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NO. COA13-612  
NORTH CAROLINA COURT OF APPEALS

Filed: 17 December 2013

JACKIE MYLINDA ALLEN CLARK

V.

Montgomery County  
No. 97 CVD 211

DAVID MacDUFFIE CLARK

Appeal by defendant and cross-appeal by plaintiff from judgment entered 11 January 2013 by Judge Scott C. Etheridge in Montgomery County District Court. Heard in the Court of Appeals 4 November 2012.

*Barry Snyder for plaintiff-appellee.*

*Doster, Post, Silverman, Foushee & Post, P.A., by Jonathan Silverman, for defendant-appellant.*

STEELMAN, Judge.

Where the trial court's findings were either unchallenged or supported by competent evidence, and its findings supported its conclusions of law, the trial court did not err by granting plaintiff's motion for child support arrearage and for attorney's fees, by denying plaintiff's motion for increased

alimony, or by denying defendant's motion for decreased alimony and attorney's fees.

### I. Factual and Procedural Background

The parties married in 1984, had two sons born in 1990 and 1994, and separated in 1997. In May 1997, plaintiff filed a complaint seeking child custody and support, post-separation support and alimony, and equitable distribution. Defendant denied plaintiff's entitlement to post-separation support or alimony, and counterclaimed, seeking child custody and support and equitable distribution. In 1999 a consent judgment was entered by the court in which the parties stipulated that plaintiff was a dependent spouse and defendant a supporting spouse; that facts existed to support plaintiff's claim for alimony; and that defendant would pay plaintiff \$2,167 a month in alimony "until the plaintiff dies, remarries or cohabits with another person of the opposite sex[.]" The parties also agreed that plaintiff would have primary custody of the children, and that defendant would pay \$1233 a month in child support "until each of the minor children reach age 18 or until age 20 if either remain in secondary school."

On 15 June 2012 plaintiff filed a Motion to Modify Prior Order Based on Changed Circumstances. Plaintiff alleged that

between 1999 and 2012 her expenses had increased significantly. Plaintiff also asserted that defendant owed \$14,796.00 in unpaid child support, and that he earned "sufficient income to pay additional alimony." Plaintiff asked the court to increase her monthly permanent alimony, order defendant to pay the child support arrearage, and award her attorney's fees. On 12 July 2012, defendant filed a response denying that he owed child support or that plaintiff was entitled to additional alimony. Defendant alleged that his ability to pay alimony and child support had decreased since the entry of the consent order, and asked the court to reduce or terminate his alimony payments, deny plaintiff's motion for increased alimony, order plaintiff to reimburse him for certain child care expenses, and award him attorney's fees.

The trial court entered an order on 11 January 2013 denying defendant's motion in its entirety, and granting plaintiff's motion for payment of child support arrears and for attorney's fees, but denying her request for an increase in alimony. The trial court concluded that there had been a significant change in circumstances since 1999, and found that (1) although defendant's line of work, printing, had suffered with the increased use of computers, defendant had amassed an estate of over \$500,000 and could afford to pay alimony and attorney's

fees; (2) plaintiff's individual expenses had significantly increased between 1999 and 2012; (3) plaintiff's income from part-time work and alimony was insufficient to meet her ongoing expenses, and her available income would decrease further when child support was terminated; (4) although child support payments were prospectively reduced from \$1,233 to \$658 because one child had reached the age of 18, defendant owed plaintiff \$14,796 in child support arrearages, and; (5) plaintiff could not afford to pay her attorney's fees. The trial court ordered that the amount of alimony should remain unchanged, that defendant should pay back child support of \$14,796, payable either as a lump sum or at the rate of \$617 per month, and that plaintiff was entitled to \$20,500 in attorney's fees. The trial court also retained jurisdiction of the case, and directed that when the parties' younger child reached the age of 18 the matter should be brought back before the court for review of its order.

Defendant appealed from the trial court's order, and plaintiff cross-appealed from the denial of her motion for increased alimony.

## II. Appeal by Defendant

### A. Alimony

#### 1. Standard of Review

Defendant does not dispute plaintiff's entitlement to alimony, which was stipulated to in the 1999 consent order, leaving the amount of alimony as the only contested issue. "It is well-established that '[t]he amount of alimony is determined by the trial judge in the exercise of [its] sound discretion and is not reviewable on appeal in the absence of an abuse of discretion,' and that '[a] ruling committed to a trial court's discretion is to be accorded great deference and will be upset only upon a showing that it was so arbitrary that it could not have been the result of a reasoned decision.'" *Works v. Works*, \_\_ N.C. App. \_\_, \_\_, 719 S.E.2d 218, 221 (2011) (quoting *Quick v. Quick*, 305 N.C. 446, 453, 290 S.E.2d 653, 658 (1982), and *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985)). "To demonstrate an abuse of discretion, the appellant must show that the trial court's ruling was manifestly unsupported by reason, or could not be the product of a reasoned decision.'" *Williams v. Williams*, \_\_ N.C. App. \_\_, \_\_, 746 S.E.2d 319, 322 (2013) (quoting *Nationwide Mut. Fire Ins. Co. v. Bournlon*, 172 N.C. App. 595, 601, 617 S.E.2d 40, 45 (2005) (citations omitted)).

"Evidentiary issues concerning credibility, contradictions, and discrepancies are for the trial court - as the fact-finder - to resolve and, therefore, the trial court's findings of fact

are conclusive on appeal if there is competent evidence to support them despite the existence of evidence that might support a contrary finding. The trial court's conclusions of law, however, are reviewed *de novo* on appeal." *Smallwood v. Smallwood*, \_\_ N.C. App. \_\_, \_\_, 742 S.E.2d 814, 817 (2013) (citing *Hand v. Hand*, 46 N.C. App. 82, 87, 264 S.E.2d 597, 599-600 (1980), and *Casella v. Alden*, 200 N.C. App. 24, 28, 682 S.E.2d 455, 459 (2009)). "Unchallenged findings of fact are presumed correct and are binding on appeal." *In re Shiphof*, 192 N.C. App. 696, 700, 666 S.E.2d 497, 500 (2008) (citing *Keeter v. Lake Lure*, 264 N.C. 252, 257, 141 S.E.2d 634, 638 (1965)).

## 2. Defendant's Income and Expenses

We will consider separately defendant's challenges to the court's findings regarding his own expenses and income and those of plaintiff. Defendant first argues that the court erred in determining that his gross monthly earned income was \$5,417. He concedes that he "indicated on his First Bank financial statement that his annual [earned] income was \$65,512.00" and that "the gross monthly income used by the court was based [on] his making \$65,512.00 annually," and he does not dispute that his financial statement was competent to support the trial court's finding. Defendant argues, however, that the trial court should have given more consideration to other evidence,

including his testimony at the hearing. "[D]efendant argues that the trial court's findings were not based upon his evidence or his interpretation of the evidence, and in this regard, his arguments fail, as this Court cannot substitute its judgment for that of the trial court in weighing the evidence." *Kelly v. Kelly*, \_\_ N.C. App. \_\_, \_\_, 747 S.E.2d 268, 275 (2013) We hold that the evidence relied upon by the court supported its finding as to defendant's gross monthly earned income.

Defendant also argues that the trial court failed to properly calculate his net monthly income, on the grounds that (1) the court erred by failing to include in his monthly expenses a monthly credit card payment of \$1000, and by finding that this credit card debt was incurred in making discretionary payments for his son's college education and; (2) the court erred by failing to include in his expenses a \$250 monthly "warehouse debt." We disagree.

Regarding defendant's monthly credit card payments, the trial court found that:

24. The debts shown on the personal financial affidavit show two credit card debts totaling \$56,000.00.

25. There was no direct testimony or other evidence showing exactly what expenses were financed with said credit cards.

26. Defendant testified that he was borrowing money to make his expenses.

27. The financial affidavit the Defendant filed with the Court does not include any of the expenses for his eldest son's college education [that] Defendant claims to have incurred in both his testimony before the court and as alleged in his motion.

28. Thus, this Court concludes that said credit cards are being and/or were used by the Defendant to finance the parties' eldest son's college education.

29. The Defendant did not present any evidence that he was under any legal obligation to pay for his eldest son's college expenses at a point in time after which his son had already reached the age of majority.

30. The Court finds that this expense for the eldest son's education is discretionary to the Defendant and not legally required and therefore the monthly amount of \$1000.00 paid toward the debt under the category "credit card" cannot be considered as one of the Defendant's reasonable monthly expenses.

Defendant had the burden of proof on the issue of his reasonable expenses, as "'the moving party bears the burden of proving that the present [alimony] award is either inadequate or unduly burdensome.'" *Kelly*, \_\_ N.C. App. at \_\_, 747 S.E.2d at 279 (quoting *Britt v. Britt*, 49 N.C. App. 463, 470, 271 S.E.2d 921, 926 (1980) (citations omitted)). He does not dispute the validity of the trial court's finding that he presented "no direct testimony or other evidence showing exactly what expenses were financed with said credit cards" a finding which supports



the conclusion that defendant failed to establish that his credit card debt was incurred as a result of his reasonable and necessary expenses.

Defendant's only challenge to this ruling is his argument that the trial court engaged in speculation when it found that the credit card debt was incurred in order to pay for his son's education. However, to "'obtain relief on appeal, an appellant must not only show error, . . . appellant must also show that the error was material and prejudicial, amounting to denial of a substantial right that will likely affect the outcome of an action.'" *Lynn v. Lynn*, 202 N.C. App. 423, 433, 689 S.E.2d 198, 205 (quoting *Starco, Inc. v. AMG Bonding & Ins. Servs.*, 124 N.C. App. 332, 335, 477 S.E.2d 211, 214 (1996)), *disc. review denied*, 364 N.C. 613, 705 S.E.2d 736 (2010). In this case, even if the court erred by finding that the credit card debt arose from tuition payments, the error was not prejudicial, given defendant's failure to produce evidence that the credit card payments were for his reasonable and necessary expenses. We hold that the trial court did not err by declining to include defendant's credit card debt in his monthly expenses.

Regarding defendant's monthly "warehouse debt" of \$250 per month, the court found:

31. The Court further finds that the personal financial affidavit requires that

Defendant update his financial information, and that the Defendant failed to include on his personal financial affidavit the Warehouse Debt which he listed on the financial affidavit filed with the Court despite the federal offense possibly committed by this action and the resulting penalty which could be imposed upon the Defendant.

32. The Court therefore declines to include the monthly payment of \$250.00, which the Defendant alleges is being paid toward the reduction of the Warehouse Debt, as being among the reasonable monthly expenses incurred by the Defendant.

The court was presented with a contradiction between the evidence contained in the financial statement that defendant submitted to his bank and in the financial affidavit that he submitted to the court. It was within the trial court's authority to assign greater weight and credibility to the financial statement submitted to defendant's bank. This argument lacks merit.

Defendant also disputes the court's calculation of his total gross annual earned and unearned income and certain of its findings regarding his general financial standing. Defendant argues that the trial court erred in (1) calculating his gross annual income; (2) finding that he had "amassed a personal estate in excess of \$500,000"; (3) finding that he had considerable business acumen and would likely be successful in the future, and; (4) finding that defendant owned property

containing timber which might produce future income. We disagree.

In Finding No. 39 the court calculated defendant's average annual income, including both earned and unearned income, to be \$116,937, based on its review of his tax returns and deposits into his bank account. Defendant admits that "the parties did stipulate that Mr. Clark's deposits totaled roughly \$1.2 million from January 2002 through October 2012, which indicated an average annual amount of a little over \$100,000.00" and does not dispute that the trial court could rely on sources such as his tax returns, banking deposits, and the financial statement he filed with First Bank in calculating his income. Defendant argues that he presented other evidence indicating that his income had decreased. However, where the trial court's findings are supported by competent evidence, they will be upheld, notwithstanding the existence of evidence that might have supported a contrary conclusion. *Smallwood*.

Defendant also argues that the trial court's calculation of his gross annual income was inaccurate because it incorporated income from sources other than his salary, such as the sale of stock. However, N.C. Gen. Stat. § 50-16.3A(b)(4) requires a trial court, in determining the amount of alimony, to consider the "amount and sources of earned and unearned income of both

spouses, including, but not limited to, earnings, dividends, and benefits such as medical, retirement, insurance, social security, or others[.]” See *Barrett v. Barrett*, 140 N.C. App. 369, 373, 536 S.E.2d 642, 646 (2000) (“defendant overlooks the clear statutory language, which states that income encompasses both earned and unearned income”). We hold that the trial court did not err in its determination of defendant’s gross annual income.

Defendant next disputes the court’s finding that he had “amassed a personal estate in excess of \$500,000.00.” The only specific challenge he raises to this finding is the court’s inclusion of a tract of land valued at \$150,000. Defendant concedes he assigned this value to the property in the financial statement he filed with First Bank, but contends that the court should have reduced this amount based on his testimony. As discussed above, weight and credibility of evidence, and the resolution of evidentiary conflicts, are for the trial court to determine. This argument lacks merit.

Defendant also argues that there was insufficient evidence to support the trial court’s finding that “Defendant is intelligent, has considerable business acumen, and has been very successful in business ventures and investing in the past and the Court anticipates no less than the same success in the

future resulting in an increase in the Defendant's income and net worth." We hold that this finding is supported by the trial court's other findings detailing defendant's wealth, and that the court did not err by making this finding.

Next, defendant argues that the trial court erred by finding that he owns property with timber that "may produce income for the defendant in the future." Defendant's objection is to the court's characterization of this property as "laden" with timber, which he contends is a phrase used by plaintiff's counsel. However, he does not dispute the accuracy of the court's general finding that this land "may produce income" of an unspecified amount in the future. We hold that the court did not err in this finding and that its use of the word "laden" does not invalidate its finding.

### 3. Plaintiff's Income and Expenses

We next review defendant's arguments regarding the trial court's determination of plaintiff's income and expenses. Defendant first challenges the court's statement in Finding No. 11 that "Plaintiff, alone, now has uninsured medical expenses of \$359.00 per month . . . which she did not have under the prior [court] order[.]" The sole basis cited by defendant for his challenge to this finding is that plaintiff's medical expenses, as shown in the "spreadsheets, bank statements and other

documentation" she submitted, included a surgical procedure which defendant contends "will not be a reoccurring expense." However, past medical expenses are a valid factor in determining future needs, and defendant cites no authority for his premise that, in its determination of a party's medical expenses, a court may not consider any past expenses absent a finding that the specific treatment will "be a reoccurring expense." We hold that defendant failed to establish that the trial court erred by taking into consideration the cost of plaintiff's recent surgery in its calculation of her likely ongoing medical expenses.

Next, defendant challenges the trial court's statement in Finding No. 53 that plaintiff's "expenses have increased as a result of her own needs rather than decreas[ing] as a result of the emancipation of one child[.]" Defendant disputes only one specific dollar amount - the trial court's inclusion in plaintiff's monthly expenses of a \$200 monthly debt plaintiff owed to her dental care provider. Defendant argues that plaintiff "double dipped" by including this amount in both her uninsured medical and dental expenses and in her debts, and contends that if this \$200 is subtracted from plaintiff's monthly expenses, her expenses have not increased significantly since 1997. We disagree.

Our review indicates that plaintiff may have made arithmetic errors or double-counted the \$200 dental debt in some of the records she submitted to the trial court. However, we reject defendant's argument that such mathematical errors would render erroneous the trial court's finding that "the Plaintiff's expenses have increased as a result of her own needs rather than decreas[ing] as a result of the emancipation of one child." The record shows that plaintiff's individual monthly expenses in 1997 were approximately \$1303. The trial court found that plaintiff's current expenses were \$4091. If her medical expenses are reduced by \$200, her current total expenses would be \$3,891, an amount that is still \$2,588 more than her previous expense level of \$1,303. This supports the trial court's finding that plaintiff's expenses had increased. We hold that the court did not err in Finding No. 53, notwithstanding the possibility that the trial court based its calculation of plaintiff's medical expenses in part on records that included arithmetic or categorization errors.<sup>1</sup>

Defendant also argues that the trial court erred in calculating plaintiff's monthly income and expenses. He again asserts that plaintiff inflated her medical expenses by double

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<sup>1</sup> Defendant compares plaintiff's current individual expenses of \$4,091 or \$3,891 to the 1997 total expenses for plaintiff and both children of \$4,035. Defendant offers no authority for the relevance of such a comparison and we know of none.

counting her \$200 monthly debt for dental services, but offers no argument that reducing plaintiff's total expenses by \$200 would have led the trial court to reduce alimony payments, given that this reduced total is still almost \$2,600 more than plaintiff's individual expenses at the time the amount of alimony was initially established. Regarding plaintiff's income, defendant acknowledges that the court's determination of her income was supported by tax returns for the previous year, but speculates, without evidentiary support, that more recent pay stubs might reflect an increase in her salary. We hold that defendant has failed to demonstrate that any errors in the trial court's calculation of plaintiff's monthly income and expenses were prejudicial or entitle him to relief.

Defendant also argues that the trial court erred in Finding No. 9:

9. The affidavit supporting the Plaintiff's present motion demonstrates that when child support is no longer required for both children to be paid to the Plaintiff, Plaintiff's expenses, food and especially housing will increase substantially, since the Plaintiff is living in the same home when she filed her present motion as she was at the time of the prior order."

Defendant argues that this finding was based on "pure speculation" because the trial court "has no way of knowing what the future holds for the Plaintiff[.]" We disagree.



Defendant does not contend that a court is prohibited from considering the fact that a party's expenses will increase when a child reaches the age of majority, and we find that in appropriate circumstances this is permissible. In *Harris v. Harris*, 188 N.C. App. 477, 656 S.E.2d 316 (2008), the defendant argued "that the trial court improperly considered the termination of his child support obligation as a factor in deciding whether a modification of the alimony award was warranted[.]" *Harris*, 188 N.C. App. at 481, 656 S.E.2d at 318. We held that the trial court did not err by considering the termination of child support in assessing the needs of the parties.

In this case, we find it appropriate to consider the challenged finding in connection with certain other findings:

52. The language of the order requiring the Defendant to pay child support until both children reach majority indicated the Court's recognition of the factor in [N.C. Gen. Stat. § 50-16.3A(b)(7)] where "the extent to which the earning power, expenses, or financial obligations of a spouse will be affected by reason of serving as the custodian of a minor child."

53. The Court acknowledges that the Plaintiff's expenses have increased as a result of her own needs rather than decreas[ing] as a result of the emancipation of one child and, notwithstanding that fact, her income will have decreased as a result of the Court's modification of the prior

order reducing the amount of child support by nearly half.

54. The Court further recognizes the general rule that alimony and child support must be kept separate when it determines the appropriate awards as to each . . . particularly when the child for whom the support is needed resides primarily with the recipient of the alimony.

55. However, the question of the correct amount of alimony is a question of fairness to all parties.

56. As part of this fairness inquiry, all of the circumstances of the parties have been taken into consideration, including: the property, earnings, earning capacity, condition and accustomed standard of living, and child care expenses, amount and sources of earned and unearned income of both spouses, [and] the relative assets and liabilities of both spouses.

57. At present, the Court finds that fairness to all parties, [and] the standard of living established and consented to by the parties' prior order dictates that the monthly payment of alimony to the Plaintiff by the Defendant should remain the same as set by the prior order.

58. However, the Court further finds that the Plaintiff does not have as great an earning capacity as the Defendant, nor does she have the property and assets possessed by the Defendant, and if the Plaintiff does not receive assistance from family or some other source she will soon have liabilities which will exceed her assets, given the amount of alimony she is presently receiving in order to maintain her accustomed standard of living which would be that she remain in the same home she occupied May 3, 1999.

. . .

61. Therefore the Court finds that after the youngest child born of the parties graduates high school in May 2013, fairness to all parties dictates that this matter come before the Court for review of this order and further hearing, if necessary, to determine the amount of alimony which would be fair to the Plaintiff consistent with the standard of living set by the prior order of this court.

Consideration of the challenged finding in connection with other findings indicates that the court was merely expressing its general awareness that the parties' economic circumstances and financial obligations were in a transitional period. Although the court expressed its finding in terms of plaintiff's expenses, it is more precisely plaintiff's ability to meet her expenses that will decrease when all of her expenses are personal, rather than being partially attributable to her children. However, we note that the trial court did not assign any dollar amount to its general finding that plaintiff's financial situation would become more challenging after both children reached majority. Moreover, defendant has failed to articulate any prejudice arising from the trial court's generalized observation regarding the impact of the termination of child support on plaintiff's financial situation. We hold that the trial court did not err in making this finding.

Next, defendant argues that the trial court erred by stating in Finding No. 58 that "the Plaintiff does not have as great an earning capacity as the Defendant, nor does she have the property and assets possessed by the Defendant, and if the Plaintiff does not receive assistance from family or some other source she will soon have liabilities which will exceed her assets, given the amount of alimony she is presently receiving in order to maintain her accustomed standard of living which would be that she remain in the same home she occupied May 3, 1999." Defendant does not argue that these statements are factually inaccurate, but asserts that other evidence shows that the parties have a similar level of education and that defendant has worked in a field that has declined in recent years. However, it is undisputed that plaintiff was a homemaker during the marriage, has much less work experience than defendant and currently works as a part-time child care provider, while defendant has significantly greater financial assets and property than plaintiff. Defendant does not dispute these facts, which provide competent evidentiary support for the trial court's finding. We hold that this finding was not error.

Next, defendant argues that there was insufficient evidence to support Finding No. 15 stating "Plaintiff does not have sufficient income to meet her expenses and has cashed in her

retirement account of over \$8000.00, has borrowed on the equity line of her home, and has borrowed, during the years from July 2010 to May 2012, from her father a sum totaling \$18,400.00." We disagree.

Defendant concedes that plaintiff "testified that she was forced to sell her stock and rely on her home equity to meet her monthly obligations, while contending that her alimony and child support payments were not enough to meet her expenses[.]" She also testified that she had cashed in a retirement account, and had borrowed from her father. Her testimony supports the trial court's finding. Defendant argues that there was no evidence of a formal loan from plaintiff's father; however, we do not reach this issue, as this debt is not included in the trial court's list of plaintiff's monthly expenses. Additionally, the court's findings regarding plaintiff's expenses and income show that, even if plaintiff's medical expenses are reduced as suggested by defendant, her monthly expenses still exceed her income by a significant amount. We hold that the trial court's finding was supported by competent evidence and was not error.

#### B. Attorney's Fees

Next, defendant argues that the trial court erred by awarding plaintiff \$20,500 in attorney's fees, on the grounds that (1) plaintiff is not entitled to attorney's fees because

she was the "non-prevailing party"; (2) there was "no evidence" on the amount of time plaintiff's attorney devoted to litigating child support as opposed to alimony; (3) there was insufficient evidence to support the trial court's finding that plaintiff lacked the ability to pay attorney's fees; and (4) the trial court erred by denying his motion for attorney's fees. We disagree.

N.C. Gen. Stat. § 50-16.4 provides that if a dependent spouse is "entitled to alimony . . . the court may, upon application of such spouse, enter an order for reasonable counsel fees, to be paid and secured by the supporting spouse in the same manner as alimony." Defendant does not dispute plaintiff's entitlement to alimony, and the statute does not require that the dependent spouse be the "prevailing party" in order to be entitled to attorney's fees. Defendant cites *Barrett*, 140 N.C. App. at 374, 536 S.E.2d at 646, which held that a "spouse is entitled to attorney's fees if that spouse is (1) the dependent spouse, (2) entitled to the underlying relief demanded (e.g., alimony and/or child support), and (3) without sufficient means to defray the costs of litigation." (citing *Clark v. Clark*, 301 N.C. 123, 135-36, 271 S.E.2d 58, 67 (1980)). In quoting *Barrett*, defendant omits the phrase "e.g., alimony and/or child support" and argues that plaintiff's entitlement to

attorney's fees required her to prevail on her request for increased alimony. Defendant's position is contradicted by the actual language of *Barrett* and by N.C. Gen. Stat. § 50-16.4. We reject defendant's argument that as "the non-prevailing party" plaintiff "should not be awarded attorney's fees." We also note that plaintiff sought payment of child support arrears in addition to an increase in alimony, and that she was the prevailing party as to this issue.

Next, defendant argues that the order for attorney's fees was deficient because plaintiff "is not entitled to any attorney's fees regarding her motion to modify alimony" and there was "no evidence offered" as to the amount of time her attorney devoted to litigation of child support issues. We disagree with defendant's premise and his argument.

The trial court ordered that plaintiff was "entitled to an award of attorney's fees in the amount of \$20,500.00 for the prosecution of the motion to increase alimony and for arrears in child support." The only basis for defendant's assertion that plaintiff is not entitled to attorney's fees arising from her counsel's litigation of her motion to increase alimony is that the trial court denied this request. As discussed above, N.C. Gen. Stat. § 50-16.4 does not require, as a prerequisite for award of attorney's fees, that the dependent spouse be the

"prevailing party" in litigation, and we hold that plaintiff was entitled to attorney's fees incurred with respect to both alimony and child support. Nor does defendant cite any authority for his position the trial court was required to parse its award of attorney's fees according to the amount of time devoted to specific legal arguments or issues. This argument lacks merit.

Defendant next argues that there was no evidence to support the trial court's finding that plaintiff could not afford to pay her attorney's fees. However, the statute does not require a finding that plaintiff be unable to pay attorney's fees, beyond its undisputed finding that she is a dependent spouse. The trial court made extensive findings regarding plaintiff's income and expenses, including a finding that her income is insufficient to meet her ongoing expenses, which supports the finding that plaintiff cannot meet the additional expense of attorney's fees. This argument lacks merit.

Defendant also argues that the trial court erred in its "implicit denial" of his motion for attorney's fees. He contends that the court's award of attorney's fees to plaintiff must be reversed because, although the court made findings detailing why it was awarding attorney's fees to plaintiff, it failed to make corresponding findings specifying why it was not awarding attorney's fees to defendant. We disagree.



Our review indicates that the trial court's findings regarding attorney's fees provide sufficient support for its decision to award attorney's fees to plaintiff and for its concomitant implicit denial of defendant's request for attorney's fees. For example, the court found that plaintiff could not afford to pay attorney's fees but that defendant was able to pay the fees, as his "estate is worth over \$500,000.00" and he was capable of earning sufficient income to recover the amount of the fees.

Moreover, neither at the trial level nor on appeal has defendant offered any legal or equitable argument in support of his entitlement to attorney's fees, or any reason why the trial court should have granted his motion. He does not dispute that he is a supporting spouse, does not contend that he cannot afford to pay attorney's fees, and cites no authority in support of his position that he was entitled to attorney's fees. We hold that the trial court's findings support its award of attorney's fees to plaintiff and that, given defendant's failure to offer any substantive basis for his own entitlement to attorney's fees, the trial court did not err by declining to award him attorney's fees.

#### D. Trial Court's Retention of Jurisdiction

In his final argument, defendant asserts that the trial court erred by directing that the case be brought back in court when defendant's obligation to pay child support terminated. Defendant contends that this part of the court's order constituted an improper modification of alimony without a showing of changed circumstances. We disagree.

Defendant argues that it was "not proper" for the trial court to set the matter for further review. However, the trial court did not set a specific date for reconvening, decide any issues in advance, or announce any prospective modification of alimony. Instead the court simply directed that the matter be reviewed at a future date. Defendant has not identified any prejudice arising from the trial court's retention of jurisdiction or from its wish to review its order in the future, and we discern none. This argument is without merit.

#### Conclusion

We conclude that the trial court did not err in the rulings challenged by defendant and that none of his arguments entitle him to relief or require reversal of the trial court's order.

#### III. Plaintiff's Appeal

Plaintiff appeals from the trial court's denial of her motion for increased alimony. She argues that (1) the court abused its discretion by not increasing alimony, given its

conclusion that there had been a change of circumstances, and (2) that the court failed to enter sufficient findings and conclusions to explain its decision not to increase alimony. We disagree.

#### A. Standard of Review

Under N.C. Gen. Stat. § 50-16.9, an alimony award "may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party or anyone interested." "In general, the change of circumstances required for modification of an alimony order 'must relate to the financial needs of the dependent spouse or the supporting spouse's ability to pay.' A court should also consider the sixteen factors listed in N.C. Gen. Stat. § 50-16.3A[(b)] when considering modification of an alimony order; among those factors are the relative earnings of the spouses and relative needs of the spouses." *Martin v. Martin*, 207 N.C. App. 121, 122, 698 S.E.2d 491, 493 (2010) (quoting *Rowe v. Rowe*, 305 N.C. 177, 187, 287 S.E.2d 840, 846 (1982) (citations omitted), and citing *Swain v. Swain*, 179 N.C. App. 795, 800, 635 S.E.2d 504, 507 (2006), *disc*, *review denied*, 361 N.C. 437, 649 S.E.2d 897 (2007)).

#### B. Analysis

Plaintiff argues that the trial court "failed to explain" why "after finding there had been a substantial change in circumstances, the Plaintiff's alimony should not be increased[.]" Plaintiff contends that the "trial court's failure to set forth" its reasoning requires remand because the court's findings were "too meager to enable the reviewing court to determine whether the trial court exercised proper discretion in deciding what Defendant was to pay plaintiff." We disagree.

Although the trial court's conclusion that there had been a "substantial and material change of circumstances" does not specify whether the changed circumstances applied to plaintiff, defendant, or both, the court's findings indicate its belief that the economic circumstances of both parties had changed. For example, the court found that plaintiff had increased medical and dental expenses, but also that defendant's field of work had suffered a downturn with the advent of computerized printing. Plaintiff has failed to show that the court's finding of changed circumstances pertained solely to her increased expenses. In addition, "[e]ven where the moving party has met her burden to show relevant changed circumstances . . . the trial court is not required to modify an alimony award, but may do so in its discretion." *Kowalick v. Kowalick*, 129 N.C. App. 781, 785, 501 S.E.2d 671, 674 (1998) (citing *Robinson v. Robinson*, 10 N.C.

App. 463, 468, 179 S.E.2d 144, 148 (1971)). We hold that the trial court's conclusion that there had been a significant change in circumstances did not, standing alone, necessarily require modification of the amount of alimony.

The trial court's order contains more than 60 findings setting out in great detail the parties' contentions and the court's resolution of conflicting evidence, the court's calculations of the parties' respective income and expenses, and the factors, such as increased age and market changes, that had played a part in shaping the parties' economic circumstances. The trial court also made findings as to plaintiff's individual expenses, debts, fixed expenses, and income. As discussed above, a court may consider child support payments in determining whether to modify alimony. *Harris*, 188 N.C. App. at 481, 656 S.E.2d at 318 ("the trial court did not err in considering the effect of the cessation of child support in modifying the alimony award"). In this case, the trial court calculated plaintiff's total monthly expenses to be \$4091. The total of her income from alimony, her part-time job, the arrears in child support (assuming a monthly payment of \$617), and the child support for her younger child was \$4090, essentially the same as her expenses. We hold that the trial court's findings are sufficient to permit appellate review and that they provide a

sufficient explanation for its decision not to modify the amount of alimony at the time of the order's entry.

The court's findings also indicate its understanding that the parties were in a transitional phase of their family responsibilities. The court awarded plaintiff \$14,796 in past due child support payments, modified child support to reflect the emancipation of one of the parties' children, acknowledged that the termination of child support payments would increase plaintiff's financial burden, and noted that plaintiff earned only \$648 a month in a part-time job, which she kept in order to receive reduced school tuition for her younger son. The trial court's order reflects an awareness that modification might be appropriate in the near future, and the court directed that the parties return to court for review of the court's order after their younger child graduated high school in May of 2013, a circumstance that would increase the plaintiff's expenses but might also permit her increased employment options.

#### Conclusion

We conclude that the trial court did not abuse its discretion in ordering that the amount of alimony remain the same for the time being, that its order included sufficient facts to allow appellate review, and that its order should be affirmed.

AFFIRMED.

Chief Judge MARTIN and Judge DILLON concur.

Report per Rule 30(e).