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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1120

Filed 5 February 2025

Wake County, No. 21 SP 1929

JENNA PAIGE CAMERON, Petitioner,

v.

JOHN ANTHONY NEWMAN, Respondent.

Appeal by Respondent from judgment entered 5 January 2023 and order entered 25 April 2023 by Judge G. Bryan Collins, Jr. in Wake County Superior Court. Heard in the Court of Appeals 30 April 2024.

Davis Hartman & Wright, LLP, by Attorney R. Daniel Gibson, for petitioner-appellee.

Attorney Ryan Hayden Smith, for respondent-appellant.

STADING, Judge.

John A. Newman (“Respondent”) appeals from a judgment equitably partitioning a property jointly owned with Jenna P. Cameron (“Petitioner”) and an order denying his motion to amend that judgment. In the alternative, Respondent petitions this Court for a writ of *certiorari*. For the reasons below, we grant Respondent’s petition and affirm the trial court’s denial of his motion. However, we

remand this matter for the trial court to document its findings of fact and conclusions of law.

I. Background

This dispute concerns an agreement between Petitioner and Respondent regarding the sale of their jointly owned residential property. On 24 March 2016, the parties purchased the property and held it as tenants in common. Over the next four years, both parties contributed to the property’s ongoing maintenance and remodeling. Their relationship ended and Petitioner moved out of the property on 7 December 2019. On 31 May 2020, the parties executed a written agreement (“Contract”) stating, in relevant part:

Both parties have agreed to the value of the property as of December 7th, 2019. This value serves as the basis for determining an equitable distribution of the asset.

. . . .

[Respondent] performed most of the labor associated with the improvements of the home solely.

[Respondent] will solely make all decisions heretofore the sale of real property. . . .

[Respondent] agrees to pay for all associated expenses of the property until closing. This includes mortgage, utilities, maintenance, repairs and any other associated home expenses.

[Petitioner] will receive a fixed amount of \$18,000 from the sale at the time of closing. All remaining proceeds from the sale of the property will be solely credited to [Respondent] after the \$18,000 credit has been allocated to [Petitioner].

Petitioner alleges Respondent contemporaneously modified the Contract by orally promising to “ha[ve] the property ready to go and . . . list[ed] . . . sometime late that summer.”

Over the next several months, Petitioner and Respondent stayed in touch through regular text-message exchanges. Their conversations remained cordial among Petitioner’s interspersed requests for updates on Respondent’s progress in listing the property for sale. In any event, by that fall, Respondent still had not placed the property on the market.

On 18 November 2021, Petitioner sought an equitable partition by private sale to avoid the financial and personal expenses of a physical partition. On 10 March 2022, Respondent filed his response, arguing that the Contract contemplated his property sale and outlined the sole division of proceeds. He denied any breach of the Contract or any contemporaneous oral modification.

On 8 December 2022, the trial court conducted a hearing. Petitioner testified that Respondent made her “feel pressured to sign” the Contract, and that he promised to list the property on the market “sometime late that summer.” Respondent denied both allegations in full, arguing that the Contract’s terms expressly precluded the partition.

On 5 January 2023, the trial court entered a judgment (“Judgment”) in favor of Petitioner that documented findings of fact, in relevant part:

4. Both of the parties signed on the loan to purchase the

[p]roperty.

8. After Petitioner moved out, Respondent had exclusive use of the [p]roperty and Petitioner stopped paying for the maintenance of the [p]roperty, though [Petitioner] remained liable on the mortgage.

. . . .

12. [The Contract] is not the entire agreement between the parties.

13. Respondent agreed to sell the [p]roperty “quickly,” which both parties understood to be within three months.

14. Respondent did not place the [p]roperty on the market within the agreed time, as such Respondent was in breach of the agreement.

15. Following the agreement, Petitioner followed up to get the status of the sale of the [p]roperty in order to obtain her financial freedom. This included direct communication as well as communication through attorneys. . . .

Based on its findings, the trial court concluded that the property “should be sold by private sale and the proceeds split among the parties” and that Respondent materially breached their Contract “by failing to market the [p]roperty within the agreed time.” The trial court also concluded that it lacked “enough evidence to determine the appropriate split of the proceeds” at that point in the litigation. Based on its documented findings and conclusions, the trial court ordered the parties “into mediation” “[w]ith regard to the split of the proceeds.” The trial court ordered the parties to report back upon completing mediation. If unsuccessful, the trial court would “set further hearing[s] to determine all remaining issues” between the parties.

On 13 January 2023, Respondent filed a motion (“Rule 59 Motion”) seeking a new trial, additional evidentiary hearings, or an amendment of the Judgment under North Carolina Rule of Civil Procedure 59(a). *See* N.C. Gen. Stat. § 1A-1, Rule 59(a)(1)–(4), (7)–(9) (2023). In the Rule 59 Motion, Respondent asserted that Petitioner’s initial pleading failed for insufficient notice by omitting her claimed “oral[] modification [of] the timeframe in which . . . the property would be sold” and “duress in . . . fe[eling] ‘pressured’ to sign the Contract.” The trial court conducted a hearing on the motion. Respondent requested the trial court to document its supporting findings of fact and conclusions of law consistent with the Rules of Civil Procedure. On 25 April 2023, the trial court denied the Rule 59 Motion in an order (“Order”) without any specified findings or conclusions. Respondent entered his notice of appeal from both the 5 January 2023 Judgment and the 25 April 2023 Order.

II. Jurisdiction

A review of the judgment makes clear that the order for a partition sale did not resolve the entire controversy. The trial court specifically left the division of proceeds from the sale for determination, ordering the parties to mediation pursuant to N.C. Gen. Stat. § 46A-29 (2023), and retaining jurisdiction to set further hearings to determine all remaining issues if the parties could not reach an agreement in mediation. Furthermore, a partition sale is not final until fifteen days after the entry of an order confirming a partition sale or the denial of a petition for revocation,

whichever occurs later. *Id.* § 46A-85(a) (2023). A party may appeal from an order confirming a petition sale within ten days of the order becoming final. *Id.*

Respondent petitioned this Court for a discretionary writ of *certiorari*. A petition for writ of *certiorari* is the proper remedy to obtain review “when the right to prosecute an appeal has been lost by failure to take timely action, or when no right of appeal from an interlocutory order exists[.]” N.C.R. App. P. 21(a)(1) (2023). Respondent asserts that the trial court’s refusal to adhere only to the Contract’s express terms directly impacts his substantial right to its purported enforcement. We agree and grant *certiorari*. See *Cryan v. Nat’l Council of YMCA of the United States*, 384 N.C. 569, 573, 887 S.E.2d 848, 851 (2023) (“Ultimately, the decision to issue a writ of *certiorari* rests in the sound discretion of the presiding court.”).

III. Analysis

Respondent asks us to consider whether the trial court committed error by: (1) denying his Rule 59 Motion; and (2) not including findings of fact and conclusions of law in the Order. After careful review, we hold that the trial court did not err in denying Respondent’s Rule 59 Motion. But the trial court did err in failing to make the requisite findings of fact and conclusions of law in its Order. We therefore affirm, but remand solely for the trial court to document its findings of fact and conclusions of law that support the Order’s resolution.

Respondent also proffers two additional substantive issues in his petition for *certiorari* concerning the trial court’s Judgment: (1) whether findings of fact six, ten,

twelve, and thirteen are supported by competent evidence; and (2) whether conclusions of law five, six, and seven are in error. However, our Rules of Appellate Procedure provide that “[i]ssues not presented in a party’s brief . . . will be taken as abandoned.” N.C. R. App. P. 28(b)(6); *see also Meadows v. Iredell Cnty.*, 187 N.C. App. 785, 786, 653 S.E.2d 925, 927 (2007) (“It is well established that the Appellate Rules are mandatory”). Since Respondent makes no mention of these issues (or the arguments contained therein) outside of his petition for *certiorari*, we consider them abandoned and decline review.

A. Judgment and Rule 59 Order

Respondent first argues that the trial court erred in denying his Rule 59 Motion. Respondent asserts that his Rule 59 Motion should have been granted because Petitioner “prejudiced his ability to mount a meaningful defense” by improperly bringing an unnoticed oral modification claim before the trial court.¹ N.C. Gen. Stat. § 1A-1, Rules 8(a)(1) and 59(a)(1)–(4), (7)–(9) (2023). We disagree.

1. Standard of Review

¹ “The Rules of Civil Procedure . . . are applicable to special proceedings” N.C. Gen. Stat. § 1-393 (2023). Our statutory law and precedents confirm that a partition of land is a special proceeding. *See, e.g., Brown v. Boger*, 263 N.C. 248, 255, 139 S.E.2d 577, 582 (1965) (“Partition of land is by special proceeding.”); *see also, e.g., Tarr v. Zalaznik*, 264 N.C. App. 597, 600, 826 S.E.2d 245, 249 (2019) (“An action for partition under [Chapter 46] is a special proceeding. . . .”); *see also, e.g., N.C. Gen. Stat. § 46A-1* (2023) (“Partition is a special proceeding”).

“The standard of review on appeal from a judgment entered after a non-jury trial is whether there is competent evidence to support the trial court’s findings of fact and whether the findings support the conclusions of law and ensuing judgment.” *Stovall v. Stovall*, 205 N.C. App. 405, 407, 698 S.E.2d 680, 683 (2010) (citations omitted). “The trial court’s findings of fact are binding on appeal as long as competent evidence supports them, despite the existence of evidence to the contrary.” *Id.* “A trial court’s conclusions of law, however, are reviewable *de novo*.” *Tarr*, 264 N.C. App. at 600, 826 S.E.2d at 249 (citation omitted).

As for a trial court’s denial of a Rule 59 motion:

For motions brought under Rule 59(a)(1)–(6) and (9), a motion for new trial is addressed to the sound discretion of the trial court, and its ruling will not be disturbed absent a manifest abuse of that discretion. A trial court’s discretion regarding a motion under Rule 59 is practically unlimited. Consequently, an appellate court should not disturb a discretionary Rule 59 order unless it is reasonably convinced by the cold record that the trial judge’s ruling probably amounted to a substantial miscarriage of justice.

Jonna v. Yaramada, 273 N.C. App. 93, 105, 848 S.E.2d 33, 44 (2020) (cleaned up).

“However, where the motion involves a question of law or legal inference, our standard of review is *de novo*.” *Kinsey v. Spann*, 139 N.C. App. 370, 372, 533 S.E.2d 487, 490 (2000); *see also N.C. Indus. Capital, LLC v. Clayton*, 185 N.C. App. 356, 371, 649 S.E.2d 14, 25 (2007) (providing that a “motion for a new trial pursuant to Rule 59(a)(7) and Rule 59(a)(8) presents questions of law which receive *de novo* review on

appeal.”). “Under a de novo review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *McAdoo v. Univ. of N.C. at Chapel Hill*, 225 N.C. App. 50, 51, 736 S.E.2d 811, 814 (2013) (citations and quotation marks omitted).

2. Rules 8(a)(1) and 59

Under Rule 8, a party must initially plead a “short and plain statement of the claim sufficiently particular to give the court and the parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved” N.C. Gen. Stat. § 1A-1, Rule 8(a)(1) (2023). A pleading complies with Rule 8(a)(1) if “it gives sufficient notice of the events or transactions which produced the claim to enable the adverse party to understand the nature of it and the basis for it, to file a responsive pleading, and [] to get any additional information he may need to prepare for trial.” *Sutton v. Duke*, 277 N.C. 94, 104, 176 S.E.2d 161, 167 (1970).

Pursuant to Rule 59, a party may move to amend a judgment on “any of the following . . . grounds” relevant here:

- (1) Any irregularity . . . [that] prevent[s] [a party] from . . . a fair trial;
- (2) Misconduct of . . . [a] prevailing party;
- (3) Accident or surprise which ordinary prudence could not have guarded against;
- (4) Newly discovered evidence material for the [movant] . . . which he could not, with reasonable diligence, have discovered and produced at the trial;

. . . .

(7) Insufficien[t] . . . evidence to justify the verdict or . . . [a] verdict . . . contrary to law;

(8) [Legal] [e]rror . . . occurring at the trial and objected to by the . . . [movant; or]

(9) Any other reason heretofore recognized as grounds for new trial.

N.C. Gen. Stat. § 1A-1, R. 59(a)(1)–(4), (7)–(9).

Our Rules of Civil Procedure intentionally “liberal[ize] [the] opportunit[ies] for discovery and . . . other pretrial procedures” to both “disclose more precisely the basis of” the parties’ respective filings and “to define more narrowly [any] disputed facts and issues.” *Pyco Supply Co. v. Am. Centennial Ins. Co.*, 321 N.C. 435, 443, 364 S.E.2d 380, 384 (1988). But Rule 59 codifies our jurisdictional understanding that “no amount of liberalization” permits a court to bypass or minimize the required “substantive elements of his claim or of his defense.” *Sutton*, 277 N.C. at 105, 176 S.E.2d at 167 (citation omitted).

Respondent cites *Manning v. Manning*, 20 N.C. App. 149, 201 S.E.2d 46 (1973), and *Parkersmith Props. v. Johnson*, 136 N.C. App. 626, 525 S.E.2d 491 (2000) to support his assertion that Petitioner’s pleading failed to comply with Rule 8(a)(1); thus, justifying relief under Rule 59. However, our interpretation of these holdings differs from that of Respondent.

In *Manning*, a wife sought alimony *pendente lite* from her husband as part of a legal separation. *Manning*, 20 N.C. App. at 154, 201 S.E.2d at 50. The wife’s complaint alleged that her husband “by cruel and barbarous treatment on many occasions endangered [her] life” and “offered . . . indignities to [her] person.” *Id.* It offered no facts more specific than “the exact language of the . . . statute” at issue. *Id.* at 155, 201 S.E.2d at 50. The husband argued the complaint failed to provide him sufficient notice of “any ‘transactions, occurrences, or series of transactions or occurrences, intended to be proved.’” *Id.* (quoting N.C. Gen. Stat. § 1A-1, R. 8(a)(1)). This Court agreed, holding that the wife’s failure to “mention *any* specific act of cruelty or indignity committed by the defendant” reduced the complaint to an insufficient “assertion of a grievance.” *Id.* (quoting N.C. Gen. Stat. § 1A-1, R. 8 cmt. (a)(3)). Here, conversely, the claim offered more than bare statutory language. Petitioner specified in her pleading “an agreement . . . such that Respondent would re-finance the [p]roperty, remov[e] Petitioner f[ro]m the [related] Deed and the loan, and pay Petitioner a certain price” as proceeds from the sale.

In *Parkersmith*, a general-partnership plaintiff appealed the trial court’s grant of summary judgment for two defendants who asserted their preexisting contractual rights to an installment-contract assignation. *Id.* at 627–28, 525 S.E.2d at 492–93. The plaintiff’s initial pleading advanced a single claim against the defendants for tortious interference with contract. *Id.* at 628, 525 S.E.2d at 492–93. As part of the pretrial proceedings, plaintiff filed an affidavit asserting an additional theory of

recovery for equitable redemption. *Id.* at 630, 525 S.E.2d at 494. In rejecting the plaintiff's newly alleged claim, this Court reasoned that the complaint "d[id] not allege equitable mortgage as a possible [legal] claim . . . [or] any facts that would put [the] [d]efendants on notice of" said claim. *Id.* at 631, 525 S.E.2d at 494. But here, Petitioner did not allege an entirely distinct legal theory that would have prejudiced Respondent in constructing his legal strategy for trial. We therefore discern no meritorious comparison or analogy between the two cases.

In the instant case, Petitioner's pleading alleged sufficient facts as to put Respondent on notice of the transactions, occurrences, or series of transactions and occurrences at issue—that Respondent failed to perform his agreed upon contractual obligations despite having ample time to do so. N.C. Gen. Stat. § 1A-1, R. 8(a)(1). Indeed, the pleading alleged that Respondent failed to dispose of the property pursuant to the parties' Contract:

11. The parties did enter into an agreement with regard to the Property such that Respondent would re-finance the Property, removing Petitioner f[rom] the Deed and the loan, and pay Petitioner a certain price.

12. However, despite giving ample time to accomplish this and demand by Petitioner, Respondent will not honor the agreement.

Although the pleading incorrectly states that Respondent failed to *re-finance* the property as opposed to *sell* the property, the reference to the fact that Respondent failed to honor the Contract despite having ample time provided "sufficient notice of

the nature and basis of the plaintiff's claim [as to] allow[] the defendant to answer and prepare for trial." *Quackenbush v. Groat*, 271 N.C. App. 249, 256, 844 S.E.2d 26, 31 (2020) (citation omitted). Accordingly, we hold that Petitioner's pleading conferred sufficient notice upon Respondent under Rule 8(a)(1).

In light of notice being properly conferred on Respondent, we hold that the trial court did not abuse its discretion or err in denying his Rule 59 Motion. *See Davis v. Davis*, 360 N.C. 518, 522, 631 S.E.2d 114, 118 (2006). Here, Respondent's Rule 59 argument hinges *almost entirely* on whether Petitioner failed to comply with Rule 8(a)(1). To that end, Petitioner's pleading or subsequent conduct did not prevent Respondent from having a fair trial, did not surprise him to an extent beyond "ordinary prudence," did not prevent him from discovering evidence through "reasonable diligence," and did not result in a "verdict contrary to law." N.C. Gen. Stat. § 1A-1, R. 59(a)(1)–(4), (7). In addition, no legal error occurred at trial, thus making relief under Rule 59(a)(8) unavailable. *Id.* § 1A-1, R. 59(a)(8).

Even assuming there was insufficient evidence of Respondent's alleged oral modification, Respondent still had an obligation under the Contract *as written* to sell the property within a reasonable time. *See id.* § 1A-1, R. 59(a)(7). The uncontradicted evidence shows that Respondent breached that duty as a matter of law, thus supporting the denial of his Rule 59 Motion. The contract, *as written*, contemplates that the property would be sold, such that Petitioner would get her agreed-upon share of the proceeds (\$18,000) and be removed from any mortgage obligation, and that

Respondent would be responsible for selling the property. Though the written contract did not state a specific time by which Respondent was to list the property, the law imposes an obligation that he do so within a “reasonable time.” *Harris v. Stewart*, 193 N.C. App. 142, 146, 666 S.E.2d 804, 807 (2008) (recognizing the “reasonable time to perform rule” in contracts for the sale of real estate). However, the record shows Respondent had done nothing over a year and a half after he agreed to undertake the obligation to sell the property.

For all of these reasons, we affirm the trial court’s denial of Respondent’s Rule 59 Motion. Since Petitioner’s pleading satisfied Rule 8(a)(1)’s notice requirement, the trial court did not abuse its discretion in denying Respondent’s Rule 59 Motion. In any event, even if the evidence of Respondent’s oral modification was insufficient as a matter of law, his failure to sell the property within a reasonable time justifies the trial court’s denial of the motion under Rule 59(a)(7).

B. Findings of Fact and Conclusions of Law

Respondent next argues that the trial court erred in failing to document specific findings of fact and conclusions of law in its Order despite his request that it do so. We agree and remand the Order for the trial court to expressly document those findings and conclusions.

“Rule 52(a)(2) . . . mandate[s] . . . findings and conclusions even on a discretionary Rule 59 motion” *Andrews v. Peters*, 318 N.C. 133, 138, 330 S.E.2d 638, 412–13 (1986). This documentary requirement “facilitate[s] meaningful

appellate review of a[] [Rule 59(a)] order” *Andrews*, 318 N.C. at 139, 330 S.E.2d at 413.

Upon Respondent’s request, the trial court owed him an articulation of its rationale for rejecting his Motion, even if the denial itself remains within its discretion. As a result, we remand the trial court’s denial of the Motion to document its findings of fact and conclusions of law thus reached, but do not otherwise disturb its force as legally binding.

IV. Conclusion.

The trial court did not commit error by denying Respondent’s 13 January 2023 Motion, but did err in failing to document its findings of fact and conclusions of law in its subsequent 24 April 2023 Order denying that Motion. We affirm and remand with instructions to document the findings of fact and conclusions of law.

AFFIRMED AND REMANDED.

Chief Judge DILLON and Judge GRIFFIN concur.

Report per Rule 30(e).