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NO. COA11-608
NORTH CAROLINA COURT OF APPEALS

Filed: 7 February 2012

GWENDOLYN HARRIS LANE,
Plaintiff,

v.

Bertie County
No. 06 CVD 179

LINWOOD EARL LANE,
Defendant.

Appeal by plaintiff from the equitable distribution order entered 10 September 2010 by Judge Thomas R. J. Newbern in Bertie County District Court. Heard in the Court of Appeals 15 November 2011.

Economos Law Firm, PLLC, by Larry C. Economos, for plaintiff-appellant.

Mitchell S. McLean for defendant-appellee.

STEELMAN, Judge.

Where the trial court's findings as to the amount of a marital debt were contrary to the stipulations of the parties, that portion of the order must be vacated, and the matter remanded for re-computation of the equitable distribution award. Plaintiff is bound by her stipulation as to the debt owed on the

marital residence. The trial court's findings as to the value of two tracts of real estate are supported by evidence in the record. The parties' stipulation that testimony as to the value of real estate could be considered as both date of separation and current values was binding, even though it was an oral stipulation in open court. It was incumbent upon plaintiff, not the court, to produce evidence of the value of the goodwill of defendant's business.

I. Factual and Procedural Background

Gwendolyn Harris Lane (plaintiff) and Linwood Earl Lane (defendant) were married on 5 March 1985, and separated in February 2006. There were no children born of the marriage. On 28 April 2006, plaintiff filed a complaint, seeking among other things, the equitable distribution of marital property. On 16 June 2006, defendant filed an answer and counterclaim, also seeking equitable distribution, and specifically an unequal distribution of marital property. On 22 November 2006, Judge Newbern entered two orders affecting interim distributions of marital property in accordance with two memoranda entered into between the parties. On 11 June 2010, the trial court entered an equitable distribution pre-trial order. The matter was tried before Judge Newbern at the 11 June 2010 session of District

Court for Bertie County. On 10 September 2010, Judge Newbern entered an equitable distribution order. This order directed an equal distribution of marital property; distributed the marital residence to plaintiff; ordered that plaintiff pay a distributive award to defendant of \$84,492.85 within sixty days; and if plaintiff was unable to pay the distributive award, that the marital residence be sold, with defendant to receive the first \$24,492.86 of the net proceeds, and the balance to be divided equally.

Plaintiff appeals.

II. Standard of Review

"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.'" *Cartin v. Harrison*, 151 N.C. App. 697, 699, 567 S.E.2d 174, 176 (2002) (quoting *Sessler v. Marsh*, 144 N.C. App. 623, 628, 551 S.E.2d 160, 163 (2001)).

III. Valuation of Timeshare Unit

In her first argument, plaintiff contends that the trial court erred in finding that the debt owed on a timeshare unit

located in Harrisonburg, Virginia, at the date of separation was \$6,853.61. Defendant concedes error and we agree.

In the pre-trial order, the parties agreed and stipulated that the timeshare unit had a fair market value of \$12,000.00, and with a debt of \$9,322.36 as of the date of separation. It was further agreed that this asset was to be distributed to plaintiff. The trial court found a fair market value of \$12,000.00 and a debt of \$6,853.61, and distributed the difference of \$5,146.39 to plaintiff. Based upon the stipulations of the parties, the amount distributed to plaintiff should have been only \$2,677.64.

This portion of the equitable distribution order is vacated and this matter is remanded to the trial court for re-computation of its award, using the correct figures, as noted above.

IV. Debt on Marital Residence

In her second argument, plaintiff contends that the trial court erred in computing the amount of debt owed against the marital residence. We disagree.

In the pretrial order, the parties disagreed as to the fair market value of the marital residence. Plaintiff contended that it was worth \$78,500.00, while defendant contended that it was

worth \$120,000.00. The parties stipulated that the balance on the mortgage for this property was \$18,500.00, that plaintiff had resided there since separation, that plaintiff made the mortgage payments since separation, and that the mortgage was "now paid and no liens on residence."

The trial court found that plaintiff's evidence as to the fair market value of the residence was not credible, and found its value to be \$120,000.00. In accordance with the stipulations of the parties, the trial court found that the debt on the residence was \$18,500.00, that plaintiff made all payments on the debt, post-separation, and that "the mortgage has now been paid and there are no current liens against the residence." The trial court further found the post-separation mortgage payments by plaintiff were offset by her exclusive use of the premises. The residence was distributed to plaintiff, provided that she was able to pay a distributive award to defendant.

On appeal, plaintiff contends that there was a second mortgage on the residence that was used to purchase a 1995 Chevrolet Suburban automobile. In the pretrial order, the parties stipulated that the fair market value of this vehicle was \$6,800.00, that it was to be distributed to plaintiff, but

specifically did not stipulate as to whether there was a lien on the vehicle.

Courts look with favor on stipulations designed to simplify, shorten, or settle litigation and save cost to the parties, and such practice will be encouraged. While a stipulation need not follow any particular form, its terms must be definite and certain in order to afford a basis for judicial decision, and it is essential that they be asserted to by the parties or those representing them. Once a stipulation is made, a party is bound by it and he may not thereafter take an inconsistent position.

Moore v. Richard West Farms, Inc., 113 N.C. App. 137, 141, 437 S.E.2d 529, 531 (1993) (alteration omitted) (citations omitted) (internal quotation marks omitted).

In the instant case, the parties entered into a clear and unequivocal stipulation that the mortgage on the residence was "now paid and no liens on residence." Plaintiff is bound by her stipulation, and cannot disavow it on appeal. Further, the parties' stipulation constitutes competent evidence in the record supporting the trial court's findings of fact. See *Cartin*, 151 N.C. App. at 699, 567 S.E.2d at 176.

This argument is without merit.

V. Values assigned to Two Tracts of Real Estate

In her third argument, plaintiff contends that the parties' stipulations as to the fair market value of two tracts of real

estate were ambiguous and that the evidence presented at trial was not competent to support the trial court's findings as to fair market value as of the date of separation. We disagree.

Plaintiff complains of the values assigned by the trial court as to two tracts of land: the marital residence and another tract located at 110 Church Street in Lewiston. The parties' stipulations and the trial court's findings as to the marital residence are set forth in Section IV of this opinion, and are not repeated. As to the Church Street property, the parties stipulated in the pre-trial order that it would be distributed to defendant, and that there was no lien on the property. Plaintiff contended that it had a fair market value of \$11,000.00 while defendant contended that its fair market value was \$1,200.00. The trial court found that plaintiff's evidence "as to the date of separation [and] current fair market value" was not credible, and found that the "date of separation and current fair market value of this real property is \$1,200.00."

Plaintiff argues that the values set forth in the pre-trial order did not state that they were fair market values as of the date of separation. Since the parties did not agree on the values, this is irrelevant. The only question is whether there

was competent evidence in the record to support the trial court's findings of fact as to value.

Defendant is a real estate broker. He testified that in his opinion, the residence had a fair market value of \$120,000.00, and the Church Street property had a fair market value of \$1,200.00. During the course of defendant's testimony, the trial court had a conference with the attorneys, the result of which was that the parties stipulated that the testimony from both parties as to fair market value would be considered as both date of separation, and current fair market values.

Defendant's testimony, coupled with the parties' stipulation constitutes competent evidence of the fair market value of these properties supporting the trial court's findings of fact.

This argument is without merit.

VI. Binding Nature of Parties Stipulations

In her fourth argument, plaintiff contends that the stipulation discussed in Section V of this opinion was not in writing and therefore not binding. We disagree.

Plaintiff argues that under the holding in *McIntosh v. McIntosh*, "[a]ny agreement entered into by parties regarding the distribution of their property should be reduced to writing,

duly executed[,] and acknowledged," 74 N.C. App. 554, 556, 328 S.E.2d 600, 602 (1985). She then contends that the stipulation that the testimony as to the fair market values of real estate should be considered as both date of separation and current values, was invalid since it was only an oral stipulation in open court.

Plaintiff confuses an agreement to distribute marital property, which under the provisions of N.C. Gen. Stat. 50-20(d) is required to be "duly executed and acknowledged in accordance with the provisions of G.S. 52-10 and 52-10.1," N.C. Gen. Stat. § 52-20(d) (2009), with an evidentiary stipulation during the course of a trial. The parties' stipulation did not distribute marital property. Rather it obviated the need for plaintiff to be recalled to the witness stand to put her valuation testimony in proper form, and also eliminated the need for additional, redundant questions to be asked of defendant for the same purpose. We decline to hold that the requirements of N.C. Gen. Stat. § 50-20(d) extend to any aspect of an equitable distribution proceeding which might peripherally touch upon the distribution of marital property, but does not directly deal with the actual distribution of marital property.

This argument is without merit.

VII. Valuation of Cornerstone Properties

In her fifth argument, plaintiff contends that the trial court erred in not making any findings concerning goodwill in valuing defendant's business, Cornerstone Properties. We disagree.

In the pretrial order, the parties stipulated that Cornerstone Properties was to be distributed to defendant, and further stipulated as to the value of the tangible personal property of the business. Defendant contended that the tangible personal property represented the entire value of the business. Plaintiff contended "that the marital value of the business is much greater and evidence of such shall be produced at trial." Plaintiff offered no expert testimony as to the value of Cornerstone Properties at trial. The trial court found that "plaintiff has offered no credible evidence at trial as to any additional value of Cornerstone Properties, other than the listed tangible assets."

Plaintiff cites this court to isolated bits and pieces of testimony which she contends indicates that Cornerstone Properties had a value greater than its tangible assets. However, none of these bits of information were temporally related to the date of separation. Nor do they point to any

value of goodwill for Cornerstone Properties that would be other than sheer speculation. Plaintiff argues that the trial court had the authority pursuant to Rule 706 of the Rules of Evidence to appoint an expert appraiser to evaluate Cornerstone Properties. The clear import of this argument is that the trial court had a duty to appoint an appraiser. We reject this argument.

The pre-trial order clearly laid out the contentions of the parties as to the value of Cornerstone Properties. Defendant contended it was to be valued based upon its assets. Plaintiff contended that it was worth more than its assets, and that she would produce evidence of that at trial. This she failed to do. Instead, on appeal, she seeks to affix blame upon the trial court for failing to intervene and create evidence of the value of Cornerstone Properties by appointing an appraiser. We hold that the trial court did not err in failing to *ex mero motu* appoint an appraiser, especially in light of plaintiff's representation in the pre-trial order that she would present such evidence at trial.

Further, we note that "[a]t a bench trial, 'the trial judge considers the credibility of the witnesses and the weight to be given their testimony and the reasonable inferences to be drawn

therefrom. If different inferences may be drawn from the evidence, the trial judge determines which inferences shall be drawn and which shall be rejected.'" *Durham Hous. Auth. v. Partee*, 189 N.C. app. 388, 391, 658 S.E.2d 69, 71 (2008) (quoting *Terry's Floor Fashions, Inc. v. Crown General Contractors, Inc.*, 184 N.C. App. 1, 10, 645 S.E.2d 810, 816 (2007)). In the instant case, the trial court found that plaintiff "offered no credible evidence at trial as to any additional value of Cornerstone Properties."

This argument is without merit.

VIII. Conclusion

We remand this case to the trial court for re-computation of the award of equitable distribution in accordance with section III of this opinion. We affirm the balance of the trial court's order.

AFFIRMED IN PART, REVERSED AND REMANDED IN PART.

Judges McGEE and McCULLOUGH concur.

Report per Rule 30(e).