

COURT OF APPEALS OF NORTH CAROLINA

Stoner v. Stoner

83 N.C. App. 523 (1986) · Decided December 16, 1986

SUMMARY

The North Carolina Court of Appeals affirmed the denial of a defendant's motion for relief under North Carolina Rule of Civil Procedure 60(b) from an absolute divorce judgment. The court held that the evidence supported the finding that the parties had been separated for more than one year, that alleged false swearing concerning the grounds for divorce did not render the decree void, and that the trial court did not abuse its discretion.

CASE DETAILS

COURT	Court of Appeals of North Carolina
WRITING FOR THE COURT	Arnold, Judge; Arnold; Johnson; Eagles
JURISDICTION	North Carolina
DECIDED	December 16, 1986
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from the trial court's denial of her motion for relief from a divorce judgment under North Carolina Rule of Civil Procedure 60(b).
STANDARD OF REVIEW	A Rule 60(b) motion is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published North Carolina Court of Appeals opinion
PARTIES	Stoner v. Stoner

TOPICS

- divorce
- subject matter jurisdiction
- motion for reconsideration
- standard of review
- appellate procedure

PRACTICE AREAS

- family law
- civil procedure
- appellate procedure
- remedies

QUESTIONS PRESENTED

- Whether the evidence supported the finding that the parties had been separated for at least one year before the divorce action was filed.

2. Whether alleged false swearing concerning the grounds for divorce rendered the divorce decree void for lack of subject matter jurisdiction.
3. Whether defendant established fraud, misrepresentation, or misconduct warranting relief under Rule 60(b).
4. Whether the trial court abused its discretion in denying defendant's Rule 60(b) motion.
5. Whether the trial court's findings were supported by the evidence and its conclusions supported by the findings.

HOLDINGS

1. The trial court's finding that the parties had been separated for at least one year before institution of the divorce action was supported by ample evidence.
2. A divorce decree regular on its face is not void when obtained through false pleading or evidence concerning the grounds for divorce; the decree is merely voidable and is immune from attack by either party to the divorce.
3. The trial court did not abuse its discretion in denying defendant's Rule 60(b) motion.

KEY QUOTATIONS

“The Supreme Court held in Carpenter that if a divorce decree regular on its face is obtained by false swearing, by way of pleading and evidence which relates to the grounds for divorce, the decree is not void but merely voidable.” (83 N.C. App. at 525)

“A motion under Rule 60(b) is within the sound discretion of the trial court and appellate review is limited to a determination of whether the trial court abused its discretion.” (83 N.C. App. at 526)

FACTUAL BACKGROUND

The divorce complaint alleged that the parties had lived separate and apart since February 20, 1984, and that allegation was supported by corroborating testimony. Defendant told plaintiff's attorney that the parties had been separated for more than one year, accompanied the attorney to file the complaint and be served, and did not contest plaintiff's testimony at the divorce proceeding. Approximately nine months after entry of the divorce judgment, defendant sought relief after learning that the absolute divorce revoked her designation as beneficiary of plaintiff's life insurance policy.

PROCEDURAL HISTORY

The trial court granted an absolute divorce after finding that the parties had lived separate and apart for at least one year. Defendant later moved for relief from the judgment, alleging fraud, misrepresentation, misconduct, lack of subject matter jurisdiction, and unsupported findings. The trial court denied the motion, and the Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Henderson v. Henderson, 232 N.C. 1, 59 S.E. 2d 227 (1950)
- [case] Carpenter v. Carpenter, Carpenter v. Carpenter, 244 N.C. 286, 93 S.E. 2d 617 (1956)
- Thrasher v. Thrasher, 4 N.C. App. 534, 167 S.E. 2d 549 (1969)
- Sink v. Easter, 288 N.C. 183, 217 S.E. 2d 532 (1975)

OPINION

ARNOLD, J.

ARNOLD, Judge. Defendant appellant first argues that the trial court committed reversible error in finding that the parties were separated for at least one year next preceding the institution of the divorce action. We disagree.

In addition to defendant's evidence at the hearing for relief from judgment, the trial court had before it: 1) the verified complaint of the plaintiff which stated that the parties had lived separate and apart since 20 February 1984, 2) the sworn testimony of a corroborating witness at the trial for divorce and 3) the testimony at the later hearing of plaintiff's attorney who stated *525that on the day the divorce complaint was filed, defendant told him that she had been separated for more than a year.

There was ample evidence to support the trial court's finding on this matter. Defendant next contends that the trial court erred in concluding as a matter of law that the trial court had jurisdiction over the subject matter to grant the divorce.

In support of her position defendant cites a line of cases including Henderson v. Henderson, 232 N.C. 1, 59 S.E. 2d 227 (1950). We hold, however, that this line of cases is not dispositive of the issue in the present case because the above line of cases involved situations where the defendant was served by publication and the fraud involved due process. See Carpenter v. Carpenter, 244 N.C.

286, 93 S.E. 2d 617 (1956). The Supreme Court held in Carpenter that if a divorce decree regular on its face is obtained by false swearing, by way of pleading and evidence which relates to the grounds for divorce, the decree is not void but merely voidable. Id. It is immune from attack by either party to the divorce. Id. The rationale behind this decision is that the defendant had ample opportunity at trial to meet this testimony.

See 1 R. Lee, North Carolina Family Law § 90, at 423 (4th ed. 1979); Thrasher v. Thrasher, 4 N.C. App. 534, 167 S.E. 2d 549 (1969). Based on this authority we find the cases supporting defendant's second contention inapposite. Defendant next contends that the trial court erred in

concluding as a matter of law that the defendant failed to allege and prove fraud, misrepresentation or misconduct sufficient to entitle her to relief under Rule 60(b) and that the trial court erred in concluding that defendant by her own actions is barred from the relief sought.

We disagree. Rule 60(b) states that the court “may” relieve a party from a final judgment “upon such terms as are just.” A motion under Rule 60(b) is within the sound discretion of the trial court and appellate review is limited to a determination of whether the trial court abused its discretion. *Sink v. Easter*, 288 N.C. 183, 217 S.E. 2d 532 (1975).

In light of the facts that defendant herself told plaintiffs attorney that the parties were separated for over one year, that defendant accompanied the attorney to file the complaint and to be served, that defendant failed to contest plaintiffs testimony at the divorce proceeding and that she only filed her *526 motion nine months after the judgment when she learned that absolute divorce revoked her name as beneficiary on plaintiffs life insurance policy, we find no abuse of discretion on the part of the trial court in denying defendant’s motion.

Defendant lastly contends that the trial court erred in that the findings of fact are not supported by the evidence, the conclusions are not supported by the findings, the trial court lacked subject matter jurisdiction to grant the divorce and that the trial court abused its discretion in denying defendant’s Rule 60(b) motion.

For the reasons stated above we disagree. Affirmed. Judges Johnson and Eagles concur.