An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 17-763

Filed: 21 August 2018

Wake County, No. 11-CVD-16365

DABEERUDDIN KHAJA, Plaintiff,

v.

FATIMA HUSNA, Defendant.

Appeal by Defendant from order entered 26 October 2016 by Judge Michael Denning in Wake County District Court. Heard in the Court of Appeals 18 April 2018.

*Sandlin Family Law Group, by Deborah Sandlin, for Plaintiff-Appellee.*

*The Lea/Schultz Law Firm, P.C., by James W. Lea, III, and Paige Inman, for Defendant-Appellant.*

DILLON, Judge.

Fatima Husna ("Wife") appeals from the trial court's order awarding her former husband, Dabeeruddin Khaja ("Husband"), alimony and attorney's fees. After careful review, we affirm.

I. Background

In 2006, Husband met Wife online and moved to the Unites States to be with her. In 2007, Husband and Wife were married in a ceremony held in India. In 2008, they separated while living in the United States. During the marriage and after separation, Wife subjected Husband to a pattern of mental and emotional abuse.

In October 2011, Husband commenced this action seeking absolute divorce and alimony. This matter comes to our Court for the second time. Previously, in 2015, we affirmed the trial court's order granting divorce but reversed and remanded the trial court's award granting Husband alimony. *Khaja v. Husna*, 243 N.C. App. 330, 777 S.E.2d 781 (2015). In 2016, on remand, the trial court entered an order which awarded Husband alimony and attorney's fees (the "Alimony Award"). This second appeal is from the Alimony Award.

## II. Analysis

Wife essentially makes three arguments on this second appeal, which we address in turn.

### A. Subject Matter Jurisdiction

Wife asserts that the trial court lacked subject matter jurisdiction to enter the Alimony Order. Specifically, Wife argues that the trial court should have recognized the annulment of the marriage she obtained in India in November 2011, a month after Husband commenced this present action, and barred Husband's subsequent

claim for alimony.[1] Because the trial court did not err in determining that neither Wife nor Husband was domiciled in India when she sought and obtained the annulment, we conclude that the trial court did not err in giving no effect to the Indian annulment.

It is the law in North Carolina that foreign divorces and annulments, whether granted in other States or granted in other countries, need not be recognized by our courts where neither party was domiciled in the jurisdiction which granted the divorce or annulment. Our Supreme Court has held this to be the case with respect to decrees rendered in another State:

> [A] foreign decree of divorce rendered in a state in which neither of the parties had a bona fide domicile is not required to be recognized in another state under the full faith and credit clause of the federal constitution, and . . . the court of another state is free to go behind the findings of the foreign divorce court as to the jurisdictional fact of domicile in the divorce forum, and find for itself, contrary to the finding of the foreign divorce court, that no domicile in fact existed in the foreign state to entitle the foreign decree to extraterritorial recognition[.]

*Donnell v. Howell*, 257 N.C. 175, 186, 125 S.E.2d 448, 456 (1962). We have held that this same rule applies with respect to decrees rendered in foreign countries. *See Mayer v. Mayer,* 66 N.C. App. 522, 528, 311 S.E.2d 659, 664 (1984) ("Since the power

[1] In a first appeal, Wife failed to pursue an argument concerning our lack of subject matter jurisdiction based on the Indian annulment. While this failure would typically constitute a waiver of an issue on a subsequent appeal, subject matter jurisdiction may be argued for the first time at any stage of the proceedings, even at the Supreme Court. *See Boseman v. Jarrell*, 364 N.C. 537, 548, 704 S.E.2d 494, 502 (2010).

of a State of the Union to grant a divorce decree is dependent upon the existence of a sufficient jurisdictional basis—domicile or such a relationship between the parties [and] the State as would make it reasonable for the State to dissolve the marriage—it follows that the validity of a foreign divorce decree should depend upon an adequate jurisdictional basis.”).

We note that “[d]omicile denotes one's permanent, established home . . . where [he or she] intends to remain permanently, or for an indefinite length of time, or until some unexpected event shall occur to induce him to leave.” *Hall v. Wake County Bd. of Elections,* 280 N.C. 600, 605, 187 S.E.2d 52, 55 (1972). Further, “[a]lthough a person may have more than one residence, he can only have one domicile.” *Atassi v. Atassi*, 117 N.C. App. 506, 511, 451 S.E.2d 371, 374 (1995). And one can change her domicile by the (1) actual abandonment of the previous domicile with an intent not to return; (2) physical residence in the new place; and (3) an intent to remain in the new place permanently or indefinitely. *Hall*, 280 N.C. at 608-09, 187 S.E.2d at 57.

Here, the trial court found that Wife and Husband were domiciled in the United States at the time Wife sought and obtained the Indian annulment in 2011. At the time of the action, Husband was a resident of New Jersey, living in a home with his family. He had put down roots, continued studying to achieve an American medical degree, and maintained his intent to stay in the United States. Wife lived and worked in North Carolina for years and conceded that she continued to live in

the United States at each step of the trial process. Therefore, the trial court did not err in determining that both Husband and Wife remained domiciled in the United States at the time of the alleged annulment.

Further, the trial court fully considered the alleged annulment, weighed the evidence presented, and found that the annulment was conducted without proper service on Husband and without Husband's participation. Accordingly, we conclude that the trial court had subject matter jurisdiction to award alimony and attorney's fees.

B. Alimony Award

With regard to the Alimony Order, Wife challenges a total of thirty-six (36) of the trial court's sixty-two (62) findings of fact. In sum, Wife alleges that these findings of fact either (1) were not supported by competent evidence at trial, (2) were based on factual inaccuracies, or (3) related to events or litigation occurring in India and other Wake County courts of which the trial court had limited or no knowledge.

When the trial court sits without a jury, the standard of review on appeal is whether there was competent evidence to support the trial court's findings of fact and whether its conclusions of law were proper in light of such facts. *Oakley v. Oakley*, 165 N.C. App. 859, 861, 599 S.E. 2d 925, 927 (2004). Evidentiary issues concerning credibility, contradictions, and discrepancies are for the trial court as the fact-finder

to resolve. *Smallwood v. Smallwood*, ___ N.C. App. ___, ___, 742 S.E.2d 814, 817 (2013).

As our General Statutes outline, alimony is to be awarded to a dependent spouse following two separate inquiries: (1) whether either spouse is a dependent spouse and (2) whether an amount of alimony is equitable under the circumstances. N.C. Gen. Stat. § 50-16.3A(a) (2015).

1. Dependent Spouse

First, entitlement to alimony requires that the seeking spouse be a dependent spouse and the other be a supporting spouse. *Id.* A spouse is a dependent spouse if he is:

> either "actually substantially dependent upon the other spouse" or "substantially in need of maintenance and support from the other spouse." A spouse is "actually substantially dependent" if he or she is currently unable to meet his or her own maintenance and support. A spouse is "substantially in need of maintenance" if he or she will be unable to meet his or her needs in the future, even if he or she is currently meeting those needs.

*Barrett v. Barrett*, 140 N.C. App. 369, 371, 536 S.E.2d 642, 644-45 (2000) (internal marks and citations omitted). Our standard of review for entitlement to alimony is *de novo*. *See Rickert v. Rickert*, 282 N.C. 373, 379, 193 S.E. 2d 79, 82 (1972).

In an unchallenged finding, the trial court found that Wife earned $114,667 per year or had the ability to earn this amount but had left her job through her own actions. There was evidence Wife offered to the contrary, but the trial court found

her evidence not to be credible. Further, we note that the record demonstrates that Wife was asked to supplement evidence regarding her income and financial documents and that Wife was resistant to and non-compliant with this request. *See Haddon v. Haddon*, 42 N.C. App. 632, 636, 257 S.E.2d 483, 486 (1979) (conceding that, while "it would be more desirable for the trial court to have more evidence of defendant's earnings and financial condition and that the court make more detailed findings of fact based on such evidence," "such evidence was not available to the court because of defendant's failure or refusal to prepare business records and file income tax returns" and "the evidence and findings are sufficient to support the awards of alimony").

Regarding the Husband's financial condition, Husband submitted documentation detailing his poor financial circumstances and gave additional testimony with respect to that information. This evidence was certainly competent to support the trial court's findings regarding his earning capacity, and the trial court was free to assign weight to the entirety of the evidence before it.

Wife challenges the trial court's findings of fact pertaining to events that transpired in India and pending litigation between the parties in Wake County. Wife's concern, here, appears to be that she was unable to present evidence regarding these events and that only Husband's side of the story was heard by the trial court. However, Wife was barred from offering certain evidence due to the terms of a

Sanctions Order discussed and affirmed in this Court's first opinion in this case. *See Khaja*, 243 N.C. App. 330, 777 S.E.2d 781. The trial court was free to hear Husband's evidence, and, upon determining that it was credible, make findings of fact accordingly. Further, the trial court heard evidence from other witnesses regarding the events that occurred in India and other pending litigation.

In sum, where the trial court's findings of fact are supported by competent evidence, they are conclusive on appeal, even if there is contrary evidence. *Smallwood*, ___ N.C. App. at ___, 742 S.E.2d at 817. Therefore, after review of the record, we find no abuse of discretion in the trial court's decision to award Husband alimony. We conclude that the trial court's findings support a determination that Husband was indeed a dependent spouse in need of alimony in order to meet his pre-separation standard of living. *See Barrett*, 140 N.C. App. at 371, 536 S.E.2d at 644.

2. Amount of Alimony

Wife challenges the amount and duration of alimony awarded to Husband, as well as the grant of retroactive alimony. Specifically, Wife argues that a consideration of the statutory factors enumerated in N.C. Gen. Stat. § 50-16.3A shows the amount of alimony awarded to Husband is inequitable and an award of such a size is unsupported by reason. We review the amount of a trial court's alimony award under an abuse of discretion standard. *Sayland v. Sayland*, 267 N.C. 378, 382, 148 S.E.2d 218, 221 (1966).

Section 50-16.3A enumerates sixteen (16) factors to guide the trial court's determination of the amount and duration of an alimony award, *see* N.C. Gen. Stat. § 50-16.3A(b), and instructs the trial court to set forth its reasons for granting a particular amount and duration, N.C. Gen. Stat. § 50-16.3A (c).

In the present case, the trial court considered a number of the statutory factors, finding that "[Wife]'s voluntary assumption of her duty to support [Husband]," "the acts taken by [Wife] to diminish or destroy any earning potential [Husband] has in both the United States and India;" and [Wife]'s cruelty, abuse, and abandonment throughout the marriage and separation each particularly influential. Wife contends that these findings were not supported by the evidence, and that the trial court did not place enough emphasis on the extremely brief length of the marriage. We disagree.

No single factor must be weighted more than another and the trial court has no duty to explain how it balanced the factors it considered. *See Montague v. Montague*, 238 N.C. App. 61, 70, 767 S.E.2d 71, 78 (2014). The court need only consider factors upon which competent evidence was presented and state its reasoning. *Id.* Wife insists that the short length of the marriage was not long enough to form a "standard of living," because the marriage lasted less than one year and the total cohabitation time for Wife and Husband was seventy-one (71) days. However, though this Court previously remanded this case for findings on the date of

separation, Wife has yet to offer evidence to support a separation date. Despite the shortness of the marriage, Husband moved to the United States in order to reside with Wife and enjoyed a certain standard of living upon his arrival here.

Additionally, though Husband's education was ultimately in his own control, Wife's marital misconduct at least indirectly gave Husband great difficulty in completing his medical education. Given Husband's inability to reach his own earning capacity, Wife's financial status and earning capacity far exceeded that of Husband.

Based on the evidence presented and consideration of the statutory factors, the trial court awarded Husband payment of arrears and thereafter $2,500 per month in alimony for a cumulative total of ninety-six (96) months. We note Wife's contention that the trial court exceeded the scope of its instructions on remand by functionally tripling the alimony award given in its prior alimony order. But in our first opinion, we instructed that the trial court had "sole discretion as to whether the parties should be permitted to present additional evidence." *Khaja*, 243 N.C. App. at 355, 777 S.E.2d at 796. On remand, after hearing that Husband's circumstances had not changed, the trial court decided to increase its previous alimony award, a determination that was within the trial court's power to make.

Wife also contends that the trial court erred in awarding Husband a *retroactive* award for the time between when the parties separated and the time when Husband

brought his claim for alimony. In particular, Wife contends that Husband failed to request such relief in his pleadings.

This Court has repeatedly recognized that the trial court is authorized by N.C. Gen. Stat. § 50-16.3A to award "retroactive" alimony for the period between the parties' separation and the filing of the claim for alimony. *Smallwood*, ___ N.C. App. at ___, 742 S.E.2d at 823-24 ("[C]onsistent with longstanding precedent, [N.C. Gen. Stat.] § 50–16.3A authorizes the trial court, in appropriate circumstances, to award alimony for the period between the parties' date of separation and the filing of the claim for alimony.").

But Wife argues that our Court imposed a pleading requirement for the receipt of an initial retroactive alimony award in *Hill v. Hill*, 105 N.C. App. 334, 413 S.E.2d 570 (1992). However, our Supreme Court reversed that decision. *Hill v. Hill*, 335 N.C. 140, 145, 435 S.E.2d 766, 769 (1993). Neither opinion in *Hill*, though, applies to the case at hand.

In any event, Husband *did* make a request in his Complaint for "alimony" generally and also for "such other relief as is just and proper." Accordingly, we hold that the trial court did not err in awarding Husband alimony, and rightfully determined its amount and duration.

C. Attorney's Fees

Lastly, Wife contends that the trial court erred in awarding attorney's fees. We disagree.

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. *Clark v. Clark*, 301 N.C. 123, 135-36, 271 S.E.2d 58, 67 (1980). The satisfaction of these three requirements is a question of law, fully reviewable on appeal, *id.* at 136, 271 S.E. 2d at 67, but the amount of attorney's fees awarded will not be overturned on appeal absent an abuse of discretion. *Stadiem v. Stadiem*, 230 N.C. 318, 320, 52 S.E. 2d 899, 900 (1949).

Regarding the first two requirements, we conclude that Husband is a dependent spouse who is entitled to relief. Regarding the third factor, our Supreme Court has instructed that the trial court should generally focus on the income and estate of the dependent spouse, although a comparison of his or her estate with that of the supporting spouse may be considered. *Van Every v. McGuire*, 348 N.C. 58, 62, 497 S.E. 2d 689, 691 (1998).

The attorney's fees in this case were accrued though many years of litigation at multiple stages of trial involving various, complex issues of family law and international jurisprudence. The trial court reviewed the hourly rate of Husband's counsel and the hours spent on the case and determined that each were reasonable given the complexity of the work involved, and reasonable for a similar attorney in

Wake County. We agree that the total sum of roughly $110,000 is reasonable for the work required in this case.[2]

The evidence showed, and the trial court found, that Husband's own estate was insufficient to bear the cost of litigation. At the time of the hearing, Husband was living with relatives while trying to complete efforts to obtain an American medical license. His own estate was nominal, limited to earnings from minimum wage employment and the charitable contributions of family members. We agree that Husband's estate was insufficient to defray the cost of the litigation.

We have carefully reviewed the record and affirm the trial court's award of attorney's fees in this case.

## III. Conclusion

We hold that the trial court had subject matter jurisdiction to consider this matter, and we affirm the trial court's Alimony Award, awarding alimony and attorney's fees to Husband.

AFFIRMED.

Judges DIETZ and ARROWOOD concur.

---

[2] Wife objects to the amount awarded only insofar as it includes fees incurred during the first appeal in this case. Wife contends that she should not be burdened with fees respective of that appeal because she prevailed in having the case remanded for the purposes of its alimony ruling. However, we now review an award of alimony corresponding to this secondary appeal and to the case as a whole, in which Wife did not prevail. "[A]n award of attorney's fees for services performed on appeal should ordinarily be granted, provided the general statutory requirements for such an award are duly met, *especially where the appeal is taken by the supporting spouse*." *Fungaroli v. Fungaroli,* 53 N.C. App. 270, 273, 280 S.E.2d 787, 790 (1981) (emphasis added).

Report per Rule 30(e).