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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-916

Filed: 19 May 2020

Orange County, No. 13-CVD-415

CATHY DIANE SORGI, Plaintiff-Appellee,

v.

ERNEST RICKMAN WILKINS, Defendant-Appellant.

Appeal by defendant from order entered 7 June 2019 by Judge Joseph M. Buckner in Orange County District Court. Heard in the Court of Appeals 14 April 2020.

*Cordell Law, LLP, by Stephanie Horton, for the Defendant-Appellant.*

*No brief for the Plaintiff-Appellee.*

BROOK, Judge.

Ernest Rickman Wilkins (“Defendant”) appeals from an order awarding permanent alimony and attorney’s fees to Cathy Diane Sorgi (“Plaintiff”) entered by Judge Buckner in Orange County District Court on 7 June 2019. Because we conclude that the trial court failed to sufficiently support its findings and conclusions, we reverse and remand for additional findings consistent with this opinion.

I. Factual and Procedural Background

Defendant and Plaintiff were married on 26 June 1993 and separated on or about 1 October 2009. There was one child born of the marriage. The parties were divorced on 25 June 2013. In May 2015, Plaintiff filed a motion in the cause requesting the entry of an equitable distribution and alimony award. On 16 July 2015 she filed another motion that incorporated the requests in her first motion and included a request for attorney's fees. On 20 July 2015, Defendant filed a reply to Plaintiff's motion and included a motion to dismiss Plaintiff's alimony claim for failure to prosecute and a motion to dismiss Plaintiff's request for attorney's fees for failure to state a claim upon which relief may be granted.

On 4 August 2015, the parties executed a memorandum of judgment for temporary spousal support. The memorandum stated that "[t]his matter will be placed on the February 2016 calendar call for scheduling in March of 2016." However, no hearing was scheduled. The parties entered a new memorandum of judgment on 6 December 2016. The December memorandum stated:

- a. Defendant will pay \$600.00 per month for 24 consecutive months to Plaintiff beginning December 2016.
- . . .
- c. The parties shall work together to execute a settlement agreement codifying the terms of this Memorandum.
- d. Upon execution of a settlement agreement, the parties shall file dismissals of their claims.

In January 2019, Plaintiff noticed her claims for alimony and equitable distribution for hearing. Defendant then filed a motion in the cause on 21 February 2019, including a motion to dismiss for failure to prosecute, a motion for contempt, and a motion to dismiss for failure to abide by court order. Plaintiff filed a reply to Defendant's motion in the cause on 15 March 2019. A hearing was held before Judge Buckner in Orange County District Court on 24 May 2019 on Plaintiff's claims for equitable distribution, alimony, and attorney's fees, as well as Defendant's motions to dismiss and for contempt.

The trial court filed an alimony order on 7 June 2019. The trial court made the following findings of fact:

1. That the parties hereto were married to each other on the 26<sup>th</sup> day of June, 1993, in Durham, North Carolina.
2. That the parties were separated in October of 2009 and divorced on June 25, 2013 in Orange County, North Carolina in this action.
3. That both equitable distribution and alimony were pled and reserved for later determination in the Divorce Decree.
4. That the Plaintiff herein filed a Motion in the Cause in this matter in May of 2015.
5. That upon receiving service of same, Defendant notified Plaintiff that he intended to cease his heretofore voluntary support payments, such as they have been. Defendant provided testimony that he paid to Plaintiff from the date of separation until May of 2015 approximately \$3000.00 per month in support. The

parties [sic] only minor child graduated from High School in June of 2015.

6. The Plaintiff and Defendant entered into a Consent Order providing that Defendant would pay to Plaintiff temporary spousal support in the amount of \$1300.00 per month on August 4, 2015.
7. The Plaintiff and Defendant entered into a Consent Order providing that Defendant would pay to Plaintiff \$600.00 in non-designated payments for 24 months, or a total of \$14,400.00, on December 6, 2015. Defendant testified that this payment was for property division, as it was about half of his equity in the property he resides in upon the date of separation. This Memorandum Order is not a full and final order, and proceeding with this alimony hearing is appropriate.
8. Plaintiff was a stay at home Mother during the coverture, and Defendant voluntarily paid all the families' [sic] expenses. When the minor child reached third grade, Plaintiff took a job at the afterschool care program at Durham Academy, where the minor child attended school. Plaintiff was paid approximately \$33,000.00 per annum, and the minor child received tuition assistance.
9. Defendant's income from employment during the coverture ranged from \$60,000.00 per annum to more than \$165,000.00 per annum. He provided additional evidence that he had been working in property development and sales[] and had lost significant sums in 2010.
10. That Plaintiff is a Dependent spouse, and Defendant is a supporting spouse. Defendant was Plaintiff's supporting spouse, both during and following the marriage, until he stopped making payments to Plaintiff after May of 2015.

11. That the Plaintiff is employed, as she was during the coverture, and has a yearly income of []\$36,000.00 and a net monthly income of approximately \$2000.00 per month. Plaintiff obtained a psychology degree from UNC-Chapel Hill prior to the marriage, but there is no evidence that Plaintiff has the present ability to better her employment appurtenant to that degree.
12. Defendant is an accountant, is highly educated and well trained, and has the means and ability to continue to provide support for Plaintiff in the form of permanent alimony. His current yearly income is \$135,000.00.
13. Plaintiff was a true and faithful wife, and the Defendant's allegations of Plaintiff having committed marital misconduct in 2007 and 2009 did not meet his burden of proof.
14. That Defendant has twice filed bankruptcy post separation which stayed the equitable distribution action in this case. Defendant also admitted that he had pled guilty to federal fraud charges in 2005, which involved off-shore accounting and his then current employer.
15. Plaintiff enjoyed a comfortable standard of living during the coverture, and with Defendant's voluntary support payments, managed to maintain the marital home, however, without the needed significant continued financial payments to Plaintiff, she was unable to maintain the home after May of 2015. At present, she resides in a one-bedroom condominium, and is unable to pay her rent in full or to pay her monthly bills in full.
16. Plaintiff requested \$200.00 per week in alimony in order to pay her monthly expenses.
17. Defendant has the ability to pay alimony to Plaintiff. His gross annual income at this time is \$135,000.00,

and he has the ability to pay permanent alimony to Plaintiff, in at least the amount of \$700.00 per month.

18. That Plaintiff is an interested party acting in good faith with insufficient means to pursue her alimony claim as pled herein; that Plaintiff is a dependent spouse and Defendant is her supporting spouse; that Plaintiff is in need of an award of attorney fees.

19. The Attorney Fee Affidavit attached hereto is reasonable and outlines with specificity the legal fees incurred by Plaintiff since 2015 in pursuit of her spousal support and alimony claims.

The trial court then made the following conclusions of law:

1. This Court has jurisdiction over the parties and the subject matter of this action.
2. Plaintiff is actually and substantially dependent upon the Defendant for her support and maintenance, and it is appropriate to order permanent alimony in this case.
3. Plaintiff is an interested party acting in good faith, and she is unable to defray the costs of this spousal support action. It is appropriate to award the Plaintiff her attorney fees as delineated herein.

The trial court then ordered that Defendant pay to Plaintiff \$700 per month in permanent alimony, that Defendant's alimony payments which accrued between 1 January 2019 and 1 June 2019 be paid to Plaintiff as a lump sum, and awarded Plaintiff \$7,010 in attorney's fees.

Defendant filed a notice of appeal on 1 July 2019. The same day, Defendant filed a motion to stay enforcement of the judgment, which was denied following a hearing on 22 August 2019. On 21 November 2019, Defendant petitioned this Court

for a writ of supersedeas, praying that this Court stay the lump-sum alimony and attorney's fees award in the alimony order pending the resolution of this appeal. By order entered 26 November 2019, our Court entered a temporary stay of the enforcement of the lump-sum payment to Plaintiff and attorney's fees payments to Plaintiff's trial counsel.

## II. Jurisdiction

Appeal to this Court is proper from the final alimony order issued 7 June 2019 pursuant to N.C. Gen. Stat. § 7A-27(b)(2) (2019).

## III. Analysis

Defendant makes several arguments regarding the alimony order: (1) that the trial court erred in proceeding with the alimony trial because the December memorandum was a full and final judgment; (2) that the trial court erred in denying Defendant's motion to dismiss for failure to prosecute and for failure to abide by a court order; (3) that the evidence at trial was insufficient to support the trial court's findings of fact and conclusions of law justifying permanent alimony to Plaintiff; (4) that the trial court improperly concluded that Defendant was a supporting spouse and Plaintiff was a dependent spouse and substantially in need of maintenance and support; (5) that the trial court erred in failing to find sufficient facts to justify an award of permanent alimony to Plaintiff; (6) that the trial court erred in failing to find sufficient facts and conclusions of law to justify its award of attorney's fees to

Plaintiff; and (7) that the trial court erred in providing its ruling ex parte to counsel for Plaintiff in violation of Defendant's due process rights.

As an initial matter, we note that Defendant pointed to no record evidence to support his contention that the trial court erred in providing its ruling ex parte to Plaintiff's counsel. This argument is therefore deemed abandoned. *See State v. Lopez*, 169 N.C. App. 816, 820, 611 S.E.2d 197, 200 (2005) (issues raised in an appellant's brief but not supported by argument are deemed abandoned) (citing N.C. R. App. P. 28(b)(6)).

We now turn to Defendant's remaining arguments.

#### A. December Memorandum

We first address Defendant's contention that the trial court "erred in proceeding despite the entry of December Memorandum" because the December Memorandum was a full and final order. We disagree.

"A judgment is either interlocutory or the final determination of the rights of the parties." N.C. Gen. Stat. § 1A-1, Rule 54(a) (2019). "An order is interlocutory if it is made during the pendency of an action and does not dispose of the case but leaves further matters to be judicially determined between the parties at the trial court level." *Rowe v. Rowe*, 131 N.C. App. 409, 410, 507 S.E.2d 317, 318 (1998).

Plaintiff's motion in the cause requesting equitable distribution, an alimony award, and attorney's fees was still pending in the trial court at the time the



December Memorandum was entered. Defendant had filed a reply to Plaintiff's motion and filed motions to dismiss Plaintiff's alimony claim for failure to prosecute. The December Memorandum provided that "[t]he parties shall work together to execute a settlement agreement codifying the terms of this Memorandum." It also provided that "[u]pon execution of a settlement agreement, the parties shall file dismissals of their claims." Because the December Memorandum left the parties with the task of negotiating a settlement agreement, and because both parties had motions pending at the trial court, the December Memorandum was interlocutory. Therefore, the trial court did not err in finding that the December Memorandum was not a full and final order.

B. Motion to Dismiss

Defendant filed a motion to dismiss under Rule 41(b) of the North Carolina Rules of Civil Procedure for failure to prosecute or to comply with a court order. Defendant contends the trial court erred in denying his motion; we disagree.

i. Standard of Review

"Dismissal under Rule 41(b) is within the discretion of the trial court." *Jones v. Stone*, 52 N.C. App. 502, 506, 279 S.E.2d 13, 15 (1981). "Where a ruling of a trial court is discretionary, the court may be reversed for abuse of discretion only upon a showing that its actions are manifestly unsupported by reason." *Eakes v. Eakes*, 194 N.C. App. 303, 309, 669 S.E.2d 891, 895 (2008) (internal marks and citation omitted).

ii. Merits

Under Rule 41(b), a trial court may dismiss a plaintiff's claim with prejudice if the plaintiff fails to prosecute the action. *Jones*, 52 N.C. App. at 505, 279 S.E.2d at 15. "Dismissal for failure to prosecute is proper only when the plaintiff manifests an intention to thwart the progress of the action to its conclusion, or by some delaying tactic plaintiff fails to progress the action toward its conclusion." *Id.* (internal marks and citation omitted). Indeed, a "mere lapse of time does not justify dismissal if the plaintiff has not been lacking in diligence." *Green v. Eure*, 18 N.C. App. 671, 672, 197 S.E.2d 599, 600 (1973).

Defendant presented no evidence to the trial court that Plaintiff "manifest[ed] an intention to thwart the progress of the action to its conclusion," or that she delayed the proceeding in such a way that "fail[ed] to progress the action toward its conclusion." *Jones*, 52 N.C. App. at 505, 279 S.E.2d at 15. We therefore hold that the trial court did not abuse its discretion in denying Defendant's motion to dismiss.

C. Alimony Order

Defendant contends that the trial court erred in concluding that Defendant was the supporting spouse and Plaintiff was the dependent spouse and substantially in need of support. Defendant further contends that the evidence presented at trial was insufficient to support the trial court's findings and conclusions, and that the trial court's findings and conclusions are insufficient to support its award of

permanent alimony to Plaintiff. Because we agree that the trial court failed to adequately support its conclusions that Defendant was a supporting spouse and Plaintiff was a dependent spouse, we reverse and remand the alimony order.

i. Standard of Review

Generally, “[t]he standard of review on appeal from a judgment entered after a non-jury trial is whether there is competent evidence to support the trial court’s findings of fact and whether the findings support the conclusions of law and ensuing judgment.” *Cartin v. Harrison*, 151 N.C. App. 697, 699, 567 S.E.2d 174, 176 (2002) (internal marks and citation omitted). This standard applies to both a trial court’s determination of dependency, *see Bodie v. Bodie*, 221 N.C. App. 29, 44-45, 727 S.E.2d 11, 22 (2012), and to a court’s award of alimony, *see Myers v. Myers*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 837 S.E.2d 443, 457 (2020). We are particularly deferential to alimony determinations, reviewing only for abuse of discretion. *Hill v. Hill*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 821 S.E.2d 210, 224 (2018).

ii. Dependent/Supporting Spouse

Before a trial court may award alimony, it first must determine that one spouse is a dependent spouse and the other is a supporting spouse. *Barrett v. Barrett*, 140 N.C. App. 369, 371, 536 S.E.2d 642, 644 (2000). “The burden of proving dependency is upon the spouse asserting the claim for alimony[.]” *Loflin v. Loflin*, 25 N.C. App. 103, 212 S.E.2d 403, 404 (1975). 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 the other spouse.” N.C. Gen. Stat. § 50-16.1A(2) (2019). Our Supreme Court has defined “actually substantially dependent” as having “actual dependence on the other [spouse] in order to maintain the standard of living in the manner to which that spouse became accustomed during the last several years prior to separation”; that is, to be a dependent spouse is to “be actually without means of providing for his or her accustomed standard of living.” *Williams v. Williams*, 299 N.C. 174, 180, 261 S.E.2d 849, 854 (1980).

To determine whether one spouse is unable to maintain his or her accustomed standard of living without financial contribution from the other, the court must look to “[t]he incomes and expenses measured by the standard of living of the family as a unit . . . from the evidence presented.” *Id.* at 183, 261 S.E.2d at 856. For example, our Court concluded that “explicit findings as to the parties’ respective incomes during the marriage, the type of home in which they lived, and the types of family vacations they enjoyed[,]” in addition to the various bills that one spouse regularly paid during the marriage, “were sufficient for an overall portrayal of the parties’ accustomed standard of living.” *Barrett*, 140 N.C. App. at 372-73, 536 S.E.2d at 645. An income-expenses deficit is “in and of itself support[]” for a dependent spouse classification. *Id.* at 372, 536 S.E.2d at 645.

However,

just because one spouse is a dependent spouse does not automatically mean the other spouse is a supporting spouse. To be a supporting spouse, one must be the spouse upon whom the other spouse is either actually substantially dependent or substantially in need of maintenance and support. A surplus of income over expenses is sufficient in and of itself to warrant a supporting spouse classification.

*Bodie*, 221 N.C. App. at 46, 727 S.E.2d at 22 (internal marks and citation omitted).

The trial court must base its dependency determinations on “findings of fact sufficiently specific to indicate that the court properly considered the factors set out in *Williams*.” *Talent v. Talent*, 76 N.C. App. 545, 548, 334 S.E.2d 256, 259 (1985), *superseded on other grounds by* N.C. Gen. Stat. § 50-16.3A(a) (1995).

The *Williams* factors include (1) the accustomed standard of living of the parties prior to the separation, (2) the income and expenses of each of the parties at the time of the trial, (3) the value of the estates, if any, of both spouses at the time of the hearing, and (4) the length of the marriage and the contribution each party has made to the financial status of the family over the years.

*Hunt v. Hunt*, 112 N.C. App. 722, 726-27, 436 S.E.2d 856, 859 (1993) (internal marks and citation omitted).

We address each *Williams* factor in turn.

First, the trial court made no findings of fact that related to the parties’ accustomed standard of living during the marriage except for a cursory finding that “Plaintiff enjoyed a comfortable standard of living during the coverture.” The trial

court did make findings regarding the parties' respective incomes during the marriage, but not their expenses.

Second, the trial court made findings regarding the income of the parties at the time of the trial, finding that Plaintiff earns a yearly income of \$36,000 and that Defendant earns a yearly income of \$135,000. However, the trial court made no findings regarding Defendant's expenses at the time of trial, although Defendant did testify his mortgage payment is \$1,100. The only findings the trial court made regarding Plaintiff's expenses are that "she was unable to maintain the [marital] home" after Defendant stopped voluntary support payments to Plaintiff, and that she "is unable to pay her rent in full or to pay her monthly bills in full." While Plaintiff did testify that her monthly rent is \$750, the trial court made no findings regarding the amount of Plaintiff's monthly bills or monthly rent, or of any other expenses.

Third, the trial court made no findings regarding the value of the parties' estates.

Finally, the trial court made findings regarding the length of the marriage and the parties' contributions to the financial status of the family, finding that Plaintiff was a stay-at-home mother or employed at the school of the parties' daughter during the marriage, and that Defendant paid the family's expenses.

Without findings regarding the relative incomes and expenses of the parties during the marriage or the value of their estates, if any, the trial court's conclusion

that Plaintiff is a dependent spouse and Defendant was a supporting spouse is unsupported because we cannot conclude, based on the written findings, that the trial court considered the parties' standard of living prior to separation. The absence of any findings about the parties' current expenses also suggests the trial court did not adequately consider each party's income-expenses deficit or surplus. We therefore reverse the alimony order and remand for further findings regarding the dependent or supporting spouse status of each party.

iii. Permanent Alimony

We turn now to the trial court's award of permanent alimony. Without a determination regarding the dependent or supporting spouse status of each party, a trial court's determination that one party is entitled to alimony cannot be supported. *See Barrett*, 140 N.C. App. at 371, 536 S.E.2d at 644. In order to provide guidance to the trial court on remand, we address the trial court's findings regarding the amount of alimony because the findings in the order are insufficient to support the award the trial court made.

The term "alimony" is defined as "an order for payment of the support and maintenance of a spouse or former spouse." In determining the amount of alimony, the trial court "shall consider all relevant factors," including the sixteen (16) factors set forth in N.C. Gen. Stat. § 50-16.3A(b). . . . "In the absence of such findings, appellate courts cannot appropriately determine whether the order of the trial court is adequately supported by competent evidence, and therefore such an order must be vacated and the case remanded for necessary findings."

The factors set forth in N.C. Gen. Stat. § 50-16.3A are as follows:

- (1) The marital misconduct of either of the spouses. Nothing herein shall prevent a court from considering incidents of post date-of-separation marital misconduct as corroborating evidence supporting other evidence that marital misconduct occurred during the marriage and prior to date of separation;
- (2) The relative earnings and earning capacities of the spouses;
- (3) The ages and the physical, mental, and emotional conditions of the spouses;
- (4) The amount and sources of earned and unearned income of both spouses, including, but not limited to, earnings, dividends, and benefits such as medical, retirement, insurance, social security, or others;
- (5) The duration of the marriage;
- (6) The contribution by one spouse to the education, training, or increased earning power of the other spouse;
- (7) The extent to which the earning power, expenses, or financial obligations of a spouse will be affected by reason of serving as the custodian of a minor child;
- (8) The standard of living of the spouses established during the marriage;
- (9) The relative education of the spouses and the time necessary to acquire sufficient education or training to enable the spouse seeking alimony to find employment to meet his or her reasonable economic needs;



(10) The relative assets and liabilities of the spouses and the relative debt service requirements of the spouses, including legal obligations of support;

(11) The property brought to the marriage by either spouse;

(12) The contribution of a spouse as homemaker;

(13) The relative needs of the spouses;

(14) The federal, State, and local tax ramifications of the alimony award;

(15) Any other factor relating to the economic circumstances of the parties that the court finds to be just and proper.

(16) The fact that income received by either party was previously considered by the court in determining the value of a marital or divisible asset in an equitable distribution of the parties' marital or divisible property.

*Collins v. Collins*, 243 N.C. App. 696, 707-09, 778 S.E.2d 854, 861 (2015) (citations and brackets omitted) (quoting N.C. Gen. Stat. § 50-16.3A (2013)). “The requirement for detailed findings is [] not a mere formality or an empty ritual; it must be done.” *Lamb v. Lamb*, 103 N.C. App. 541, 545, 406 S.E.2d 622, 624 (1991) (citation omitted).

The trial court's findings do not address each of the relevant factors raised before it. As addressed above, the trial court did not make any findings regarding the standard of living of the parties during the marriage except for a finding that “Plaintiff enjoyed a comfortable standard of living during the coverture.” The trial court made no findings regarding “[t]he relative assets and liabilities of the spouses

and the relative debt service requirements of the spouses[.]” *Collins*, 243 N.C. App. at 708, 778 S.E.2d at 861. Despite finding that “Defendant has twice filed bankruptcy post separation[.]” the trial court did not make any findings regarding Defendant’s or Plaintiff’s current debt obligations. Plaintiff testified that she received an inheritance in 2008 and that she earned \$7,000 from selling an inherited car. However, the trial court made no findings regarding Plaintiff’s current savings, assets, or debts. The trial court also did not make findings regarding the relative needs of the spouses, including the ability of each to meet his or her needs, respectively, or the ability of Defendant to contribute to Plaintiff’s needs, except for finding that “Defendant has the ability to pay alimony to Plaintiff.” While Plaintiff presented some evidence of her inability to afford her monthly rent and bills, the trial court did not make any findings regarding the amount of Plaintiff’s income-expenses deficit or the amount of alimony that would be required.

“[B]ased upon the findings of fact we are simply unable to determine how the trial court arrived at the amount of alimony[.]” *Myers*, \_\_\_ N.C. App. at \_\_\_, 837 S.E.2d at 461. We must therefore reverse the alimony order and remand with instructions to make additional findings.

#### iv. Attorney’s Fees

Defendant argues that the trial court erred in failing to make sufficient findings and conclusions to support its award of attorney's fees to Plaintiff. For the reasons stated below, we agree.

We concluded in Part C.ii., *supra*, that there were insufficient findings to support a determination that Plaintiff is a dependent spouse and that we must reverse the alimony award, which includes the award of attorney's fees. We briefly address the trial court's findings regarding the award of attorney's fees to provide guidance to the trial court on remand.

A trial court may order reasonable attorney's fees to be paid by the supporting spouse where the trial court has determined the dependent spouse is entitled to alimony. N.C. Gen. Stat. § 50-16.4 (2019). "It is well-established in this jurisdiction that the purpose of the allowance of counsel fees is to enable the dependent spouse, as litigant, to meet the supporting spouse, as litigant, on substantially even terms by making it possible for the dependent spouse to employ adequate counsel." *Williams*, 299 N.C. at 190, 261 S.E.2d at 860 (emphases omitted). In determining whether a party has insufficient means, the trial court should examine the party's estate, income, and debts. *Hudson v. Hudson*, 299 N.C. 465, 474, 263 S.E.2d 719, 725 (1980). Further, § 50-13.6 permits the trial court to compare the estates of the parties in making this determination. *Van Every v. McGuire*, 348 N.C. 58, 62, 497 S.E.2d 689, 691 (1998). In *Cox v. Cox*, this Court 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).

Here, the trial court made findings "[t]hat Plaintiff is an interested party acting in good faith with insufficient means to pursue her alimony claim as pled herein; that Plaintiff is a dependent spouse and Defendant is her supporting spouse; that Plaintiff is in need of an award of attorney's fees." It further concluded that "Defendant shall pay to Plaintiff, through [her attorney], \$7010.00 to reimburse Plaintiff for attorney fees." Without any findings regarding the value of Plaintiff's estate, her monthly expenses, or any debts, this finding by the trial court is inadequately supported.

#### IV. Conclusion

We reverse and remand the 7 June 2019 alimony order as to the determination that Plaintiff is a dependent spouse and Defendant is a supporting spouse, as to the award of permanent alimony, and as to the award of attorney's fees. We take guidance from this Court's opinion in *Myers* regarding the proper procedure upon remand:

On remand, the trial court shall make additional findings of fact and conclusions of law to address the issues noted above. At the request of either party, the trial court shall allow the parties to present additional evidence and argument limited to the issues to be addressed on remand. If neither party requests additional hearing, the trial court may in its discretion either receive additional evidence and argument or may make its findings and conclusions and

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enter a new order regarding . . . alimony based upon the current record.

\_\_\_ N.C. App. at \_\_\_, 837 S.E.2d at 464.

REVERSED AND REMANDED.

Chief Judge MCGEE and Judge MURPHY concur.

Report per Rule 30(e).