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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-73

Filed: 19 June 2018

Cumberland County, No. 17 CVD 2693

RHONDA K. DANIELS, Plaintiff

v.

JERRY DANIELS, Defendant

Appeal by plaintiff from order entered 26 September 2017 by Judge Toni S. King in Cumberland County District Court. Heard in the Court of Appeals 5 June 2018.

Chris Kremer, for plaintiff-appellant.

No brief filed for defendant-appellee.

CALABRIA, Judge.

Where the North Carolina court had subject matter jurisdiction, the trial court erred in dismissing the matter for lack thereof. However, because this matter was adjudicated by another court during the pendency of this appeal, the matter is moot, and this appeal is dismissed.

I. Factual and Procedural Background

Rhonda Daniels ("plaintiff") and Jerry Daniels ("defendant") were married on 16 May 2008, and separated on 13 May 2016. No children were born to the marriage. On 31 March 2017, plaintiff filed a verified complaint for divorce from bed and board in Cumberland County District Court, alleging defendant's marital misconduct, and seeking postseparation support and permanent alimony, and equitable distribution. According to an affidavit of service, defendant received the complaint on 5 April 2017. On 31 March 2017, the same day plaintiff filed her complaint in North Carolina, defendant filed a petition for divorce and distribution of the marital estate in Lincoln County, Oklahoma, where he resided. Although no certificate of service is included in the record, plaintiff acknowledged receiving service of defendant's Oklahoma petition on 28 April 2017.

On 15 May 2017, defendant moved to dismiss plaintiff's complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the North Carolina Rules of Civil Procedure, alleging lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted. On 19 May 2017, plaintiff filed an objection to defendant's petition in Oklahoma.

On 26 September 2017, a Cumberland County district court judge entered an order declining jurisdiction. The trial court found that "the State of Oklahoma is a more appropriate forum and controls the claims of these parties." The court stayed

the proceedings for 60 days to allow plaintiff to file her claims in Oklahoma, after which the action was dismissed.

Plaintiff appeals.

II. Motion to Dismiss

In her sole argument on appeal, plaintiff contends that the trial court erred in granting defendant's motion to dismiss. Although we agree, we hold that the matter is moot, and dismiss.

A. Standard of Review

"We review a motion to dismiss for lack of subject matter jurisdiction pursuant to Rule 12 of the North Carolina Rules of Civil Procedure *de novo*." *Burgess v. Burgess*, 205 N.C. App. 325, 327, 698 S.E.2d 666, 668 (2010). "Under the *de novo* standard of review, this Court 'considers the matter anew and freely substitutes its own judgment for that of the [trial court].' " *Id.* (quoting *In re Appeal of the Greens of Pine Glen Ltd. P'ship,* 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003)).

B. Analysis

Plaintiff contends that North Carolina, not Oklahoma, was the proper venue for the action, and that the trial court erred in determining that it lacked subject matter jurisdiction to hear the case.

In its order declining jurisdiction, the trial court entered the following findings with respect to jurisdiction:

> 7. Lincoln County, Oklahoma has both personal and subject matter jurisdiction as to the Defendant and also has personal jurisdiction over the person of the Plaintiff based on the ownership of real property by the parties in said jurisdiction.
>
> 8. The court finds that although [North Carolina] would have personal jurisdiction as to the Plaintiff, the court does not have subject matter jurisdiction to divide the military pension of the Defendant.
>
> 9. The court declines to exercise jurisdiction based on the prior filing of the Oklahoma action and finds the State of Oklahoma is a more appropriate forum and controls the claims of these parties.

In sum, the trial court's reasoning was based on two determinations: first, that Oklahoma had personal and subject matter jurisdiction over defendant and, through the presence of marital property in the state, over plaintiff; and second, that while North Carolina had jurisdiction over plaintiff, it lacked jurisdiction to divide defendant's military pension.

Plaintiff offers multiple arguments to support her position that Cumberland County had subject matter jurisdiction over this matter. We agree.

"In North Carolina, subject matter jurisdiction for divorce involves not only bringing the matter in the correct court, but also the court's finding residence by one of the parties for the requisite length of time and verification of the pleadings." *Wilson v. Wilson*, 191 N.C. App. 789, 792, 666 S.E.2d 653, 655 (2008) (citations and quotation marks omitted). We note that plaintiff's complaint was properly verified,

and that plaintiff alleged in her complaint that she had resided in Cumberland County for more than six months prior to the filing of the complaint. Moreover, the record shows that defendant received service of the complaint. This was clearly sufficient to establish subject matter jurisdiction, and we hold that the trial court erred in dismissing the matter for lack thereof.

What plaintiff does not include in the record, to our disappointment, is the subsequent history of this case. By contrast, defendant has submitted several pages of material to this Court concerning the proceedings in Oklahoma. Defendant did not file these in accordance with Rule 9 of the North Carolina Rules of Appellate Procedure. However, this Court may take judicial notice *ex mero motu* "on any occasion where the existence of a particular fact is important[.]" *West v. G. D. Reddick, Inc.*, 302 N.C. 201, 203, 274 S.E.2d 221, 223 (1981) (citations omitted). Moreover, we may take judicial notice of "a fact which is either so notoriously true as not to be the subject of reasonable dispute or *is capable of demonstration by readily accessible sources of indisputable accuracy*." *Id.* We therefore choose to take judicial notice of these materials, since they concern judicial determinations in this case, and are "capable of demonstration by readily accessible sources of indisputable accuracy."

On 7 November 2017, the District Court of Lincoln County, Oklahoma, entered a divorce decree, which purported to divorce the parties, and granted equitable distribution of the marital estate. On 20 November 2017, plaintiff filed a motion to

reconsider in Lincoln County, citing her earlier objection which she asserted was not ruled upon. The court ultimately denied this motion, ordering that the decree would remain.

Notwithstanding the fact that the North Carolina court had subject matter jurisdiction in this case, it is clear that this matter has been adjudicated. We do not disagree with the Oklahoma court that it possessed jurisdiction. Although we recognize that the outcome was unfortunate for plaintiff, we hold that this matter, having been adjudicated to finality, is now moot. We therefore dismiss plaintiff's appeal. *See Ass'n for Home & Hospice Care of North Carolina, Inc. v. Div. of Med. Assistance*, 214 N.C. App. 522, 528, 715 S.E.2d 285, 289 (2011) (holding that the remedy for mootness is dismissal of the appeal).

DISMISSED.

Judges MURPHY and ARROWOOD concur in the result.

Report per Rule 30(e).