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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-620

No. COA22-62

Filed 6 September 2022

Pitt County, No. 19 CVS 313

SANDRA SUOZZO, Plaintiff,

v.

MATTHEW SUOZZO, Defendant.

Appeal by Defendant from judgment entered 13 September 2021 by Judge Marvin K. Blount, III, in Pitt County Superior Court. Heard in the Court of Appeals 8 June 2022.

Teresa DeLoatch Bryant for the Plaintiff-Appellee.

W. Walton Kitchin for the Defendant-Appellant.

DILLON, Judge.

¶ 1 Plaintiff (“Wife”) commenced this action against her then-husband Defendant (“Husband”), alleging that he breached their Separation Agreement (the “Agreement”). Judgment was entered against Defendant. We affirm.

I. Background

¶ 2 The terms of the Agreement required Husband to pay Wife \$200,000.00 due in 240 monthly installments of \$1,550.60, with any outstanding balance accruing

interest at 7% per annum. These payments became due from March 2006 to March 2026.

¶ 3 Husband made payments under the Agreement for approximately 18-36 months. Sometime before 2009, however, Husband stopped making payments. In February 2019, more than ten years after Husband paid his last installment, Wife commenced this action against Husband for breach of the Agreement.

¶ 4 The matter was tried without a jury. The presiding judge found Husband in breach of the Agreement and awarded Wife \$100,789.00 in damages. In calculating these damages, the trial court concluded that Wife could only collect for the installments due within three years of the commencement of this action (\$55,821.60), as recovery for unpaid installments due prior to February 2016 was barred by the applicable statute of limitations. *See Finova v. Beach Pharmacy*, 175 N.C. App. 184, 189, 623 S.E.2d 289, 292 (2005) (holding that the statute of limitations runs against each installment individually from the due date of said installment). The trial court also awarded Wife for payments that had become due from the filing of the complaint through the date of trial (\$44,967.40). Judgment was entered consistent with the court's findings. Husband timely appealed.

II. Analysis

¶ 5 Husband makes two arguments that we address in turn.

A. Laches

¶ 6 Husband contends that Wife should be barred by the equitable doctrine of laches to seek damages because she waited an unreasonable amount of time to file suit after becoming aware of Husband’s breach. Our Supreme Court has summarized laches as follows:

In equity, where lapse of time has resulted in some change in the condition of the property or in the relations of the parties which would make it unjust to permit the prosecution of the claim, the doctrine of laches will be applied. Hence, what delay will constitute laches depends upon the facts and circumstances of each case.

Teachey v. Gurley, 214 N.C. 288, 294, 199 S.E. 83, 88 (1938). “[T]he mere passage of time is insufficient to support a finding of laches.” *MMR Holdings L.L.C. v. City of Charlotte*, 148 N.C. App. 208, 209, 558 S.E.2d 197, 198 (2001). And “the delay must be shown to be unreasonable and must have worked to the disadvantage, injury or prejudice of the person seeking to invoke the doctrine of laches.” *Id.* at 209–10, 558 S.E.2d at 198; *See Taylor v. Raleigh*, 290 N.C. 608, 622-23, 227 S.E.2d 576, 584-85.

¶ 7 Here, Husband claims he was prejudiced by Wife’s delay in bringing suit because he could not have reasonably foreseen that he would need to save funds to pay her. However, husband has failed to present any records indicating a lack of

savings, inability to pay, or any representation by Wife that she had forgiven the debt.

We conclude that Husband was not prejudiced by the delay.

¶ 8 We also take under consideration Wife’s evidence that she lacked funds to hire an attorney and that Husband was derelict in responding to her payment requests.

¶ 9 We conclude the affirmative defense of laches is inapplicable to this case based on the evidence relied upon by the trial court.

B. Damages Owed

¶ 10 Husband argues that the trial court erred by awarding damages for the monthly installments that became due only after Wife commenced this action. Specifically, he contends that Wife did not sue for “claims which came due subsequent to the filing the complaint[,]” which accounted for \$44,967.40 of the judgment. Husband argues that, as a result, he did not have notice that Wife would seek damages for unpaid monthly installments accruing after Wife filed suit. We disagree.

¶ 11 The trial court found that the Agreement requires Husband to make monthly payments of \$1,550.60 until March 2026; that the complaint was filed in February 2019; that the matter was heard 29 months later in June 2021; and that Husband had not made any required payments during those 29 months. These findings are supported by the evidence. The trial court properly calculated 29 x \$1,550.60 to be \$44, 967.40. We note that the trial court did not make an award for any installments

Husband may have missed from the June 2021 hearing and the entry of the Judgment in September 2021, as there was no evidence presented for that window.

¶ 12 In her complaint, Wife does not limit her prayer for relief to the recovery of installments prior to the filing of her complaint, additionally alleging that Husband is required to make the payments until March 2026. Wife prays for “all damages incurred as a result of Defendant’s breach” and for “such other and further relief as the Court may deem just and proper.”

¶ 13 We conclude that the trial court did not err in awarding Wife damages for the installments Husband missed through the date of the hearing. *See Greene v. Greene*, 77 N.C. App. 821, 336 S.E.2d 430 (1985) (affirming order directing ex-husband to catch up on missed monthly payments, including those missed after ex-wife filed her complaint.) The trial court’s judgment is affirmed.

AFFIRMED.

Judges TYSON and JACKSON concur.

Report per Rule 30(e).