

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA17-512

Filed: 6 March 2018

Rowan County, No. 15 CVD 2015

DAVID A. PEREZ, Plaintiff,

v.

LAURIE S. PEREZ, Defendant.

Appeal by defendant from order entered 4 January 2017 by Judge Marshall Bickett in Rowan County District Court. Heard in the Court of Appeals 13 November 2017.

David A. Perez, pro se litigant, for plaintiff-appellee.

Hill Evans Jordan & Beatty, PLLC, by William W. Jordan and Elaine Hedrick Ashley, for defendant-appellant.

ELMORE, Judge.

Laurie S. Perez (“defendant” or “wife”) appeals from an order entered 4 January 2017 dismissing her counterclaims for postseparation support and alimony (“spousal support”) against David A. Perez (“plaintiff” or “husband”) pursuant to Rule 12(b)(6) of our Rules of Civil Procedure. Because wife’s original pleading was legally sufficient to set forth her claims and give husband adequate notice of the same, we

reverse the order of the trial court and remand this matter for further proceedings not inconsistent with this opinion.

I.

The parties to this appeal were married on 18 March 1989 and separated from each other on 8 July 2014. There were three children born of the marriage, one of whom was still a minor as of the commencement of this action. Husband is a licensed, self-employed attorney with a general practice that includes family law, while wife maintained various employments throughout the 25-year marriage.

On 22 September 2015, husband initiated this action by filing a *pro se* complaint for absolute divorce. On 7 December 2015, wife filed an answer and counterclaims for postseparation support, alimony, and equitable distribution. The trial court entered judgment of absolute divorce on 8 December 2015.

On 9 February 2016, husband filed a reply to wife's counterclaims. On 19 February 2016, wife filed her financial affidavit as required by the judicial district's local rules in all postseparation support/alimony cases. The parties subsequently resolved wife's equitable distribution claim at mediation and scheduled a spousal support trial for 20 October 2016.

On the morning of the scheduled trial, husband filed his financial affidavit along with a motion to dismiss wife's spousal support claims pursuant to Rule 12(b)(6) of our Rules of Civil Procedure. The matter was continued to 31 October 2016 to allow

time for wife to review husband's motion and for both parties to prepare and submit briefs to the trial court, if necessary. On 28 October 2016, wife filed a motion for leave to amend her counterclaims as well as amended counterclaims for spousal support and reasonable counsel fees.

Hearings on wife's motion for leave to amend her counterclaims and husband's motion to dismiss wife's counterclaims were held on 31 October and 19 December 2016. In an order dated 4 January 2017, the trial court concluded that wife's original counterclaims were "legally and fundamentally insufficient in their allegations to set forth claims for postseparation support and alimony." The trial court further noted that

Any amendment by [wife] that would rectify the fatal defects in the allegations contained in [wife's] original Counterclaims filed December 7, 2015 cannot, pursuant to Rule 15(c) [of our Rules of Civil Procedure], relate back to the original pleading of December 7, 2015, and the absolute divorce of the parties on December 8, 2015 acts as a legal bar to the filing of any claim for postseparation support or alimony after that date.

The trial court thus denied wife's motion for leave to amend on the grounds that amendment would be futile, and it granted husband's motion to dismiss. Wife entered timely notice of appeal.

II.

Wife argues that the trial court erred in granting husband's motion to dismiss wife's counterclaims pursuant to Rule 12(b)(6) of our Rules of Civil Procedure. In the

alternative, wife contends that the trial court abused its discretion by denying wife's motion for leave to amend her counterclaims.

A motion to dismiss made pursuant to Rule 12(b)(6) tests the legal sufficiency of the pleading. N.C. Gen. Stat. § 1A-1, Rule 12(b)(6) (2015).

In order to withstand such a motion, the [pleading] must provide sufficient notice of the events and circumstances from which the claim arises, and must state allegations sufficient to satisfy the substantive elements of at least some recognized claim. The question for the court is whether, as a matter of law, the allegations of the [pleading], treated as true, are sufficient to state a claim upon which relief may be granted under some legal theory, whether properly labeled or not.

Harris v. NCB Nat. Bank of N.C., 85 N.C. App. 669, 670, 355 S.E.2d 838, 840 (1987) (citations omitted). “This Court must conduct a *de novo* review of the pleadings to determine their legal sufficiency and to determine whether the trial court's ruling on the motion to dismiss was correct.” *Leary v. N.C. Forest Prods., Inc.*, 157 N.C. App. 396, 400, 580 S.E.2d 1, 4 (2003).

“We also note that North Carolina is a notice pleading jurisdiction, and as a general rule, there is no particular formulation that must be included in a complaint or filing in order to invoke jurisdiction or provide notice of the subject of the suit to the opposing party.” *Mangum v. Raleigh Bd. of Adjustment*, 362 N.C. 640, 644, 669 S.E.2d 279, 283 (2008) (citation omitted). Pursuant to Rule 8 of our Rules of Civil Procedure, a pleading need only contain “[a] short and plain statement of the claim

sufficiently particular to give the court and the parties notice of the transactions, occurrences, or series of transactions and occurrences, intended to be proved” N.C. Gen. Stat. § 1A-1, Rule 8(a)(1) (2015).

Wife contends that her pleading “as a whole” gives husband Rule 8 notice of the spousal support claims to be determined. She argues that the trial court failed to view the pleading in its entirety, in the light most favorable to her as the non-moving party, and in accordance with our notice pleading standard.

Husband contends that because wife’s claims for relief were pled separately (e.g. first claim for relief, second claim for relief, etc.), each claim should be reviewed individually in determining the sufficiency of its contents. Unable to find any case law that directly addresses how separate claims for relief within the same pleading should be construed, husband cites to several cases that he claims indirectly address the issue. He summarizes the case law by asserting that wife’s spousal support claims must each stand or fall either upon what was incorporated by reference into that claim, or upon what was individually alleged in that claim, asking “for what reason are separate claims within one pleading made, and paragraphs from one claim incorporated by reference into another claim, if all of this is meaningless and the court may simply look anywhere in the body of a pleading for the necessary components of a claim[?]”

We disagree that allowing the court to view the pleading “as a whole” as requested by wife renders meaningless the practice of separating multiple claims within the same pleading. As husband acknowledges, there is no case law directly addressing this specific issue, but there is also no statute or case law requiring that multiple claims be pled separately. This suggests that separating each claim may simply be a practice that developed for clarity and ease of reading, and this practice is certainly not rendered meaningless by allowing the court to also view the pleading as a whole, when appropriate.

Here, wife did in fact allege separate claims for relief within one pleading. She labeled her counterclaims as follows: “First Claim for Relief (Post Separation Support),” “Second Claim for Relief (Alimony),” and “Third Claim for Relief (Equitable Distribution).” In her first and second claims for relief, wife also alleged that she was entitled “to an award of reasonable counsel fees” based on those claims. While husband would have this Court review each of wife’s counterclaims individually, we agree with wife that her pleading should be considered as a whole and without excessive regard for claim labels. “To deny a party [her] day in court because of [her] ‘imprecision with the pen’ would ‘elevate form over substance’ and run contrary to notions of fundamental fairness.” *Mangum*, 362 N.C. at 644, 669 S.E.2d at 283 (citation omitted).

In reviewing wife’s original pleading as a whole, we find wife’s counterclaims to be legally sufficient to set forth claims for both postseparation support and alimony. Wife alleged that she is a dependent spouse as defined by N.C. Gen. Stat. § 50-16.1A(2) in that she is substantially in need of maintenance and support from husband; that husband is a supporting spouse as defined by N.C. Gen. Stat. § 50-16.1A(5) in that wife is substantially in need of maintenance and support from him; that wife is employed by Sandhills Center and has gross monthly earnings of \$3538.00; that husband is a self-employed attorney; that husband committed marital misconduct; and that an award of alimony is equitable pursuant to the factors set forth in N.C. Gen. Stat. § 50-16.3A(B), seven of which wife specifically set forth in her pleading.

At the 31 October 2016 hearing on the parties’ respective motions, wife asserted to the trial court that “there’s no question that [husband] knew what he was being sued for.” We agree with wife. Accordingly, we reverse the order of the trial court dismissing wife’s claims for postseparation support and alimony.

III.

Because wife’s original pleading was legally sufficient in its allegations to set forth her counterclaims, we do not address wife’s argument, made in the alternative, that the trial court abused its discretion by denying her motion for leave to amend her counterclaims.

PEREZ V. PEREZ

Opinion of the Court

For the reasons stated herein, we reverse the order of the trial court and remand this matter for further proceedings not inconsistent with this opinion.

REVERSED AND REMANDED.

Chief Judge McGEE and Judge MURPHY concur.

Report per Rule 30(e).