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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 19-484

Filed: 5 May 2020

Guilford County, No. 15-CVD-8816

GAIL SHELL WILLIAMS, Plaintiff,

v.

DAVID BRYAN WILLIAMS, Defendant.

Appeal by defendant from order entered 27 December 2018 by Judge Teresa H. Vincent in Guilford County District Court. Heard in the Court of Appeals 1 April 2020.

*Jonathan McGirt for plaintiff-appellee.*

*Wyrick Robbins Yates & Ponton, LLP, by K. Edward Greene, Michelle D. Connell, and Jessica B. Heffner, for defendant-appellant.*

YOUNG, Judge.

This appeal arises out of an alimony award. We hold that the trial court did not err in finding that Ms. Williams was a dependent spouse, nor did the trial court err in ordering Mr. Williams to pay alimony. Further, the trial court did not err in determining the amount of alimony, determining Mr. Williams' ability to pay, or in

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calculating Mr. Williams' credits. As to the income withholding argument, because Mr. Williams failed to appeal from the Incoming Withholding Order, we do not have jurisdiction to hear the argument, and thus we dismiss. Accordingly, we affirm in part and dismiss in part.

### I. Factual and Procedural History

Plaintiff Gail Shell Williams ("Ms. Williams") and Defendant David Bryan Williams ("Mr. Williams") were married on 4 April 1992, separated on 30 December 2014, and divorced on 21 September 2016.

During the latter six years of the marriage, Ms. Williams worked part-time as a financial assistant at Caldwell Academy Christian School, earning approximately \$22,000 per year in gross income. Prior to this part-time employment, she was a homemaker. During the entirety of the marriage, Mr. Williams was an airline pilot for American Airlines. After they married, they started a construction business. Mr. Williams also played in a band to generate cash flow, attempted to work for Market America, and taught health and wellness classes in an effort to earn income.

In 2005, Ms. Williams' father passed away and she inherited a business ("Shell Brothers' Distributors") and retirement funds. From 2006-2013, Ms. Williams received board of director's fees from Shell Brothers' Distributors totaling approximately \$145,000 ("the inheritance"). Ms. Williams also received a portion of a profit-sharing plan with Shell Brothers' Distribution totaling \$20,000.

Following the date of separation, on 15 August 2015, Ms. Williams obtained full-time employment with the Trust Company of the South. Her income increased to \$4,913.84 in gross income per month. Mr. Williams continued to work for American Airlines as a pilot following separation.

On 6 October 2015, Ms. Williams filed a complaint for equitable distribution, postseparation support, alimony, and attorney's fees. Mr. Williams filed his answer and counterclaim for absolute divorce and equitable distribution on 2 February 2016. The trial court entered a judgment for absolute divorce on 21 September 2016.

On 29 September 2016, the trial court entered a consent judgment and order of equitable distribution. The trial court entered a qualified domestic relations order on 25 January 2017.

The trial on alimony and attorney's fees took place on 10, 11, 13 September 2018. On 23 October 2018, the trial court entered an order for alimony and attorney's fees. The alimony order requires Mr. Williams to pay the following: (1) alimony in the amount of \$3,959 per month; (2) retroactive alimony from 30 November 2018 to the filing of the action (6 October 2015) in the amount of \$53,233, payable in \$500 monthly installments; and (3) attorney's fees related to alimony in the amount of \$29,253.85, payable in \$500 monthly installments. The order requires that all monthly payments be made via income withholding order. On 17 January 2019, Mr. Williams filed timely written notice of appeal.

II. Dependent Spouse and Amount of Alimony

a. Standard of Review

“A trial court’s determination of whether a party is entitled to alimony is reviewable *de novo* on appeal.” *Carpenter v. Carpenter*, 245 N.C. App. 1,4, 781 S.E.2d 828, 832 (2016). “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) (citing *Sayland v. Sayland*, 267 N.C. 378, 148 S.E.2d 218 (1966)).

b. Analysis

Mr. Williams contends that the trial court committed reversible error by finding that Ms. Williams is a dependent spouse entitled to alimony, and by awarding alimony to Ms. Williams without sufficient evidence or findings of fact regarding the parties’ standard of living during the marriage. We disagree.

To be entitled to alimony, the party seeking alimony must establish that: “(1) that party is a dependent spouse; (2) the other party is a supporting spouse; and (3) an award of alimony would be equitable under all the relevant factors.” *Barrett v. Barrett*, 140 N.C. App. 369, 371, 536 S.E.2d 642, 644 (2000). A dependent spouse is one who is “actually substantially dependent upon the other spouse for his or her maintenance and support or is substantially in need of maintenance and support from another spouse.” N.C. Gen. Stat. § 50-16.1A(2) (2019). “As this Court has said before

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. . . the court must determine whether one spouse would ‘be unable to maintain his or her accustomed standard of living, established prior to separation, without financial contribution from the other.’ ” *Vadala v. Vadala*, 145 N.C. App. 478, 481, 550 S.E.2d 536, 538 (2001) (quoting *Talent v. Talent*, 76 N.C. App. 545, 548, 334 S.E.2d 256, 258-59 (1985)).

At trial Mr. Williams’ trial counsel said to the court, “we’re not denying that [Ms. Williams is] a dependent spouse.” This is invited error. Since Mr. Williams admitted that Ms. Williams is a dependent spouse at trial, he cannot now claim that the court erred in finding that she is a dependent spouse. *Weil v. Herring*, 207 N.C. 6, 10, 175 S.E.2d 836, 838 (1934) (citing “the law does not permit parties to swap horses between courts in order to get a better mount[.]”).

Mr. Williams contends that the trial court awarded alimony based on Ms. Williams’ current, higher standard of living rather than her standard of living during the latter years of the marriage. However, based on Mr. Williams’ chart which was introduced into evidence, Mr. Williams’ provided that Ms. Williams needed \$50,400 in alimony in 2014, the same year the parties separated. That amount is more than the trial court’s award of \$3,959 per month. Again, this is invited error and Mr. Williams cannot now claim the award is not fair after providing evidence to support a larger award.

Accordingly, the trial court did not err in determining that Ms. Williams is a dependent spouse, nor did the trial court abuse its discretion awarding Ms. Williams alimony in the amount of \$3,959 per month.

III. Ability to Pay Alimony

a. Standard of Review

“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*, 305 N.C. at 453, 290 S.E.2d at 658 (1982).

b. Analysis

Mr. Williams contends that the trial court improperly reduced Mr. Williams’ reasonable monthly expenses when determining his ability to pay alimony. We disagree.

Mr. Williams does not challenge reduction of expenses made for the benefit of the parties’ adult children; however, he does challenge the reduction of expenses as it pertains to any expenses he has with his new wife.

This Court has held that “the trial judge may resort to his [or her] own common sense and every-day experiences in calculating the reasonable needs and expenses of the parties.” *Bookholt v. Bookholt*, 136 N.C. App. 247, 250, 523 S.E.2d 729, 731 (1999). Furthermore, “the trial judge . . . is not required to accept at face value the

assertion of living expenses offered by litigants themselves.” *Whedon v. Whedon*, 58

N.C. App. 524, 529, 294 S.E.2d 29, 32 (1982). Here, the trial court found:

[Mr. Williams] resides with his [new] wife and provides for some expenses of his adult children; but [Mr. Williams] does not have a legal obligation to support his adult children, nor does his new marriage relieve [Mr. Williams] of his obligation to support [Ms. Williams] (so the Court reduced many of [Mr. Williams’] asserted expenses which were in the nature of support for [Mr. Williams’ new wife and adult children).

Accordingly, the trial court reduced expenses such as debt Mr. Williams incurred for the purchase of his new wife’s engagement ring and wedding band, gas and car payment for his new wife’s vehicle, and lunch expenses which are covered per diem by his employer.

Mr. Williams failed to show that the trial court improperly reduced his reasonable monthly expenses, or that the trial court abused its discretion. Therefore, we hold that the trial court did not err in reducing Mr. Williams’ expenses.

#### IV. Alimony Credit

##### a. Standard of Review

“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*, 305 N.C. at 453, 290 S.E.2d at 658 (1982).

##### b. Analysis

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Mr. Williams contends that the trial court failed to award proper credit to Mr. Williams for his support of Ms. Williams prior to this alimony award. We disagree.

Where the trial judge sits as a jury and where different reasonable inferences can be drawn from the evidence, the determination of which reasonable inferences shall be drawn is for the trial judge. The trial judge has the authority to believe all, any, or none of the testimony.

*Sharp v. Sharp*, 116 N.C. App. 513, 530, 449 S.E.2d 39, 48 (1994). The trial court found as fact that “after the date of the parties’ separation, [Mr. Williams] paid nearly 100% of the marital bills up until [Ms. Williams] filed her alimony claim[;] however, [Mr. Williams] failed to provide adequate support to [Ms. Williams] after she filed her claim for alimony.” The trial court allowed Mr. Williams credit for various payments that he made during the retroactive period from 6 October 2015 through 30 November 2018, including additional credit for his payment of interest charges on the BB&T home equity line of credit. However, Mr. Williams contends that he is entitled to additional credits. While this contention is reflected in his testimony, the trial judge had discretion as to what weight to assign such testimony in determining the credibility of such contentions. Further, as the amount of alimony is in the sound discretion of the trial court, and Mr. Williams has failed to show that the trial court abused its discretion in any way, we hold that the trial court did not err.

V. Wage Withholding

a. Standard of Review



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“[I]t is [appellant’s] burden to produce a record establishing the jurisdiction of the court from which appeal is taken, and his failure to do so subjects [the] appeal to dismissal.” *State v. Phillips*, 149 N.C. App. 310, 313-14, 560 S.E.2d 852, 855 (2002).

b. Analysis

Mr. Williams contends that the trial court erred by ordering wage withholding. “Without proper notice of appeal, this Court acquires no jurisdiction.” *Von Ramm v. Von Ramm*, 99 N.C. App. 153, 156, 392 S.E.2d 422, 424 (1990). Mr. Williams only appealed from the 27 December 2018 Order involving alimony. The Income Withholding Order was a separate order, filed on a different date. Because Mr. Williams failed to appeal from that order, we do not have jurisdiction to hear this argument, and thus, we dismiss this argument.

AFFIRMED IN PART. DISMISSED IN PART.

Judges MURPHY and COLLINS concur.

Report per Rule 30(e).