An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

2022-NCCOA-233

No. COA21-341

Filed 5 April 2022

Mecklenburg County, No. 13 CVD 18699

ROCKSON KORKU KUMAGA, Plaintiff,

v.

HANNAH KUMAGA, Defendant.

Appeal by plaintiff from order entered 29 June 2020 by Judge Christy T. Mann in Mecklenburg County District Court. Heard in the Court of Appeals 9 March 2022.

Stallard & Bellof, PLLC, by Carolyn R. Bellof, for plaintiff-appellant.

Jonathan McGirt for defendant-appellee.

TYSON, Judge.

¶ 1 Rockson K. Kumaga ("Plaintiff") appeals an order granting dismissal and relief in favor of Hannah Kumaga ("Defendant"). We affirm.

I. Background

¶ 2 Plaintiff and Defendant are both residents of Mecklenburg County and have been for more than six months preceding the present action. Plaintiff and Defendant were married on 26 January 2007. One minor child was born of the marriage in April

2008.

¶ 3 Plaintiff filed a verified complaint for absolute divorce on 21 October 2013, with a civil summons issued the same day. An acceptance of service bearing Defendant's purported signature and dated 15 November 2013 was filed in the trial court on 13 January 2014.

¶ 4 Plaintiff filed a Motion for Summary Judgment on 13 January 2014, with an accompanying Notice of Hearing. A Divorce Judgment was entered on 28 January 2014. Defendant filed four motions on 1 October 2018: (1) Rule 60(b) Motion for Relief; (2) Rule 12(b)(1) Motion to Dismiss; (3) Motion for Temporary Restraining Order/Preliminary Injunctions; and (4) Motion for Sanctions/Attorneys' Fees.

¶ 5 Defendant also initiated a Chapter 50 action asserting claims for child custody and support, post-separation support, alimony, attorneys' fees, and equitable distribution. Plaintiff subsequently filed his own 12(b)(6) Motion to Dismiss Defendant's motions for alimony, post-separation support, equitable distribution, and attorneys' fees in the Chapter 50 action. An Order Granting Plaintiff's Motion to Dismiss was issued on 11 January 2019, dismissing the Defendant's claims in the Chapter 50 action without prejudice.

¶ 6 Defendant's Rule 60(b) and Rule 12(b)(1) motions were heard, with both parties present, represented by counsel, and subject to cross-examination on 25 April 2019. Plaintiff's counsel stipulated that Plaintiff's Complaint for Absolute Divorce

contained false statements. Plaintiff had pleaded he and Defendant had "lived continuously separate and apart from each other" since 15 June 2012. The parties did not physically separate until 16 April 2018. This fact is not contested by either party. At the time his verified Complaint was filed, Plaintiff knew his allegations were false.

¶ 7 Defendant testified the address listed on the summons as hers is actually the address of Plaintiff's sister. Defendant testified she has never lived at this address. Defendant testified she did not sign the purported acceptance of service filed with the Compliant and summons, and she never met with the notary public, who notarized the document.

¶ 8 The trial court found the previously entered Divorce Judgment is void due to lack of subject matter jurisdiction. The trial court reasoned the parties did not meet the jurisdictional requirement under N.C. Gen. Stat. § 50-6 requiring parties to live separate and apart for one year prior to filing a cause of action for divorce. Because the parties were not separated for the minimum period under N.C. Gen. Stat. § 50-6, and because a question of a court's subject matter jurisdiction may be raised at any time, the trial court granted Defendant's Rule 60(b) Motion for Relief, voided the judgment, and dismissed. Plaintiff appeals.

II. Issues

¶ 9 Plaintiff argues the trial court erred in granting Defendant's motions to set

aside and to dismiss.

III. Jurisdiction

¶ 10 Jurisdiction lies in this Court pursuant to N.C. Gen. Stat. § 7A-27(b)(1) (2021).

IV. Standard of Review

¶ 11 We review a trial court's Rule 60(b) ruling for abuse of discretion. *See Davis v. Davis*, 360 N.C. 518, 523, 631 S.E.2d 114, 118 (2006) (citation omitted). The Court reviews a motion to dismiss for lack of jurisdiction *de novo*. *Country Club of Johnston Cty., Inc. v. U.S. Fidelity & Guar. Co.*, 150 N.C. App. 231, 238, 563 S.E.2d 269, 274 (2002).

¶ 12 North Carolina courts have long held the lack of subject matter jurisdiction may always be raised by a party, or the court may raise such defect on its own initiative. *See Dale v. Lattimore*, 12 N.C. App. 348, 352, 183 S.E.2d 417, 419 (1971); *see also McAllister v. Cone Mills Corp.,* 88 N.C. App. 577, 579, 364 S.E.2d 186, 188 (1988) ("If a court finds at any stage of the proceedings that it lacks jurisdiction over the subject matter of a case, it must dismiss the case for want of jurisdiction."); *see also Johnson v. Colonial Life & Accident Ins. Co.,* 173 N.C. App. 365, 373, 618 S.E.2d 867, 873 (2005) ("Lack of subject matter jurisdiction may *always* be raised . . . even after an answer has been filed." (emphasis supplied)).

¶ 13 This Court may raise the issue of subject matter jurisdiction on its own motion, even when not argued by the parties in their briefs. *See Northfield Dev. Co. v. City of*

Burlington, 165 N.C. App. 885, 887, 599 S.E.2d 921, 924 (2004).

V. Analysis

A. Plaintiff's Complaint is Fatally Defective

¶ 14 N.C. Gen. Stat. § 50-8 (2021) provides "[i]n all actions for divorce the complaint shall be verified in accordance with the provisions of Rule 11 of the Rules of Civil Procedure and G.S. 1-148." In *Boyd v. Boyd*, this Court noted, "'in a divorce action a verification is required as an essential part of the complaint. . . . The want of a proper verification is a fatal defect, and is a cause for dismissal of the action.'" *Boyd v. Boyd*, 61 N.C. App. 334, 336, 300 S.E.2d 569, 570 (1983). N.C. Gen. Stat. § 1-148 (2021) requires the verification be signed in front of a notary public or other appropriate officer of the court to be valid.

¶ 15 It is undisputed Plaintiff's complaint was improperly verified. First, Plaintiff admitted at the 25 April 2019 hearing that paragraphs three and four of his complaint were knowingly false. Second, a genuine dispute exists of the validity of the acceptance of service. Defendant testified she never signed the acceptance of service and alleges the signature on the document to be fraudulent. Defendant denies ever meeting with or signing before the notary listed on the acceptance, and the listed address is that of Plaintiff's sister. Defendant denies having ever lived at that address. The trial court properly held the complaint is fatally defective, and the trial court lacked subject matter jurisdiction to enter the Divorce Judgment.

B. Inadequate Separation under N.C. Gen. Stat. § 50-6

¶ 16 N.C. Gen. Stat. § 50-6 outlines the requirements for a cause of action for divorce, stating:

> Marriages may be dissolved and the parties thereto divorced from the bonds of matrimony on the application of either party, if and when the husband and wife have lived separate and apart for one year, and the plaintiff or defendant in the suit for divorce has resided in the State for a period of six months.

N.C. Gen. Stat. § 50-6 (2021).

¶ 17 Our Supreme Court has viewed these two requirements as jurisdictional for over seventy years, and if either one does not exist, the court is without jurisdiction, and any decree rendered is void. *Henderson v. Henderson*, 232 N.C. 1, 9, 59 S.E.2d 227, 233 (1950).

¶ 18 Separation "begins on the date the parties physically separate with the requisite intention that the separation remain permanent, and the cause of action under N.C. Gen. Stat. § 50-6 accrues at the end of one year." *Bruce v. Bruce*, 79 N.C. App. 579, 582, 339 S.E.2d 855, 858 (1986).

¶ 19 The requirement is jurisdictional, the existence of subject matter jurisdiction is a matter of law, which cannot be conferred upon a court by consent. *See Feldman v. Feldman*, 236 N.C. 731, 734, 73 S.E.2d 865, 867 (1953).

¶ 20 A "court's lack of subject matter jurisdiction is not waivable and can be raised

at any time." *Banks v. Hunter*, 251 N.C. App. 528, 531, 796 S.E.2d 361, 365 (2017) (citation omitted). "Whether a trial court has subject-matter jurisdiction is a question of law, reviewed de novo on appeal." *McKoy v. McKoy*, 202 N.C. App. 509, 511, 689 S.E.2d 590, 592 (2010) (citation omitted).

¶ 21 Here, the parties did not physically separate from one another until on or about 16 April 2018. This fact is undisputed by both parties. The parties did not meet the requirements for a one-year separation under N.C. Gen. Stat. § 50-6 to sustain the complaint. Where such jurisdictional element is lacking, the trial court lacks subject matter jurisdiction to enter a judgment. Any purported judgment entered is without jurisdiction and void. *Henderson*, 232 N.C. at 9, 59 S.E.2d at 233.

VI. Conclusion

Plaintiff failed to properly verify his complaint; and the parties' failed to meet the separation requirements to support an action of divorce under North Carolina law. The trial court lacked subject matter jurisdiction. N.C. Gen. Stat. § 50-6 (2021).

¶ 22 The trial court's 29 June 2020 order granting Rule 60 relief and dismissal of the complaint is affirmed. The purported Divorce Judgment entered on 28 January 2014 is void. *It is so ordered*.

AFFIRMED.

Judges DIETZ and COLLINS concur.

Report per Rule 30(e).