

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA19-11

Filed: 7 January 2020

Burke County, No. 12 CVD 1555

BECKY ANN CHAPPELL, Plaintiff,

v.

JOHN DANIEL CHAPPELL, Defendant.

Appeal by defendant from judgment entered 20 December 2017 by Judge Robert A. Mullinax, Jr., in Burke County District Court. Heard in the Court of Appeals 2 October 2019.

Robert & Stevens, P.A., by Mark C. Kurdys, for plaintiff-appellee.

Jonathan McGirt for defendant-appellant.

ZACHARY, Judge.

Defendant John Daniel Chappell appeals from the trial court's equitable distribution judgment. We affirm in part, reverse in part, and remand.

Background

CHAPPELL V. CHAPPELL

Opinion of the Court

Defendant-Husband and Plaintiff Becky Ann Chappell were married in August of 1982. The parties separated in March of 2012, and were granted an absolute divorce in March of 2014.

The trial court entered an equitable distribution judgment on 20 December 2017. The parties disagreed as to the classification, valuation, or distribution of the vast majority of their marital estate, thus requiring the trial court to make complex findings and conclusions concerning an extensive array of the parties' real, personal, and intangible personal property. The trial court determined that an unequal distribution of the parties' marital and divisible property was equitable, and concluded that

a distribution of 49% of the marital estate to Plaintiff[-Wife] and 51% of the marital estate to Defendant[-Husband] would be equitable. The net fair market value of the parties' marital and divisible estates on the date of their separation is \$1,252,969.95. An in kind distribution of those estates would distribute \$712,304.55 to Defendant[-Husband] and \$540,665.36 to Plaintiff[-Wife]. A distributive award to Plaintiff[-Wife] from Defendant[-Husband] in an amount of \$73,289.90 will be required to provide an equitable distribution of marital property. The presumption towards an in kind distribution has been rebutted and Defendant[-Husband] has sufficient means to make a distributive award as set forth pursuant to the terms of this Order.

Defendant-Husband timely filed notice of appeal from the trial court's equitable distribution order. On appeal, Defendant-Husband argues that (1) the trial court erred in distributing two of his defined benefit pension plans without first

determining the value of those plans; (2) the trial court erred in classifying the funds held in two accounts as marital property because those funds represented gifts to Defendant-Husband from his father, and were thus Defendant-Husband's separate property; (3) the trial court erred in distributing certain items of personal property to Plaintiff-Wife where the parties had indicated a proposed distribution of the same to Defendant-Husband; and (4) the equitable distribution judgment contains arithmetic errors, requiring correction on remand. We address Defendant-Husband's first three arguments in turn. Because we remand the equitable distribution judgment, we need not address the arithmetic errors raised by Defendant-Husband, which may be corrected on remand.

Discussion

I. Standard of Review

Equitable distribution is governed by N.C. Gen. Stat. § 50-20 . . . which requires the trial court to conduct a three-step process: (1) classify property as being marital, divisible, or separate property; (2) calculate the net value of the marital and divisible property; and (3) distribute equitably the marital and divisible property.

Brackney v. Brackney, 199 N.C. App. 375, 381, 682 S.E.2d 401, 405 (2009) (citations omitted). “[W]hen 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.” *Romulus v. Romulus*, 215 N.C. App. 495, 498, 715 S.E.2d 308, 311 (2011). “The trial court’s

findings of fact are binding on appeal as long as competent evidence supports them, despite the existence of evidence to the contrary.” *Kabasan v. Kabasan*, 257 N.C. App. 436, 440, 810 S.E.2d 691, 696 (2018) (citation omitted).

“While findings of fact by the trial court . . . are conclusive on appeal if there is evidence to support those findings, conclusions of law are reviewable *de novo*.” *Romulus*, 215 N.C. App. at 498, 715 S.E.2d at 311. Classifications of property in an equitable distribution proceeding are evaluated as conclusions of law. *See id.* at 500, 715 S.E.2d at 312 (“Because the classification of property in an equitable distribution proceeding requires the application of legal principles, this determination is most appropriately considered a conclusion of law.”). However, “the court’s equitable distribution award is reviewed for an abuse of discretion and will be reversed only upon a showing that it is so arbitrary that it could not have been the result of a reasoned decision.” *Brackney*, 199 N.C. App. at 381, 682 S.E.2d at 405 (citation and quotation marks omitted).

II. Distribution of Defendant-Husband’s Defined Benefit Pension Plans

Defendant-Husband first argues that the trial court erred in distributing his New Hampshire Ball Bearing defined benefit plan and Continental Automotive defined benefit plan¹ without first valuing the same as of the date of the parties’ separation. We agree.

¹ The parties do not dispute the trial court’s classification of these accounts as marital property.

“Upon application of a party, the court shall determine what is the marital property and divisible property and shall provide for an equitable distribution of the marital property and divisible property between the parties” N.C. Gen. Stat. § 50-20(a) (2017). However, “only those assets and debts that are classified as marital property *and valued* are subject to distribution.” *Grasty v. Grasty*, 125 N.C. App. 736, 740, 482 S.E.2d 752, 755 (emphasis added), *disc. review denied*, 346 N.C. 278, 487 S.E.2d 545 (1997). Hence, “when no finding is made regarding the value of an item of distributable property, [the] trial court’s findings are insufficient” to support distribution of that property. *Cunningham v. Cunningham*, 171 N.C. App. 550, 556, 615 S.E.2d 675, 680 (2005).

This Court has outlined the following procedures for trial courts to employ when valuing a defined benefit plan:

First, the trial court must calculate the amount of monthly pension payment the employee, assuming he retired on the date of separation, will be entitled to receive at the later of the earliest retirement age or the date of separation. This calculation must be made as of the date of separation and “shall not include contributions, years of service or compensation which may accrue after the date of separation.” N.C.G.S. § 50-20(b)(3). The calculation will however, include “gains and losses on the prorated portion of the benefit vested at the date of separation.” *Id.*

Second, the trial court must determine the employee-spouse’s life expectancy as of the date of separation and use this figure to ascertain the probable number of months the employee-spouse will receive benefits under the plan.

Opinion of the Court

Third, the trial court, using an acceptable discount rate, must determine the then-present value of the pension as of the later of the date of separation or the earliest retirement date.

Fourth, the trial court must discount the then-present value to the value as of the date of separation. In other words, determine the value as of the date of separation of the sum to be paid at the later of the date of separation or the earliest retirement date. This calculation requires mortality and interest discounting. The mortality and interest tables of the Pension Benefit Guaranty Corporation, a corporation within the United States Department of Labor, are well suited for this purpose.

Finally, the trial court must reduce the present value to account for contingencies such as involuntary or voluntary employee-spouse termination and insolvency of the pension plan. This calculation cannot be made with reference to any table or chart and rests within the sound discretion of the trial court.

Bishop v. Bishop, 113 N.C. App. 725, 731, 440 S.E.2d 591, 595-96 (1994) (paragraph breaks supplied) (citations omitted).

In the instant case, although the trial court distributed Defendant-Husband's New Hampshire Ball Bearing and Continental Automotive defined benefit plans in its equitable distribution judgment, it omitted findings as to the valuation of those accounts. In the absence of such valuation, the trial court's distribution of those accounts was error. *Cunningham*, 171 N.C. App. at 556, 615 S.E.2d at 680.

Accordingly, we necessarily remand this portion of the trial court's equitable distribution judgment for the limited purpose of allowing the trial court to value the

New Hampshire Ball Bearing and Continental Automotive defined benefit plans, and to thereafter adjust its distribution of the marital estate, if appropriate. On remand, the trial court's inquiry as to valuation must be "based on this record (without the taking of new evidence)." *Grasty*, 125 N.C. App. at 740, 482 S.E.2d at 755.

III. Classification of Account Funds as Marital Property

Next, Defendant-Husband argues that the trial court erred in classifying the funds contained in a Wells Fargo Money Market Account and a DWS Investment Account as marital property. We agree that, as a matter of law, the trial court's findings establish that the Wells Fargo Money Market Account was Defendant-Husband's separate property. However, we conclude that the trial court's findings concerning the DWS Investment Account were supported by competent evidence, and that the trial court's classification of that account as marital property was proper in light of such facts.

"[O]nly that property which is marital in character is subject to distribution." *Wade v. Wade*, 72 N.C. App. 372, 378, 325 S.E.2d 260, 267, *disc. review denied*, 313 N.C. 612, 330 S.E.2d 616 (1985). "Marital property" includes "all real and personal property acquired by either spouse . . . during the course of the marriage and before the date of the separation . . . except property determined to be separate property." N.C. Gen. Stat. § 50-20(b)(1) (2017). "Separate property" includes "all real and

personal property acquired by a spouse before marriage or acquired by a spouse by devise, descent, or gift during the course of the marriage.” *Id.* § 50-20(b)(2).

[T]he party seeking to classify [an account] as marital property must show by the preponderance of the evidence that the property is presently owned, and was acquired by either of the spouses during the course of the marriage and before the date of separation. Thereafter, the party seeking to classify the . . . account as separate property must show by the preponderance of the evidence that the property falls within the statutory definition of separate property. If both parties meet their burdens, then under the statutory scheme of N.C.G.S. § 50-20(b)(1) and (b)(2), the property is excepted from the definition of marital property and is, therefore, separate property.

O’Brien v. O’Brien, 131 N.C. App. 411, 418, 508 S.E.2d 300, 305 (1998) (citations and quotation marks omitted), *disc. review denied*, 350 N.C. 98, 528 S.E.2d 365 (1999).

The “clear legislative intent” of the Equitable Distribution Act is “that separate property . . . acquired by a spouse during the marriage be returned to that spouse, if possible, upon dissolution of the marriage.” *Wade*, 72 N.C. App. at 381, 325 S.E.2d at 269. Where an asset is comprised of both marital and separate property, courts in this State attempt to meet this legislative intent by employing the source of funds theory. “Under this theory, . . . each estate is entitled to an interest in the property in the ratio its contribution bears to the total investment in the property. Thus, both the separate and marital estates receive a proportionate and fair return on . . . investment.” *Id.* at 382, 325 S.E.2d at 269 (citation omitted).

“Because the classification of property in an equitable distribution proceeding requires the application of legal principles, this determination is most appropriately considered a conclusion of law.” *Romulus*, 215 N.C. App. at 500, 715 S.E.2d at 312.

Defendant-Husband first challenges the trial court’s classification as marital property the \$69,281.71² in funds held in the Wells Fargo Money Market Account ending in 5417 (“Money Market Account”). The trial court found that Defendant-Husband opened the Money Market Account in his sole name in 2003 with an initial deposit of \$11,337.45, which included an \$11,000.00 gift to Defendant-Husband from his father. The trial court also found that the majority of the funds existing in the Money Market Account on the date of the parties’ separation had “derived from annual gifts ranging from \$10,000.00 to \$13,000.00 to Defendant[-Husband] from his father.” Nonetheless, the trial court classified as marital property all of the funds held in the Money Market Account on the date of the parties’ separation.

In that the record reveals that the initial deposit and a majority of the funds subsequently deposited into the Money Market Account were gifted to Defendant-Husband individually by his father, the trial court erred in classifying the entire sum of that account as marital property. *See, e.g., O’Brien*, 131 N.C. App. at 419, 508 S.E.2d at 306 (“[I]t is equally clear that the initial deposit into the investment account

² Defendant-Husband contends that “[t]he value of the account on [the date of the parties’ separation] was actually \$75,124.93.” Any such discrepancies in valuation may be corrected on remand.

was from [the] defendant's separate property, consisting of her inheritance from her father's estate. Therefore, [the] defendant has met her burden of establishing the separate nature of the property."); *see also Friend-Novorska v. Novorska*, 131 N.C. App. 508, 510, 507 S.E.2d 900, 902 (1998) ("It is clear that a gift received by a spouse from a *third party* is the separate property of the receiving spouse."), *aff'd per curiam*, 354 N.C. 564, 556 S.E.2d 294 (2001).

We therefore vacate that portion of the equitable distribution judgment classifying the Money Market Account as marital property, and remand the matter to the trial court in order to trace which portions of those funds represent Defendant-Husband's separate property not subject to equitable distribution.

Next, Defendant-Husband challenges the trial court's classification as marital property the parties' DWS Investment Account ending in 4934 ("DWS Account"). The DWS Account contained \$33,266.05 on the date of separation. Defendant-Husband's father opened the account in 1996 as a joint account in both parties' names, along with a concurrent gift of \$10,000.00 to be invested therein. The initial \$10,000.00 investment was the only deposit into the DWS Account, and there had been no withdrawals from the account as of the date of the parties' separation.

In challenging the classification of the DWS Account as marital property, Defendant-Husband relies on the affidavit of his father, which Defendant-Husband prepared, and in which his father avers that the initial \$10,000.00 investment "was

a Christmas gift to my son individually from me in 1996.” It appears, however, that the trial court assigned greater weight to other evidence in the record supporting the account’s classification as marital property, including evidence that (1) Defendant-Husband’s father gifted the \$10,000.00 investment with the intent that it be deposited into the DWS Account, which Defendant-Husband’s father simultaneously opened in both Defendant-Husband’s and Plaintiff-Wife’s names; (2) Plaintiff-Wife and Defendant-Husband considered any gains on the DWS Account to be joint for income tax purposes; and (3) the parties treated the \$10,000.00 deposited into the DWS Account differently from the other checks that Defendant-Husband’s father gifted him during the course of the marriage, with those checks being deposited into his separate Money Market Account.

This constitutes competent evidence to support the trial court’s findings regarding classification of the DWS Account. Accordingly, the trial court did not err in classifying the DWS Account as marital property.

IV. Distribution of Items of Personal Property to Plaintiff-Wife

Finally, Defendant-Husband argues that because the parties indicated a “proposed distribution” of the parties’ cherry dining table and six cherry dining chairs to Defendant-Husband in the unsigned, un-entered Equitable Distribution Pretrial Order, the trial court “erred as a matter of law” in distributing those items to

Plaintiff-Wife in its final equitable distribution judgment. However, we find no abuse of discretion in the trial court's distribution of this property.

This Court reviews a trial court's distribution of marital property only for an abuse of discretion. *Romulus*, 215 N.C. App. at 498, 715 S.E.2d at 311. "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." *Embler v. Embler*, 159 N.C. App. 186, 187, 582 S.E.2d 628, 630 (2003).

Defendant-Husband cites no law in support of his suggestion that the trial court was required, as a matter of law, to distribute the parties' cherry dining table and six cherry dining chairs as proposed in the unsigned Pretrial Order. The trial court determined that "Defendant[-Husband] does not use either the table or the chairs," and we find no abuse of discretion in the trial court's distribution of the same to Plaintiff-Wife.

Conclusion

We affirm the trial court's classification of the DWS Account as marital property, as well as the trial court's distribution of the cherry dining table and six cherry dining chairs to Plaintiff-Wife. We reverse the trial court's classification of the funds held in the Money Market Account as marital property, as well as the distribution of the Defendant-Husband's defined benefit pension plans. This matter

CHAPPELL V. CHAPPELL

Opinion of the Court

is remanded in order for the trial court to trace the source of funds constituting the Money Market Account and to classify, value, and distribute the proceeds of the Money Market Account consistent with this opinion; to value and distribute Defendant-Husband's defined benefit pension plans consistent with this opinion; and to correct any arithmetic errors of which Defendant-Husband complains on appeal. The trial court may adjust its distribution of the marital estate, if appropriate.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Judges MURPHY and ARROWOOD concur.

Report per Rule 30(e).