’ rights under the various declarations, Defendants could, immediately upon termination of this matter, return to the Register of Deeds with yet another amendment restoring the unreasonable provisions to the public record.

More importantly, the validity of the 2015 Amendment is also at issue as the determination of loss of declarant control will apply to the 2015 Amendment as well as the other amendments. If Defendants could not unilaterally record the 2014 Amendment, they could not unilaterally record the 2015 Amendment.

Plaintiffs confuse the issues. Because they sought to amend their complaint after the 30-day period allowed by Rule 15, plaintiffs could not do so without defendants' consent or the trial court's permission. N.C. Gen. Stat. § 1A-1, Rule 15(a). Accordingly, plaintiffs' proposed amended complaint "was not material which would have been admissible in evidence and therefore, the trial court was not obliged to consider it when ruling" on defendants' motion for summary judgment. *Chicora Country Club*, 128 N.C. App. at 111, 493 S.E.2d at 803 (internal quotation marks and brackets omitted). Consequently, we hold that the trial court did not err in granting defendants' motion for summary judgment based on mootness.

B. Plaintiffs' Motion to Amend

Plaintiffs next argue that the trial court erred in denying their motion to amend the complaint on the grounds of futility and undue delay and prejudice. We disagree.

As discussed above, N.C. Gen. Stat. § 1A-1, Rule 15 provides, in pertinent part:

A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 30 days after it is served. *Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party*; and leave shall be freely given when justice so requires.

N.C. Gen. Stat. § 1A-1, Rule 15(a) (emphasis added).

“A motion to amend is addressed to the discretion of the court, and its decision thereon is not subject to review except in case of manifest abuse.” *Calloway v. Ford Motor Co.*, 281 N.C. 496, 501, 189 S.E.2d 484, 488 (1972). “Reasons justifying denial of an amendment are (a) undue delay, (b) bad faith, (c) undue prejudice, (d) futility of amendment, and (e) repeated failure to cure defects by previous amendments.” *Martin v. Hare*, 78 N.C. App. 358, 361, 337 S.E.2d 632, 634 (1985).

Here, it is undisputed that plaintiffs “failed to amend their Complaint within the time period allowed by right in Rule 15 of the North Carolina Rules of Civil Procedure.” As a result, plaintiffs could only amend their complaint “by leave of court” or with defendants’ written consent. N.C. Gen. Stat. § 1A-1, Rule 15(a).

At the hearing on 19 January 2016, plaintiffs requested a 60-day continuance to allow them to investigate and assert additional claims related to MLI’s declarant rights. Despite defendants’ opposition, the trial court granted plaintiffs’ motion to continue. However, the trial court specifically ordered plaintiffs to “file any motion to amend on [the declarant control] issue no later than March 21, 2016.” Plaintiffs filed their motion to amend on 28 March 2016, seven days after the 60-day continuance allowed by the trial court (and specifically requested by plaintiffs). At the summary judgment hearing on 18 April 2016, plaintiffs conceded that their motion to amend was untimely served.

The trial court had discretion to allow plaintiffs to amend their complaint. *Calloway*, 281 N.C. at 501, 189 S.E.2d at 488. Plaintiffs failed to file their motion to amend the complaint within the 60-day time period specifically mandated by the trial court. Accordingly, the court did not abuse its discretion by denying plaintiffs' motion on the basis of undue delay. Having so concluded, we need not address the other bases for the trial court's denial of plaintiffs' motion to amend.

III. Conclusion

Plaintiffs' original complaint was rendered moot when defendants recorded the 2015 Amendment. Because plaintiffs sought to amend their complaint after the 30-day time period provided by Rule 15, the trial court was not required to consider the arguments raised in plaintiffs' proposed amended complaint when ruling on defendants' motion for summary judgment. Furthermore, the trial court did not abuse its discretion by denying plaintiffs' motion to amend, which plaintiffs acknowledged was untimely. Therefore, we affirm the trial court's orders.

AFFIRMED.

Judges BRYANT and STROUD concur.

Report per Rule 30(e).