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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-46

Filed 19 March 2024

Iredell County, No. 18 CVD 2233

AMY DELENE KEAN, Plaintiff,

v.

WARREN PAUL KEAN, Defendant.

Appeal by Defendant from orders entered 9 December 2021, 31 January 2022, and 13 June 2022 by Judge Thomas R. Young in Iredell County District Court. Heard in the Court of Appeals 28 November 2023.

James, McElroy & Diehl, P.A., by Preston O. Odom, III, Jon R. Burns, Dustin L. Rapp, and John R. Buric, for Plaintiff-Appellee.

Fox Rothschild LLP, by Kip D. Nelson, and Pressly Thomas & Conley PA, by Jessie Conley, for Defendant-Appellant.

COLLINS, Judge.

Defendant Warren Paul Kean appeals from several orders issued during this dispute arising from the parties' separation and divorce. Defendant argues that the trial court committed errors involving the interpretation and enforcement of the parties' premarital agreement. We disagree with Defendant's arguments and affirm

the trial court's orders.

I. Factual Background

Plaintiff and Defendant married in January 2006 and divorced in September 2019. Prior to their marriage, the parties entered into a Premarital Agreement, wherein they each waived their rights to the other's separately owned property and to spousal support:

2. WAIVER OF RIGHTS IN SEPARATELY OWNED PROPERTY. Each of us waives, releases, and surrenders forever any rights and claims that we may have or hereafter acquire in any of the separately owned property of the other by reason of our marriage, including but not limited to any rights that either of us might have under the present or future laws of any jurisdiction relating to equitable distribution of marital property or other determination and distribution of community or quasi-community property that may be applicable to this Agreement at the time of its enforcement.

....

10. WAIVER OF RIGHTS TO SPOUSAL SUPPORT. Each of us hereby waives and releases forever any and all claims and all rights of any nature that either of us might have regarding support from the other. Each of us waives and releases any rights and claims to alimony, maintenance and support, post-separation support, alimony pendent lite, or attorneys fees, which either of us might have or hereafter acquire by reason of our marriage under the present or future laws of any jurisdiction which may be applicable to this Agreement at the time of its enforcement[.]

....

15. BINDING EFFECT. . . . This Agreement may be pled in bar of any action or proceeding for the recovery of the rights or estates herein waived and released by either of us

. . . .

The parties also waived equitable distribution and provided a method for division and distribution of their property in the event of separation or divorce:

8. DIVISION AND DISTRIBUTION OF PROPERTY UPON SEPARATION OR DISSOLUTION OF MARRIAGE. We agree that if we separate after our marriage or if our marriage is dissolved by reason of a judgment of divorce or other judicial decree, then our property shall be divided and distributed as follows:

(a) Each of us shall retain our respective separately owned property upon such separation or marital dissolution, free of any claim or right of any nature of the other party.

(b) All jointly owned property will be divided equally between us in order that each of us shall receive property that is equal in value to the jointly owned property being received by the other. (The parties will make their good faith, best efforts to accomplish such division within 120 days of their separation.) If we are unable to agree as to the value or division of any item of jointly owned property, each of us shall have the right to apply to a court of competent jurisdiction for a determination of the value or division of such items of jointly owned property.

The Premarital Agreement defined “separately owned property” as:

(i) all property and interest in property owned by each of us at the time of our marriage; (ii) all property or interest in property that may be acquired separately by either of us from any source whatsoever during our marriage; . . . and (iv) all other property of any nature that is not jointly owned property.

The Premarital Agreement defined “jointly owned property” as:

(i) all real property that has been deeded to us in both of our names as tenants in common, joint tenants with right of survivorship, or tenants by the entirety; (ii) all personal

property with a written title or other evidence of ownership that shows both of our names as tenants in common or joint tenants with right of survivorship; and (iii) all personal property that has no written title or other evidence of ownership if each of us provided funds for the purchase of the property, or if such property was a gift to both of us jointly.

The Premarital Agreement also contemplated the parties' debts:

3. DEBTS OF THE PARTIES. In regards to any debt presently owed or hereafter incurred by either of us, either individually or jointly, we agree that:

(a) As to any debt presently owed by either of us individually or hereafter incurred by either of us in our individual name, any such debt shall be the sole responsibility of the party incurring that debt. We each agree that neither of us will individually contract any debt, charge, or liability for which the other party or his or her property or estate may become personally liable. Each party shall hold the other harmless from any claim or responsibility on any indebtedness in his or her individual name and shall fully indemnify the other party against any claim or responsibility regarding such debt.

(b) As to any debt that may be incurred to acquire or in connection with jointly owned property, we agree that as between us, each of us will be equally liable for such debt, and each of us shall be responsible for the payment of one-half of such debt incurred.

(c) As to any debt that may be incurred to acquire or in connection with separately owned property, we agree that any and all responsibility for such debt shall be the sole responsibility of the party who owns or is acquiring that property. In the event that any debt regarding separately owned property is incurred in our joint names, whether by reason of any guaranty or other accommodation made by the other party, we agree that the party so accommodated shall hold the other harmless from any claim or responsibility on the indebtedness so incurred and shall fully indemnify the other party against any claim or

responsibility regarding that debt.

The parties purchased a home together in June 2011 and established a Home Equity Line of Credit (“HELOC”) secured by that home in 2017. The terms of the HELOC authorized either party to request and receive advances while holding both parties jointly and severally liable for any amounts due. In June 2018, Plaintiff requested and received a \$285,000 advance on the HELOC, which she deposited into her separate bank account.

II. Procedural History

Plaintiff initiated this action in September 2018 by filing a complaint asserting claims for postseparation support, alimony, writ of possession of the marital residence, equitable distribution, and injunctive relief. Defendant answered, asserting that the Premarital Agreement barred Plaintiff’s claims for postseparation support, alimony, and equitable distribution. Defendant also filed counterclaims for breach of contract, specific performance, conversion, punitive damages, and attorney fees.

In September 2019, Plaintiff voluntarily dismissed without prejudice her claims for postseparation support, alimony, and equitable distribution, and amended her complaint “to assert a claim under the Premarital Agreement to have th[e] court determine the value and division of all items of jointly owned property.”

Defendant moved for partial summary judgment on his claims for breach of contract and specific performance in September 2021, moved for partial summary

judgment regarding jointly owned property in October 2021, and dismissed without prejudice his claims for conversion and punitive damages in November 2021. Plaintiff filed a response, arguing that “Plaintiff—and not Defendant—is entitled to summary judgment on Defendant’s purported counterclaims for breach of contract, and all said claims, to the extent that they exist, should be dismissed.”

The trial court entered an Amended Order on Defendant’s Second Amended Motion for Partial Summary Judgment and Motion for Partial Summary Judgment Regarding Jointly Owned Property (“Summary Judgment Order”) on 9 December 2021, denying Defendant’s motion for partial summary judgment on his claims for breach of contract and specific performance and dismissing those claims. The trial court also identified the property that both parties agreed to classify as “jointly owned property” and the remaining property to be classified after receiving evidence.

Also on 9 December 2021, the trial court conducted a hearing on its own motion to determine whether it could value and distribute certain items of debt pursuant to the Premarital Agreement. On 31 January 2022, the trial court entered an Order on the Power of the Court to Classify, Value, and Distribute Certain Debt (“Debt Order”) concluding that it had “no authority to categorize, value or distribute debt,” and that “[a]ll listed debt should be born[e] by the parties and disposed of outside of any classification, valuation and distribution scheme undertaken by the Court pursuant to the terms and conditions of the parties [Premarital Agreement].”

The trial court received evidence on the property to be classified, valued, and

distributed in April 2022 and entered an Order on Distribution of Jointly Owned Property (“Distribution Order”) on 13 June 2022. The order valued and distributed various items of personal property to each party and ordered the sale of the marital residence, a pontoon boat, and two paintings. Regarding the sale of the marital residence, the trial court determined that the balance on the HELOC should be taken from the proceeds of the sale and deposited with the Iredell County Clerk of Superior Court to be “distributed at a later date as the parties are able to establish their claims regarding debt distribution.”

Defendant filed a notice of appeal on 23 June 2022 from the Distribution Order and “all intermediate orders of the court involving the merits and necessarily affecting the judgment.” On 17 August 2022, this Court issued a writ of supersedeas, staying the Distribution Order during the pendency of this appeal. On appeal, Defendant argues that portions of the Summary Judgment Order, Debt Order, and Distribution Order were erroneous.

III. Discussion

A. Jurisdiction

1. Appellate Jurisdiction

Plaintiff argues that Defendant’s appeal should be dismissed because the Distribution Order is not a final judgment from which appeal may be taken pursuant to N.C. Gen. Stat. § 7A-27.

A party may appeal to this Court “[f]rom any final judgment of a district court

in a civil action.” N.C. Gen. Stat. § 7A-27(b)(2) (2022). “A final judgment is one which disposes of the cause as to all the parties, leaving nothing to be judicially determined between them in the trial court.” *Veazey v. City of Durham*, 231 N.C. 357, 361-62, 57 S.E.2d 377, 381 (1950) (citation omitted).

Plaintiff argues that the Distribution Order is not a final judgment because it provides that the balance on the HELOC should be taken from the proceeds of the sale of the marital residence and deposited with the Iredell County Clerk of Superior Court for further disposition. However, the Distribution Order states that the funds in question are to be “distributed at a later date as the parties are able to establish their claims regarding debt distribution,” leaving allocation of those funds to be determined by the parties, not by the trial court. Thus, the Distribution Order leaves nothing to be *judicially* determined between the parties and constitutes a final judgment. *See id.* Accordingly, this Court has jurisdiction to hear Defendant’s appeal. *See* N.C. Gen. Stat. § 7A-27(b)(2).

2. District Court Jurisdiction

Defendant argues that the district court was not the proper division to handle the present action because the amount in controversy was more than \$25,000, and that “[i]f the district court had no jurisdiction, then all of its orders are void.”

The general statutes vest original jurisdiction of “all justiciable matters of a civil nature cognizable in the General Court of Justice” concurrently in the superior court division and the district court division except for proceedings in probate and the

administration of decedents' estates. N.C. Gen. Stat. § 7A-240 (2022). Moreover, although the statutes allocate "proper" jurisdiction in the superior court for some matters, and in the district court for others, "no judgment rendered by any court of the trial divisions in any civil action or proceeding as to which the trial divisions have concurrent original jurisdiction is void or voidable for the sole reason that it was rendered by the court of a trial division which by such allocation is improper" for a given action. *Id.* § 7A-242 (2022).

Although the superior court division "is the proper division for the trial of all civil actions in which the amount in controversy exceeds twenty-five thousand dollars," *id.* § 7A-243 (2022), the district court division is not stripped of its jurisdiction to hear such cases, and its orders in those cases are not void, *id.* § 7A-242. Accordingly, Defendant's argument lacks merit.

B. Summary Judgment Order

Defendant argues that the trial court erred by denying his motion for partial summary judgment and dismissing his claims. We first note that the Summary Judgment Order, while denying Defendant's motion for summary judgment, also dismissed Defendant's claims. Thus, the Summary Judgment Order effectively granted summary judgment to Plaintiff on these claims.

"We review de novo an appeal of a summary judgment order." *N.C. Farm Bureau Mut. Ins. Co. v. Martin*, 376 N.C. 280, 285, 851 S.E.2d 891, 895 (2020) (citation omitted). Under de novo review, "the court considers the matter anew and

freely substitutes its own judgment for that of the lower tribunal.” *Carolina Mulching Co. v. Raleigh-Wilmington Invs. II, LLC*, 272 N.C. App. 240, 245, 846 S.E.2d 540, 544 (2020) (citation omitted). Summary judgment is appropriate if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.” N.C. Gen. Stat. § 1A-1, Rule 56(c) (2022).

1. Breach of contract

Defendant argues that Plaintiff breached the Premarital Agreement by obtaining an advance on the HELOC, thus obtaining personal property and incurring a joint debt in violation of the Premarital Agreement.¹

The terms of the HELOC state, in relevant part:

Your Account is a revolving credit arrangement in which we make loans to you by advancing funds (“**Advances**”) at your direction, allowing you to repay those Advances and take additional Advances, subject to the terms of this Agreement. This Agreement will remain in full force and effect notwithstanding that the Account balance under the Agreement may occasionally be reduced to an amount equal to or less than zero.

In this Agreement, the terms “we,” “us,” “our” and “Bank”

¹ Defendant argues that Plaintiff breached the Premarital Agreement in other ways as well. However, a party may not advance new theories in support of his motion for summary judgment on appeal. *Baker v. Rushing*, 104 N.C. App. 240, 246, 409 S.E.2d 108, 111 (1991). Defendant’s only arguments before the trial court were that Plaintiff breached the Premarital Agreement by (1) obtaining an advance on the HELOC, and (2) filing claims that were barred by the Premarital Agreement. Defendant does not advance the latter argument on appeal. Accordingly, we consider only whether Plaintiff breached the Premarital Agreement by obtaining an advance on the HELOC.

refer to the Lender or to any subsequent assignee or transferee. Except as noted below, the terms “you,” “your,” “yours” and “Borrower” refer to each person that signs this Agreement or has the authority to use the Credit Line.

The terms also included the “Borrower’s Promise to Pay” as follows:

2. Borrower’s Promise to Pay. You promise to pay to Lender the total of all Advances plus **FINANCE CHARGES**, together with all fees and charges under the terms of this Agreement. You will pay your Account according to the terms set forth below. If there is more than one Borrower, each is jointly and severally liable on this Agreement. This means we can require any Borrower to pay all amounts due under this Agreement, including credit advances made to any Borrower. Each Borrower authorizes any other Borrower, on his or her signature alone, to cancel the Credit Line, to request and receive credit advances, and to do all other things necessary to carry out the terms of this Agreement.

Plaintiff and Defendant each signed the terms of the HELOC as “Borrowers” in 2017. In June 2018, Plaintiff requested and received a \$285,000 advance on the HELOC and deposited the funds in her separate bank account. The advance left a balance on the HELOC for which Plaintiff and Defendant were jointly and severally liable as Borrowers pursuant to the terms of the HELOC.

Paragraph 3 of the Premarital Agreement governing the parties’ debts states:

3. DEBTS OF THE PARTIES. In regards to any debt presently owed or hereafter incurred by either of us, either individually or jointly, we agree that:

(a) As to any debt presently owed by either of us individually or hereafter incurred by either of us in our individual name, any such debt shall be the sole responsibility of the party incurring that debt. We each

agree that neither of us will individually contract any debt, charge, or liability for which the other party or his or her property or estate may become personally liable. Each party shall hold the other harmless from any claim or responsibility on any indebtedness in his or her individual name and shall fully indemnify the other party against any claim or responsibility regarding such debt.

(b) As to any debt that may be incurred to acquire or in connection with jointly owned property, we agree that as between us, each of us will be equally liable for such debt, and each of us shall be responsible for the payment of one-half of such debt incurred.

(c) As to any debt that may be incurred to acquire or in connection with separately owned property, we agree that any and all responsibility for such debt shall be the sole responsibility of the party who owns or is acquiring that property. In the event that any debt regarding separately owned property is incurred in our joint names, whether by reason of any guaranty or other accommodation made by the other party, we agree that the party so accommodated shall hold the other harmless from any claim or responsibility on the indebtedness so incurred and shall fully indemnify the other party against any claim or responsibility regarding that debt.

Paragraph 3(a) applies to any debt “incurred by either [party] in [their] individual name” and states, “We each agree that neither of us will individually contract any debt . . . for which the other party . . . may become personally liable.” However, Plaintiff did not contract this debt in her individual name; both parties signed the HELOC terms as “Borrowers,” authorizing either “Borrower” to receive credit advances while remaining jointly and severally liable for any amounts due. Thus, while Plaintiff individually requested the advance, the balance on the HELOC remained in both parties’ names as “Borrowers” and constituted a joint debt.

Accordingly, Plaintiff did not breach Paragraph 3(a) of the Premarital Agreement by taking the advance.

The parties disagree as to whether Paragraph 3(b), which concerns debt incurred “to acquire or in connection with jointly owned property,” or Paragraph 3(c), which concerns debt incurred “to acquire or in connection with separately owned property,” governs the HELOC balance. However, the distinction is immaterial as neither subparagraph includes the promise that neither party will contract any debt for which the other may become personally liable. Accordingly, Plaintiff did not breach Paragraph 3(b) or 3(c) of the Premarital Agreement by taking the advance.

2. Specific performance

Defendant argues that he is entitled to specific performance for Plaintiff’s breach of the Premarital Agreement.

“The remedy of specific performance is available to compel a party to do precisely what he ought to have done without being coerced by the court.” *McKinnon v. CV Indus., Inc.*, 213 N.C. App. 328, 333, 713 S.E.2d 495, 500 (2011) (citation omitted). However, “[f]or a court to award specific performance, there must be a breach of a valid contract.” *Id.* (citation omitted). As Plaintiff did not breach the Premarital Agreement, Defendant is not entitled to specific performance.

3. Defendant’s remaining arguments

Defendant argues that the trial court made several other errors in the Summary Judgment Order that warrant remand.

First Defendant argues that the trial court erred by including findings of fact in a summary judgment order.

“The appellate courts of this state have on numerous occasions held that it is not proper to include findings of fact in an order granting summary judgment.” *Winston v. Livingstone Coll., Inc.*, 210 N.C. App. 486, 487, 707 S.E.2d 768, 769 (2011) (citations omitted). “If the trial court chooses to recite uncontested findings of fact in its order, they should clearly be denominated as such.” *Id.* (emphasis omitted).

Here, the trial court included findings of fact that were properly denominated as “undisputed.” Accordingly, the trial court did not err by including findings of fact in the Summary Judgment Order.

Next, Defendant argues that the trial court erred by denying his Constitutional right to a jury trial. At oral argument, Defendant clarified that this argument was limited to his right to a jury trial on his claims for breach of contract and specific performance. As those claims were properly dismissed, Defendant’s argument is moot.

Finally, Defendant argues that the trial court committed several other errors that led to its conclusion that Defendant’s claims should be dismissed.

“Where a trial court has reached the correct result, the judgment will not be disturbed on appeal even where a different reason is assigned to the decision.” *Bracey v. Murdock*, 286 N.C. App. 191, 195, 880 S.E.2d 707, 710 (2022) (citation omitted). “As a result, a trial court’s ruling must be upheld if it is correct upon any theory of

law[.]” *Id.* (quotation marks and citation omitted).

As we have held, upon de novo review, that Defendant’s claims for breach of contract and specific performance were properly dismissed, Defendant’s arguments are moot.

C. Debt Order

Defendant argues that the trial court erred by “holding that it could not enforce the Premarital Agreement’s provisions regarding debt” and “failing to hold [Plaintiff] responsible for the \$285,000 that she wrongfully converted to her separate property.”

Defendant conceded at oral argument that the trial court did not have the authority to classify, value, or distribute debt under Paragraph 8 of the Premarital Agreement. Thus, the trial court could only have enforced the debt provisions by awarding specific performance for a breach of those provisions, or by issuing a declaratory judgment determining which of the debt provisions applied to the various debts. As Plaintiff did not breach the Premarital Agreement, the trial court could not have awarded specific performance. Furthermore, Defendant did not seek a declaratory judgment. Accordingly, the trial court correctly held that it could not enforce the Premarital Agreement’s debt provisions.

D. Distribution Order

Defendant argues that the trial court erred by misinterpreting certain terms of the Premarital Agreement that defined how property should be classified and divided.

“Issues of contract interpretation present questions of law, which we review de novo.” *Brown v. Between Dandelions, Inc.*, 273 N.C. App. 408, 410, 849 S.E.2d 67, 70 (2020).

1. *Property Classification*

Defendant argues that the trial court “ignored the language of the Premarital Agreement and used its own definitions in deciding what was separately and jointly owned.” Defendant specifically argues that the trial court’s findings of fact regarding a floating frame, certain pieces of artwork, pottery, a vehicle, and a rug, “reveal[] that it was not following the terms of the Premarital Agreement.”

“Written contracts are to be construed and enforced according to their terms.” *Galloway v. Snell*, 384 N.C. 285, 287-88, 885 S.E.2d 834, 836 (2023) (quotation marks and citation omitted). “When the language of a contract is clear and unambiguous, effect must be given to its terms, and the court, under the guise of constructions, cannot reject what the parties inserted or insert what the parties elected to omit.” *Weyerhaeuser Co. v. Carolina Power & Light Co.*, 257 N.C. 717, 719, 127 S.E.2d 539, 541 (1962) (citation omitted).

The Premarital Agreement defines jointly owned property as:

(i) all real property that has been deeded to us in both of our names as tenants in common, joint tenants with right of survivorship, or tenants by the entirety; (ii) all personal property with a written title or other evidence of ownership that shows both of our names as tenants in common or joint tenants with right of survivorship; and (iii) all personal property that has no written title or other evidence of

ownership if each of us provided funds for the purchase of the property, or if such property was a gift to both of us jointly.

We agree with all parties and the trial court that this definition is unambiguous. Thus, the trial court's duty was to determine which property was jointly owned according to this definition. The record shows that the trial court heard evidence regarding each item that it ultimately classified as jointly owned property, and that the evidence was sufficient to support the trial court's classification of those items as jointly owned property pursuant to the Premarital Agreement. Accordingly, the trial court correctly applied the Premarital Agreement's definition of jointly owned property. *See Carolina Mulching Co.*, 272 N.C. App. at 244-45, 846 S.E.2d at 544 ("We review an order entered by a trial court sitting without a jury to determine whether competent evidence supports the findings, whether the findings support the conclusions, and whether the conclusions support the judgment." (citation omitted)).

2. Sale of Property

Defendant argues that the trial court erred by ordering the sale of certain property because the Premarital Agreement does not expressly authorize the court to order property to be sold.

"Written contracts are to be construed and enforced according to their terms." *Galloway*, 384 N.C. at 287-88, 885 S.E.2d at 836 (quotation marks and citation omitted). "A contract, however, encompasses not only its express provisions but also all such implied provisions as are necessary to effect the intention of the parties

unless express terms prevent such inclusion.” *Lane v. Scarborough*, 284 N.C. 407, 410, 200 S.E.2d 622, 624 (1973) (citation omitted). “Agreements must receive a reasonable interpretation, according to the intention of the parties at the time of executing them, gathered from the language employed by them.” *Id.* at 411, 200 S.E.2d at 625 (ellipsis and citation omitted).

The Premarital Agreement states that, upon dissolution of the marriage:

All jointly owned property will be divided equally between us in order that each of us shall receive property that is equal in value to the jointly owned property being received by the other. (The parties will make their good faith, best efforts to accomplish such division within 120 days of their separation.) If we are unable to agree as to the value or division of any item of jointly owned property, each of us shall have the right to apply to a court of competent jurisdiction for a determination of the value or division of such items of jointly owned property.

The Premarital Agreement is clear that the parties intended to divide their jointly owned property such that each party received property of equal value. The Premarital Agreement is also clear that either party could ask the court to divide their jointly owned property. The Premarital Agreement is silent, however, as to how this equal division should be accomplished.

Here, both parties requested that the marital residence be sold, and the proceeds be divided. Additionally, the Premarital Agreement contains no express terms preventing the trial court from ordering the sale of jointly owned property, and neither party argued nor presented evidence that the sale of jointly owned property

was against their intention at the time the Premarital Agreement was executed. Thus, it was reasonable for the trial court to determine that the parties intended for the Premarital Agreement to authorize the sale of jointly owned property and distribution of the proceeds to achieve an equal division of their jointly owned property. *See id.* at 410-11, 200 S.E.2d at 624-25. Accordingly, the trial court did not err by ordering the sale of jointly owned property to give effect to the Premarital Agreement's terms.

IV. Conclusion

For the foregoing reasons, the trial court's orders are affirmed.

AFFIRMED.

Judges CARPENTER and WOOD concur.

Report per Rule 30(e).