

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

No. COA24-329

Filed 17 December 2024

Mecklenburg County, No. 23 CVS 5788

ROGER HILL & ROGER K. HILL & CO., INC., Plaintiffs,

v.

SANDRA HILL & SANDRA HILL, CPA, Defendants.

Appeal by Plaintiffs from an order entered 19 September 2023 by Judge Daniel Kuehnert in Mecklenburg County Superior Court. Heard in the Court of Appeals 22 October 2024.

*Sodoma Law, PC, by Amy E. Simpson and Caitlin H. Hickman, for Plaintiffs-Appellants.*

*Thurman, Wilson, Boutwell & Galvin, P.A., by James P. Galvin, for Defendants-Appellees.*

GRIFFIN, Judge.

Roger Hill (“Plaintiff”) and Roger K. Hill & Co., Inc. (collectively “Plaintiffs”), appeal from the trial court’s order granting a Motion to Dismiss by Sandra Hill (“Defendant”) and Sandra Hill, CPA (collectively “Defendants”), pursuant to Rules 12(b)(1) and 12(b)(6) of the North Carolina Rules of Civil Procedure. Plaintiffs

contend the trial court reversibly erred by granting Defendants' Motion.

**I. Factual and Procedural Background**

Plaintiff and Defendant were married on 20 May 1989, separated on 25 September 2017, and divorced on 12 July 2021. While the parties were separated, Plaintiff brought an equitable distribution action in Mecklenburg County District Court. During the parties' marriage, Plaintiff was the sole shareholder and president of Roger K. Hill & Co. (hereinafter, "RKH"), a business entity that assists dentists in developing and transitioning their dental practices. Defendant was the sole proprietor of Sandra J. Hill, CPA (hereinafter, "SJH"), an individual accounting practice. Each party's respective business joined with their "title owner" as a party to the lawsuit.

Throughout the parties' marriage, Defendant provided all accounting services and performed certain administrative activities for RKH. Defendant provided her services for RKH until the parties separated. After the parties separated, on 24 September 2021, RKH filed a Complaint in superior court alleging a breach of fiduciary duties in connection with Defendants' handling of certain RKH business documents. However, prior to litigation commencing for the equitable distribution action, Plaintiff and Defendant signed an equitable distribution Consent Order, resolving all claims, and Plaintiff agreed to dismiss the RKH superior court action with prejudice. Plaintiff signed the Order on 29 October 2021, and Defendant signed on 1 November 2021. The Consent Order "resolved all issues related to equitable

distribution, spousal support, attorney’s fees, and the superior court lawsuit.” The Consent Order was entered by the court on 1 November 2021. On 2 November 2021, Plaintiff filed a Notice of Voluntary Dismissal in the superior court lawsuit. On the day Plaintiff signed the Consent Order, Plaintiff alleges his attorney emailed Defendant’s attorney a specific list of items Plaintiff intended to collect from the former marital residence. RKH records were specifically included in the list. Defendant’s attorney “did not confirm or deny whether the requested items would be made available for Plaintiff.” After the parties signed the Consent Order and after the Order was entered, Plaintiff continued to make efforts to retrieve the documents from Defendant, but Plaintiff was unsuccessful.

On 31 March 2023, Plaintiffs filed a second superior court action, this time suing Defendants for negligence, conversion, trespass to chattel, bailment, and punitive damages. On 9 June 2023, Defendants filed an Answer, Motion to Dismiss, and Counterclaims. Defendants moved to dismiss pursuant to Rules 12(b)(1) and 12(b)(6) of the North Carolina Rules of Civil Procedure. The hearing on Defendants’ Motion to Dismiss was held on 30 August 2023 before the Honorable Daniel Kuehnert in Mecklenburg County Superior Court. The court granted Defendants’ Motion pursuant to both Rules 12(b)(1) and 12(b)(6), and the Order was entered 19 September 2023. Plaintiffs timely appeal.

## **II. Analysis**

Plaintiffs contend the trial court erred by granting Defendants’ Motion to Dismiss pursuant to Rules 12(b)(1) and 12(b)(6) of the North Carolina Rules of Civil Procedure. Specifically, Plaintiffs contend the trial court had jurisdiction to hear Plaintiffs’ Complaint, and Plaintiffs alleged facts that properly support legal relief which could be granted on one or more grounds.

We review a trial court’s ruling on a motion to dismiss de novo regardless of whether the motion is brought under Rule 12(b)(1) or 12(b)(6). *United Daughters of the Confederacy, N.C. Div. v. City of Winston-Salem*, 383 N.C. 612, 624, 881 S.E.2d 32, 43 (2022). We “view the allegations as true and the supporting record in the light most favorable to the nonmoving party.” *Id.* (citation and internal marks omitted).

**A. 12(b)(1)**

Rule 12(b)(1) of the North Carolina Rules of Civil Procedure allows a complaint to be dismissed due to lack of subject matter jurisdiction over the claims asserted. N.C. R. Civ. P. 12(b)(1) (2023). “Subject matter jurisdiction refers to ‘the legal power and authority of a court to make a decision that binds the parties to any matter properly brought before it.’” *Watson v. Joyner-Watson*, 263 N.C. App. 393, 394, 823 S.E.2d 122, 124 (2018) (quoting *Catawba Cty. ex rel. Rackley v. Loggins*, 370 N.C. 83, 88, 804 S.E.2d 474, 478 (2017)). Issues pertaining to jurisdiction of the trial court, which consists of superior and district courts, are governed by Chapter 7A of our General Statutes. *Id.* at 394–95, 823 S.E.2d at 124.

HILL V. HILL

*Opinion of the Court*

District courts exercise subject matter jurisdiction over all “civil actions and proceedings for . . . equitable distribution of property . . . and the enforcement of separation or property settlement agreements between spouses, or recovery for the breach thereof.” N.C. Gen. Stat. § 7A-244 (2023). “In an equitable distribution action, the district court is empowered to ‘determine what is the marital property and divisible property and shall provide for an equitable distribution of the marital property and divisible property between the parties in accordance with the provisions of this section.’” *Burgess v. Burgess*, 205 N.C. App. 325, 330, 698 S.E.2d 666, 670 (2010) (quoting N.C. Gen. Stat. § 50-20(a) (2009)). *See also* N.C. Gen. Stat. § 50-20(a) (2023) (utilizing the same language). The district court is instructed to conduct a three-step analysis which includes (1) identifying what is marital and separate property; (2) determining the value of the marital property on the date of separation; and (3) dividing the property between the parties. *Id.* (citing *Estate of Nelson v. Nelson*, 179 N.C. App. 166, 168, 633 S.E.2d 124, 126–27 (2006)).

This Court has previously held when “an action listed in section 7A-244 has been previously filed in district court and another action relating to the subject matter of the previously filed action is then filed in superior court, the district court’s jurisdiction over the subject matter has already been invoked by the parties to the first action.” *Hudson Int’l, Inc. v. Hudson*, 145 N.C. App. 631, 637, 550 S.E.2d 571, 575 (2001). Therefore, “superior court does not have jurisdiction in the subsequently filed action, irrespective of the parties to the first action.” *Id.*

HILL V. HILL

*Opinion of the Court*

Many times, this Court has held a trial court lacked subject matter jurisdiction when parties had pre-existing actions in either district court or superior court pertaining to the same subject matter. *See id.*, 145 N.C. App. at 631, 550 S.E.2d at 571 (holding superior court did not have proper subject matter jurisdiction when third parties filed an action concerning property that was subject to an equitable distribution lawsuit in district court); *Garrison v. Garrison*, 90 N.C. App. 670, 672, 369 S.E.2d 628, 629 (1988) (holding a partition action to divide the marital home was improperly brought in superior court when there was an equitable distribution action pending in district court); *McKoy v. McKoy*, 202 N.C. App. 509, 515, 689 S.E.2d 590, 594–95 (2010) (holding the superior court had already acquired jurisdiction over guardianship of an incompetent adult and the district court was barred from entering a custody order concerning the same adult).

Here, although Plaintiffs do not dispute there was a pre-existing equitable distribution action between the parties that was filed and resolved through a consent order in district court, Plaintiffs contend superior court has proper jurisdiction over their Complaint because they are seeking relief only available to them in superior court. Plaintiffs rely on the case of *Burgess v. Burgess*. Plaintiffs argue the *Burgess* Court “clarified prior decisions,” and contend there is not an “automatic bar” for filing actions in district court and then in superior court, even if they concern the same subject matter. Plaintiffs’ interpretation that *Burgess* “clarified prior decisions” is misconstrued.

HILL V. HILL

*Opinion of the Court*

In *Burgess*, a couple was going through a separation and divorce, and the plaintiff filed an equitable distribution action against the defendant in district court. *Burgess*, 205 N.C. App. at 326, 698 S.E.2d at 667. Pertinent to the equitable distribution action was the division of the parties' business. *Id.* at 326, 698 S.E.2d at 667–68. The parties owned a residential contracting company, and each party owned 50% of the company's shares. *Id.* After the plaintiff wrote a letter to the defendant requesting an inspection of the company's books and the defendant refused, the plaintiff filed a shareholder action in superior court. *Id.* The plaintiff demanded an inspection of the books, asked for an accounting, sought damages for \$10,000 for breach of fiduciary duties, and requested that the defendant be divested of his shares in the corporation. *Id.* This Court held the superior court lacked jurisdiction over the plaintiff's claim for equitable divestiture of the defendant's shares, as that was property to be apportioned in district court through the equitable distribution suit. *Id.* at 334, 698 S.E.2d at 672. However, this Court determined "the superior court properly concluded that it had subject matter jurisdiction over [the] plaintiff's causes of action for inspection, accounting, and breach of fiduciary duties." *Id.* at 334, 698 S.E.2d at 672. This Court reasoned the "shareholder suit does not concern the division of marital property[.]" and the relief sought was not available to the plaintiff in district court. *Id.* at 331, 698 S.E.2d at 670–71.

Here, similar to the facts in *Burgess*, Plaintiff and Defendant were going through a separation and divorce and had a pre-existing equitable distribution suit

HILL V. HILL

*Opinion of the Court*

in district court. Like the plaintiff in *Burgess*, RKH filed a Complaint in superior court alleging a breach of fiduciary duties in connection with Defendants' handling of certain RKH business documents. However, unlike *Burgess*, Plaintiff and Defendant agreed to settle their equitable distribution action by entering a consent order, and, in that order, the parties agreed to resolve all claims, including Plaintiff dismissing the RKH superior court action with prejudice.

More than a year after the Consent Order was entered, and after Plaintiff dismissed the initial superior court action with prejudice, Plaintiffs filed a new Complaint in superior court, this time suing Defendants for negligence, conversion, trespass to chattel, bailment, and punitive damages. Although Plaintiffs' Complaint consists of claims that would ordinarily fall within the jurisdiction of superior court, the primary purpose of Plaintiffs' action is to recover two non-compete agreements and certain bank records Plaintiffs contend Defendants are in possession of and are required to provide to Plaintiffs. Plaintiffs plainly stated at the hearing they were seeking the return of those documents, and they affirmatively responded to the judge's question the documents were to be delivered pursuant to the parties' Consent Order. We hold these are matters solely within the jurisdiction of the district court.

The law is clear. Matters pertaining to the division and distribution of any marital property, including businesses and any interest in a business are matters to be resolved by an equitable distribution action in district court. *Burgess*, 205 N.C. App. at 330, 698 S.E.2d at 670; N.C. Gen. Stat. § 50-20(a). *See generally Chafin v.*



*Chafin*, 250 N.C. App. 19, 26, 791 S.E.2d 693, 699 (2016) (discussing marital interest in a business in an equitable distribution proceeding). Here, the parties agreed to resolve all matters pertaining to the division of their marital property in a consent order.

The language of their Consent Order states, “during the course of their marriage and prior to the date of separation, the parties acquired certain assets that constitute marital property, including real property, vehicles, *business interests*, banks accounts, interests in retirement plans, and miscellaneous tangible personal property and furnishings.” (Emphasis added). By signing the Consent Order, the parties agreed to “settle any and all legal disputes and pending motions of any nature (past or present, known or unknown) between them.” Here, the documents Plaintiffs are requesting are allegedly within Defendants’ possession; however, all matters pertaining to the business and the division thereof, including the transfer of business documents, should have been resolved in the parties’ equitable distribution consent order.

Because the parties agreed to resolve their equitable distribution suit through a consent order, any violation of that Order should be brought by a contempt action in district court. *See Holden v. Holden*, 214 N.C. App. 100, 110, 715 S.E.2d 201, 208 (2011) (“[A] party to a consent order . . . may move for the trial court to exercise its contempt powers to enforce that consent order. Contempt, however, may only be found upon a showing that the party in noncompliance with the consent order acted

# HILL V. HILL

## *Opinion of the Court*

willfully, and was capable of complying with the consent order.”). *See also Conrad v. Conrad*, 82 N.C. App. 758, 760, 348 S.E.2d 349, 350 (1986) (explaining contempt actions for failure to comply with an equitable distribution order are included within the “the contempt power of the district court”). Although Plaintiffs state the Consent Order “does not say specifically [Defendants] [are] to return the documents[,]” that does not give rise to a cause of action for superior court. Moreover, Plaintiffs in their Complaint do point out the Consent Order stated the following:

In general, and except as provided to the contrary herein, each party shall retain as his or her sole and separate property all items of tangible and intangible property which are titled in his or her individual name or which are in his or her possession of, or under his or her control. Except as specifically provided to the contrary herein, neither party shall have any further right or claim with respect to the items of property in the name of or in the possession of or under the control of the other party, **except as specifically distributed below:**

Roger K. Hill & Co.		X [husband]
------------------------	--	----------------

(Emphasis in original).

We decline to address the obligation of the parties under their Consent Order. However, we hold any dispute regarding the disposition of marital property, including marital businesses, is an issue for the district court. *Burgess*, 205 N.C. App. at 330, 698 S.E.2d at 670; N.C. Gen. Stat. § 50-20(a). Thus, we hold the superior court

appropriately held it was without jurisdiction and the trial court did not err in granting Defendants' Motion to Dismiss pursuant to Rule 12(b)(1).

**B. 12(b)(6)**

While the trial court properly granted Defendants' Motion to Dismiss pursuant to Rule 12(b)(1), we hold the trial court erred by granting the Motion pursuant to 12(b)(6). When a trial court does not have jurisdiction to hear a matter, as the trial court here correctly determined, it does not follow that the court may then proceed to address the merits of a 12(b)(6) motion. *United Daughters of the Confederacy*, 383 N.C. at 650, 881 S.E.2d at 60.

Here, the trial judge did not address the application of Rule 12(b)(6) to any of the claims raised in Plaintiffs' complaint because he arguably dismissed Plaintiffs' Complaint for lack of jurisdiction. However, the court did state it was dismissing pursuant to Rule 12(b)(6), and the judge signed an Order granting Defendants' Motion to Dismiss pursuant to Rules 12(b)(1) and 12(b)(6).

Our Supreme Court has previously held the legal effects of granting dismissal under Rules 12(b)(1) and 12(b)(6) are "quite different." *Id.* (internal citation and quotations omitted). When a court lacks subject matter jurisdiction over certain claims, it does not have the ability to decide the merits of the case. *Id.* It follows that a court can only dismiss those claims without prejudice, since it cannot render a final judgment. *Id.*; *Pugh v. Howard*, 288 N.C. App. 576, 588, 887 S.E.2d 734, 744 (2023). Thus, a court cannot grant a motion to dismiss pursuant to both Rule 12(b)(1) and

Rule 12(b)(6) because a dismissal under Rule 12(b)(6) requires the court to reach the merits of the case. *United Daughters of the Confederacy*, 383 N.C. at 650, 881 S.E.2d at 60.

Here, the trial court properly granted Defendants' Motion pursuant to Rule 12(b)(1) because it did not have jurisdiction to hear Plaintiffs' claims. However, it erred by also granting Defendants' Motion pursuant to Rule 12(b)(6) because that would require the court to reach the merits of the case. The trial court should have only granted Defendants' Motion pursuant to Rule 12(b)(1).

We vacate the trial court's dismissal with prejudice, and remand for entry of dismissal based on lack of subject matter jurisdiction pursuant to Rule 12(b)(1).

### **III. Conclusion**

We hold the trial court properly granted Defendants' Motion to Dismiss pursuant to Rule 12(b)(1) but erred by granting the Motion pursuant to Rule 12(b)(6) because it was without jurisdiction to reach the merits.

**AFFIRMED IN PART, VACATED IN PART, AND REMANDED.**

Judges ZACHARY and ARROWOOD concur.

Report per Rule 30(e).