An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

2021-NCCOA-341

No. COA20-535

Filed 6 July 2021

Guilford County, No. 07 CVD 3230

JEFFREY LOREN WELCH, Plaintiff,

v.

DEBORAH BEAM WELCH, Defendant.

Appeal by Defendant from an Order Dismissing Motion for Contempt entered 24 February 2020 by Judge Marcus A. Shields in Guilford County District Court and an Order Denying Rule 70 Motion entered 13 April 2020 by Judge William B. Davis in Guilford County District Court. Heard in the Court of Appeals 27 April 2021.

The Spagnola Law Firm, by Samuel S. Spagnola, for Plaintiff-Appellee.

Woodruff Family Law Group, by Carolyn J. Woodruff and Jessica S. Bullock, for Defendant-Appellant.

GORE, Judge.

¶ 1 On 19 June 1981, Jeffrey Loren Welch ("Mr. Welch") and Deborah Beam Welch ("Ms. Welch") were married, they subsequently separated on 3 January 2004 and were divorced on 2 July 2007. As part of their divorce, Mr. Welch and Ms. Welch submitted Equitable Distribution Worksheets, both of which listed Mr. Welch's

Charles Schwab IRA account number 9145 ("the Schwab IRA"). On 30 October 2008, the trial court entered a Consent Order and Judgment ("Order"). The Order provided that "[a]s soon as practicable . . . [Mr. Welch] shall transfer to [Ms. Welch] one-half (50%) of [The Schwab IRA] into an individual retirement account in [Ms. Welch's] sole name." In their Property Settlement, Child Support, and Alimony Agreement the parties agreed that transfer of one-half of the Schwab IRA to Ms. Welch shall occur within sixty days of the execution of the agreement.

¶ 2 On 28 October 2019, Ms. Welch filed a Motion for Contempt alleging that Mr. Welch had failed to transfer Ms. Welch her one-half share of the Schwab IRA and had made no attempt to comply with the Order, despite having the ability to comply. The trial court found that Mr. Welch had in fact failed to comply with the Order and there was probable cause that Mr. Welch was in contempt. The trial court ordered Mr. Welch to appear and show cause why he was not in contempt. On 30 October 2019, Mr. Welch filed a Motion to Dismiss arguing that Ms. Welch's action is barred by the statute of limitations set forth in N.C. Gen. Stat. § 1-47(1). On 24 February 2020, the Honorable Marcus Shields concluded that because Ms. Welch's Motion for Contempt was brought eleven years after the Order was entered, Ms. Welch's action to enforce the judgment by contempt is barred by the ten-year statute of limitations in § 1-47(1).

¶ 3 On 30 January 2020, Ms. Welch filed a Rule 70 Motion requesting that the trial court execute the documents required to transfer title to the Schwab IRA to Ms.

Welch. The Motion alleges that Mr. Welch removed an amount in excess of his one-half share of the Schwab IRA shortly after the Order was entered. Ms. Welch asserts that Mr. Welch represented in the fall of 2019 that he had transferred Ms. Welch her share of the Schwab IRA, however, title to The Schwab IRA and remaining balance are still in Mr. Welch's name. On 13 April 2020, the Honorable William B. Davis found that Ms. Welch's Rule 70 Motion was also barred by the statute of limitations in § 1-47(1).

¶ 4 Ms. Welch gave written notice of appeal.

¶ 5 Ms. Welch first argues that the statute of limitations does not bar the transfer of the Schwab IRA to her. Under this argument Ms. Welch asserts that (1) property rights vest at the time of the equitable distribution decision and (2) the Internal Revenue Code, I.R.C. § 408(d)(6), does not have a statute of limitations and thus, is not a barrier to the Welch IRA transfer. Ms. Welch is correct that her interest in the Schwab IRA vested in October 2008 when the Order was entered. *See Patterson v. Patterson*, 137 N.C. App. 653, 666, 529 S.E.2d 484, 492 (2000). However, Ms. Welch's interest in the Schwab IRA is not what is barred by the statute of limitations, and therefore is not at issue here. Further, I.R.C. § 408(d)(6) pertains to the taxability of IRA accounts which are transferred due to divorce and has no impact on the trial court's application of the statute of limitations. Section 1-47(1) applies to a "judgment

or decree of any court of the United States," which includes the orders on appeal here. N.C. Gen. Stat. § 1-47(1) (2020). Therefore, the § 1-47(1) statute of limitations applies.

¶ 6 Ms. Welch's next argument is that she acquired the Schwab IRA at the time the equitable distribution decision was entered on 30 October 2008. As mentioned above, this appeal does not concern whether Ms. Welch obtained an ownership interest when the Order was entered in 2008. Instead, the issue here pertains to enforceability of the Order, by contempt and through Rule 70, eleven years later. As a result, this argument has no bearing on the present appeal.

¶ 7 Ms. Welch next argues that two mechanisms were available to transfer the Schwab IRA to her, either a domestic relations order pursuant to I.R.C. § 408(d)(6) or contempt requiring Mr. Welch to sign the appropriate Schwab transfer paperwork. However, the methods of enforcement Ms. Welch pursued at the trial court level, and has subsequently appealed, were a motion to show cause and subsequent contempt and a motion pursuant to Rule 70. Therefore, we do not address the domestic relations order argument. *See State v. Benson*, 323 N.C. 318, 322, 372 S.E.2d 517, 519 (1988) (finding that where a theory argued on appeal is not raised before the trial court, the argument is deemed waived on appeal). Further, Ms. Welch's contempt argument is that issuing contempt would be proper, not that dismissing her motion based on the statute of limitations was improper. Civil contempt may have been appropriate if the motion were timely brought in this case, however, because Ms. Welch brought the

contempt action eleven years after the Order was entered, her claims are barred by N.C. Gen. Stat. § 1-47(1). Section 1-47(1) provides a ten year statute of limitations for actions "[u]pon a judgment or decree of any court of the United States, or of any state or territory thereof . . . ." N.C. Gen. Stat. § 1-47(1). Therefore, this argument necessarily fails.

¶ 8 Finally, Ms. Welch argues that transferring the title of the Schwab IRA to her is a ministerial act by the court, and therefore, the court erroneously denied her Rule 70 motion. Rule 70 provides that if a judgment directs a party to perform any specific act and that party fails to comply, the trial court is then authorized "to direct the act to be done at the cost of the disobedient party by some other person appointed by the judge and the act when so done has like effect as if done by the [disobedient] party." N.C. Gen. Stat. § 1-1A, Rule 70 (2020). The trial court correctly ruled that in order to enter an order on Ms. Welch's Rule 70 motion, the trial court would be required to make findings that are "beyond a mere ministerial act where no facts are in dispute" and such action is barred by the § 1-47(1) statute of limitations. In addition, Ms. Welch puts forth no legal authority supporting her argument that transfer of title is a ministerial act or arguing that the § 1-47(1) statute of limitations does not apply. Arguments for which there is no supporting authority cited are deemed abandoned and dismissed. *State v. Elliot*, 360 N.C. 400, 427, 628 S.E.2d 735, 753 (2006) (citing

N.C.R. App. P. 28(b)(6)). Further, enforcement of the October 2008 Order is barred by the ten-year statute of limitations in N.C. Gen. Stat. § 1-47(1).

¶ 9 For the foregoing reasons we affirm the trial court's orders.

AFFIRMED.

Judges INMAN and GRIFFIN concur.

Report per Rule 30(e).