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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA20-10

Filed: 31 December 2020

Guilford County, No. 18 CVD 7109

MICHAEL E. WILLIAMS, Plaintiff,

v.

SUSAN L. MCDONALD, Defendant.

Appeal by Plaintiff from order entered 1 October 2019 by Judge Teresa H. Vincent in District Court, Guilford County. Heard in the Court of Appeals 25 August 2020.

William W. Jordan for Plaintiff-Appellant.

Roberson Haworth & Reese PLLC, by Arlene M. Zipp, for Defendant-Appellee.

McGEE, Chief Judge.

Michael E. Williams (“Plaintiff”) appeals from the trial court’s order granting Susan L. McDonald’s (“Defendant”) Rule 12(b)(6) motion to dismiss Plaintiff’s complaint. Plaintiff argues the trial court erred by dismissing his complaint because the complaint sufficiently presented a claim for which the court could grant relief. We affirm the trial court’s order.

I. Factual and Procedural Background

Plaintiff and Defendant separated on 26 December 2001 after 16 years of marriage. Plaintiff and Defendant entered into a Separation Agreement and Property Settlement (the “Separation Agreement”) on 22 November 2002, which set out the division of marital property of the parties.

The parties agreed to execute two qualified domestic relations orders (“QDROs”), which the trial court entered in two consent judgments on 24 September 2012. The first QDRO (“VF QDRO”) concerned the division and disposition of Defendant’s VF Corporation Pension plan “as a result of the [Separation Agreement] entered into [22 November 2002].” The VF QDRO assigned to Plaintiff benefits equal to 50 percent of the “Marital Portion of [Defendant’s] Accrued Benefit under the Plan.” The second QDRO (“Blue Bell QDRO”) concerned the division and disposition of Defendant’s interest in a Blue Bell Savings Plan that was rolled over into a “VF Corporation Tax-Advantaged Savings Plan for Salaried Employees” (“Savings Plan”). The Blue Bell QDRO assigned to Plaintiff “140.8 shares of VF Corporation Common Stock, 344.7 shares of the Spartan 500 Index, plus any gains and/or losses on those shares from [19 June 2012], until date of distribution.” The remaining funds and assets in the Savings Plan remained Defendant’s sole and separate property pursuant to N.C. Gen. Stat. § 50-20(b)(2) (2012) and the terms of the Separation Agreement.

Plaintiff filed the complaint in this action on 10 August 2018. In the complaint, Plaintiff alleges the following, in relevant part:

5. On [22 November 2002], the parties entered into a Separation Agreement and Property Settlement.

6. Under the terms of the [22 November 2002 Separation Agreement] Defendant was to execute a Qualified Domestic Relations Order dividing equally between the parties her Blue Bell 401(k) Plan after deducting the premarital component of the Plan and the gains and/or losses thereon until disbursement.

7. The Court entered a Qualified Domestic Relations Order on [24 September 2012] in file number 03 CvD 11714 providing for the division of Defendant's Blue Bell 401(k) Plan as provided for in the [22 November 2002 Separation Agreement]. However, at the time of entry of the Qualified Domestic Relations Order, there was no claim for equitable distribution or for entry of the Qualified Domestic Relations Order pending.

8. Plaintiff is entitled to have the Court adopt and otherwise incorporate the [24 September 2012] Qualified Domestic Relations Order dividing Defendant's Blue Bell 401(k) into this action.

9. Under the terms of the [22 November 2002 Separation Agreement] Defendant was to execute a Qualified Domestic Relations Order dividing her VF Corporation Pension Plan and assigning to Plaintiff, at the time [Defendant] elects to receive benefits, 50% of such benefits payable to [Defendant] under the VF Pension Plan, multiplied by the coverture fraction provided for in the agreement.

10. The Court entered a Qualified Domestic Relations Order on [24 September 2012] in file number 03 CvD 11714

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providing for the division and assignment of a portion of Defendant's VF Corporation Pension Plan.

11. At the time of entry of the Qualified Domestic Relations Order there was no claim for equitable distribution or for entry of the Qualified Domestic Relations Order pending.

Plaintiff's complaint further alleges in Paragraphs 16 and 17 that Defendant "failed and refused to abide by the terms of the [Separation Agreement]," by "continu[ing] to refuse to execute" QDROs assigning to Plaintiff "50% of her benefits payable under the VF Pension Plan multiplied by the coverture fraction provided for in the [Separation Agreement]," and "dividing Defendant's Blue Bell 401(k) account as provided for in the [Separation Agreement]."

Based on these allegations, Plaintiff made the following prayers for relief:

1. That the Court adopt and otherwise incorporate the [24 September 2012] Qualified Domestic Relations Order dividing Defendant's Blue Bell 401(k) into this action;
2. That the Court adopt, incorporate, and amend the [24 September 2012] Qualified Domestic Relations Order dividing Defendant's VF Corporation Pension Plan to reflect the terms of the [22 November 2002 Separation Agreement] of the parties.
3. That in the alternative, the Court enter an order for specific performance of the terms of the [22 November 2002 Separation Agreement] requiring Defendant to execute a Qualified Domestic Relations Order assigning to Plaintiff 50% of her benefits payable under the VF Pension Plan

multiplied by the coverture fraction provided for in the [Separation Agreement].

4. That in the alternative, the Court enter an order for specific performance of the terms of the [22 November 2002 Separation Agreement] requiring Defendant to execute a Qualified Domestic Relations Order dividing Defendant's Blue Bell 401(k) account provided for in the [Separation Agreement] subject to the contempt powers of the Court[.]

Plaintiff also sought attorney fees and costs.

Defendant filed an answer on 15 October 2018, alleging that under the Separation Agreement, Defendant “ha[d] no obligation to amend [the QDROs], which [were] executed by all parties and their counsel[.]” Defendant’s answer included a Rule 12(b)(6) motion to dismiss, which argued Plaintiff’s claim regarding the Blue Bell QDRO should be dismissed for failure to state a claim because “Defendant executed the [24 September 2012 QDRO] dividing Defendant’s Blue Bell 401(k) plan and VF Corporation has already divided the 401(k) Plan and paid Plaintiff his interest therein.” Defendant’s motion to dismiss also argued that Plaintiff’s claim regarding the VF QDRO should be dismissed for failure to state a claim because no breach of contract claim was filed within the timeframe permitted by the statute of limitations, and because the trial court “lacked subject matter jurisdiction to enter the [QDROs] and the [QDROs] [were] void *ab initio*.”

Following a hearing on Defendant’s motion, the trial court entered an order granting Defendant’s motion to dismiss on 1 October 2019. Plaintiff appeals.

II. Analysis

Plaintiff argues the trial court erred by granting Defendant's motion to dismiss his complaint under N.C. Gen. Stat. § 1A-1, Rule 12(b)(6) (2019). In his brief on appeal, Plaintiff states "that the previously entered [VF QDRO and Blue Bell QDRO] . . . are void due to a lack of subject matter jurisdiction because no claim had been asserted [in the 2012 civil action] which would provide the trial court entering the QDRO[s] with subject matter jurisdiction to enter any order distributing [Defendant's] interest in her retirement assets." However, Plaintiff solely contends in his brief on appeal that the trial court erred by granting Defendant's Rule 12(b)(6) motion to dismiss because his complaint "clearly stated a claim in contract seeking to require [Defendant] to follow through as necessary to effectuate the agreement of the parties to divide [Defendant's] interest in her retirement assets as provided for in [the Separation Agreement]."

We review the trial court's grant of a Rule 12(b)(6) motion to dismiss *de novo*, *Leary v. N.C. Forest Prods., Inc.*, 157 N.C. App. 396, 400, 580 S.E.2d 1, 4 (2003), considering "whether, as a matter of law, the allegations of the complaint, treated as true, are sufficient to state a claim upon which relief may be granted under some legal theory," *Harris v. NCBN Nat'l Bank of N.C.*, 85 N.C. App. 669, 670, 355 S.E.2d 838, 840 (1987) (citation omitted); N.C. Gen. Stat. § 1A-1, Rule 12(b)(6). Dismissal of a complaint under Rule 12(b)(6) is proper: "(1) when the complaint on its face reveals

that no law supports plaintiff's claim; (2) when the complaint reveals on its face the absence of fact[s] sufficient to make a good claim; [or] (3) when some fact disclosed in the complaint necessarily defeats the plaintiff's claim." *Oates v. JAG, Inc.*, 314 N.C. 276, 278, 333 S.E.2d 222, 224 (1985).

We hold that the trial court did not err by granting Defendant's motion to dismiss because Plaintiff's complaint "reveals on its face the absence of facts sufficient to make a good claim," in addition to disclosing facts that necessarily defeat Plaintiff's claim.

A. Absence of Facts

Plaintiff requested that the trial court (1) "adopt and otherwise incorporate the [Blue Bell QDRO] dividing Defendant's Blue Bell 401(k) into this action;" and (2) "adopt, incorporate, and amend the [VF QDRO] dividing Defendant's VF Corporation Pension Plan to reflect the terms of the [Separation Agreement] of the parties." In the alternative, Plaintiff requested that the trial court "enter an order for specific performance of the terms of the [Separation Agreement] requiring Defendant to execute a [QDRO] assigning to Plaintiff 50% of her benefits payable under the VF Pension Plan multiplied by the coverture fraction provided for in the [Separation Agreement]," and "enter an order for specific performance of the terms of the [Separation Agreement] requiring Defendant to execute a [QDRO] dividing

Defendant's Blue Bell 401(k) account as provided for in the [Separation Agreement] subject to the contempt powers of the Court[.]”

Plaintiff's complaint did not allege the necessary facts to allow the trial court to either assess the validity of his claim or to interpret the Separation Agreement and modify the QDROs. There is nothing in the record before this Court which indicates that there was a copy of the Separation Agreement, the VF QDRO, and/or the Blue Bell QDRO before the trial court. Neither party appended a copy of the integral legal documents to their pleadings. Though Defendant filed on appeal to this Court a copy of the two QDROs through a supplement to the record on appeal, the record does not show that the trial court had the benefit of these documents and the record in this case still does not contain a copy of the Separation Agreement. Plaintiff referenced specific paragraphs of the Separation Agreement in his complaint and summarized their terms but did not provide the trial court with any of the specific legal language and contractual terms that Plaintiff requested the trial court interpret or enforce. Because the complaint did not include the legal documents necessary for the trial court to determine whether a redressable claim existed, the face of Plaintiff's complaint revealed the “absence of fact[s] sufficient to make a good claim[.]” *Privette v. Univ. of N.C. at Chapel Hill*, 96 N.C. App. 124, 133, 385 S.E.2d 185, 190 (1989) (holding complaint revealed absence of facts sufficient to make a claim where the

plaintiff failed to “include in his complaint the relevant terms of the [legal document] or attach the [legal document] to the complaint as an exhibit”).

Regardless, with respect to Plaintiff’s claim for modification of the QDROs, and as Defendant notes in her brief on appeal, the proper statutory procedure to seek modification of a trial court’s order—such as a QDRO—is provided in Rule 60 of the N.C. Rules of Civil Procedure. *See Harris v. Harris*, 162 N.C. App. 511, 516, 591 S.E.2d 560, 563 (2004) (holding trial court did not abuse its discretion by modifying a QDRO pursuant to Rule 60). Rule 60 motions “shall be made within a reasonable time, and for [some reasons] not more than one year after the . . . order . . . was entered[.]” N.C. Gen. Stat. § 1A-1, Rule 60 (2019). In this case, Plaintiff has not filed a Rule 60 motion to modify the trial court’s QDROs, though the QDROs were entered over eight years ago in September 2012. Because Plaintiff has not filed a Rule 60 motion within a reasonable time, Plaintiff is barred from relief under this proper statutory procedure.

Further, the record before us does not support Plaintiff’s contention that the trial court lacked jurisdiction to enter the Blue Bell QDRO and the VF QDRO in 2012. The trial court’s order in this action granting Defendant’s motion to dismiss stated only that the trial court “finds and concludes that the Complaint fails to state a claim upon which relief can be granted and that the Defendant’s motion should be granted.” The record on appeal contains a copy of the VF QDRO and the Blue Bell QDRO

entered by the trial court in 2012 “upon consent of the parties” in order to “divi[de] and dispos[e] of the [relevant accounts] as provided in the [Separation Agreement.]” The record does not otherwise show what cause of action prompted the trial court to enter the two QDROs and does not support arguments that the trial court lacked jurisdiction to do so.

B. Disclosed Facts that Necessarily Defeat Plaintiff’s Claim

Plaintiff’s complaint alleged in Paragraphs 16 and 17 that Defendant “failed and refused to abide by the terms of the [Separation Agreement],” by “continu[ing] to refuse to execute” QDROs assigning to Plaintiff “50% of her benefits payable under the VF Pension Plan multiplied by the coverture fraction provided for in the [Separation Agreement],” and “dividing Defendant’s Blue Bell 401(k) account as provided for in the [Separation Agreement].”

In an earlier allegation, however, Plaintiff stated that “[t]he Court entered a [QDRO] . . . providing for the division of Defendant’s Blue Bell 401(k) Plan as provided for in the [Separation Agreement.]” Plaintiff’s admission that the trial court entered the Blue Bell QDRO as provided for in the Separation Agreement discloses facts that necessarily defeat Plaintiff’s claim with respect to the Blue Bell QDRO.

Plaintiff further alleged that under the terms of the Separation Agreement, Defendant was to execute a QDRO “dividing [Defendant’s] VF Corporation Pension Plan and assigning to Plaintiff, at the time [Defendant] elects to receive benefits, 50%

of such benefits payable to [Defendant] under the VF Pension Plan, multiplied by the coverture fraction provided for in the [Settlement Agreement].” Plaintiff then admits in a subsequent paragraph of his complaint that the VF QDRO did assign “a portion of Defendant’s benefit which equates 50% of the marital portion of Defendant’s accrued benefit under the plan . . . multiplied by the coverture fraction[,]” but he argues that the terms of the VF QDRO do not reflect the terms of the Separation Agreement. Plaintiff does not explain why the terms of the VF QDRO do not reflect the terms of the Separation Agreement, does not include exactly what the “coverture fraction” used in either document is, and did not include the Separation Agreement or the VF QDRO for the trial court to review. Based purely on the language of the Plaintiff’s complaint, it appears that the VF QDRO complied with the terms of the Separation Agreement. Thus, Plaintiff’s complaint also reveals facts which necessarily defeat his claim. Plaintiff failed to state a claim for relief.

III. Conclusion

We affirm the order of the trial court granting Defendant’s Rule 12(b)(6) motion to dismiss Plaintiff’s action. Plaintiff’s complaint revealed an absence of facts sufficient to make the claims he presented and also presented facts which defeated those claims.

AFFIRMED.

Judge DILLON concurs.

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Judge MURPHY concurs in result only.

Report per Rule 30(e).