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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-607

Filed 21 March 2023

Burke County, No. 12 CVD 1555

BECKY ANN CHAPPELL, Plaintiff,

v.

JOHN DANIEL CHAPPELL, Defendant.

Appeal by defendant from amended judgment entered 11 December 2020, and orders entered 18 June 2021 and 27 September 2021, by Judge Robert A. Mullinax, Jr., in Burke County District Court. Cross-appeal by plaintiff from orders entered 18 June 2021, 27 September 2021, 21 October 2021, and 19 May 2022, by Judge Robert A. Mullinax, Jr., in Burke County District Court. Heard in the Court of Appeals 10 January 2023.

Mark C. Kurdys for plaintiff-appellee/cross-appellant.

LeCroy Law Firm, PLLC, by M. Alan LeCroy, for defendant-appellant/cross-appellee.

ZACHARY, Judge.

Plaintiff Becky Ann Chappell and Defendant John Daniel Chappell have been litigating the equitable distribution of their marital property for more than a decade,

ever since Plaintiff filed her initial complaint on 13 November 2012. The present appeal is the second time this dispute has reached this Court. *See Chappell v. Chappell (Chappell I)*, 269 N.C. App. 384, 836 S.E.2d 780, 2020 WL 64762 (2020) (unpublished). Defendant appeals from the trial court’s amendment to its equitable distribution judgment, and both parties appeal from several of the trial court’s subsequent orders. After careful review, we affirm.

I. Background

A full recitation of the facts of this case can be found in this Court’s prior opinion in *Chappell I*; we recite below those facts necessary for our disposition of this appeal.

On 20 December 2017, the trial court entered an equitable distribution judgment (the “Original Judgment”), from which Defendant appealed. *Id.* at *1. In *Chappell I*, this Court affirmed the trial court’s classifications of certain property for the purposes of equitable distribution, but reversed its classification of a money market account “as well as the distribution of [Defendant]’s defined benefit pension plans.” *Id.* at *5. This Court remanded the matter for the trial court to, *inter alia*, “value and distribute [Defendant]’s defined benefit pension plans consistent with this opinion[.]” *Id.*

Following this Court’s opinion in *Chappell I*, a status conference was held on 28 February 2020, at which counsel for each party agreed to prepare proposed equitable distribution orders. On 24 August 2020, Plaintiff’s counsel submitted a

“‘redline’ draft” of a proposed order, addressing the matters raised in this Court’s opinion and adding “findings, conclusions and decretal language to deal with the fact that the parties have each been collecting retirement benefits, in different amounts for different length[s] of time beginning as early as July 2017, without dividing those pension benefit payments as decreed in the [O]riginal [J]udgment.” Plaintiff’s counsel invited feedback from the trial court and Defendant’s counsel on the proposed order. On 27 August 2020, Defendant’s counsel indicated his intent to respond by the end of the next week, but no response followed for more than three months.

On 11 December 2020, the trial court amended its Original Judgment of equitable distribution (the “Amended Judgment”). In the Amended Judgment, the trial court made numerous additional findings of fact upon review of the record, in light of this Court’s opinion in *Chappell I*. Pertinent to the present appeal, and as instructed by this Court, the trial court made extensive findings concerning Defendant’s pension plans pursuant to *Bishop v. Bishop*, 113 N.C. App. 725, 731, 440 S.E.2d 591, 595–96 (1994). As a result of these and other calculations, the trial court ordered, *inter alia*, that Defendant pay Plaintiff “\$51,781.04 as a distributive award, together with interest at the legal rate of 8% simple interest from 20 December 2017 until paid[,]” as well as “\$27,532.31 as the result of retaining the full amount of post[-]judgment defined pension benefits upon payment of same.”

On 22 December 2020, Defendant filed a series of motions (the “Rules Motions”) under Rules 58, 59, and 60 of the North Carolina Rules of Civil Procedure,

seeking (1) an extension of time within which to respond to the Amended Judgment; (2) an order staying enforcement of the Amended Judgment; and (3) an order setting aside the Amended Judgment or, in the alternative, an order modifying it. On 11 January 2021, Plaintiff filed a response opposing the Rules Motions, in which she argued, *inter alia*, that “Defendant’s motion does not describe any facts or legal errors giving rise to grounds for relief pursuant to Rule 59.”

On 18 June 2021, the trial court entered an order granting in part and denying in part the Rules Motions (the “Rules Motions Order”). Specifically, the trial court found that it “had insufficient evidence to find as a fact” certain of its supplemental findings of fact in the Amended Judgment concerning post-judgment pension benefit payments. Consequently, the trial court set aside those findings and the \$27,532.31 award to Plaintiff, and ordered an evidentiary “hearing to determine any defined benefit retirement payments a party received after the conclusion of the equitable distribution trial in this matter.”

On 2 August 2021, Plaintiff filed a motion for Defendant to show cause why he should not be held in contempt of court and seeking sanctions against Defendant (the “Contempt Motion”).

Following the evidentiary hearing, on 27 September 2021, the trial court entered an order regarding post-trial receipt and distribution of pension benefit payments (the “Post-Trial Order”). The trial court made further findings of fact and ordered that Defendant pay Plaintiff \$28,671.59 “on account of undistributed pension

plan benefits together with post-judgment interest at the legal rate until satisfied.”

On 21 October 2021, the trial court entered an order denying Plaintiff’s Contempt Motion (the “Contempt Order”). On 22 October 2021, Defendant filed notice of appeal from the Amended Judgment, the Rules Motions Order, and the Post-Trial Order. On 1 November 2021, Plaintiff filed notice of appeal from the Rules Motions Order, the Post-Trial Order, and the Contempt Order.

On 21 December 2021, Plaintiff filed with the trial court a motion to dismiss Defendant’s appeal. Plaintiff filed a memorandum in support of her motion on 9 March 2022, the day that the motion came on for hearing. On 19 May 2022, the trial court entered an order denying Plaintiff’s motion to dismiss Defendant’s appeal. On 27 May 2022, Plaintiff filed notice of appeal from the 19 May 2022 order.

II. Plaintiff’s Cross-Appeal

Although Plaintiff appeals from several of the trial court’s orders, she only raises the preliminary issue of this Court’s appellate jurisdiction over the matter before us. Plaintiff argues that the trial court erred by considering the merits of Defendant’s Rules Motions because Defendant “asserted no defect, error or irregularity in the” Amended Judgment. Consequently, Plaintiff argues that the Rules Motions were inadequate to toll the time for giving notice of appeal and the trial court thus erred by failing to grant Plaintiff’s motion to dismiss Defendant’s

appeal as untimely.¹ Because these arguments address this Court’s jurisdiction over this appeal, we first address Plaintiff’s cross-appeal.

A. Standard of Review

Plaintiff’s argument focuses primarily on the sufficiency of Defendant’s Rule 59 motion. “Our review of a Rule 59 motion is guided by the general principle that the determination of whether to grant or deny a motion pursuant to either Rule 59(a) or Rule 59(e) is addressed to the sound discretion of the trial court.” *N.C. Alliance for Transp. Reform, Inc. v. N.C. Dep’t of Transp.*, 183 N.C. App. 466, 469, 645 S.E.2d 105, 107 (citation and internal quotation marks omitted), *disc. review denied*, 361 N.C. 569, 650 S.E.2d 812 (2007). “However, where the Rule 59 motion involves a question of law or legal inference,” such as the sufficiency of the motion, this Court reviews that question de novo. *Id.* (citation omitted).

B. Analysis

In her cross-appeal, Plaintiff contends that Defendant’s Rule 59 motion “simply recite[d] the text of one or more potential grounds for relief, as summarized in the language of the [R]ule,” and contained “no description of any irregularity or defect in the hearing[,] trial[,] or procedure that resulted in the order or judgment challenged **in this case.**”

¹ Plaintiff does not raise any argument concerning the trial court’s denial of her Contempt Motion. Accordingly, any challenge to the Contempt Order is “deemed abandoned.” N.C.R. App. P. 28(a).

Rule 3(c) of the North Carolina Rules of Appellate Procedure provides, in relevant part, that “if a timely motion is made by any party for relief under Rules 50(b), 52(b) or 59 of the Rules of Civil Procedure, the thirty-day period for taking appeal is tolled as to all parties until entry of an order disposing of the motion[.]” N.C.R. App. P. 3(c). Such a motion will only toll the 30-day window for taking notice of appeal “if the motion actually presents a rationale for relief under one of these rules and is not simply used as a means to reargue matters already argued.” *Raymond v. Raymond*, 257 N.C. App. 700, 706, 811 S.E.2d 168, 172 (2018) (citation and internal quotation marks omitted); *see also* N.C. Gen. Stat. § 1A-1, Rule 7(b)(1) (2021) (“An application to the court for an order shall be by motion which . . . shall state with particularity the grounds therefor . . .”).

Here, Defendant’s Rules Motions includes a motion under Rule 58; motions under Rule 60(a) and 60(b); and motions under Rule 59(a) and 59(e). Plaintiff correctly states that Defendant’s Rule 59(a) motion merely lists six of the nine “causes or grounds” enumerated in Rule 59(a). N.C. Gen. Stat. § 1A-1, Rule 59(a).

However, Defendant offered a more specific basis for his Rule 59(e) motion to amend the Amended Judgment: “The Order entered on December 11, 2020 was not supported by evidence and was inconsistent with the record upon which the Court entered its judgment.” Although minimally stated, Defendant articulated an objection to the trial court’s Amended Judgment as entered; he thus “present[ed] a rationale for relief under” Rule 59 and, unlike the cases upon which Plaintiff relies,

was “not simply us[ing his motion] as a means to reargue matters already argued.” *Raymond*, 257 N.C. App. at 706, 811 S.E.2d at 172 (citation and internal quotation marks omitted); *see also Quevedo-Woolf v. Overholser*, 261 N.C. App. 387, 407, 820 S.E.2d 817, 831 (2018) (“[The p]laintiff’s purported Rule 59 motion included bare allegations of errors pursuant to Rule 59(a), but did not allege any *actual conduct* that would support any of those bare allegations of error.”), *appeal dismissed and disc. review denied*, 372 N.C. 359, 828 S.E.2d 164 (2019); *Smith v. Johnson*, 125 N.C. App. 603, 606, 481 S.E.2d 415, 417 (“In this case the defendants attempt to reargue matters already decided by the trial court and the motion thus cannot be treated as a Rule 59(e) motion.”), *disc. review denied*, 346 N.C. 283, 487 S.E.2d 554 (1997).

Defendant’s timely Rule 59 motion was minimally sufficient to toll the time for notice of appeal, and Plaintiff has not shown that the trial court erred by considering the Rules Motions. Indeed, the trial court not only found that Defendant’s Rule 59 motion sufficiently raised an issue for consideration but ultimately found that issue to be meritorious. Accordingly, Plaintiff’s cross-appeal is without merit.

III. Defendant’s Appeal

Defendant first argues that the trial court committed reversible error by distributing his defined benefit pension plans “where there was no competent evidence to find and conclude the amount of monthly pension payment applicable at the later of the earliest retirement age or the date of separation of the parties for either plan.” We disagree.

A. Standard of Review

“When the trial court sits without a jury, the standard of review on appeal is whether there was competent evidence to support the trial court’s findings of fact and whether its conclusions of law were proper in light of such facts.” *Robbins v. Robbins*, 240 N.C. App. 386, 395, 770 S.E.2d 723, 728 (citation omitted), *disc. review denied*, 368 N.C. 283, 775 S.E.2d 858 (2015). “Our review of an equitable distribution order is limited to determining whether the trial court abused its discretion in distributing the parties’ marital property. Accordingly, the findings of fact are conclusive if they are supported by any competent evidence from the record.” *Id.* (citation omitted).

B. Pension Value

Pursuant to the method for evaluating defined benefit pension plans articulated by this Court in *Bishop*, the first step for the trial court was to “calculate the amount of monthly pension payment [that Defendant], assuming he retired on the date of separation, will be entitled to receive at the later of the earliest retirement age or the date of separation.” 113 N.C. App. at 731, 440 S.E.2d at 595. Defendant argues that “[t]he record in this matter is completely devoid of evidence regarding the correct amount of monthly pension payment for these two pension plans at the later of the earliest retirement age or the date of separation.” Therefore, Defendant contends “that these plans could not as a matter of law *be valued*.” Defendant is incorrect.

In its Amended Judgment, the trial court made extensive findings of fact

concerning the pension plans at issue. As relates to this first step, the trial court found as fact:

L. Pursuant to an election made by . . . Defendant at or around the time of his resignation of employment at New Hampshire Ball Bearing at the end of June 1993, the amount of the monthly pension benefit . . . Defendant . . . would receive from the New Hampshire Ball Bearing defined benefit plan, beginning on the earliest date such benefits could be received, May 1, 2020, is \$104.29.

M. Pursuant to the terms of the Continental Automotive defined benefit plan which Defendant participated in beginning July 1993, the maximum monthly pension benefit amount that Defendant could receive upon retirement at age 65, i.e., beginning May 1, 2020, or on the earliest available retirement date, May 1, 2017, was [\$1,775.65]. At trial, Defendant testified that he has already submitted and processed his plan to retire and begin collecting his Continental Automotive monthly pension benefit starting July 2017.

Despite Defendant's protestations otherwise, Plaintiff directs us to competent evidence in the record that supports these findings of fact. This evidence includes several sworn equitable distribution affidavits submitted by both parties,² as well as Defendant's testimony from July 2017. As there exists "competent evidence to support the trial court's findings of fact[.]" the trial court's findings are conclusive on appeal. *Robbins*, 240 N.C. App. at 395, 770 S.E.2d at 728 (citation omitted). Defendant's

² The parties' sworn equitable distribution affidavits were submitted pursuant to court order. Indeed, Defendant's first equitable distribution affidavit was submitted following the entry of a pretrial conference order that contains a handwritten annotation: "Defendant has not filed his ED Aff after being ordered to do so on 5 prior occasions, which has caused delay in Plaintiff's preparation of PTO."

argument is meritless, and is overruled.

C. Interest

Defendant next argues that the trial court erred by awarding post-judgment interest on the distributive award and the pension benefit payments accruing from the date of the Original Judgment. Defendant's contention that the trial court committed reversible error is based upon this Court's statement in *Ice v. Ice* that when a judgment is reversed or vacated on appeal, "interest runs from the date of the amended judgment." 136 N.C. App. 787, 791, 525 S.E.2d 843, 846 (2000).

On remand from this Court in *Ice*, the trial court entered an amended equitable distribution judgment that increased the defendant's distributive award from \$50,000.00 to \$80,544.93. *Id.* at 788–89, 525 S.E.2d at 844–45. In response to the parties' successive requests for clarification on the accrual date for interest on the distributive award, the trial court clarified that it "intended to change the date of accrual to" the date of the amended judgment. *Id.* at 789, 525 S.E.2d at 845. On appeal, this Court considered, *inter alia*, whether it was "proper for the trial court to change the date of accrual from" the date of the original judgment to the date of the amended judgment. *Id.* at 790, 525 S.E.2d at 846.

The *Ice* Court recognized that "[i]n equitable distribution actions, interest on any distributive award accrues from the date of entry of judgment, not from the date of separation." *Id.* at 791, 525 S.E.2d at 846. This Court thus reasoned: "Where a judgment is undisturbed on appeal, interest runs from the date of the original

judgment. Logic dictates the opposite result where a judgment is reversed or vacated on appeal. In that situation, interest runs from the date of the amended judgment.” *Id.* (citations omitted). Accordingly, this Court concluded that “interest on [the defendant’s] distributive award did not accrue until the date of th[e] amended judgment.” *Id.*

In this case, however, the Amended Judgment produced the opposite effect on the distributive award, reducing it from \$73,289.90 to \$51,781.04. Moreover, Plaintiff notes that the recalculation of the distributive award in *Ice* was the result of property being reclassified as marital property, whereas here, the opposite is true. The reduced distributive award was the result of property being reclassified as separate property. Indeed, this Court affirmed—and therefore, left “undisturbed”—much of the trial court’s property classification in the Original Judgment. *Chappell I*, 269 N.C. App. 384, 836 S.E.2d 780, 2020 WL 64762, at *5. Accordingly, Plaintiff notes, “[t]he value and distribution of all other marital property considered in the [O]riginal [J]udgment for purposes of calculating the distributive award remains undisturbed[,]” and therefore, “the post-judgment interest on the reduced distributive award to Plaintiff should accumulate from the date of the [O]riginal [J]udgment.” (Emphasis omitted). We agree.

“Logic dictates the opposite result” from *Ice* in this case. *Ice*, 136 N.C. App. at 791, 525 S.E.2d at 846. Because the Amended Judgment reduces, rather than increases, the distributive award owed to Plaintiff, the trial court correctly

determined that interest on the distributive award should accrue from the date of the Original Judgment, because the entire amount of the amended distributive award was owed from that earlier date.

As for trial court's determination of the date of the accrual of interest on the post-judgment pension benefit payment award in the Post-Trial Order, Defendant argues that "this interest was awarded against post-judgment pension benefit payments where [he] had successfully challenged the trial court's award of pension benefit payments to Plaintiff in the" Original Judgment. However, Plaintiff notes that the Rules Motions Order set aside the provision for post-judgment pension benefit payments; consequently, the Post-Trial Order "was the only active order awarding post-judgment interest on pension benefit payments, [and] interest on those received but undistributed pension benefits ran from the date of that . . . [O]rder." We agree. Accordingly, there is no need to address Defendant's argument, or to reverse the Post-Trial Order on this ground.

IV. Conclusion

For the foregoing reasons, we affirm.

AFFIRMED.

Chief Judge STROUD and Judge COLLINS concur.

Report per Rule 30(e).