IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-432

Filed: 6 March 2018

Union County, No. 12 CVD 2483

MARGARET MARY MCGUIRE, Plaintiff,

v.

PATRICK JOSEPH MCGUIRE, Defendant.

Appeal by defendant from order entered 5 December 2016 by Judge N. Hunt Gwyn in Union County District Court. Heard in the Court of Appeals 9 January 2018.

*John T. Burns for plaintiff-appellee.*

*Collins Family Law Group, by Rebecca K. Watts, for defendant-appellant.*

BRYANT, Judge.

Where sufficient evidence existed to justify the trial court's order modifying child support, the trial court did not abuse its discretion. Where the trial court erred as a matter of law in making an unequal distribution of the parties' debts without giving due regard to the statutory factors, we reverse and remand that portion of the trial court's order. Where the trial court relied on record evidence in calculating plaintiff's monthly expenses and other findings of fact in the trial court's order are unchallenged by defendant, we affirm its award of alimony.

Plaintiff Margaret Mary McGuire and defendant Patrick Joseph McGuire were married in 1996, separated in 2011, and divorced in June 2013. During their marriage, the parties had two children.

In 2010, defendant moved to Florida to pursue employment. At the time of separation, the minor children resided in North Carolina with plaintiff, but in 2012, the children moved to Florida to live with defendant. After the parties' separation, plaintiff moved in with her mother in Unionville, North Carolina.

In April 2015, in Union County District Court, N. Hunt Gwyn, Judge presiding, entered an order for permanent custody and child support, which provided for the parties to have joint legal custody, for defendant to have primary physical custody, and for plaintiff to pay child support to defendant. On 4 April 2016, plaintiff filed a motion to modify her child support obligation, alleging her income had decreased. Plaintiff's claim for alimony and both parties' claims for equitable distribution went unresolved until a hearing on 18 February 2016, at which time the trial court also heard plaintiff's motion to modify child support.

By order entered 5 December 2016, the trial court modified plaintiff's child support obligation, awarded alimony to plaintiff, and made a distribution of some of the parties' assets and debts. Defendant appeals.

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On appeal, defendant argues that the trial court erred (I) in modifying child support without a finding of fact or conclusion of law that there had been a change in circumstances; (II) as a matter of law and abused its discretion in entering its equitable distribution order; and (III) in its calculation of plaintiff's monthly expenses and in its award of alimony.

*I*

Defendant first argues the trial court erred in modifying child support without making a finding of fact or a conclusion of law that there had been a change of circumstances. As a result, defendant argues the trial court erred in making certain findings of fact and in modifying child support. We disagree.

"Child support orders entered by a trial court are accorded substantial deference by appellate courts and our review is limited to a determination of whether there was a clear abuse of discretion." *Young v. Youn*g, 224 N.C. App. 388, 390, 736 S.E.2d 538, 541–42 (2012) (quoting *Leary v. Leary*, 152 N.C. App. 438, 441, 567 S.E.2d 834, 837 (2002)). "The trial court must, however, make sufficient findings of fact and conclusions of law to allow the reviewing court to determine whether a judgment, and the legal conclusions that underlie it, represent a correct application of the law." *Id.* at 390, 736 S.E.2d at 542 (quoting *Spicer v. Spicer*, 168 N.C. App. 283, 287, 607 S.E.2d 678, 682 (2005)).

> The moving party has the burden of showing a substantial change of circumstances affecting the welfare of the child.

> The court must make findings of specific facts as to what actual past expenditures have been to determine the amount of support necessary to meet the reasonable needs of the child for health, education, and maintenance. The modification of the order must be supported by findings of fact, based upon competent evidence, that there has been a substantial change in circumstances affecting the welfare of the child. It is not necessary for the trial court to make detailed findings of fact upon all the evidence offered at trial. The order must contain the material findings of fact which resolve the issues raised. In each case the findings of fact must be sufficient to allow an appellate court to determine upon what facts the trial court predicated its judgment.

*Ebron v. Ebron*, 40 N.C. App. 270, 271, 252 S.E.2d 235, 236 (1979) (internal citations omitted).

> Modification of an order requires a two-step process. First, a court must determine whether there has been a substantial change in circumstances since the date the existing child support order was entered . . . .
>
> . . . .
>
> Upon finding a substantial change in circumstances, the second step is for the court to enter a new child support order that modifies and supersedes the existing child support order.

*Young*, 224 N.C. App. at 390–91, 736 S.E.2d at 542 (alterations in original) (quoting *Head v. Mosier*, 197 N.C. App. 328, 333–34, 677 S.E.2d 191, 196 (2009)).

> [C]hild support orders may be modified upon a showing of substantial change in circumstances
>
> > [which] may be shown in any of several ways [including]: a substantial increase or decrease

> in the child's needs; a substantial and involuntary decrease in the income of the non-custodial parent even though the child's needs are unchanged; [or] a voluntary decrease in income of either supporting parent, absent bad faith, upon a showing of changed circumstances relating to child oriented expenses.

*Frey v. Best*, 189 N.C. App. 622, 631–32, 659 S.E.2d 60, 68 (2008) (alterations in original) (quoting *Wiggs v. Wiggs*, 128 N.C. App. 512, 515, 495 S.E.2d 401, 403 (1998)).

In the instant case, the trial court entered a permanent child support order on 15 April 2015 providing that plaintiff would pay child support in the amount of $712.99 per month from 1 February 2015 through 1 July 2015, at which time her child support obligation would decrease to $544.15 per month going forward. On 4 February 2016, plaintiff filed a motion to modify her child support obligation. In that motion, plaintiff alleged that since the entry of the prior order, there had been a substantial change in circumstances in that her income had decreased and she had started to pay for health insurance coverage for the minor child. In its 5 December 2016 order, the trial court made findings of fact regarding each party's current incomes and the cost of health insurance, although there was no explicit finding of fact regarding a substantial change in circumstances:

> 6. The Plaintiff's gross monthly income is $2990.00 and net is $2104.00. She has worked at BB&T for several years and her prospects of increased income are not good,

> considering her employment.[1]
>
> 7. The Defendant is a team leader closer and earns $8660.0 per month; his net monthly is $6495.00. He has worked there since September 2016. He previously worked at dealerships making between $13,000 to $17,000 monthly gross. Defendant made gross wages of $124,614 in 2010, $164,857 in 2011, $164,903 in 2012 and $186,643 in 2014. Unlike the plaintiff, the Defendant has much higher earning potential in the future.
>
> 8. Defendant did not obtain insurance for the minor children as ordered by this Court;[2] the Defendant still has not obtained insurance on [Warren[3]] despite his ability to do so; as a result the Plaintiff has insured the children at costs of $282.00 per month.
>
> 9. In addition the Plaintiff continues to pay child support of $258.046 [sic] monthly to the Defendant.

The trial court ordered a new child support obligation of $119.50 per month beginning 1 March 2016. The trial court also found that, based upon this new figure, plaintiff had overpaid child support by $3,269.68.

"While, admittedly, the trial court's findings of fact do not present a level of desired specificity, the court's factual findings were sufficient for our review, given the circumstances in the instant case." *Shipman v. Shipman*, 357 N.C. 471, 479, 586

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[1] In the trial court's Order on Permanent Child Custody, Child Support, Contempt, and Attorney's Fees entered 15 April 2015, the trial court found as fact that "Plaintiff/Mother is employed by BB&T. Plaintiff/Mother's gross yearly income is approximately $40,188.00 with an average *gross monthly income of $3,349.00*." (Emphasis added).

[2] In its Order on Permanent Child Custody, Child Support, Contempt, and Attorney's Fees entered 15 April 2015, the trial court specifically ordered that "Defendant/Father shall continue to provide health insurance coverage for the minor children."

[3] A pseudonym is used to protect the identity of the minor child.

S.E.2d 250, 256 (2003) (reviewing the trial court's modification of a child custody order and noting that "the effects of the substantial changes in circumstances on the minor child . . . [were] self-evident, given the nature and cumulative effect of those changes as characterized by the trial court in its findings of fact"). In the present case, although not labeled as such, the trial court's findings of fact, particularly with respect to defendant's failure to provide health insurance for the children despite a court order instructing him to do so, which left plaintiff with that responsibility, constituted a substantial "change[] [in] circumstances relating to child oriented expenses." *See Frey*, 189 N.C. App. at 632, 659 S.E.2d at 68 (quoting *Wiggs*, 128 N.C. App. at 515, 495 S.E.2d at 403).

Thus, despite the trial court's failure to explicitly and specifically find and conclude as a matter of law that a substantial change in circumstances existed, reading the trial court's order as a whole, the finding that defendant failed to provide health insurance as ordered is a material finding of fact which serves to confirm that a sufficient reason existed to justify the trial court's order modifying child support. *See Lang v. Lang*, 197 N.C. App. 746, 748, 678 S.E.2d 395, 397 (2009) ("On appellate review, an order modifying child support is to be construed broadly." (citation omitted)). Obviously, this Court's review would be rather more straightforward if the trial court had used the specific terms of art—that a substantial change in circumstances exist affecting the welfare of the child—and further that it had

expounded on its implicit findings and conclusion that indicate a change of circumstances does, in fact, exist. However, where, as here, the change in circumstances is self-evident, we uphold the trial court's ruling. Accordingly, the trial court did not abuse its discretion in modifying child support, and defendant's argument is overruled.

*II*

Defendant argues the trial court erred as a matter of law in entering its equitable distribution order. Specifically, defendant contends the trial court erred in (1) ordering defendant to pay plaintiff a distributive award to reimburse her for her payment of storage fees; (2) failing to distribute certain marital debts; and (3) making an unequal distribution of the parties' IRS debts. We address each argument in turn.

> Equitable distribution is vested in the discretion of the trial court and will not be disturbed absent a clear abuse of that discretion. Only a finding that the judgment was unsupported by reason and could not have been the result of competent inquiry, or a finding that the trial judge failed to comply with the statute, will establish an abuse of discretion.

*Wiencek-Adams v. Adams*, 331 N.C. 688, 691, 417 S.E.2d 449, 451 (1992) (internal citations omitted).

Under N.C. Gen. Stat. § 50-20(c), equitable distribution is a three-step process; the trial court must "(1) determine which property is marital [and divisible] property, (2) to calculate the net value of the property, fair market value less encumbrances,

and (3) to distribute that property in an equitable manner." *Beightol v. Beightol*, 90 N.C. App. 58, 63, 367 S.E.2d 347, 350 (1988) (citation omitted).

1. Storage Fees & Distributive Award

Defendant argues the trial court erred in classifying storage fees as marital debt and in ordering defendant to pay plaintiff a distributive award. We disagree.

The trial court made the following relevant findings of fact:

> 10. The Plaintiff has put personal property in storage at a cost of $188.00 monthly. Those costs were originally 145 but increased over time. That is marital debt and that is a total cost of $5,283.00 and she made that expense to prevent waste of the marital estate, having nowhere else to store the furniture.
>
> . . . .
>
> 26. Given the Plaintiff expended $5283.00 for storage, the Defendant is to make a distributive award to the Plaintiff of that much to the Plaintiff no later than February 1, 2017.

A. *Storage Fees*

A marital debt "is one incurred during the marriage and before the date of separation by either spouse or both spouses for the joint benefit of the parties." *Huguelet v. Huguelet*, 113 N.C. App. 533, 536, 439 S.E.2d 208, 210 (1994) (citations omitted). "The party claiming the debt to be marital has the burden of proving the value of the debt on the date of separation and that it was 'incurred for the joint benefit of [both parties].' " *Pott v. Pott*, 126 N.C. App. 285, 288, 484 S.E.2d 822, 825 (1997) (quoting *Miller v. Miller*, 97 N.C. App. 77, 79, 387 S.E.2d 181, 183 (1990)).

Defendant contends that because the parties separated on 18 August 2011 and plaintiff testified that she had been paying the monthly storage fees since 2012 for the storage of personal property the parties owned during the marriage, the storage fees were not a debt incurred during the parties' marriage, and the trial court erred as a matter of law in entering Finding of Fact No. 10.

Plaintiff acknowledges that the trial court "has arguably misclassified the storage fees" as a marital debt, but that the trial court was operating within its discretion in ordering defendant to pay for the storage fees pursuant to N.C. Gen. Stat. § 50-20(c).

We agree that the trial court misclassified this debt as marital debt and conclude that the storage fees incurred by plaintiff are her separate debt. Plaintiff incurred a debt in the form of storage fees *after* the date of separation. But she incurred this debt in order to maintain marital property, namely, various items of furniture which could no longer be stored in a house that had been "foreclosed due to non-payment by [d]efendant."

While "[s]eparate debt . . . cannot be distributed[,]" nevertheless "the trial court must value separate debt and *consider it as a factor* under N.C.G.S. § 50-20(c)(1) . . . when dividing the marital property." *Fox v. Fox*, 114 N.C. App. 125, 134, 441 S.E.2d 613, 619 (1994) (emphasis added) (citing *Byrd v. Owens*, 86 N.C. App. 418, 424, 358 S.E.2d 102, 106 (1987)). Those factors include "[a]cts of either party to maintain

[and/or] preserve . . . the marital property . . . during the period after separation of the parties and before the time of distribution." N.C.G.S. § 50-20(c)(11a) (2015).

Accordingly, where the trial court erroneously classified plaintiff's debt incurred for storage fees as a "marital debt," but where it found that "she made that expense to prevent waste of the marital estate, having nowhere else to store the furniture[,]" based on N.C. Gen. Stat. § 50-20(c)(11a), we find the trial court did not commit reversible error. We next turn to the trial court's distributive award for these storage fees.

B. *Distributive Award*

Pursuant to N.C. Gen. Stat. § 50-20(e), the trial court may make a distributive award in an equitable distribution action either (1) in lieu of an in-kind distribution when the presumption in favor of an in-kind distribution has been rebutted or (2) to facilitate, effectuate, or supplement a distribution of marital or divisible property. N.C.G.S. § 50-20(e) (2015).

N.C. Gen. Stat. § 50-20 regards the distribution of *marital* and *divisible* property, not separate property. *See generally id.* § 50-20(b). Thus, where, as here, we have determined that a debt is separate and not marital property, a distributive award "in lieu of in-kind distribution" or made in order to "supplement a distribution of *marital* . . . property" is inappropriate. *See id.* § 50-20(e).

However, we consider this a "mislabeling" of an order to reimburse plaintiff for her efforts to preserve the marital estate rather than as reversible error. Just as "[p]ayment by one of the spouses, after the date of separation, on a marital home mortgage is a factor appropriately considered by the trial court pursuant to N.C.G.S. § 50-20(c)(11a) . . . in determining what division of marital property is equitable[,]" *Peltzer v. Peltzer*, 222 N.C. App. 784, 792–93, 732 S.E.2d 357, 363 (2012) (quoting *Miller*, 97 N.C. App. at 80–81, 387 S.E.2d at 184), so, too, should be plaintiff's payment of storage fees in order to maintain marital property in the instant case, although made after the date of separation. Accordingly, despite the trial court's semantic error mislabeling the $5,283.00 it ordered defendant to pay plaintiff as a "distributive award," we find no reversible error in the trial court's order. Defendant's argument is overruled.

2. Failing to Distribute Marital Debts

Defendant contends the trial court erred as a matter of law in failing to distribute certain marital debts. Specifically, he challenges Finding of Fact No. 24, which states as follows: "Items 45 through 52, debt items, no evidence was presented as to the amount owed now or how seriously the debts were being pursued by the lenders and the Court makes no distribution thereof." Defendant argues that there is no requirement that a party prove that a lender is actively pursuing collection of a debt before it is distributed and that it therefore failed to distribute the marital debts

listed on lines 45 through 52 on schedule XI of the parties' equitable distribution affidavits. We disagree.

In an equitable distribution proceeding, the trial court "must identify and classify *all* property as marital or separate based upon the evidence presented regarding the nature of the asset." *Smith v. Smith*, 111 N.C. App. 460, 470, 422 S.E.2d 196, 202 (1993) (emphasis added) (citation omitted), *rev'd in part on other grounds*, 336 N.C. 575, 444 S.E.2d 420 (1994).

In the instant case, defendant listed the following debts as marital property:

> 45. Wachovia Card Service #1157—"Charged off"
> 46. CACH, LLC—"In collections"
> 47. Discover Financial Services #0869—"Charged off"
> 48. Fairfield Bay Community Club—"In collections"
> 49. BofA #9324—"Charged off"
> 50. Chase Bank USA NA #4172—"In collections"
> 51. Chase/Bank One Card #6000—"Charged off"
> 52. Chase/Bank One Card #0090—"Charged off"

No amounts were listed as to each debt's worth; in place of a monetary figure, defendant used the phrase "in collections" or "charged off."[4] With regard to which party is in possession of or paying the debts listed above, defendant wrote "n/a" in each column.

The trial court found as fact that "Items 45 through 52, debt items, *no evidence was presented as to the amount owed* now or how seriously the debts were being

[4] "Charged off" debt refers to debt that has been "treat[ed] . . . as a loss or expense because payment is unlikely; to treat as bad debt." Charge off, *Black's Law Dictionary* (10th ed. 2014).

pursued by the lenders and the Court makes no distribution thereof." While "[a] distribution order failing to list all the marital property [will be deemed] fatally defective," *Cornelius v. Cornelius*, 87 N.C. App. 269, 271, 360 S.E.2d 703, 704 (1987) (citation omitted), that is not the case here. "A 'party claiming that property is marital has the burden of proving beyond a preponderance of the evidence' that the property was acquired: by either or both spouses; during the marriage; before the date of separation; and is presently owned." *Fountain v. Fountain*, 148 N.C. App. 329, 332, 559 S.E.2d 25, 29 (2002) (quoting *Lilly v. Lilly*, 107 N.C. App. 484, 486, 420 S.E.2d 492, 493 (1992)). Here, the trial court listed these debts in its order, but found as fact that "no evidence was presented as to the amount[s] owed." Thus, defendant did not meet his burden to prove that these debts were marital property, and, therefore, the trial court did not err in declining to distribute them as such. Defendant's argument is overruled.

3. Unequal distribution of IRS debts

The trial court also found as fact that the parties' IRS debts were $124,000.00 and $8,826.80. It also found these were marital debts and that there should be an unequal distribution of them: "The IRS debt is found to be a marital debt but the Court makes an unequal distribution [because] the Defendant delayed filing taxes, the parties [have] disparate earning potential[s] and the Plaintiff under the IRS tax code would be an innocent spouse." Defendant challenges this finding of fact and

Conclusion of Law No. 37, which states that "[t]here exist grounds to make an unequal distribution of the marital property and debt according to the above findings[,]" because the trial court is required to first make a finding or conclude as a matter of law that an equal division is not equitable. We agree.

> [I]n order to divide a marital estate other than equally, *the trial court must first find that an equal division is not equitable and explain why*. Then, the trial court must decide what is equitable based on the factors set out in N.C. Gen. Stat. § 50-20(c)(1)–(12) after balancing the evidence in light of the policy favoring equal division.

*Lucas v. Lucas*, 209 N.C. App. 492, 504, 706 S.E.2d 270, 278 (2011).

In the instant case, the trial court makes no finding or conclusion that an equal division is not equitable and does not mention the factors in N.C. Gen. Stat. § 50-20(c)(1)–(12) that are required to be considered when making an unequal distribution of marital property. *See id.* Furthermore, the trial court does not state outright *to whom* the IRS debt is to be distributed; instead, we are left to infer that the court intended to distribute it to defendant based on its awkwardly-phrased finding of fact.

> Although the trial court [is] not required to recite in detail the evidence considered in determining what division of the property would be equitable, it [is] required to make findings *sufficient to address the statutory factors* and support the division ordered.
>
> "The purpose for the requirement of specific findings of fact that support the court's conclusion of law is to permit the appellate court on review 'to determine from the record whether the judgment—and the legal conclusions that underlie it—represent a correct application of the law.' "

> When the findings and conclusions are inadequate, appellate review is effectively precluded.

*Rosario v. Rosario*, 139 N.C. App. 258, 260–61, 533 S.E.2d 274, 275 (2000) (emphasis added) (quoting *Armstrong v. Armstrong*, 322 N.C. 396, 405–06, 368 S.E.2d 595, 600 (1988)). "[A] finding stating that the trial court has merely given 'due regard' to the section 50-20 factors *is insufficient as a matter of law*." *Id.* at 262, 533 S.E.2d at 276 (emphasis added) (citations omitted).

Here, the trial court did not acknowledge the existence of the section 50-20 factors in concluding that an unequal distribution was equitable, much less did it give them "due regard." *See id.* As such, the trial court's order, so far as it concluded that "[t]here exist grounds to make an unequal distribution of the marital property and debt according to the above findings," "is insufficient as a matter of law." *See id.*

> We are not unmindful of the heavy caseload in the state's district courts and realize that the district court judges do not have the luxury of spending unlimited time on each case. We are also aware that, almost without exception, district court judges provide considered expertise in a demanding and complex area of the law where the litigants' feelings often are inflamed. We are, however, unable to discharge our appellate responsibilities unless the trial courts reach reviewable conclusions of law based upon findings of fact supported in the record.

*Id.* at 267, 533 S.E.2d at 279 (citation omitted). But on this issue, we must reverse and remand. On remand, we leave it to the trial court's discretion whether to hear additional evidence in properly evaluating the section 50-20(c) factors.

*III*

Lastly, defendant argues the trial court erred in its calculation of plaintiff's monthly expenses and in its award of alimony. Specifically, defendant argues (1) there were no findings regarding the parties' income or expenses as of the date of the entry of the order and (2) the trial court's Finding of Fact No. 27 determining plaintiff's monthly expenses was in error because it was based upon a hypothetical need to incur certain expenses in the future, and therefore, the trial court erred in setting its alimony award on based on these numbers. We disagree.

"The amount of alimony is determined by the trial judge in the exercise of his sound discretion and is not reviewable on appeal in the absence of an abuse of discretion." *Quick v. Quick*, 305 N.C. 446, 453, 290 S.E.2d 653, 658 (1982) (citation omitted), *superseded on other grounds by statute as stated in State v. Brice*, ___ N.C. App. ___, 806 S.E.2d 32 (2017).

> A trial court's award of alimony is addressed in N.C. Gen. Stat. § 50-16.3A . . . which provides in pertinent part that in "determining the amount, duration, and manner of payment of alimony, the court shall consider all relevant factors" including, *inter alia*, the following: marital misconduct of either spouse; the relative earnings and earning capacities of the spouses; the ages of the spouses; the amount and sources of earned and unearned income of both spouses; the duration of the marriage; the extent to which the earning power, expenses, or financial obligations of a spouse are affected by the spouse's serving as custodian of a minor child; the standard of living of the spouses during the marriage; the assets, liabilities, and debt service requirements of the spouses, including legal obligations of

support; and the relative needs of the spouses.

*Hartsell v. Hartsell*, 189 N.C. App. 65, 69, 657 S.E.2d 724, 727 (2008).

1. Defendant's Income as of Date of Entry of the Order

Defendant first contends the trial court erred in that it made no findings regarding the parties' income or expenses as of the date of the entry of the order.

"Alimony is ordinarily determined by a party's *actual* income, from all sources, *at the time of the order*." *Collins v. Collins*, 243 N.C. App. 696, ___, 778 S.E.2d 854, 858–59 (2015) (citation omitted) (quoting *Kowalick v. Kowalick*, 129 N.C. App. 781, 787, 501 S.E.2d 671, 675 (1998)). As such, "[a] supporting spouse's ability to pay an alimony award is generally determined by the supporting spouse's *income at the time of the award*." *Rhew v. Felton*, 178 N.C. App. 475, 484–85, 631 S.E.2d 859, 866 (2006) (emphasis added) (citing *Quick*, 305 N.C. at 453, 290 S.E.2d at 658).

In *Collins*, "the trial court's findings of fact were limited to the parties' incomes and expenses *in the various years preceding* the hearing." 243 N.C. App. at ___, 778 S.E.2d at 861 (emphasis added). Also, "[t]he [alimony] order was entered over two years [after the 2012 hearing] in 2014 and require[d] [the] [d]efendant to pay alimony to [the] [p]laintiff calculated based upon [the] [p]laintiff's income *from five to seven years prior* to entry of the order." *Id.* at ___, 778 S.E.2d at 859 (citation omitted). This Court reversed and remanded the alimony order because "[t]he trial court's conclusion that [the] [p]laintiff is not a dependent spouse [was] not supported by the

findings of fact that *at the time of the order* [the ] [p]laintiff lacked sufficient *actual* and *current* income to maintain her standard of living established during the marriage." *Id.* (citation omitted).

In the instant case, defendant challenges the trial court's alimony order entered 5 December 2016, ten months after the hearing on 18 February 2016. Defendant concedes that the financial information relied upon by the trial court in entering its 5 December 2016 order is not as out of date as the information was in *Collins*. However, defendant does not challenge the trial court's findings of fact relevant to this issue as unsupported by the evidence, which is the standard by which we review a trial court's findings of fact. *See Pegg v. Jones*, 187 N.C. App. 355, 358, 653 S.E.2d 229, 231 (2007). As they are unchallenged, they are binding on appeal. *See Carpenter v. Carpenter*, 225 N.C. App. 269, 271, 737 S.E.2d 783, 786 (2013). In other words, while defendant does challenge the trial court's finding of fact related to plaintiff's monthly expenses, *see infra* Section III.2, defendant does not challenge the trial court's other findings of fact, namely, Finding of Fact No. 7, related to his income:

> 7. The Defendant is a team leader closer and earns $8660.0 per month; his net monthly is $6495.00. He has worked there since September 2016. He previously worked at dealerships making between $13,000 to $17,000 monthly gross. Defendant made gross wages of $124,614 in 2010, $164,857 in 2011, $164,903 in 2012 and $186,643 in 2014. Unlike the Plaintiff, the Defendant has a much higher earning potential in the future.

Thus, as the standard by which we review the findings of fact in an alimony order is not their "timeliness" as it relates to the date of the alimony hearing and where relevant findings of fact are binding on appeal, we conclude the trial court did not abuse its discretion. Defendant's argument is overruled.

2. Plaintiff's Monthly Expenses

Defendant also argues the trial court's Finding of Fact No. 27 determining plaintiff's monthly expenses was in error because it was based upon a hypothetical need to incur certain expenses in the future, and therefore, the trial court erred in setting its alimony award based on these numbers.

"The determination of what constitutes the reasonable needs and expenses of a party in an alimony action is within the discretion of the trial judge, and [the judge] is not required to accept at face value the assertion of living expenses offered by the litigants themselves." *Whedon v. Whedon*, 58 N.C. App. 524, 529, 294 S.E.2d 29, 32–33 (1982) (citing *Clark v. Clark*, 301 N.C. 123, 131, 271 S.E.2d 58, 65 (1980)). "Implicit in this is the idea that the trial judge may resort to [her] own common sense and every-day experiences in calculating the reasonable needs and expenses of the parties." *Robinson v. Robinson*, 210 N.C. App. 319, 329, 707 S.E.2d 785, 793 (2011) (alteration in original) (quoting *Bookholt v. Bookholt*, 136 N.C. App. 247, 250, 523 S.E.2d 729, 732 (1999)). "[T]he parties' needs and expenses for purposes of computing alimony should be measured in light of their accustomed standard of living during

the marriage." *Burger v. Burger*, ___ N.C. App. ___, ___, 790 S.E.2d 683, 687 (2016) (alteration in original) (quoting *Barrett v. Barrett*, 140 N.C. App. 369, 372, 536 S.E.2d 642, 645 (2000)).

In *Burger*, the trial court relied on the husband's financial affidavit in making its findings regarding the total amount of his reasonable needs and expenses. *Id.* On appeal, the wife argued that "the expenses in the financial affidavit [were] 'completely made up[.]' " *Id.* However, this Court determined that the wife's "argument simply goes to the credibility and weight to be given to the affidavit. [Wife] was free to attack [Husband's] affidavit at trial by cross-examination . . . . Such determinations of credibility are for the trial court, not this Court." *Id.* (alterations in original) (quoting *Parsons v. Parsons*, 231 N.C. App. 397, 400, 752 S.E.2d 530, 533 (2013)). Accordingly, this Court determined "the trial court acted within its discretion in calculating Husband's total reasonable needs and expenses based on the record evidence." *Id.*

In the instant case, the trial court made the following findings of fact regarding plaintiff's "reasonable needs and expenses":

> 27. As to the alimony claim, the Plaintiff's monthly needs are $2,934.00, her net is $2,172.00 and her shortfall is $763.68; the Plaintiff's needs are $1250.00 housing, she cannot be expected to live with her mother permanently, $50.00 home maintenance, $275.00 car payment, $75.00 repairs, $100.0 car insurance groceries, $300.00 religious contributions, $48.00 charitable contributions, $10.00 uninsured prescription drugs, $30.00 clothing, $50.00 grooming, $17.00, entertainment, $30.00 work lunches, $50.00 meals out, $30.00 vacation, 25.00 birthday gifts,

> $10.00 life insurance, $5.00 car registration, $40.00 vacation, $50.00 credit cards and $119.15 monthly child support for a total of 2934.00.

Similar to the wife in *Burger*, here, defendant challenges the trial court's Finding of Fact No. 27 as supported only by plaintiff's financial affidavit. As evidenced by this Court's opinion in *Burger*, such record evidence, even if one-sided, is sufficient to support a trial court's finding regarding a party's reasonable needs and expenses. *See Burger*, ___ N.C. App. at ___, 790 S.E.2d at 687. Here, plaintiff's financial affidavit appeared to include her current and actual expenses--$200/month—as well as her accustomed standard of living house payment or rent—$2,607.25/month. In finding that the plaintiff's housing needs are equal to $1,250.00/month, the trial court presumably took into account plaintiff's accustomed standard of living and current expenses in reaching this total. Accordingly, the trial court acted within its discretion in calculating plaintiff's total reasonable needs and expenses based on the record evidence, including her financial affidavit. *See id.* Defendant's argument is overruled.

AFFIRMED IN PART; REVERSED AND REMANDED IN PART.

Judges BERGER and MURPHY concur.

Report per Rule 30(e).