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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-708

No. COA21-302

Filed 21 December 2021

Mecklenburg County, No. 20 CVS 5091

BETSY HAUSER, Plaintiff,

v.

JASON IDILBI, Defendant.

Appeal by plaintiff from order entered 16 December 2020 by Judge Lisa C. Bell in Mecklenburg County Superior Court. Heard in the Court of Appeals 1 December 2021.

Gardner Skelton PLLC, by Tyler B. Peacock and Jared E. Gardner, for plaintiff-appellant.

Fox Rothschild LLP, by Troy D. Shelton and Matthew Nis Leerberg, for defendant-appellee.

ARROWOOD, Judge.

¶ 1 Betsy Hauser (“wife”) appeals from the trial court’s order granting Jason Idilbi’s (“husband”) motion to dismiss for lack of subject matter jurisdiction. Wife argues the trial court erred in dismissing her complaint filed in Mecklenburg County Superior Court, claiming the trial court had subject matter jurisdiction to hear her

claims against husband while the parties' equitable distribution action was ongoing in Mecklenburg County District Court. For the following reasons, we affirm the trial court's order.

I. Background

¶ 2 Wife and husband (the "parties") were married on 23 September 2013 and separated on 9 June 2019. On 2 July 2019, husband filed a complaint in Mecklenburg County District Court for, among other things, equitable distribution, child support, and attorneys' fees (the "domestic action"). On 30 August 2019, wife filed an answer and counterclaims to the domestic action, asserting, among other things, alimony, equitable distribution, and attorneys' fees. In her counterclaim for alimony, wife alleged husband had "diverted without [wife's] knowledge or approval the net proceeds of the sale of investment property in their joint names into a bank account in his sole name[,] which [wife] knew nothing about, lied to her about it, and then claimed that he was justified in doing so[,]" all of which wife argued "should be considered in the [court's] determination of alimony."

¶ 3 On 24 March 2020, wife filed a separate complaint in Mecklenburg County Superior Court against husband (the "Superior Court complaint"). Therein, again, wife alleged that husband had "misappropriated" net proceeds from the sale of joint property, namely "more than two hundred thousand dollars[,]" and that he "later admitted that he took the money to have a 'war chest' to fight" her.

¶ 4 Specifically, the Superior Court complaint stated that on 11 April 2019, the parties sold an investment property they had owned jointly in Charlotte (the “investment property”), the sale of which yielded a total of \$212,000.17 in net closing proceeds (the “net closing proceeds”). Wife claimed husband, unbeknownst to her, sent the parties’ closing attorney instructions to wire the net closing proceeds to husband’s personal account, rather than the parties’ joint bank account. Then, wife claimed, upon her discovery that the net closing proceeds had not been deposited in the parties’ joint account, husband “refused [to] share any” of the money with her.

¶ 5 The Superior Court complaint concluded by alleging one count each of the following claims: false pretenses, fraud, breach of fiduciary duty, constructive trust, and conversion. Wife did not, however, allege that the net closing proceeds or defendant’s personal bank account did not constitute marital property. She then requested a jury trial on all issues, a “[j]udgment” finding that husband “holds the Net Closing Proceeds in constructive trust for” wife, punitive damages, attorneys’ fees, “all damages caused by [husband]’s misconduct[,]” and “such other” relief as the court would find “just and proper.”

¶ 6 On 22 June 2020, husband filed a motion to dismiss, or, in the alternative, a motion to stay proceedings, as well as a motion for sanctions in Mecklenburg County Superior Court. Husband argued wife’s Superior Court complaint should be dismissed under Rule 12(b) of the North Carolina Rules of Civil Procedure for lack of

subject matter jurisdiction, wrong venue or division, “and/or” failure to state a claim, under Rule 13(a) for failure to state a compulsory counterclaim, and, specifically as to the false pretenses, fraud, and conversion claims, and under Rule 12(c) “on the grounds that” the Superior Court complaint is “insufficiently plead and when taken as true . . . does not state a viable claim against [husband].”

¶ 7 The motions came on for hearing before the Mecklenburg County Superior Court, Judge Lisa C. Bell presiding, on 23 July 2020. On 16 December 2020, the trial court entered an order in which it found that “[t]he specific act complained of in [wife]’s [Superior Court] Complaint herein was alleged in her Answer in the domestic action[,]” that wife “was aware of the sale of the [investment] property at the time that it occurred, did not oppose it, knew of the amount of proceeds derived from the sale, and is aware of where those funds were deposited[,]” and that “[t]he funds in question remain part of the marital estate which is to be divided via the equitable distribution claims pending in the domestic action.”

¶ 8 The trial court thus concluded it lacked subject matter jurisdiction to hear wife’s Superior Court complaint, granted husband’s motion to dismiss the complaint without prejudice, and denied husband’s motion for sanctions. Wife gave written notice of appeal on 13 January 2021.

¶ 9 Notably, on 26 May 2021, before wife filed her appellate brief, the parties entered a consent judgment and order (the “consent order”) for equitable distribution,

child support, alimony, and attorneys' fees. Pertinently, the parties agreed to the following:

8. By way of compromise and settlement, the parties have agreed to a division and distribution of their assets and debts as more particularly set forth in the Decretal section below. The parties waive the necessity of the court to resolve these disputes and for the court to value and distribute the property other than as set forth below.
9. The parties stipulate and agree that the division of property and debt as set forth below is equitable. This order is a complete satisfaction of all Equitable Distribution, Child Support and Chapter 50 attorneys[] fees claims.
10. Each party waives their right to further disclosures of marital and divisible property. Each are satisfied with his or her knowledge of the marital and divisible estate. The parties are satisfied with the disclosure of their respective financial status as has been made to one another, and have negotiated the terms of this Consent Order to their mutual satisfaction.
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17. This Order resolves the parties' claims for Equitable Distribution, Permanent Child Support, Alimony, Post Separation Support, and Attorneys[] [F]ees pursuant to [N.C. Gen. Stat §] 50-13.6, [N.C. Gen. Stat §] 50-16.4.
18. The parties waive the necessity for any additional Findings of Fact.

¶ 10 The District Court also ordered, among other things, no cash distributive award, and did not otherwise contain any additional provisions for future litigation.

II. Discussion

¶ 11 Wife argues the trial court erred in granting husband’s motion to dismiss for lack of subject matter jurisdiction. We disagree.

¶ 12 “An order granting a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction is subject to *de novo* review.” *Farquhar v. Farquhar*, 254 N.C. App. 243, 245, 802 S.E.2d 585, 587 (2017) (citation omitted). “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.* (citation and quotation marks omitted) (brackets in original).

¶ 13 “Subject matter jurisdiction refers to the legal power and authority of a court to make a decision that binds the parties to any matter properly brought before it.” *Watson v. Joyner-Watson*, 263 N.C. App. 393, 394, 823 S.E.2d 122, 124 (2018) (citation and quotation marks omitted). “[T]he district court exercises subject matter jurisdiction over civil actions and proceedings for . . . equitable distribution of property . . . and the enforcement of separation or property settlement agreements between spouses, or recovery for the breach thereof.” *Id.* at 395, 823 S.E.2d at 124 (quotation marks omitted) (ellipses in original) (quoting N.C. Gen. Stat. § 7A-244 (2017)). “The resolution of an equitable distribution action requires the District Court

to determine what is the marital [] and divisible property and to provide for an equitable distribution of the marital property and divisible property between the parties” *Jessee v. Jessee*, 212 N.C. App. 426, 433, 713 S.E.2d 28, 34 (2011) (citation and quotation marks omitted) (brackets in original); *see also* N.C. Gen. Stat. § 50-20(a) (2019).

¶ 14 Here, regardless as to husband’s alleged motives, because the net closing proceeds and husband’s personal account were created during the marriage, they both constitute marital property. N.C. Gen. Stat. § 50-20(b)(1) (defining “marital property”). Neither party disputed this fact in their respective complaints, and both parties conceded this fact at the hearing. Thus, the division and assignment of the net closing proceeds and husband’s personal account falls squarely within the district court’s jurisdiction. N.C. Gen. Stat. § 50-20(a).

¶ 15 The allegations wife made in the Superior Court complaint were substantially similar to those she made in her answer and counterclaims to the domestic action: in essence, that husband had committed misconduct by depositing and keeping the net closing proceeds in his personal account, and that wife was entitled to said net closing proceeds. Given the “clear interrelationship between the issues in both actions,” and the fact that wife had filed the Superior Court claim after filing her answer and counterclaims in the domestic action, it was “not . . . in the interest of judicial economy or clarity for both of these actions to proceed simultaneously.” *See Baldelli*

v. Baldelli, 249 N.C. App. 603, 608-609, 791 S.E.2d 687, 690-91 (2016) (deciding to hold a Superior Court claim in abeyance while the domestic action was still pending). Thus, the trial court correctly dismissed the Superior Court complaint.

¶ 16 Furthermore, the domestic action has now been settled by way of a consent order. This not only resolved the parties' equitable distributions claims, but also the parties' claims for alimony and any allegations set out therein. Accordingly, the Superior Court complaint has been rendered moot by the consent order. *See Yeager v. Yeager*, 232 N.C. App. 173, 181, 753 S.E.2d 497, 503 (2014) ("A case is 'moot' when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy. [A]n appeal presenting a question which has become moot will be dismissed." (citation and some quotation marks omitted) (brackets in original)).

III. Conclusion

¶ 17 Accordingly, we affirm the trial court's order granting husband's motion to dismiss.

AFFIRMED.

Judges TYSON and GRIFFIN concur.

Report per Rule 30(e).