IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-359

No. COA20-435

Filed 20 July 2021

Mecklenburg County, No. 16 CVD 1733

NEEPA DESAI, Plaintiff,

v.

SHYAM DESAI, Defendant.

Appeal by Defendant-Husband from order entered 20 August 2019 by Judge Paulina N. Havelka in Mecklenburg County District Court. Heard in the Court of Appeals 11 May 2021.

Wofford Burt, by Rebecca B. Wofford, for Plaintiff-Appellee.

Collins Family Law Group, by Rebecca K. Watts, for Defendant-Appellant.

CARPENTER, Judge.

¶ 1 Shyam Desai ("Defendant-Husband") appeals from an order and judgment of equitable distribution ("Equitable Distribution Order"), which ordered Defendant-Husband to pay a distributive award to Neepa Desai ("Plaintiff-Wife") in the amount of $48,211.25. For the following reasons, we reverse and remand.

I. Factual & Procedural Background

¶ 2 The evidence of record tends to show the following: Defendant-Husband and

Plaintiff-Wife married in a traditional Hindu ceremony on 31 March 2013. Following Hindu custom, Plaintiff-Wife was gifted several pieces of jewelry from her family and Defendant-Husband's family before the marriage. One particular piece, a Hindu mangalsutra necklace, which the groom traditionally ties around the bride's neck as part of the wedding ceremony to identify her as a married woman, was given to Plaintiff-Wife during the ceremony.

¶ 3 Prior to the marriage, Defendant-Husband financed a 2008 Honda CR-V. During the marriage, he used marital funds to pay down the debt owed and ultimately paid off the remaining balance of the vehicle before the parties' separation.

¶ 4 Defendant-Husband also owned three bank accounts prior to the marriage, including a Chase Bank account ending in 7724 ("Chase account"). On the date of the marriage, the Chase account had a balance of $10,556.75. On the date of separation, it was valued at $10,589.86.

¶ 5 During the marriage, Defendant-Husband worked as an independent contractor for TIAA-CREF, while Plaintiff-Wife was unable to find employment in the United States and "did not work during [the] marriage." In the course of his employment, Defendant-Husband contributed $3,033.42 to his workplace retirement account.

¶ 6 In October 2013, Plaintiff-Wife formed Desai Consulting Corporation ("Desai Consulting") at the request of Defendant-Husband. The parties intended for

Defendant-Husband to be the first consultant of the firm, and they planned to hire additional consultants in the future. The expansion plan was not realized, and the corporation incurred a tax liability of $14,098.33 over its approximate two years in operation, due to unpaid taxes. Defendant-Husband testified that he sent an email to Plaintiff-Wife in late 2015, informing her of the corporate tax debt of which he had just become aware. Plaintiff-Wife paid the debt with her funds post-separation, and Defendant-Husband ultimately reimbursed her through interim distribution payments. On the date of separation, Desai Consulting held a checking account in its name valued at $35,055.04.

¶ 7 Following the parties' separation on 24 January 2015, Plaintiff-Wife vacated the marital home and returned to her home country of India. At separation, Defendant-Husband retained possession of the Honda CR-V, as well as the three bank accounts he opened before marriage, and the Desai Consulting checking account. Plaintiff-Wife kept her jewelry, including the mangalsutra necklace.

¶ 8 On 27 January 2016, Plaintiff-Wife filed a complaint for equitable distribution. She also included a request for a temporary restraining order and preliminary injunction seeking an unequal distribution of assets in her favor; a freeze of Defendant-Husband's accounts until he disclosed the account information to Plaintiff-Wife; and a grant of an interim distribution "distributing Desai Consulting, Inc., completely to [Defendant-Husband's] possession, including responsibility for

taxes and tax filings." On 28 March 2016, Defendant-Husband filed his answer and counterclaim for equitable distribution. On 26 January 2017, the trial court conducted an initial pre-trial conference and entered its Initial Pretrial Conference, Scheduling, and Discovery Order on the same day. The order identified two discovery issues: (1) the identification, classification, and valuation of jewelry; and (2) the tax liability of Plaintiff-Wife and Desai Consulting. Pursuant to the order, a status conference was scheduled for 20 April 2017.

¶ 9 On 24 March 2017, Plaintiff-Wife filed a Supplemental Motion for Interim Distribution seeking, *inter alia*, an interim distribution of $14,098.33 as reimbursement of the corporate taxes she paid. On 3 April 2017, the parties filed a memorandum of judgment/order ("Interim Distribution 1"), which addressed the tax liability that was owed by Desai Consulting. Pursuant to the memorandum of judgment/order, the parties agreed Defendant-Husband would pay Plaintiff-Wife the sum of $7,000.00 as an interim distribution, and Defendant-Husband was to be "given credit for this amount in a Final Equitable Distribution."

¶ 10 On 20 April 2017, the trial court entered a Status Conference Checklist and Order, in which a final pretrial order was scheduled to be due on 6 July 2017, and an equitable distribution trial was set for the same day.

¶ 11 In response to Defendant-Husband's Motion for Interim Distribution filed 16 June 2017, the trial court entered an order for interim distribution on 18 July 2017

("Interim Distribution 2"). It ordered, *inter alia*, Defendant-Husband to pay Plaintiff-Wife $7,000.00 to reimburse her for the remaining tax liability that she had paid on behalf of Desai Consulting.

¶ 12 After nearly two years of unexplained delay since the scheduled trial, an equitable distribution hearing was held before the Honorable Paulina N. Havelka on 28 June 2019. The trial court entered the Equitable Distribution Order on 20 August 2019, which addressed the classification, valuation, and distribution of the parties' Honda CR-V vehicle, bank accounts, and jewelry, and ordered a distribution award be paid from Defendant-Husband to Plaintiff-Wife in the amount of $48,211.25. Defendant-Husband gave timely, written notice of appeal from the Order.

II. Jurisdiction

¶ 13 This Court has jurisdiction to address Defendant-Husband's appeal of the Order pursuant to N.C. Gen. Stat. § 7A-27(b)(2) (2019) as a final judgment of a district court in a civil action.

III. Issues

¶ 14 The issues on appeal are whether: (1) the trial court erred in its classification and valuation of the Honda CR-V vehicle; (2) the trial court erred in classifying the entire date-of-separation balance of Defendant-Husband's Chase account as marital property; (3) the trial court erred in classifying the mangalsutra wedding necklace as Plaintiff-Wife's separate property; (4) the trial court erred by failing to value and

distribute the $14,000.00 corporate tax debt owed by the parties; and (5) the trial court erred in ordering the distributive award.

IV. Standard of Review

¶ 15 "When the trial court sits without a jury, this Court reviews a trial court's equitable distribution order for whether there was competent evidence to support the trial court's findings of fact and whether those findings of fact supported its conclusions of law." *Crago v. Crago*, 268 N.C. App. 154, 157, 834 S.E.2d 700, 704 (2019), *disc. rev. denied*, __ N.C. __, 838 S.E.2d 181 (2020) (citations and quotation marks omitted). "The division of property in an equitable distribution is a matter within the sound discretion of the trial court." *Cunningham v. Cunningham*, 171 N.C. App. 550, 555, 615 S.E.2d 675, 680 (2005) (citations and quotation marks omitted). "Only a finding that the judgment was unsupported by reason and could not have been a result of competent inquiry, or a finding that the trial judge failed to comply with the statute, N.C. [Gen. Stat.] § 50-20(c) (1987), will establish an abuse of discretion." *Wiencek-Adams v. Adams*, 331 N.C. 688, 691, 417 S.E.2d 449, 451 (1992); *see also* N.C. Gen. Stat. § 50-20(c) (2019). "Accordingly, the trial court's rulings in equitable distribution cases receive great deference and may be upset only if they are so arbitrary that they could not have been the result of a reasoned decision." *Lawing v. Lawing*, 81 N.C. App. 159, 162, 344 S.E.2d 100, 104 (1986).

¶ 16 Additionally,

> [b]ecause 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. The conclusion that property is either marital, separate or non-marital, must be supported by written findings of fact. Appropriate findings of fact include, but are not limited to, (1) the date the property was acquired, (2) who acquired the property, (3) the date of the marriage, (4) the date of separation, and (5) how the property was acquired. (i.e., by gift, bequest, or purchase).

Hunt v. Hunt, 112 N.C. App. 722, 729, 436 S.E.2d 856, 861 (1993) (citations omitted); *see also* N.C. Gen. Stat. §§ 50-20(b)(1)–(2).

¶ 17 The purpose of requiring sufficient findings of fact and conclusions of law is "to enable an appellate court to review the decision and test the correctness of the judgment." *Wade v. Wade*, 72 N.C. App. 372, 376, 325 S.E.2d 260, 266, *disc. rev. denied*, 313 N.C. 612, 330 S.E.2d 616 (1985).

V. Equitable Distribution

¶ 18 In deciding an equitable distribution matter, N.C. Gen. Stat. § 50-20 requires a trial judge to follow a three-step procedure:

> (1) all property must be classified as marital or separate, and when property has dual character, the component interests of the marital and separate estates must be identified;
> (2) the net value of marital property must be determined; and
> (3) marital property must then be distributed equally or, if equal division would be inequitable, distributed according to the equitable factors set out in N.C. Gen.

Stat. § 50-20(c).

McIver v. McIver, 92 N.C. App. 116, 123–24, 374 S.E.2d 144, 149 (1988); *see also* N.C. Gen. Stat. § 50-20 (2019).

¶ 19 "Marital property" is defined 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 . . . ." N.C. Gen. Stat. § 50-20(b)(1). "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." N.C. Gen. Stat. § 50-20(b)(2).

> The trial court must classify and identify property as marital or separate depending upon the proof presented to the trial court of the nature of the assets. The burden of showing the property to be marital is on the party seeking to classify the asset as marital and the burden of showing the property to be separate is on the party seeking to classify the assets as separate. A party may satisfy [his or] her burden by a preponderance of the evidence.

Atkins v. Atkins, 102 N.C. App. 199, 206, 401 S.E.2d 784, 787 (1991) (citations and quotation marks omitted). If the party seeking to prove the property is marital meets his or her burden of showing the property is marital, "then the burden shifts to the party claiming the property to be separate to show by a preponderance of the evidence that the property meets the definition of separate property." *Ross v. Ross*, 230 N.C. App. 28, 32, 749 S.E.2d 84, 88 (2013) (citation omitted). "If both parties meet their

burdens, the property is considered separate property." *Finney v. Finney*, 225 N.C. App. 13, 18, 736 S.E.2d 639, 643 (2013) (citation omitted). Separate property is not subject to equitable distribution. *See* N.C. Gen. Stat. § 50-20(c) (2019).

A. 2008 Honda CR-V

¶ 20 In his first argument, Defendant-Husband contends that "finding of fact 8(a) [classifying the Honda CR-V as marital property and valuing it at $9,411.00] is not based upon competent evidence and the conclusion of law is not based upon competent findings of fact." Further, Defendant-Husband asserts that the trial court erred in classifying the Honda CR-V as marital property rather than separate property because he "owned this vehicle prior to his marriage"; thus, only the "increase in value of the vehicle that is attributable to th[e] marital effort" is marital property subject to distribution. On appeal, Plaintiff-Wife argues that the "trial court correctly classified and valued the Honda CR-V, by determining its approximate net value, which is the marital component." After careful review, we agree with Defendant-Husband that the trial court's classification of the vehicle as marital property was not based on competent evidence. Moreover, our review of the record reveals the pertinent conclusions of law as to the Honda CR-V's classification and valuation are not supported by sufficient findings of fact.

¶ 21 This Court has adopted the "source of funds rule," which is applicable when property is acquired using both marital property and separate property. *McIver*, 92

N.C. App. at 124, 374 S.E.2d at 149; *see also Wade*, 72 N.C. App. at 382, 325 S.E.2d at 269. Under the source of funds rule, acquisition of property occurs "as it is paid for"; thus, acquisition is considered an "on-going process" determined by the contributions of the parties. *McLeod v. McLeod*, 74 N.C. App. 144, 148, 327 S.E.2d 910, 913, *disc. rev. denied*, 314 N.C. 331, 333 S.E.2d 488 (1985).

¶ 22 "When marital efforts actively increase the value of separate property, the increase in value is marital property and is subject to distribution." *Conway v. Conway*, 131 N.C. App. 609, 615, 508 S.E.2d 812, 817 (1998) (citations omitted). A party may determine active appreciation of separate property by demonstrating the: "(1) value of asset at time of acquisition, (2) value of asset at date of separation, (3) difference between the two." *Id.* at 615–16, 508 S.E.2d at 817.

¶ 23 The trial court valued the Honda CR-V at $9,411.00. Furthermore, it classified the Honda CR-V as marital property. However, the record and transcripts tend to show the parties did not dispute that Defendant-Husband financed the Honda CR-V prior to the marriage and that the Honda CR-V should be classified as separate property.

¶ 24 In Defendant-Husband's equitable distribution affidavit dated 13 June 2016, he classified the 2008 Honda CR-V as separate property; notated "[d]ecrease in car loan" under the "nature of contribution to increase in value" column; and entered "TBD" in the boxes for the net fair market value on date of marriage or date of

acquisition, net fair market value on date of separation, and amount of active increase in value. Defendant-Husband testified that between 6 May 2013 and 6 March 2014, marital funds were used to make monthly $500.00 payments on the vehicle, which totaled approximately $5,262.00.

¶ 25 On the other hand, Plaintiff-Wife listed the Honda CR-V as transportation-related marital property in her equitable distribution affidavit. She declared the net value of the Honda CR-V on the date of separation was $10,000.00 and noted the Honda CR-V was "[*s*]*eparate property*, except [the] paydown of [Defendant-Husband's] separate debt during the marriage." (Emphasis added). Moreover, Plaintiff-Wife classified the vehicle's debt paid during the marriage as "non-marital" debt and listed the amount owed on the date of separation as negative $9,930.00.

¶ 26 As our Court held in *Hunt*, an "equitable distribution judgment must be reversed [when] the judgment does not reflect that the property was valued . . . on 'the date of the separation of the parties'" or when property classifications are not supported by adequate findings of fact. *Hunt*, 112 N.C. App. at 729, 436 S.E.2d at 861. In *Hunt*, the trial court's only findings of fact in support of its property classifications were the parties' date of marriage and date of separation. *Id.* at 729, 436 S.E.2d at 861. The Court noted that the trial court made "no findings as to when the property was acquired, how it was acquired, or by whom it was acquired." *Id.* at 729, 436 S.E.2d at 861. The *Hunt* Court reversed and remanded the matter to the

trial court and ordered a new trial because the record contained no transcripts of the equitable distribution hearing. *Id.* at 730, 436 S.E.2d at 862.

¶ 27 Here, like *Hunt*, the trial court's only findings supporting the conclusion that the Honda CR-V was marital property are the parties' date of marriage, date of separation, and an aggregate value the trial court assigned to the marital estate. *See id.*, 112 N.C. App. at 729, 436 S.E.2d at 861. The Order did not include sufficient findings of fact to support the conclusion of law that the Honda CR-V was marital property.

¶ 28 In fact, the trial court's classification of the Honda CR-V as marital property is in conflict with the record because the parties agreed in their equitable distribution affidavits that the Honda CR-V should have been classified as separate property. The parties further agreed that Defendant-Husband acquired the vehicle prior to the marriage, and they used marital funds to pay down the loan balance. Although Plaintiff-Wife included the Honda CR-V under the marital property portion of her affidavit to account for the marital funds applied to the vehicle's loan, she did not put forth evidence to show the vehicle was "acquired by either spouse or both spouses during the course of the marriage and before the date of the separation of the parties . . . ." as statutorily required; thus, Plaintiff failed to satisfy her burden to show that the Honda CR-V was marital property. *See* N.C. Gen. Stat. § 50-20(b)(1); *Atkins*, 102 N.C. App. at 206, 401 S.E.2d at 787. Therefore, the trial court erred in classifying

the Honda CR-V as marital property.

¶ 29 We reverse and remand for proceedings not inconsistent with the opinion so the trial court can enter sufficient findings of fact with respect to the classification of the Honda CR-V and the valuation of appreciation due to marital efforts. "The trial court may rely on the original record, except to the extent that further hearing may be necessary." *Lawing*, 81 N.C. App. at 185, 344 S.E.2d at 117. "We emphasize that our holding does not require voluminous findings from the trial court, but instead simply findings sufficiently adequate to reflect that it has performed the task imposed upon it by our case law." *Robertson v. Robertson*, 174 N.C. App. 784, 790, 625 S.E.2d 117, 121 (2005); *see, e.g.*, *Hunt*, 112 N.C. App. at 729, 436 S.E.2d at 861.

B. Chase Bank Account (7724)

¶ 30 Defendant-Husband next argues the trial court erred in classifying the Chase account as solely marital property and valuing the account as the entire date of separation balance rather than the difference between the date of marriage value and the date of separation value. We disagree with Defendant-Husband's contentions, but again conclude the trial court's classification and valuation of the Chase account are not supported by adequate findings of fact. *Hunt*, 112 N.C. App. at 729, 436 S.E.2d at 861. "The fact that there is evidence in the record from which sufficient findings *could* be made does not excuse the error" of insufficient written factual findings to support conclusions of law. *Wade*, 72 N.C. App. at 376, 325 S.E.2d at 266

(emphasis in original).

¶ 31 In the accounts schedule of his equitable distribution affidavit, Defendant-Husband listed the Chase account under Part I – Marital Property, designated himself as the owner of the account, and again wrote "TBD" in the boxes for the net fair market value on the date of separation. He did not list the Chase account under Part III – Separate Property of the affidavit.

¶ 32 Plaintiff-Wife declared the net fair market value of the Chase account as $10,589.86 on the date of separation under Part I – Marital Property of her equitable distribution affidavit and provided proof of the date-of-separation balance by way of a bank statement.

¶ 33 The trial court made finding of fact 8(b), which classified Chase Bank account as marital property and valued it as $10,589.86, the date-of-separation balance provided by Plaintiff-Wife in her affidavit.

¶ 34 "[T]he mere commingling of marital funds with separate funds alone does not automatically transmute the separate property into marital property. *O'Brien v. O'Brien*, 131 N.C. App. 411, 419, 508 S.E.2d 300, 306 (1998), *disc. rev. denied*, 350 N.C. 98, 528 S.E.2d 365 (1999). However, "[t]ransmutation would occur . . . if the party claiming the property to be his separate property is unable to trace the initial deposit into its form at the date of separation." *Fountain v. Fountain*, 148 N.C. App. 329, 333, 559 S.E.2d 25, 29 (2002) (citation omitted).

¶ 35 Defendant-Husband offered no evidence to show that any premarital funds still existed in the account since the parties married. *See Crago*, 268 N.C. App. at 161, 834 S.E.2d at 706 (holding the trial court did not err in classifying accounts as marital where the wife did not show evidence that any money was acquired by devise, descent, or gift; did not prove any premarital funds existed after eight years of marriage; nor did she provide any means of tracing the separate funds). Furthermore, even if Defendant-Husband owned the account prior to the marriage, he did not provide tracing or other evidence to show that the contents of the account were separate property as of the date of separation. *Id.* at 160, 834 S.E.2d 705–06.

¶ 36 The evidence of record tends to show that Defendant-Husband's Chase account had some separate property attributes—mainly, it was opened prior to the date of the marriage; however, there was also competent evidence in the record to support a finding that the account was marital property considering the parties' affidavits and Defendant-Husband's lack of tracing and proof of premarital funds. Nevertheless, the trial court merely classified the Chase account as marital, assigned it a value, and distributed it to one party without making the appropriate findings. Like the Honda CR-V and the other property classified as marital, the trial court did not make sufficient findings of fact or conclusions of law as to the Chase account's classification and valuation. On remand, the trial court must make additional findings of fact to support its classification as marital property and its valuation of $10,589.86.

C. Mangalsutra Wedding Necklace

¶ 37 In his third argument, Defendant-Husband contends he gave the mangalsutra necklace to Plaintiff-Wife after the marriage solemnization; thus the necklace was presumptively marital property pursuant to N.C. Gen. Stat. § 50-20(b)(2) (2019), because it was "property . . . gift[ed] from one spouse to the other during the course of the marriage . . . ." Plaintiff-Wife asserts the customary mangalsutra necklace is "intended to remain the separate property of the wife" and represents the "love and affection received by the woman on both sides of the family." After careful review, we agree with Plaintiff-Wife that the necklace is separate property; however, as previously discussed relating to the property the trial court classified as marital, the court failed to make adequate findings of fact to support this conclusion of law.

¶ 38 Pursuant to N.C. Gen. Stat. § 50-20, "separate property" includes "personal property acquired . . . by a spouse by devise, descent, or gift during the course of the marriage. However, property acquired by gift from the other spouse during the course of the marriage shall be considered separate property only if such intention is stated in the conveyance." N.C. Gen. Stat. § 50-20(b)(2).

¶ 39 The essential elements of a valid gift *inter vivos* are: (1) donative intent; and (2) either actual or constructive delivery. *Holloway v. Wachovia Bank & Trust Co. N.A.*, 333 N.C. 94, 100, 423 S.E.2d 752, 755 (1992). Our Court has held that property acquired by a spouse during the marriage from *his or her own parent* is presumptively

separate property. *See Burnett v. Burnett*, 122 N.C. App. 712, 714, 471 S.E.2d 649, 651 (1996). In other cases where a third party provides a gift to a spouse,

> [t]he party claiming a certain classification has the burden of showing, by the preponderance of the evidence, that the property is within the claimed classification. Thus[,] a party claiming property acquired during the marriage to be separate, on the basis that it was a gift, has the burden of showing that the alleged donor intended to transfer ownership of the property without receiving any consideration in return.

Id. at 714, 471 S.E.2d at 651 (citations and quotation marks omitted).

¶ 40 Testimony from a donor or an alleged donor is relevant evidence in the determination of donative intent. *Id.* at 715, 471 S.E.2d at 651. "Transfer documents stating that the property is a gift or characterizing the consideration as love and affection is strong evidence of donative intent." *Id.* at 715, 471 S.E.2d at 651.

¶ 41 In the instant case, Defendant-Husband concedes that the mangalsutra necklace was a gift from his family to Plaintiff-Wife as part of their marriage. Considering the necklace was a gift from Defendant's Husband's family, we reject his argument that the necklace was presumptively marital property under N.C. Gen. Stat. § 50-20(b)(2) as a gift from one spouse to the other. Thus, we must determine whether Plaintiff-Wife met her burden of proof in showing that the mangalsutra necklace is separate property.

¶ 42 Defendant-Husband testified that it was his family who purchased the

mangalsutra necklace. He further testified that even though his marriage to Plaintiff-Wife was an arranged marriage, "there [was] no dowry involved." According to Defendant-Husband, the families "provided . . . very, very valuable jewelry as part of the marriage. And that should be marital property." When asked if the families provided jewelry pieces to both the bride and groom, Defendant-Husband responded that the giving of jewelry was "something that you do from your own ability or your love . . . ." Although Defendant's family did not provide a transfer document for the mangalsutra necklace, Defendant-Husband's testimony "characterize[es] the consideration [for the necklace] as love and affection"; thus, there is strong evidence of donative intent on the part of Defendant's family. *See Burnett*, 122 N.C. App. at 715, 471 S.E.2d at 651.

¶ 43 Furthermore, on appeal, Defendant-Husband relies on Plaintiff-Wife's testimony on direct examination in which she states, "Page 7 is the mangalsutra that we discussed about the husband puts it in—around the wife's neck, and *this is after the marriage got solemnized*," for support of his argument that the necklace was given to Plaintiff-Wife after the marriage solemnized. (Emphasis added). Our review of the record reveals Defendant-Husband took this phrase from Plaintiff-Wife's testimony out of context. Plaintiff-Wife was describing various photographs, which were placed into evidence and depicted the jewelry at issue in this case. We interpret Plaintiff-Wife's statement as meaning the *photograph* was taken after the marriage

was solemnized—not that the necklace was given after the solemnization. Therefore, we reject Defendant-Husband's argument.

¶ 44 Plaintiff-Wife testified she received the mangalsutra necklace, which is customarily placed around the bride's neck as part of the wedding ceremony and given to the wife as a gift of the marriage. When asked during cross-examination whether "all the jewelry [at issue] was given to [her] before marriage," Plaintiff-Wife responded, "[y]es." Therefore, there was evidence that the necklace was "acquired by [Plaintiff-Wife] before marriage." *See* N.C. Gen. Stat. § 50-20(b)(2). The donative intent and actual delivery elements for establishing a gift *inter vivos* were met. *See Holloway*, 333 N.C. at 100, 423 S.E.2d at 755. Additionally, there is no indication that Defendant-Husband's family sought any consideration for the necklace. *See Burnett*, 122 N.C. App. at 714, 471 S.E.2d at 651.

¶ 45 Although the parties disagree on appeal as to whether the mangalsutra necklace was given before or after the marriage solemnization, in either case, there was sufficient competent evidence from which the trial court could find that the mangalsutra necklace was given by Defendant-Husband's family solely to Plaintiff-Wife with donative intent. Yet the trial court did not make any findings of fact to support its classification of the necklace as separate property. On remand, the trial court must enter findings to supports its conclusion of law that the necklace is separate property including how the necklace was acquired, who acquired it, and the

date of acquisition.

D. Corporate Tax Debt

¶ 46 In his fourth argument, Defendant-Husband maintains that the trial court erred in not including his payments totaling $14,000.00 to Plaintiff-Wife in its final equitable distribution order. He contends this "[f]ailure to do so was error and greatly skewed the trial court's determination of the total value of the marital estate." We agree.

¶ 47 N.C. Gen. Stat. § 50-20(i1) provides:

> [u]nless good cause is shown that there should not be an interim distribution, the court may, at any time after an action for equitable distribution has been filed and prior to the final judgment of equitable distribution, enter orders declaring what is separate property and may also enter orders dividing part of the marital property, divisible property or debt, or marital debt between the parties. The partial distribution may provide for a distributive award and may also provide for a distribution of marital property, marital debt, divisible property, or divisible debt. *Any such orders entered shall be taken into consideration at trial and proper credit given*.

N.C. Gen. Stat. § 50-20(i1) (2019) (emphasis added).

¶ 48 In this case, the parties reached an agreement as to a $7,000.00 interim distribution, which was memorialized in Interim Distribution 1, filed 3 April 2017. It stated, *inter alia*, "Defendant shall pay to Plaintiff the sum of $7,000 as an interim distribution by certified or cleared funds to [Plaintiff-Wife],"

and "Defendant shall be given credit for this amount in a Final Equitable Distribution."

¶ 49 Interim Distribution 2 ordered Defendant-Husband to pay an additional $7,000.00 to Plaintiff-Wife. It specifically stated the order was entered "[w]ithout making affirmations or denials of whether certain items are correctly valued or are properly classified as marital or separate [property]."

¶ 50 Although Defendant-Husband failed to account for the payment of the tax liability in his equitable distribution affidavit, Defendant-Husband testified at the 28 June 2019 equitable distribution hearing, "I have paid [Plaintiff-Wife] fourteen thousand dollars from [the marital] accounts."

¶ 51 The trial court found as fact that an equal distribution of marital property and divisible property and debts was equitable and fair to the parties. However, the Equitable Distribution Order did not make a finding to give Defendant-Husband credit for either of his two $7,000.00 payments; therefore, it is unclear whether the interim distributions were "taken into consideration at trial and [whether] proper credit [was] given." *See* N.C. Gen. Stat. § 50-20(i1). We hold the trial court erred in failing to make a finding of fact with respect to crediting Defendant-Husband for the aggregate amount of $14,000.00 in his interim distribution payments. On remand, the trial court must credit Defendant-Husband for his payments to Plaintiff-Wife and adjust the distributive award as necessary.

E. Distributive Award

¶ 52 In his final argument, Defendant-Husband contends that the trial court erred in ordering its distributive award because: (1) the valuation of the total marital property is wrong; (2) it did not make the requisite findings to rebut the presumption that an in-kind distribution of marital or divisible property is equitable; and (3) it did not find that Defendant-Husband had sufficient liquid assets from which to pay the award. We disagree.

¶ 53 We previously discussed Defendant-Husband's contention that the marital property was valued incorrectly; therefore, we need not address this argument again.

¶ 54 Although we held the distributive award requires modification to account for the $14,000.00 interim distributions and potentially for improper property classifications and valuations, we consider Defendant-Husband's remaining arguments with respect to the award.

¶ 55 N.C. Gen. Stat. § 50-20 provides:

> [s]ubject to the presumption of subsection (c) of this section that an equal division is equitable, it shall be presumed in every action that an in-kind distribution of marital or divisible property is equitable. This presumption may be rebutted by the greater weight of the evidence, or by evidence that the property is a closely held business entity or is otherwise not susceptible of division in-kind. In any action in which the presumption is rebutted, the court in lieu of in-kind distribution shall provide for a distributive award in order to achieve equity between the parties. The court may provide for a distributive award to facilitate,

> effectuate or supplement a distribution of marital or divisible property. The court may provide that any distributive award payable over a period of time be secured by a lien on specific property.

N.C. Gen. Stat. § 50-20(e) (2019).

¶ 56 "[I]f the trial court determines that the presumption of an in-kind distribution has been rebutted, it must make findings of fact and conclusions of law in support of that determination." *Urciolo v. Urciolo*, 166 N.C. App. 504, 507, 601 S.E.2d 905, 908 (2004). "[A] trial court's failure to comply with the provisions of the equitable distribution statute constitutes an abuse of discretion." *Pott v. Pott*, 126 N.C. App. 285, 289, 484 S.E.2d 822, 826 (1997).

¶ 57 In this case, the trial court made finding of fact 13 and conclusion of law 3, in which it determined that an equal division of the marital and divisible property and debts was an equitable distribution of the assets. Additionally, the trial court made finding of fact 14 and conclusion of law 4 in which it stated that the distributive award was "necessary to facilitate, effectuate or supplement a distribution of marital or divisible property." However, the trial court made insufficient findings of fact and conclusions of law regarding the in-kind presumption and whether the presumption was rebutted. *See Urciolo*, 166 N.C. App. at 507, 601 S.E.2d at 908. On remand, the trial court must make an entry of additional findings of fact and conclusions of law pertaining to the trial court's basis for ordering the distributive award, including

whether the in-kind presumption was rebutted.

¶ 58 Next, Defendant-Husband cites to *Embler v. Embler* in arguing that the trial court erred by ordering a distributive award without first making a "finding that [he] had sufficient liquid assets from which to pay a distributive award." *See* 159 N.C. App. 186, 582 S.E.2d 628.

¶ 59 In *Embler*, our Court held that the lower court erred in ordering the defendant to pay the plaintiff a distributive award "without making any finding whether he had sufficient liquid assets to pay the award." *Id.* at 188, 582 S.E.2d at 630. There, the only assets from which the defendant could pay the award were "non-liquid in nature"; thus, the defendant either had to liquidate assets or obtain a loan to pay the award. *Id.* at 188–89, 582 S.E.2d at 630. We remanded the case to the trial court to determine whether the defendant had non-liquid assets from which he could pay the ordered award. *Id.* at 189, 582 S.E.2d at 630.

¶ 60 We find the facts of *Clark v. Dyer*, rather than those of *Embler*, analogous to the facts in the case before us. 236 N.C. App. 9, 762 S.E.2d 838 (2014). In *Clark*, the plaintiff was ordered to pay the defendant a distributive award after the trial court distributed "several bank accounts, valued in excess of $60,000.00 in total" to the plaintiff. *Id.* at 31, 762 S.E.2d at 850. We held that the liquid assets that the plaintiff received in the equitable distribution "could logically serve as a source of payment" for the award to the defendant. *Id.* at 31, 762 S.E.2d at 850.

¶ 61 Here, Defendant-Husband received not only non-liquid assets including the Honda CR-V and TIAA-CREF retirement account in the equitable distribution, but liquid assets including the Desai Consulting bank account balance valued at $35,055.04 and three bank accounts with an aggregate value of $48,923.04. The cash held in the four bank accounts "could logically serve as a source of payment" for the distributive award. *See id.* at 31, 762 S.E.2d at 850. For the reasons stated above, we hold the trial court did not err in not making a finding of fact that he had sufficient liquid assets to pay the distributive award.

VI. Conclusion

¶ 62 We hold the trial court erred: (1) in classifying the Honda CR-V as marital property; (2) by not making sufficient findings of fact with respect to its classification and valuation of the Honda CR-V, Chase account, and mangalsutra necklace; and (3) in failing to give Defendant-Husband credit and to make findings of fact with respect to the interim distributions. Additionally, we hold the trial court erred in entering the distributive award by not making findings of fact pertaining to the in-kind presumption and whether it was rebutted. On remand, the trial court is instructed to enter the appropriate findings of fact to support its conclusions of law and adjust the distributive award as necessary based on the foregoing. The trial court may rely on the original record to the extent possible and hold additional hearings if necessary.

REVERSED AND REMANDED.

Judge ZACHARY concurs.

Judge MURPHY concurs in result only.

Report per Rule 30(e).