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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-265

Filed: 21 January 2020

Sampson County, No. 17 CVD 1401

KEVIN JASON LEE, Plaintiff,

v.

CHELSEY ELIZABETH ALLEN, Defendant.

Appeal by Plaintiff from order entered 3 January 2019 by Judge William B. Sutton, Jr., in Sampson County District Court. Heard in the Court of Appeals 18 September 2019.

Warrick, Bradshaw and Lockamy, P.A., by Franklin L. Bradshaw, for Plaintiff.

No brief for Defendant.

BROOK, Judge.

Kevin Jason Lee (“Plaintiff”) appeals from the district court’s order awarding \$16,900 in attorney’s fees to Chelsey Elizabeth Allen (“Defendant”). Specifically, Plaintiff argues the trial court’s findings were not supported by competent evidence, the trial court did not properly consider whether Defendant had “insufficient means to defray the expenses of the suit,” and the amount of attorney’s fees was not

reasonable. For the following reasons, we reverse the award and remand to the trial court for additional findings.

I. Factual and Procedural History

This appeal comes to this Court as the result of a child custody suit filed on 20 November 2017 and resolved on 10 January 2019. The trial court conducted a custody hearing that was heard over a three-day period from 6 November 2018 to 8 November 2018 and entered an order of child custody on 10 January 2019. On 31 December 2018, the trial court presided over a hearing on Defendant’s motion for attorney’s fees, and the court ordered Plaintiff to pay Defendant’s attorney’s fees in the amount of \$16,900 within 60 days.

Plaintiff timely noticed appeal.

II. Analysis

On appeal, Plaintiff challenges several of the trial court’s findings of fact as not supported by competent evidence. Plaintiff also contends that attorney’s fees were improperly awarded to Defendant because she had “sufficient means to defray the expenses of the suit” and the amount of attorney’s fees was not reasonable.

We first consider whether the findings of fact were supported by competent evidence. We then turn to whether the trial court properly considered whether Defendant had “insufficient means to defray the expenses of the suit.” We conclude

that it did not and therefore do not reach the question of whether the amount of attorney's fees was reasonable.

A. Findings of Fact

Plaintiff challenges findings of fact 4, 9, 14, and 15 as not supported by competent evidence. After laying out the governing standard of review, we assess each finding in turn.

1. Standard of Review

This Court's review of a trial judge's findings of fact is "strictly limited to determining whether" they "are supported by competent evidence[.]" *State v. Williams*, 362 N.C. 628, 632, 669 S.E.2d 290, 294 (2008) (citation omitted). Even if the "evidence is conflicting," the trial judge is in the best position to "resolve the conflict." *State v. Smith*, 278 N.C. 36, 41, 178 S.E.2d 597, 601 (1971) (internal citations omitted).

In addition, it is well-established that labels are not dispositive in our review of a lower court's factual findings and conclusions of law. *See Quick v. Quick*, 305 N.C. 446, 461, 290 S.E.2d 653, 663 (1982), *overruled on other grounds by Smith v. Smith*, 247 N.C. App. 166, 785 S.E.2d 166 (2016) ("While denominated a finding of fact, this statement is really a conclusion of law."). "[A]ny determination requiring the exercise of judgment . . . or the application of legal principles . . . is more properly

classified a conclusion of law.” *In re Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675 (1997).

2. Challenged Findings

i. Finding of Fact 4

The trial court found “[t]hat Defendant’s attorney submitted an affidavit at the hearing at the close of the evidence for fees totaling \$16,900 through November 8th, 2018.” This finding is supported by competent evidence in the record given Defendant’s attorney did submit an affidavit at the hearing on 8 November 2018 showing his fees through that date.

ii. Finding of Fact 9

The trial court found “[t]hat the Plaintiff is a farmer that owns a beach house, an airplane, a boat, and the house where he resides according to his testimony at the trial of this matter.” Plaintiff contends that he never testified as to owning an airplane, a beach house, a boat, or his house and thus this finding is not supported by competent evidence.

A careful review of the trial testimony reveals that Plaintiff did in fact testify as to owning an airplane, a beach house, and a boat. On cross-examination, Plaintiff testified:

[Defense Counsel]: You have a beach house, I believe.

[Plaintiff]: Yes, sir.

[Defense Counsel]: And you have an airplane?

[Plaintiff]: Yes, sir.

[Defense Counsel]: And you have a boat?

[Plaintiff]: Yes, sir.

However, the trial court's finding that Plaintiff owned his house was not supported by competent evidence. Defense counsel asked Plaintiff if he owned the house he currently lives in, and Plaintiff responded, "No, sir."

We therefore conclude finding of fact 9 was supported by competent evidence as to Plaintiff owning a beach house, airplane, and boat but not as to Plaintiff owning his home.

iii. Finding of Fact 14

The trial court found "[t]hat an attorney fee of \$16,900 to the Defendant's attorney is reasonable based upon the affidavit submitted to the Court in comparison to that of other lawyers of similar skill and the time required for the prosecution of this case." This statement is more properly classified as a conclusion of law, because assessing whether an attorney's fee is reasonable "require[s] the exercise of judgment." *In re Helms*, 127 N.C. App. at 510, 491 S.E.2d at 675. As stated above, we need and do not reach the validity of this conclusion of law.

iv. Finding of Fact 15

The trial court found “[t]hat the Defendant had insufficient means and was unable to employ an adequate counsel to proceed as a litigant to meet the Plaintiff as a litigate.” Again, this “finding of fact” required the exercise of judgment and is more appropriately classified as a conclusion of law and is reviewed as such below.

B. Insufficient Findings to Support Award Per Statute

Plaintiff next argues the trial court erred in concluding that Defendant has insufficient means to defray the expenses of the suit and failed to meet the statutory requirements of N.C. Gen. Stat. § 50-13.6. For the reasons stated below, we agree.

1. Standard of Review

Whether the statutory requirements of N.C. Gen. Stat. § 50-13.6 are met is a question of law, reviewable de novo on appeal. *See Taylor v. Taylor*, 343 N.C. 50, 54, 468 S.E.2d 33, 35 (1996). “When the statutory requirements have been met, the *amount* of attorney’s fees to be awarded rests within the sound discretion of the trial judge and is reviewable on appeal only for an abuse of discretion.” *Hudson v. Hudson*, 299 N.C. 465, 472, 263 S.E.2d 719, 724 (1980) (emphasis in original).

2. Analysis

Attorney’s fees can properly be awarded in a child custody or child support case when “the interested party acted in good faith and had insufficient means to defray the expense of the suit.” N.C. Gen. Stat. § 50-13.6 (2019). A party has insufficient means to defray the costs of the action where the party is “unable to employ adequate

counsel in order to proceed as litigant to meet the other spouse as litigant in the suit.”

¹ *Hudson v. Hudson*, 299 N.C. at 474, 263 S.E.2d at 725. In determining whether a party has insufficient means, the trial court should examine the party’s estate, income, and debts. *Id.* Further, the governing statute allows the trial court to compare the estates of the parties in making this determination. *See Van Every v. McGuire*, 348 N.C. 58, 62, 497 S.E.2d 689, 691 (1998).

Our Court has reversed attorney’s fee awards in this context when the trial court’s findings do not go much beyond reciting statutory language. For example, in *Davignon v. Davignon*, this Court reversed an award of attorney’s fees when the trial court’s only finding as to whether the plaintiff had insufficient means to defray the expenses of the suit was “Plaintiff did not have sufficient funds to defray the costs and expenses of this lawsuit, including attorneys’ [sic] fees.” 245 N.C. App. 358, 366, 782 S.E.2d 391, 397 (2016). We concluded “[t]he record and transcript . . . [were] wholly devoid of any evidence . . . to show [p]laintiff was unable to defray the costs of th[e] action.” *Id.* Similarly, in *Dixon v. Gordon*, this Court reversed the attorney’s fees award, because the trial court’s findings of fact contained “little more than the bare statutory language[.]” 223 N.C. App. 365, 373, 734 S.E.2d 299, 305 (2012).

Beyond “bare statutory language,” the trial court’s order should contain findings as to the party’s income, expenses, and assets. In *Resspass v. Resspass*, this

¹ We note that Defendant is unrepresented on appeal.

Court reversed and remanded for additional findings to support an award of attorney's fees when the order lacked findings as to the plaintiff's assets and estate. 232 N.C. App. 611, 637, 754 S.E.2d 691, 707 (2014). And, in *Cox v. Cox*, we reversed and remanded a trial court's award of attorney's fees when the order lacked "findings about plaintiff's monthly income or expenses." 133 N.C. App. 221, 228, 515 S.E.2d 61, 66 (1999). Finally, "the trial court should focus on the disposable income and estate" of the moving party in making its determination. *McGuire*, 348 N.C. at 62, 497 S.E.2d at 691.

In this case, the trial court found, in part:

8. [D]uring the almost 3 years the parties lived together the Defendant did not work outside of the home, but took care of the parties minor child and a child she had from a previous relationship at the request of the Plaintiff.

9. That the Plaintiff is a farmer that owns a beach house, an airplane, a boat, and the house where he resides according to his testimony at the trial of this matter.

...

12. That the Defendant began working in February, 2018 about the time that these parties separated from each other and since that time has earned a gross pay of approximately \$25,000 through December 14, 2018.

The trial court's order contains findings beyond "bare statutory language" that are supported by evidence in the record, transcript, and order, yet there are no findings as to Defendant's assets and estate. The trial court began the correct inquiry

by finding that Defendant stayed and cared for the children during the three years she lived with Defendant and that she had \$25,000 in gross income from February to December 2018. However, it did not complete its inquiry by making findings as to whether Defendant had assets from before or after her relationship with Defendant or, more broadly, her level of disposable income. The trial court thus erred in making this award and we remand to the trial court for additional findings consistent with this opinion.

Given that we conclude that the statutory requirements of N.C. Gen. Stat. § 50-13.6 have not been met, we do not reach the question of whether the amount of the fees was reasonable.

III. Conclusion

For the aforementioned reasons, we remand to the trial court for additional findings consistent with this opinion.

REVERSED AND REMANDED.

Judges DILLON and TYSON concur.

Report per Rule 30(e).