IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-175

No. COA20-466

Filed 20 April 2021

Cabarrus County, No. 17 CVD 3512

SHERRY VONHALL, Plaintiff,

v.

TROY VONHALL, Defendant.

Appeal by plaintiff from orders entered 22 November 2019 and 24 February 2020 by Judge Juanita Boger-Allen in Cabarrus County District Court. Heard in the Court of Appeals 24 March 2021.

Ferguson, Hayes, Hawkins & DeMay, PLLC, by James R. DeMay, for plaintiff-appellant.

Hartsell & Williams, PA, by Austin "Dutch" Entwistle III, for defendant-appellee.

ZACHARY, Judge.

¶ 1 Plaintiff Sherry VonHall ("Wife") appeals from an equitable distribution order and an order denying her motion for additional findings of fact. On appeal, Wife argues that the trial court erred by classifying the camper parked on a leased lot in Myrtle Beach, South Carolina, ("the Camper") as a marital asset, or in the alternative, that the trial court erred by failing to make sufficient findings of fact

regarding the classification of the Camper and by denying Wife's motion for additional findings. We disagree and affirm.

Background

¶ 2 Wife and Defendant Troy VonHall ("Husband") were married in 1985 and separated in 2017. Two children were born of the marriage, both of whom were emancipated at the commencement of this action.

¶ 3 On 16 November 2017, Wife filed a complaint against Husband seeking divorce from bed and board, equitable distribution, alimony, and post-separation support. On 27 March 2018, Husband filed an answer and counterclaim for equitable distribution.

¶ 4 The parties' equitable distribution case came on for hearing in Cabarrus County District Court on 27 March 2019 and 8 April 2019 before the Honorable Juanita Boger-Allen. In support of Wife's assertion that the Camper was her separate property, Wife presented the testimony of her mother ("Mother") that on 29 October 2015, Mother purchased the Camper for $110,000.00 as a gift to Wife and the parties' children. However, the Camper was titled to "VonHall, Sherry or VonHall, Troy." The Camper was parked on a site at Ocean Lakes Family Campground in Myrtle Beach, South Carolina, which was leased to both Wife and Husband.

¶ 5 Mother testified at trial that she bought the Camper for "[Wife] and the grandkids[,]" and that Husband "knew I was buying it for [Wife], because she loves the beach and I wanted to see her enjoy it a little bit while I was living." Nonetheless,

she learned at closing that title to the Camper would be in both Wife's and Husband's names: "the lady that was doing the paperwork said it would be easier to put his name on it . . . than it would be [to] add it later. And -- but I didn't want his name on it. He knew I didn't want his name on it."

¶ 6 Wife also testified at trial regarding the gift of the Camper and the decision to title it in both names:

> Q. And what was the decision? How was the property to be titled?
>
> A. My -- his name was put on the title.
>
> Q. Okay. And why was that?
>
> A. Just in case if something would happen to me. If I would get killed, in a coma, then if it was only in my name, he would not have access to the property.
>
> Q. Okay. And was that a portion of the discussion that took place at the closing?
>
> A. Yes.
>
> Q. Okay. And did he participate in that discussion very much or how did that happen?
>
> A. Yes, he was there the whole time, yeah.
>
> Q. Okay. And did you -- did you agree with that decision ultimately?
>
> A. In the end, it made sense.
>
> Q. Okay. . . . but you two were satisfied that ultimately it was -- the residence was titled in both names?

A. Yes, for that --

Q. -- as a result of the discussions that you had?

A. Yes, sir, for that reason.

¶ 7 On 22 November 2019, the trial court entered its equitable distribution order. The trial court made the following relevant findings of fact pertaining to the classification of the Camper:

> 10. . . . The lone remaining item listed on Schedule B is the parties' [Camper] located at . . . Myrtle Beach, South Carolina. [Wife] contends that the [Camper] is her separate property, and [Husband] contends that the [Camper] is marital property. The Court makes the following findings with respect to the classification and valuation of [the Camper], which the Court finds to be a marital asset with a net fair market value of $125,000.00:
>
> a. The parties acquired a [Camper] and leasehold interest in a vacation property . . . .
>
> b. The [Camper] was acquired during the parties' marriage and prior to the date of separation, and was presently owned by the parties on the date of trial.
>
> c. The parties purchased the [Camper] with funds provided by [Mother]. At the time of the transfer of the [Camper] to [Wife] and [Husband], [Mother] was present and did not object to the [Camper's] being titled to the parties jointly. [Wife] testified that it would be easier to do it this way, just in case something happened to her. The Court finds this testimony to be credible[.]
>
> d. During the parties' marriage, both parties and [Mother] vacationed at the [Camper]. Since the date of separation, [Wife] and [Mother] have had full use of the [Camper]. During the marriage all insurance, maintenance

> and property tax expenses were paid from marital funds. In addition, [Husband] made repairs and improvements to the [Camper] during the marriage. Both parties signed a lease agreement for the property during the marriage and for at least one year post-separation.
>
> e. Although [Wife] contends that the [Camper] is her separate property, [Wife] has failed to present credible testimony or evidence that the [Camper] is her separate property. Despite [Mother]'s testimony . . . that she had provided the money to purchase the [Camper], [and] that she intended the money as a gift to [Wife] and the parties' children, the Court does not find her testimony to be credible.

¶ 8 The trial court classified the Camper as marital property, awarded it to Wife, and ordered that "a distributive award of $78,673.47 must be paid by [Wife] to [Husband] in order to effect an equitable distribution."

¶ 9 On 27 November 2019, Wife filed a motion for additional findings of fact pursuant to Rule 52(b) of the North Carolina Rules of Civil Procedure. The trial court denied the motion by order entered on 24 February 2020.

¶ 10 Wife filed timely notice of appeal on 26 February 2020.

Discussion

¶ 11 On appeal, Wife argues that the trial court erred by classifying the Camper as marital property because her mother intended to gift the Camper to Wife, not to Husband and Wife together. Alternatively, she argues that the trial court erred by failing to make sufficient findings of fact to support a conclusion that the Camper was

marital property and by denying Plaintiff's Rule 52(b) motion for additional findings. We conclude that the trial court did not err in classifying the Camper as marital property; we therefore necessarily conclude that the trial court adequately supported its conclusion and that it did not abuse its discretion in denying Wife's Rule 52(b) motion.

I. Standard of Review

¶ 12 "[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." *Lee v. Lee*, 167 N.C. App. 250, 253, 605 S.E.2d 222, 224 (2004) (citation omitted). Thus, upon review of an equitable distribution order, "this Court will uphold the trial court's written findings of fact as long as they are supported by competent evidence." *Kabasan v. Kabasan*, 257 N.C. App. 436, 441, 810 S.E.2d 691, 696 (2018). "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." *Hunt v. Hunt*, 112 N.C. App. 722, 729, 436 S.E.2d 856, 861 (1993). We review the trial court's conclusions of law de novo and the distribution decision for abuse of discretion. *Kabasan* 257 N.C. App. at 441, 810 S.E.2d at 696 (citation omitted).

II. Equitable Distribution

¶ 13 "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) (2019). In an equitable distribution action, the trial court is required to conduct a three-step analysis: "(1) classify the property, (2) calculate the net value of the property . . . and (3) distribute the property in an equitable manner." *Lund v. Lund*, 252 N.C. App. 306, 308, 798 S.E.2d 424, 426 (2017).

¶ 14 Section 50-20(b)(1) of the North Carolina General Statutes defines "marital property" as "all real and personal property acquired by either spouse or both spouses during the course of the marriage and before the date of the separation of the parties, and presently owned[.]" "Separate property" is defined as "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). A gift of property to *both* spouses during the marriage, however, is marital property. *Loeb v. Loeb*, 72 N.C. App. 205, 211, 324 S.E.2d 33, 38 (citation omitted), *cert. denied*, 313 N.C. 508, 329 S.E.2d 393 (1985), *disapproved of on other grounds by Armstrong v. Armstrong*, 322 N.C. 396, 368 S.E.2d 396 (1988).

¶ 15 "The party claiming a certain classification has the burden of showing, by the preponderance of the evidence, that the property is within the claimed classification." *Burnett v. Burnett*, 122 N.C. App. 712, 714, 471 S.E.2d 649, 651 (1996). Several

rebuttable presumptions are at play in the classification of property as separate or marital. "[W]hen property is acquired during marriage by one spouse from his or her parent(s), a rebuttable presumption arises that the transfer is a gift to that spouse" and is, therefore, separate property. *Caudill v. Caudill*, 131 N.C. App. 854, 857, 509 S.E.2d 246, 249 (1998). However, a gift in "[j]oint title . . . creates the rebuttable presumption of marital property[.]" *Loeb*, 72 N.C. App. at 211, 324 S.E.2d at 39 (citation and internal quotation marks omitted); *accord Atkins v. Atkins*, 102 N.C. App. 199, 207, 401 S.E.2d 784, 788 (1991) (property was marital where it "was not acquired by *a* spouse by bequest, devise, descent or gift . . . . Instead, the deed was a conveyance to *both* the Husband and the Wife . . . . by the Husband's mother."); *see also Burnett*, 122 N.C. App. at 714 n.1, 471 S.E.2d at 651 n.1 ("Because our statute provides that gifts to 'a' spouse during the course of the marriage is the separate property of that spouse, it follows that gifts to both spouses jointly are not within the definition of separate property[.]" (citation and internal quotation marks omitted)).

¶ 16 These classification presumptions may be overcome if the other party presents clear, cogent, and convincing evidence to the contrary. *See Loeb*, 72 N.C. App. at 211, 324 S.E.2d at 39. In the case of a jointly titled gift, "evidence that the gift of property was intended for only one spouse could conceivably rebut the presumption. Admittedly, the likelihood of overcoming the presumption is small." *Id.*

¶ 17 Here, the uncontroverted evidence adduced at trial supported the trial court's determination that the Camper was jointly titled. This created a rebuttable presumption that—although the Camper was a gift from Wife's mother—it was marital property. *See id.* Wife bore the burden of rebutting this presumption with clear, cogent, and convincing evidence. *See id.*; *Burnett*, 122 N.C. App. at 714, 471 S.E.2d at 651. The trial court determined that Wife did not meet that burden; we will not disturb the court's judgment.

¶ 18 While Mother testified that she intended the Camper to be a gift solely to Wife and the parties' children, the trial court rejected this testimony. The trial court found as fact that "[a]t the time of the transfer of the property to [Wife] and [Husband], [Wife]'s mother was present and did not object to the property being titled to the parties jointly. [Wife] testified that it would be easier to do it this way, just in case something happened to her." It further found that "[M]other's testimony . . . that she intended the money as a gift to [Wife] and the parties' children [was not] credible."

¶ 19 We may not now reweigh the evidence or credibility of the witnesses. *Coble v. Coble*, 300 N.C. 708, 712–13, 268 S.E.2d 185, 189 (1980); *see also Atkins*, 102 N.C. App. at 207, 401 S.E.2d at 788. "[T]he trial judge in an equitable distribution action is the sole arbiter of credibility and may reject the testimony of any witness in whole or in part." *Zhu v. Deng*, 250 N.C. App. 803, 814, 794 S.E.2d 808, 815–16 (2016) (citation omitted). It is the trial court's role to "determine what pertinent facts are

actually established by the evidence before it, and it is not for an appellate court" to reweigh or determine the credibility of the evidence. *Coble*, 300 N.C. at 712–13, 268 S.E.2d at 189.

¶ 20 We conclude that the trial court's findings were supported by competent evidence and that they support the court's classification of the Camper as marital property. Accordingly, Wife's assertions to the contrary lack merit.

III. Rule 52(b) Motion For Additional Findings

¶ 21 Wife also contends that the trial court erred by denying her Rule 52(b) motion for additional findings. We disagree.

¶ 22 Rule 52(b) of the North Carolina Rules of Civil Procedure provides that "[u]pon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly." N.C. Gen. Stat. § 1A-1, Rule 52(b). A trial court's ruling on a Rule 52(b) motion for additional findings of fact is reviewed for abuse of discretion. *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985).

¶ 23 In that the trial court's findings of fact are supported by competent evidence, and those findings are sufficient to support the trial court's conclusion of law that the Camper was marital property, we find no abuse of discretion in the trial court's denial of the Rule 52(b) motion. Moreover, additional findings would not have impacted our

appellate review of this issue. Thus, we reject Wife's contention that the trial court abused its discretion by denying her Rule 52(b) motion for additional findings.

AFFIRMED.

Judges DILLON and COLLINS concur.

Report per Rule 30(e).