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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-419

Filed 2 September 2026

Wake County, No. 22CVD002883-910

RHEA M. BRYSON, Plaintiff,

v.

THE ESTATE OF JULIETTE SIMMONS, MELISSA L. DOBBINS, and
MATTHEW A. SIMMONS, Defendants.

Appeal by Defendant from orders entered 5 October 2023 and 8 July 2024 by Judge Margaret P. Eagles in Wake County District Court. Heard in the Court of Appeals 16 October 2025.

Smith Debnam Narron Drake Saintsing & Myers, LLP, by Michael J. Denning, Landon G. Van Winkle, and Emily R. Murphy, for Defendant-Appellant Melissa L. Dobbins.

Davis Hartman Wright, LLP, by R. Daniel Gibson, for Plaintiff-Appellee.

CARPENTER, Judge.

Melissa L. Dobbins (“Defendant”) appeals from the trial court’s orders entering judgment in favor of Rhea M. Bryson (“Plaintiff”) and denying Defendant’s Rule 59 motion. On appeal, Defendant argues the trial court erred by: (1) finding the contract was invalid; and (2) denying her Rule 59 Motion. After careful review, we reverse.

I. Factual & Procedural Background

On 7 March 2022, Plaintiff filed a complaint against the Estate of Juliette Simmons, Defendant, and Juliette’s son, Matthew A. Simmons, as “parties to the written contract . . . for purchase of Defendants’ real estate property” In short, Plaintiff sought the return of a due diligence fee after a failed real estate transaction. Plaintiff asserted claims for breach of contract, negligent misrepresentation, breach of the covenant of good faith and fair dealing, obtaining property by false pretenses, restitution, and unjust enrichment. In late March 2022, Plaintiff voluntarily dismissed her complaint against Matthew without prejudice, and Defendant filed a motion to dismiss. On 13 May 2022, the trial court partially granted Defendant’s motion, dismissing Plaintiff’s claims for negligent misrepresentation, restitution, and unjust enrichment. On 8 June 2022, Defendant filed an answer admitting that she had entered a contract with Plaintiff but denying that she breached it.

On 19 January 2023, Plaintiff filed a motion to amend her complaint, seeking to assert that the contract was invalid because Defendant was not the exclusive owner of the property. The trial court denied Plaintiff’s motion to amend on 9 August 2023. On 28 August 2023, Plaintiff and Defendant jointly stipulated in a pretrial order, which the trial court did not sign or file, that “[t]here [we]re no pending Motions, and neither party desire[d] further amendments to the pleadings.” On 28 August 2023, the trial court conducted a bench trial, and the evidence tended to show the following.

On 27 September 2021, Juliette died intestate with two heirs, Matthew and

Defendant. Originally, Matthew was the administrator of Juliette's estate, but the probate court later appointed Defendant. At the time of her death, Juliette owned land in Raleigh. Defendant listed the property for sale "as is."

On 6 February 2022, Plaintiff submitted a signed "Offer to Purchase and Contract" along with a \$15,000 due diligence fee and \$5,000 in earnest money. Defendant accepted Plaintiff's offer and signed it (the "Contract"). The Contract, which listed Juliette as the seller, was signed by Plaintiff and Defendant but not by Matthew. Following several inspections during the due diligence period that revealed defects with the Property, Plaintiff requested that Defendant repair the defects. After Defendant's refusal, Plaintiff terminated the Contract on 1 March 2022. Thereafter, Defendant returned Plaintiff's earnest money but not the \$15,000 due diligence fee.

During trial, Plaintiff's counsel moved to conform the pleadings to the evidence under Rule 15(b) of the North Carolina Rules of Civil Procedure. Defense counsel responded, "To the extent that the evidence did not contradict any of the dismissed claims, Judge, I will not object, which is a way of saying I would not like coming through the back door that which was not allowed to come in through the front door." The trial court granted Plaintiff's motion "with [Defendant's] understanding." Defendant moved to dismiss, arguing Plaintiff was not entitled to reimbursement of the due diligence fee given the "as is" nature of the sale. In response, Plaintiff asserted that "either the contract needed to be signed by [Defendant] in an official capacity or that it needed to be signed by all of the heirs including her brother, which

it wasn't." The trial court denied Defendant's motion to dismiss.

On 5 October 2023, the trial court entered judgment in favor of Plaintiff, reasoning that the Contract was not valid because it was not properly signed by the seller. The trial court awarded Plaintiff \$15,000 plus interest.

On 11 October 2023, Defendant filed a motion for reconsideration under Rule 59(e) (the "Rule 59 Motion"). Defendant argued that the trial court's judgment exceeded the contested issues because Plaintiff waived the remedy of rescission, an affirmative defense, by failing to assert it in her complaint. On 13 October 2023, Plaintiff filed a motion for attorney's fees. On 8 July 2024, the trial court denied Defendant's motion (the "Rule 59 Order") and found that a claim for breach of contract "necessitates a finding of the existence of a valid contract." The trial court, however, did not address Plaintiff's motion for attorney's fees. Defendant filed written notice of appeal from the trial court's judgment and Rule 59 Order on 2 August 2024.

II. Jurisdiction

As an initial matter, we must determine whether we have jurisdiction to review this appeal. "Rule 3 of the North Carolina Rules of Appellate Procedure provides thirty days to file an appeal from a judgment or order in a civil action." *Smith v. Johnson*, 125 N.C. App. 603, 606, 481 S.E.2d 415, 417 (1997) (citing N.C. R. App. P. 3(c) (1997)). Upon the timely filing of a Rule 59 motion, however, "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) (2025). The thirty-day period then "runs as

to each party from the date of entry of the order” *Id.* To qualify for Rule 3(c) tolling, a party must serve a Rule 59 motion “not later than 10 days after entry of the judgment.” N.C. Gen. Stat. § 1A-1, Rule 59(e) (2025).

A Rule 59 motion “must ‘state the grounds’ ” for the motion. *Smith*, 125 N.C. App. at 606, 481 S.E.2d at 417. Grounds for a Rule 59 motion include “[e]rror in law occurring at the trial and objected to by the party making the motion[.]” N.C. Gen. Stat. § 1A-1, Rule 59(a)(8). “The mere recitation of the rule number relied upon by the movant is not a statement of the grounds . . . [because t]he motion . . . must supply information revealing the basis of the motion.” *Smith*, 125 N.C. App. at 606, 481 S.E.2d at 417. Even if a party does not explicitly specify the Rule 59(a) ground for relief, a trial court can rule on the motion “so long as the grounds asserted are clear and [the adverse party is] not prejudiced thereby.” *Akshar Distrib. Co. v. Smoky’s Mart Inc.*, 269 N.C. App. 111, 116, 837 S.E.2d 621, 625 (2020).

Here, Defendant’s Rule 59 Motion tolled the deadline to give notice of appeal. *See id.* at 116, 837 S.E.2d at 625; N.C. R. App. P. 3(c). Although Defendant cited Rule 59(e) as the basis for her motion, Defendant’s argument that the judgment exceeded the scope of contested issues was sufficiently clear to establish a claim of error in law. *See Akshar Distrib. Co.*, 269 N.C. App. at 116, 837 S.E.2d at 625. Therefore, Defendant’s Rule 59 Motion tolled the thirty-day deadline until 7 August 2024. *See* N.C. R. App. P. 3(c). Accordingly, Defendant’s notice of appeal filed 2 August 2024 was timely.

Further, Plaintiff's remaining request for attorney's fees is a collateral issue that does not preclude our review of the trial court's final judgment. *See Duncan v. Duncan*, 366 N.C. 544, 546, 742 S.E.2d 799, 801 (2013) ("An order that completely decides the merits of an action therefore constitutes a final judgment for purposes of appeal even when the trial court reserves for later determination collateral issues such as attorney's fees and costs."). Accordingly, we have jurisdiction under N.C. Gen. Stat. § 7A-27(b)(2) (2025).

III. Issues

The issues are whether the trial court erred by: (1) invalidating the Contract; and (2) denying Defendant's Rule 59 Motion.

IV. Analysis

Defendant argues that the trial court erred by invalidating the Contract following its decision to deny Plaintiff's motion to amend her complaint. We conclude that the trial court abused its discretion in allowing Plaintiff's Rule 15(b) motion to conform the pleadings to the evidence to the extent that conforming presented a claim that the Contract was invalid. Indeed, that claim was specifically prohibited when the trial court denied Plaintiff's motion to amend her complaint.

A. Preservation & Standard of Review

"Rule 10(a)(1) requires the complaining party to obtain a ruling upon the party's timely request, objection, or motion in order to preserve an issue for appellate review." *Smith v. Axelbank*, 222 N.C. App. 555, 560, 730 S.E.2d 840, 844 (2012)

(citing N.C. R. App. P. 10(a)1(1) (2012)). This Rule “ ‘prevent[s] unnecessary new trials caused by errors . . . that the [trial] court could have corrected if brought to its attention at the proper time.’ ” *Dogwood Dev. & Mgmt. Co. v. White Oak Transp. Co.*, 362 N.C. 191, 195, 657 S.E.2d 361, 363 (2008) (alterations in original) (quoting *Wall v. Stout*, 310 N.C. 184, 188–89, 311 S.E.2d 571, 574 (1984)).

Here, Defendant preserved the issue of Plaintiff’s preclusion from a motion to conform the pleadings to the evidence regarding the issue of the Contract’s validity. *See Smith*, 222 N.C. App. at 560, 730 S.E.2d at 844. When Plaintiff made the motion, defense counsel responded, “To the extent that the evidence did not contradict any of the dismissed claims, Judge, I will not object, which is a way of saying I would not like coming through the back door that which was not allowed to come in through the front door.” Thus, defense counsel’s qualified objection cautioned the trial court against exceeding the scope of contested issues. *See* N.C. R. App. P. 10(a)(1) (2025). Accordingly, the trial court’s ruling allowing Plaintiff’s Rule 15(b) motion is preserved for appellate review. *See Smith*, 222 N.C. App. at 560, 730 S.E.2d at 844.

“The trial court’s ruling on a motion to amend pursuant to [Rule 15(b)] is not reviewable on appeal absent a showing of abuse of discretion.” *Tyson v. Ciba-Geigy*, 82 N.C. App. 626, 630, 347 S.E.2d 473, 476 (1986) (citation omitted). “ ‘Abuse of discretion results where the court’s ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.’ ” *JPMorgan Chase Bank, Nat’l Ass’n v. Browning*, 230 N.C. App. 537, 541, 750 S.E.2d 555, 559

(2013) (quoting *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988)).

B. Amending the Pleadings

In a pleading, a plaintiff must include “[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 showing that the pleader is entitled to relief[.]” N.C. Gen. Stat. § 1A-1, Rule 8(a)(1) (2025). If a plaintiff waits until more than thirty days after service of the original complaint, “a party may amend his pleading only by leave of court or by written consent of the adverse party” *Id.* § 1A-1, Rule 15(a) (2025). Upon a denial of a plaintiff’s motion to amend the pleadings, a defendant in a response must “state in short and plain terms his defenses to each claim asserted and *shall admit or deny* the averments upon which the adverse party relies.” *See id.* § 1A-1, Rule 8(b) (emphasis added).

“An admission in a pleading or a stipulation admitting a material fact becomes a judicial admission in a case and eliminates the necessity of submitting an issue in regard thereto to the jury.” *Crowder v. Jenkins*, 11 N.C. App. 57, 62, 180 S.E.2d 482, 485 (1971). Indeed, an admission “is binding in every sense, preventing the party who makes it from introducing evidence to dispute it, and relieving the opponent from the necessity of producing evidence to establish the admitted fact.” *Id.* at 62, 180 S.E.2d at 486. Thus, “admissions in the pleadings and stipulations by the parties have the same effect as a jury finding; the jury is not required to find the existence of

such facts; and nothing else appearing, they are conclusive and binding upon the parties and the trial judge.” *Id.* at 63, 180 S.E.2d at 486. If, “under the circumstances, [it i]s not a ‘proper case’ in which to allow an amendment . . .,” a trial court may err by permitting a plaintiff’s motion to amend the pleadings to contravene an admitted fact. *See id.* at 63, 180 S.E.2d at 487.

Under Rule 15(b) of the North Carolina Rules of Civil Procedure, “[w]hen issues not raised by the pleadings are tried by the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.” N.C. Gen. Stat. § 1A-1, Rule 15(b). “Implied consent to the trial of an unpleaded issue is not established merely because evidence relevant to that issue was introduced without objection.” *Eudy v. Eudy*, 288 N.C. 71, 77, 215 S.E.2d 782, 786–87 (1975), *overruled on other grounds*, *Quick v. Quick*, 305 N.C. 446, 458, 290 S.E.2d 653, 661 (1982) (citation omitted). “At least it must appear that the parties understood the evidence to be aimed at the unpleaded issue.” *Id.* at 77, 215 S.E.2d at 787.

“‘A void contract is no contract at all; it binds no one and is a mere nullity.’” *Bryan Builders Supply v. Midyette*, 274 N.C. 264, 270, 162 S.E.2d 507, 511 (1968) (quoting 17 Am. Jur. 2d *Contracts* § 7 (1964)). Yet, a voidable contract, which occurs “‘on account of its tender solicitude for [a party’s] rights and the fear that he may be imposed upon in his bargain[,]’” may be “‘abide[d] by his conveyance . . . or . . . disaffirm[ed].’” *Bobby Floars Toyota, Inc. v. Smith*, 48 N.C. App. 580, 582, 269 S.E.2d

320, 322 (1980) (quoting *Weeks v. Wilkins*, 134 N.C. 516, 522, 47 S.E. 24, 26 (1904)). In other words, a party can ratify a voidable contract by substantial performance because “the law will not permit [the party] to retain the benefit of the contract and repudiate its obligations.” *Herndon v. Durham & S. R.R. Co.*, 161 N.C. 650, 655, 77 S.E. 683, 685 (1913).

Generally, “upon the death of the owner, title to [her] real estate vests in [her] heirs at law and not in [her] executor or administrator.” *Thompson v. Pilot Life Ins. Co.*, 234 N.C. 434, 439, 67 S.E.2d 444, 447 (1951). An administratrix, however, has capacity to sign a contract that binds the estate to sell real estate. *See In re Est. of Harper*, 269 N.C. App. 213, 215–16, 837 S.E.2d 602, 603–04 (2020). If a contract, like one signed by an administratrix to benefit the heirs at law, is voidable, the heirs may ratify or challenge it. *See Thompson*, 234 N.C. at 439, 67 S.E.2d at 447. A voidable contract is “valid until challenged.” *Woodring v. Swieter*, 180 N.C. App. 362, 367, 637 S.E.2d 269, 275 (2006) (citing *Daniels v. Montgomery Mut. Ins. Co.*, 320 N.C. 669, 676, 360 S.E.2d 772, 777 (1987)). If a party chooses to void a voidable contract, the adverse party may be entitled to an equitable remedy. *See Waters Edge Builders, LLC v. Longa*, 214 N.C. App. 350, 353, 715 S.E.2d 193, 196 (2011).

Here, in her complaint, Plaintiff alleged that she entered a written contract with Defendant and pleaded as a cause of action that Defendant breached the Contract. *See* N.C. Gen. Stat. § 1A-1, Rule 8(a)(1). In her answer, Defendant admitted the existence of the Contract. Although Plaintiff later attempted to amend

her complaint to request a declaration that the Contract was void, the trial court denied her motion. The trial court also dismissed Plaintiff's unjust enrichment claim—the only equitable remedy Plaintiff requested. Further, because Defendant admitted the existence of the Contract in her answer, the trial court could only consider the issue of whether Defendant had breached the Contract. *See id.* at 63, 180 S.E.2d at 487. Accordingly, the trial court was bound to consider only the remaining claims and remedies requested in Plaintiff's complaint, which did not include voiding the Contract or any equitable theories of relief. *See Crowder*, 11 N.C. App. at 63, 180 S.E.2d at 487; *Waters Edge Builders, LLC*, 214 N.C. App. at 353, 715 S.E.2d at 196.

Thus, Plaintiff was precluded from moving to conform the pleadings to the evidence under Rule 15(b). *See id.* at 63, 180 S.E.2d at 487; N.C. Gen. Stat. § 1A-1, Rule 15(b). Moreover, Defendant did not impliedly consent to introducing evidence of the Contract's validity because defense counsel objected to Plaintiff's Rule 15(b) motion. *See Eudy*, 288 N.C. at 77, 215 S.E.2d at 786–87. Accordingly, after denying Plaintiff's motion to amend her complaint, the trial court abused its discretion in granting Plaintiff's motion to conform the pleadings to the evidence. *See Tyson*, 82 N.C. App. at 630, 347 S.E.2d at 476. Indeed, this error is reversible because Plaintiff's Rule 15(b) motion permitted the trial court to enter a judgment that conflicted with an admitted fact and exceeded the theories of relief requested in Plaintiff's complaint. *See Crowder*, 11 N.C. App. at 63, 180 S.E.2d at 487.

Moreover, the parties substantially, if not completely, performed as to the due diligence period, ratifying that provision of the Contract. *See Herndon*, 161 N.C. at 655, 77 S.E. at 685. Indeed, Plaintiff received the benefit of her bargain concerning due diligence, as she was able to inspect the property in exchange for Defendant removing the listing from the market. *See id.* at 655, 77 S.E. at 685. Thus, Plaintiff's actions further bound her to the validity of the Contract. *See Owens*, 251 N.C. at 356, 111 S.E.2d at 704. Even assuming for the sake of argument that the Contract was void, Plaintiff could only prevail in equity, which the trial court precluded when it dismissed her only equitable theory. *See Waters Edge Builders, LLC*, 214 N.C. App. at 353, 715 S.E.2d at 196.

The trial court, therefore, erred in declaring the Contract void, which was, at most, voidable until the end of the due diligence period. *See Crowder*, 11 N.C. App. at 63, 180 S.E.2d at 486–87; *Thompson*, 234 N.C. at 439, 67 S.E.2d at 447. As this issue is dispositive, we do not reach the Rule 59 Order.

V. Conclusion

In sum, under this unique procedural posture where Plaintiff's complaint alleged the existence of a valid contract, Defendant's answer admitted the existence of a valid contract, and the trial court denied Plaintiff's motion to amend her complaint but later allowed a Rule 15(b) motion, the trial court was precluded from invalidating the Contract. Moreover, even assuming the Contract was void *ab initio*, Plaintiff's only remaining avenue for relief sounded in equity. Accordingly, we

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Opinion of the Court

reverse and remand with instructions to enter judgment for Defendant.

REVERSED.

Judges HAMPSON and FREEMAN concur.

Report per Rule 30(e).