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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-335

Filed: 6 November 2018

Halifax County, No. 15CVD1141

THOMAS YOUNG, Plaintiff

v.

BRENDA L. YOUNG, Defendant.

Appeal by plaintiff from judgment and order entered 6 September 2017 by Judge Brenda G. Branch in District Court, Halifax County. Heard in the Court of Appeals 19 September 2018.

Perry & Associates, by Cedric R. Perry, for plaintiff-appellant.

No brief filed for defendant-appellee.

STROUD, Judge.

Plaintiff appeals an equitable distribution judgment and order. Because the trial court did not abuse its discretion in ordering an unequal distribution in defendant's favor and correctly classified, valued, and distributed the marital property and debt of the parties, we affirm.

On 6 September 2017, the trial court entered an equitable distribution judgment and order. Plaintiff appeals and raises two issues, with one and one-half pages of "argument."

I. Unequal Distribution

Plaintiff first contends the trial court erred by granting an unequal distribution in defendant's favor. Plaintiff notes that an unequal distribution is only allowed if the trial court finds "by a preponderance of the evidence that one or more of the 12 factors in Section 50-20(c) [have been] presented" and also contends these factors as found by the trial court were not enough to support an unequal distribution.

The trial court made detailed findings of fact addressing the distributional factors:

> 10. The Court has considered the evidence relating to the statutory factors set forth in N.C. Gen. Stat. § 50-20(c), and the Court finds that an unequal division of the marital property is equitable, reasonable, and fair to the parties in this case based upon the following factors:
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> a. N.C. Gen. Stat. § 50-20(c)(1),(5),(6),(11),(12). The Plaintiff is fifty-eight years old. The Plaintiff receives Social Security Disability which is not marital property. He receives $1,113 per month. There are no taxes deducted from this sum. He does not file tax returns. In addition, he earns cash performing odd jobs and cutting grass for patrons. He has even paid employees to assist him with these jobs. The Defendant is employed by the North Carolina Department of Corrections. She is fifty-five years old. She has been a correctional officer for sixteen years. She has eight to nine years before she is eligible for retirement. She earns thirty-five thousand dollars per year. The Defendant has no other income source or

> retirement. The Defendant is responsible for the mortgage on the former marital residence. The Plaintiff purchased a home with a girlfriend prior to the date of separation. He conveyed his interest in the home to this girlfriend. Presently, the Plaintiff resides in a home which he owns. He is making plans to move to another home.
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> b. N.C. Gen. Stat. § 50-20(c)(9). The non-liquid character of the home. The home has decreased in value. The home will be difficult to sell.
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> c. N.C. Gen. Stat. § 50-20(c)(11a). The Defendant has maintained and preserved the marital property during the period after separation of the parties and before the time of distribution. The Defendant has also improved the property by replacing the roof. Although the Plaintiff has stored his landscaping equipment and tools at the marital residence, the Defendant has maintained and preserved the property.

Plaintiff did not challenge any of the trial court's findings of fact, so they are binding on appeal. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) ("Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal."). While he notes a disparity of income between the parties, he does not challenge the trial court's finding regarding income as error. Plaintiff argues only that the factors are not "favor[able]" to defendant or "do not apply[.]"

But, as noted above, the trial court made detailed findings as to the factors as required by North Carolina General Statute § 50-20(c) and has the discretion to weigh the distributional factors. *See Hill v. Hill*, 229 N.C. App. 511, 525, 748 S.E.2d 352, 362 (2013) ("The trial court is required to consider each of the factors enumerated in

N.C. Gen. Stat. § 50-20(c), including any other factor which the court finds to be just and proper, to the extent that evidence is presented as to each factor. However, this statute does not require the trial court to consider additional factors beyond those enumerated in the statute. Consideration of factors beyond those enumerated, as previously stated, is within the trial court's discretion. The trial court considered the arguments and proposed factors of both sides, and, in its discretion, did not find all of the facts argued by plaintiff. The trial court did consider each of the relevant statutory factors under N.C. Gen. Stat. § 50-20(c), and in doing so, did not abuse its discretion." (citations, quotation marks, and brackets omitted)). We see no abuse of discretion in how the trial court weighed and considered the distributional factors. This argument is without merit.

II. Marital Debt

Plaintiff also contends that "the trial judge committed reversible error when she failed to make a finding as to the marital debt of the parties[.]" Plaintiff's entire argument comprises four sentences. The substance of the argument is that "[e]ven though the trial court adopted schedule G of the Defendant/Appellee, she failed to specifically classify the mortgage debt and distribute the same. Under Section 50-20(c) of the General Statutes of North Carolina, the court is obligated to consider all liabilities of the parties when making a distribution. This, the trial court did not do." (Quotation marks omitted).

The trial court made a detailed finding of fact regarding the marital home, its mortgage, and the valuation of the home, ultimately finding a value of $46,100.00. Based upon the mortgage balance, the trial court found the home had a net value of $21,154.64. In fact, on Schedule G of the pretrial order, the parties had agreed that the mortgage was marital debt and that defendant had made all of the payments on the mortgage after the date of separation. The trial court then distributed the home, valued at $21,154.64, to defendant.

Plaintiff does not contest the findings of fact or the net value of the home. The trial court found that "[t]he Defendant *is* responsible for the mortgage on the former marital residence." (Emphasis added.). As best we can tell, plaintiff is contending that the trial court should have been more specific in its wording in distributing the mortgage to defendant.

Where, as here, the trial court determines that an equal division of property would not be equitable, the court must divide the parties' marital and divisible property equitably, considering the factors enumerated under North Carolina General Statute § 50-20(c)(1)-(12). *See* N.C. Gen. Stat. § 50-20(c)(1)-(12) (2017). Plaintiff is correct that the trial court should specifically address marital debt:

> Debt, as well as assets, must be classified as marital or separate property. If the debt is classified as marital, the court must value the debt and distribute it pursuant to N.C.G.S. Sec. 50-20(c). For the purpose of an equitable distribution, marital debt is debt incurred during the marriage for the joint benefit of the husband and wife.

Byrd v. Owens, 86 N.C. App. 418, 424, 358 S.E.2d 102, 106 (1987) (citations omitted).

Furthermore,

> [a] spouse is entitled to some consideration, in an equitable distribution proceeding, for any post-separation payments made by that spouse (from non-marital or separate funds) for the benefit of the marital estate. Likewise, a spouse is entitled to some consideration for any post-separation use of marital property by the other spouse. To accommodate post-separation payments, the trial court may treat the payments as distributional factors under section 50–20(c)(11a), or provide direct credits for the benefit of the spouse making the payments. With regard to post-separation use of marital property, the trial court may treat the use as a distributional factor under N.C. Gen. Stat. § 50–20(c)(12), or place some value on the use and provide a direct credit for the benefit of the spouse who did not use the property. If the property is distributed to the spouse who did not have the post-separation use of it or who did not make post-separation payments relating to the property's maintenance (i.e. taxes, insurance, repairs), the use and/or payments must be considered as either a credit or distributional factor. If, on the other hand, the property is distributed to the spouse who had the post-separation use of it or who made post-separation payments relating to its maintenance, there is, as a general proposition, no entitlement to a credit or distributional factor. Nonetheless, the trial court may, in its discretion, weigh the equities in a particular case and find that a credit or distributional factor would be appropriate under the circumstances.

Walter v. Walter, 149 N.C. App. 723, 731–32, 561 S.E.2d 571, 576–77 (2002) (citations omitted).

Here, the trial court awarded the marital home to defendant and determined that a 32/68 division of property in her favor would be "equitable, fair and reasonable to the parties." It is evident from the order that, in arriving at these conclusions, the trial court considered defendant's maintenance of the marital home and sole responsibility for the parties' monthly mortgage payments. The findings of fact, conclusions of law, and decree all implicitly assign the mortgage debt to defendant. But the court failed to explicitly classify the parties' mortgage as marital debt, or to make any detailed findings establishing how this distribution of debt affected the court's ultimate distribution of property.

> In today's society debt is commonplace and distribution of the debts can be as great a concern to divorced persons as distribution of the assets. Distribution of marital debts has the benefit of resolving all issues flowing from the former marriage relationship. . . . Accordingly, when the court distributes debts the court must make findings to show it considered all debts of the parties and to identify those which comprise marital debts.

Geer v. Geer, 84 N.C. App. 471, 475-46, 353 S.E.2d 427, 430 (1987).

Nevertheless, "it is axiomatic that the party asserting error must show from the record not only that the trial court committed error, but that the aggrieved party was prejudiced as a result." *Kabasan v. Kabasan*, ___N.C. App. ___, ___, 810 S.E.2d 691, 709 (2018) (citation, quotation marks, and brackets omitted). Plaintiff does not challenge the trial court's valuation of the marital home or any of its findings of fact. The trial court found, in relevant part, that "Defendant is responsible for the

mortgage[;]" that "[t]he home has decreased in value . . . [and] will be difficult to sell[;]" and "Defendant has maintained and preserved the marital property during the period after separation of the parties and before the time of distribution[,]" including "improv[ing] the property by replacing the roof." We are bound by these unchallenged findings of fact. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

Furthermore,

> [t]his Court has long held that where
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> > the party claiming the property, here a debt, to be marital has failed in his burden to present evidence from which the trial court can classify, value and distribute the property, that party cannot on appeal claim error when the trial court fails to classify the property as marital and distribute it.

Cushman v. Cushman, 244 N.C. App. 555, 566, 781 S.E.2d 499, 506 (2016) (citation omitted). At trial, plaintiff offered no evidence to rebut the trial court's findings regarding the parties' marital debt; on appeal, he barely offers any arguments. Although plaintiff faults the trial court for failing "to specifically classify the mortgage debt and distribute the same[,]" plaintiff neglects to explain how he was prejudiced by the error. Plaintiff's bare assertion is insufficient to carry his burden of establishing a right to appellate relief.

We affirm.

AFFIRMED.

Judges ZACHARY and MURPHY concur.

Report per Rule 30(e).