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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-816

Filed 06 June 2023

Wake County, No. 20 CVD 718

RESHMA SRIPATHI, Plaintiff,

v.

GIRIDHAR RAYALA, Defendant.

Appeal by defendant from order entered 24 March 2022 by Judge Rashad Hauter in Wake County District Court. Heard in the Court of Appeals 9 May 2023.

Reshma Sripathi, pro se, for plaintiff-appellee.

Allen & Spence, PLLC, by Scott E. Allen, for defendant-appellant.

ARROWOOD, Judge.

Giridhar Rayala (“defendant”) appeals from the trial court’s order denying his motion for relief from judgment. Defendant contends the trial court erred in denying his motion to set aside his divorce judgment because he showed his failure to file the motion to preserve his equitable distribution claim was the result of a mistake or excusable neglect. For the following reasons, we hold the trial court did not abuse its discretion in denying defendant’s motion.

I. Background

Defendant and Reshma Sripathi (“plaintiff”) (collectively “the parties”) were married 22 March 2014, and separated 6 December 2018. One child was born to the marriage. On 10 January 2020, plaintiff filed a complaint for equitable distribution and absolute divorce. Although plaintiff was represented by counsel, defendant elected to continue *pro se*.

On 18 September 2020, a judgment of absolute divorce was entered, as defendant did not “answer or otherwise plead” within thirty days of the commencement of the action. Since defendant did not properly file the motion for his equitable distribution claim, it was not preserved in the judgment. Thereafter, plaintiff’s attorney filed for dismissal of the equitable distribution claim, and notice of the dismissal was served on defendant by mail. In October 2020, defendant emailed plaintiff’s attorney to set up an appraisal for the equitable distribution claim and was advised that the claim had been dismissed. In November 2020, defendant was, again, notified that there was no pending equitable distribution claim in an email from the trial court.

Ten months later, on 5 August 2021, defendant filed a *pro se* motion to set aside the divorce judgment “pursuant to Rule 60(b)(1) and (6) of the North Carolina Rules of Civil Procedure[.]” Defendant asserted he was entitled to relief since he emailed the motion to preserve his equitable distribution claim to the family court coordinator, believing that “he had properly filed and preserved his Equitable

Distribution Claim.” Defendant argued that the “loss of [his] equitable distribution claim is a loss of a substantial right that he tried in good faith to preserve and give [p]laintiff notice of[,]” so he was entitled to have the divorce judgment set aside.

The matter came on for hearing in Wake County District Court on 21 December 2021, Judge Hauter presiding. Defendant continued to represent himself at the hearing. At the hearing, defendant testified that during the 18 September 2020 divorce proceeding, he advised the presiding judge that he had submitted a motion for an equitable distribution claim by emailing it to the family court case coordinator. Although plaintiff’s attorney stated during the divorce hearing that the motion was filed incorrectly, defendant testified he consented to the divorce because he thought plaintiff’s attorney was “just saying [that] to get the divorce done[.]”

Furthermore, defendant testified he “assum[ed] that sending an e-mail [was] the right way to preserve the claim” due to the pandemic. Defendant also acknowledged that he did not file an answer to the initial divorce complaint and that he was “aware” he needed to “clock in a court filing.” Lastly, defendant could not provide a reason for why he waited ten months after learning the equitable distribution claim had been dismissed before addressing the matter.

Plaintiff also testified. Plaintiff testified that if the divorce were to be set aside and the equitable distribution matter began anew, she would incur significant legal fees in addition to the over \$60,000 in legal fees she had already paid for the divorce

and related issues, such as equitable distribution and child custody.

In open court and in an order entered 24 March 2022, the trial court denied defendant's motion to set aside the divorce judgment. The trial court found that under Rule 60(b)(1), defendant did not show there were extraordinary circumstances nor that justice demanded relief be granted. The trial court explained that defendant's delay in filing the motion to set aside the judgment, "close to a year" after the divorce judgment was entered, and the fact that there was no "reasonable explanation for why there was a delay" prejudiced the plaintiff since the "neglect . . . was in the reasonable control of [defendant][.]" The court also found that, per defendant's own testimony, he had received notice from plaintiff's counsel the day of the divorce hearing that he had not preserved his claim for equitable distribution, but still consented to the divorce and then failed to take any corrective action for an unreasonable amount of time under the circumstances. Thereafter, defendant obtained counsel and filed a notice of appeal on 22 April 2022.

II. Discussion

On appeal, defendant's sole argument is that the trial court abused its discretion in denying his motion to set aside the divorce judgment. Specifically, defendant contends he met the requirements to have the divorce judgment set aside under Rule 60(b)(1), since he mistakenly believed emailing his motion was sufficient to preserve his equitable distribution claim. We disagree.

A. Standard of Review

“A motion for relief under [Rule 60(b)(1)] is addressed to the sound discretion of the trial court and will not be disturbed absent an abuse of discretion.” *Baker v. Baker*, 115 N.C. App. 337, 340, 444 S.E.2d 478, 480 (1994) (citations omitted).

A trial court may be reversed for abuse of discretion only upon a showing that its actions are manifestly unsupported by reason. A ruling committed to a trial court’s discretion is to be accorded great deference and will be upset only upon a showing that it was so arbitrary that it could not have been the result of a reasoned decision.

White v. White, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985) (citation omitted).

B. Relief From Judgment Under Rule 60(b)(1)

“On motion and upon such terms as are just, the court *may* relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) [m]istake, inadvertence, surprise, or excusable neglect[.]” N.C. Gen. Stat. § 1A-1, Rule 60(b)(1) (2022) (emphasis added). “A party moving to set aside a judgment under Rule 60(b)(1) must show not only one of the grounds listed . . . but also the existence of a meritorious defense[.]” *Baker*, 115 N.C. App. at 340, 444 S.E.2d at 480 (citations omitted). Such motions “shall be made *within a reasonable time*, and for [claims under] [(b)(1),] not more than one year after the judgment, order, or proceeding was entered or taken.” N.C. Gen. Stat. § 1A-1, Rule 60(b) (emphasis added).

“To rescind a judgment due to mistake of fact, there must be a mutual mistake of fact. ‘A unilateral mistake, unaccompanied by fraud, imposition, undue influence,

or like oppressive circumstances, is not sufficient’” *Goodwin v. Cashwell*, 102 N.C. App. 275, 277, 401 S.E.2d 840, 842 (1991) (quoting *Fin. Servs. v. Capitol Funds*, 288 N.C. 122, 136, 217 S.E.2d 551, 560 (1975)). Here, defendant was advised *during the divorce hearing* that he had not properly preserved his equitable distribution claim, but he still consented to the divorce. Therefore, defendant’s assertion that he “left the courtroom after the divorce judgment” was finalized thinking he had done what “he needed to preserve his equitable distribution claim” is inaccurate. Under these circumstances, defendant cannot show a mutual mistake, or even a unilateral mistake, as he was given notice the claim was not properly filed at the divorce proceeding and could have objected to the divorce at that time. Accordingly, defendant did not make a mistake pursuant to Rule 60(b)(1).

Defendant further argues that his actions constitute excusable neglect under Rule 60(b)(1). This argument is likewise without merit. “Although a motion for relief under Rule 60(b) is addressed to the sound discretion of the trial court and will not be disturbed unless the trial court has abused its discretion, whether excusable neglect has been shown is a question of law—not of fact.” *Thomas M. McInnis & Assocs., Inc. v. Hall*, 318 N.C. 421, 425, 349 S.E.2d 552, 554 (1986). “Based on the facts found by the trial court, [we] must determine, as a matter of law, whether defendant’s actions constitute excusable neglect.” *Id.*

“[W]hat constitutes excusable neglect depends upon what, under all the surrounding circumstances, may be reasonably expected of a party in paying proper

attention to his case.” *Id.* at 425, 349 S.E.2d at 555 (citation omitted). As an initial matter, we note that although defendant elected to represent himself at the trial court proceedings, our rules apply uniformly whether or not a litigant is represented by an attorney. *Goins v. Puleo*, 350 N.C. 277, 281, 512 S.E.2d 748, 751 (1999) (“[T]he Rules of Civil Procedure promote the orderly and uniform administration of justice, and all litigants are entitled to rely on them. Therefore, the rules must be applied equally to all parties to a lawsuit, without regard to whether they are represented by counsel.”).

Here, defendant’s actions were *not* reasonable under the circumstances. Again, defendant learned at the divorce hearing he improperly filed his motion, but he consented to the divorce anyway. Defendant was, in September 2020, served with the voluntary dismissal of the equitable distribution claim and in October 2020 told by plaintiff’s counsel in an email the equitable distribution claim was considered dismissed.

Defendant was, again, told that there was no pending equitable distribution claim in November 2020 by the trial court. Still, defendant waited ten months before filing the motion to set aside the divorce judgment. Defendant provided no reasonable explanation for his delay. Under the circumstances, defendant’s actions do not constitute excusable neglect since he was not acting as a reasonable person would that was “paying proper attention to his case.” *Thomas M. McInnis & Assocs., Inc.*, 318 N.C. at 425, 349 S.E.2d at 555. “[I]n the absence of sufficient evidence” to meet the requirements of Rule 60(b), “there is no need to reach the question of a meritorious

defense.” *See Grier ex rel. Brown v. Guy*, 224 N.C. App. 256, 259, 741 S.E.2d 338, 341 (2012) (citation omitted), *disc. review denied*, 366 N.C. 563, 738 S.E.2d 381 (Mem) (2013).

Furthermore, despite defendant’s numerous references to the statement “[t]he claims for equitable distribution [are] preserved” in the divorce judgment, our precedent is clear that this “only preserves the claim of equitable distribution for the party who has asserted the right prior to judgment of absolute divorce.” *Lutz v. Lutz*, 101 N.C. App. 298, 303, 399 S.E.2d 385, 388, *disc. review denied*, 328 N.C. 732, 404 S.E.2d 871 (Mem) (1991). Defendant did not properly preserve his claim of equitable distribution, and this statement from the divorce judgment does not change that. *See id.* Accordingly, defendant’s argument is without merit.

III. Conclusion

For the foregoing reasons, we hold the trial court did not abuse its discretion in denying defendant’s motion to set aside his divorce judgment.

AFFIRMED.

Judges TYSON and RIGGS concur.

Report per Rule 30(e).