

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-485

No. COA20-785

Filed 7 September 2021

Randolph County, No. 17 CVD 2295

LESLIE JULIA ZIMMERMAN, Plaintiff,

v.

NORMAN JUDE ZIMMERMAN, Defendant.

Appeal by Defendant from Order entered 5 March 2020 by Judge Scott C. Etheridge in Randolph County District Court. Heard in the Court of Appeals 25 May 2021.

Bunch & Robins, LLP, by Thomas D. Robins, for plaintiff-appellee.

Rebecca Perry, PLLC, by Rebecca Perry, for defendant-appellant.

MURPHY, Judge.

¶ 1

In an action for equitable distribution, a trial court has the discretion to classify property as marital, divisible, or separate, and to value and distribute the marital and divisible property. A trial court abuses this discretion when it fails to value and distribute certain property for which evidence was presented at an equitable distribution hearing. Without findings of fact regarding property for which evidence was presented, we cannot determine whether the trial court abused its

ZIMMERMAN V. ZIMMERMAN

2021-NCCOA-485

Opinion of the Court

discretion in granting an unequal distribution to one party.

¶ 2 Here, the Record reflects the trial court neglected to make findings of fact regarding certain property for which evidence was presented at the equitable distribution hearing. The trial court granted unequal distribution in favor of the wife based on erroneous findings of fact. We remand to the trial court.

BACKGROUND

¶ 3 Plaintiff-Wife, Leslie Julia Zimmerman, and Defendant-Husband, Norman Jude Zimmerman, were married on 18 June 1988. The parties separated on 18 October 2016 and were granted an absolute divorce on 7 December 2018. Five children were born of the marriage, all of whom had reached the age of majority by the time of the parties' separation.

¶ 4 On 6 and 7 January 2020, the trial court held a hearing regarding the parties' claims for equitable distribution. After the hearing, the trial court filed an *Equitable Distribution Order* on 5 March 2020 and awarded the parties' real estate ("Zimmerman property"), consisting of over 130 acres, and the parties' business, Zimmerman Vineyards, LLC, to Leslie. The remainder of the marital assets, worth little comparative value, were distributed approximately equally between the parties. The trial court also ordered Leslie to pay Norman a distributive award of \$415,000.00, the limit of what she could borrow. After the distributive award, the total marital

estate was distributed unequally in favor of Leslie. Norman timely filed *Notice of Appeal* from the trial court's *Equitable Distribution Order*.

ANALYSIS

¶ 5

On appeal, Norman argues the trial court erred: (A) by erroneously calculating the value of the Zimmerman property; (B) by failing to value and distribute every item of marital property; and, (C) by failing to consider Norman's contribution of separate property as a factor in determining whether an equal distribution would be equitable. Norman asks us to reverse the *Equitable Distribution Order* and remand to the trial court for further findings.

Our review of an equitable distribution order is limited to determining whether the trial court abused its discretion in distributing the parties' marital property. Accordingly, the findings of fact are conclusive if they are supported by any competent evidence from the record.

However, even applying this generous standard of review, there are still requirements with which trial courts must comply. Under N.C.G.S. § 50-20(c), equitable distribution is a three-step process; the trial court must (1) determine what is marital and divisible^[1] property; (2) find the net value of the property; and (3) make an equitable distribution of that property.

....

In fact, to enter a proper equitable distribution judgment, the trial court must specifically and particularly classify

¹ We note the trial court found "[t]he net value of divisible property on the date of distribution is zero as no evidence of divisible property was offered by the parties." Divisible property is therefore not at issue here.

and value all assets and debts maintained by the parties at the date of separation. . . . Furthermore, in doing all these things the [trial] court must be specific and detailed enough to enable a reviewing court to determine what was done and its correctness.

Robinson v. Robinson, 210 N.C. App. 319, 322-23, 707 S.E.2d 785, 789 (2011) (marks and citations omitted).

A. Calculation of the Zimmerman Property’s Value

¶ 6

In its *Equitable Distribution Order*, the trial court made the following relevant findings of fact:

7. During the marriage the parties acquired both real and personal property as set forth in the following schedules:

A. Schedule I. Real Property and Schedule VI. Business Assets.

. . . .

2. The property located at 1428 and 1432 Tabernacle Rd., Trinity, North Carolina is referred to as the “Zimmerman property” by Michael Smith in his appraisal of the aforementioned properties. Michael Smith’s report was admitted in evidence as Plaintiff’s exhibit number five (5). The Zimmerman property appraisal included the 138.48 acre tract, the vineyard and improvements to said property, which included: the residence, the Tasting Room, the vineyard, and other miscellaneous improvements.

3. Michael Smith is self-employed as a Real Estate Appraiser with twenty-three (23) years’ experience in performing appraisals. Mr. Smith has performed appraisals for both residential and commercial properties. Michael Smith also has experience in

ZIMMERMAN V. ZIMMERMAN

2021-NCCOA-485

Opinion of the Court

vineyard appraisals.

4. The valuation method used by Michael Smith was the Cost Approach valuation method. This valuation analysis was the more appropriate method of valuation than the Sales Approach and Income Approach. The Sales Approach was not an appropriate valuation method as the appraiser was unable to find sales of similarly situated properties and thus, found “insufficient data on which to base a meaningful value estimate.” The Income Approach was also rejected as a meaningful valuation method as this property as of the date of the report “was not generating sufficient income to support this business venture. In fact, this property/business has operated at a net loss for the majority of its existence.

5. The [trial] court finds, based on the appraisal, that the reasonable, fair market value of the Zimmerman property is \$965,000.00.

¶ 7 Norman argues the trial court did not make a finding of fact as to the value of the Zimmerman property at the date of separation. We disagree.

¶ 8 In Finding of Fact 7.A.5, the trial court found the “value of the Zimmerman property is \$965,000.00.” On the first page of the *Equitable Distribution Order*, the trial court stated the property was valued as of the “date of valuation”:

AND IT APPEARING that a Pre-Trial Conference was conducted before the undersigned Presiding Judge upon pleadings seeking a determination of marital property and each party seeking an unequal distribution of such property as shall be determined to be marital;

AND IT APPEARING that each party prior to trial agreed with the facts and issues classified as agreed upon in the

ZIMMERMAN V. ZIMMERMAN

2021-NCCOA-485

Opinion of the Court

Amended Pre-Trial Order and further stipulated that the facts and issues classified as being in dispute are accurately reflected and there are no other issues to be determined by the [trial court];

AND IT FURTHER APPEARING, that each party by signing the Pre-Trial Order and stipulating to the adoption of the Amended Pre-Trial Order warrants and avows that he or she has disclosed the existence of all property, both marital and separate, *to which he or she may have claim at the date of valuation of marital property*, regardless of to whom such property may be titled or in whom actual ownership may be designated.

(Emphasis added).

¶ 9

According to N.C.G.S. § 50-21, the date of valuation of marital property is the date of separation. N.C.G.S. § 50-21(b) (2019) (“For purposes of equitable distribution, marital property shall be valued as of the date of the separation of the parties[.]”). This Court applies a presumption “that the trial court knows and follows the applicable law unless an appellant shows otherwise.” *State v. Jones*, 260 N.C. App. 104, 108, 816 S.E.2d 921, 924 (2018), *disc. rev. denied*, 372 N.C. 710, 831 S.E.2d 90 (2019). This presumption can be overcome by evidence in the record that the trial court did not properly understand the law. *Id.* “When a trial judge acts under a misapprehension of the law, this constitutes an abuse of discretion.” *State v. Nunez*, 204 N.C. App. 164, 170, 693 S.E.2d 223, 227 (2010). However, there is no evidence in the Record to rebut the presumption that the trial court properly applied the law,

ZIMMERMAN V. ZIMMERMAN

2021-NCCOA-485

Opinion of the Court

specifically N.C.G.S. § 50-21, and exercised its sound discretion. The trial court made a finding of fact as to the value of the Zimmerman property at the date of separation.

¶ 10 Norman also argues that to the extent Finding of Fact 7.A.5 values the Zimmerman property as of the date of separation, it should be disregarded because it is unsupported by competent evidence.² Specifically, Norman argues “[t]he [Zimmerman property] appraisal [referenced in the *Equitable Distribution Order*] should be disregarded because the value it reflects is more than a year after the date of separation” and “since the value at the date of separation would be different from the value as of the date of the appraisal, the appraisal cannot be relied upon to establish the value at the date of separation.” Again, we disagree.

¶ 11 The trial court properly relied on the appraisal as competent evidence to support the valuation of the Zimmerman property as of the date of separation. There was expert testimony at the equitable distribution hearing from Michael Smith, the appraiser, that there was no significant change in value to the Zimmerman property between the date of separation and the appraisal date:

[LESLIE’S COUNSEL:] Okay. All right. Now the date of your appraisal is [1 May 2018]?

² To the extent Norman’s argument pertains to relevancy, we note he has not preserved this argument for appellate review, as he did not make a Rule 401 or Rule 403 argument in his brief. *See* N.C. R. App. P. 28(a) (2021) (“The scope of review on appeal is limited to issues so presented in the several briefs. Issues not presented and discussed in a party’s brief are deemed abandoned.”).

ZIMMERMAN V. ZIMMERMAN

2021-NCCOA-485

Opinion of the Court

[MICHAEL SMITH:] That's the date of value.

[LESLIE'S COUNSEL:] Okay. So that's the date---

[MICHAEL SMITH:] That's the date of the report, so that's the date that I finished the analysis and put it together.

[LESLIE'S COUNSEL:] All right. Now it has been established that the parties separated on [18 October 2016]. [Do] [y]ou know, what, if anything, would have caused the [Zimmerman] property to change value between [18 October 2016] and [1 May 2018]?

[MICHAEL SMITH:] I'm sorry. Repeat the question.

[LESLIE'S COUNSEL:] What, if anything, could have caused or would have caused a change in [the] value of the [Zimmerman property] between [18 October 2016] and about 18 months later when you appraised it?

[MICHAEL SMITH:] So it could -- either a change -- fundamental change in the property or a change in the market conditions that the property exists in. Either of those things could cause the value to change over that period of time.

[LESLIE'S COUNSEL:] Okay. Are you aware of any changes in the fundamental nature of the [Zimmerman] property between October of 2016 and 2018 when you saw it?

[MICHAEL SMITH:] No, I am not.

This testimony is competent evidence to support Finding of Fact 7.A.5. The trial court did not err in finding “based on the appraisal, that the reasonable, fair market value of the Zimmerman property is \$965,000.00” as of the date of separation.

B. Valuation and Distribution of Certain Marital Property

¶ 12 Norman does not challenge any of the property classifications made by the trial court. However, Norman argues the trial court erred in *valuing* and *distributing* certain marital property, specifically: (1) Zimmerman Vineyards, LLC; (2) the Randolph County Schools retirement pension; (3) the Zimmerman line of credit; and, (4) the John Deere tractor debt.

1. Zimmerman Vineyards, LLC

¶ 13 Norman challenges Finding of Fact 7.A.1 as unsupported by competent evidence. Finding of Fact 7.A.1 states:

1. *The parties agreed and stipulated that number one (1) on Schedule I,^[3] and number two hundred fifty-seven (257)^[4] are the same, and the [trial court] could classify, value and distribute these assets together under Schedule I. The parties further stipulated and agreed that the 138.48 acre[s] of real property consists of three tracts of land which are all titled in both names of the parties as of the date of separation. Two of the three tracts were acquired after the date of marriage, were held as tenancies by the entirety, and existed on the date of separation. One of the three (3) tracts was acquired by [Norman] prior to the date of marriage, but title to this tract was later converted to a tenancy by the entirety by [Norman] after the date of marriage, and thus was a gift to the marriage. Therefore, all three tracts are classified as marital property.*

³ Number 1 is listed on Schedule I and titled “1428 and 1432 Tabernacle Ch. Rd., Trinity, NC[.]”

⁴ Number 257 is listed on Schedule VI and titled “Zimmerman Vineyards[.]”

ZIMMERMAN V. ZIMMERMAN

2021-NCCOA-485

Opinion of the Court

(Emphasis added). According to Norman, “the [R]ecord reflects no such stipulation.” He contends the trial court erred by not valuing and distributing the property, namely Zimmerman Vineyards, LLC, enumerated in Finding of Fact 7.A.1.

¶ 14 “We have held that a simple oral division of marital property is not binding.” *Robinson*, 210 N.C. App. at 324, 707 S.E.2d at 790.

Any agreement entered into by parties regarding the distribution of their marital property should be reduced to writing, duly executed and acknowledged. If . . . oral stipulations are not reduced to writing it must affirmatively appear in the record that the trial court made contemporaneous inquiries of the parties at the time the stipulations were entered into. It should appear that the [trial] court read the terms of the stipulations to the parties; that the parties understood the legal effects of their agreement and the terms of the agreement, and agreed to abide by those terms of their own free will.

McIntosh v. McIntosh, 74 N.C. App. 554, 556, 328 S.E.2d 600, 602 (1985).

¶ 15 Here, no evidence of a written stipulation appears in the Record before us. The only source for the trial court’s conclusion that the parties were in agreement regarding lumping the valuation and distribution of the Zimmerman property and Zimmerman Vineyards, LLC together was as follows:

[LESLIE’S COUNSEL]: Well, actually, if Your Honor please, what we’re basically going to be dealing with is Schedule 1, item 1 [1428 and 1432 Tabernacle Ch. Rd, Trinity, NC], but also Schedule 6 [Businesses, Stocks, Securities and Intangible Assets]. Essentially those things are the same.

ZIMMERMAN V. ZIMMERMAN

2021-NCCOA-485

Opinion of the Court

THE COURT: All right. Thank you.

[NORMAN⁵]: I have 1 and 6. Can I talk with you like this? I have three different things. I have things in red. I--

....

[LESLIE'S COUNSEL]: So anyway, if Your Honor please, what we're going to be dealing with is Schedule 1, number 1 [1428 and 1432 Tabernacle Ch. Rd, Trinity, NC], and I believe it's -- as you said, it's 257 on Schedule 6 [Zimmerman Vineyards, LLC]. And, if Your Honor please, we would call Michael Smith.

....

THE COURT: Okay. So if you would like to put on your evidence, [Norman], as to the value of number 1 and number 257, I'd be glad to hear that now.

[NORMAN]: Number 1?

THE COURT: Yes, sir. It's the---

[NORMAN]: This last Plaintiff's Exhibit 5? You said 1 through what?

THE COURT: On the pretrial order. I'm sorry. Yes, sir. The pretrial order is kind of a map that we're going by.

[NORMAN]: Oh, okay. "The Court has jurisdiction over the parties?"

THE COURT: Yes. So if you'll turn to the schedules, Schedule 1 and Schedule 6. We're hearing the assets.

[NORMAN]: Oh. Gosh. I'm sorry. I'm not following.

THE COURT: That's okay. Let me ask you this way: Do

⁵ Norman represented himself *pro se* at the equitable distribution hearing.

ZIMMERMAN V. ZIMMERMAN

2021-NCCOA-485

Opinion of the Court

you have any evidence you want to put on about the marital residence or the vineyard, sir?

[NORMAN]: Well, I think what you're asking is the appraisal report.

[LESLIE'S COUNSEL]: What he's asking is -- [Norman], is if you think that the property is worth a different value than has been testified to, now is your opportunity to offer evidence about what that value may be.

....

THE COURT: As far as classification goes, [Norman] -- and as I understand it, we're really covering both 1 and 257---

[LESLIE'S COUNSEL]: Yes.

THE COURT: ---in this, right?

[LESLIE'S COUNSEL]: Yeah.

[NORMAN]: What's 257?

THE COURT: Which is the vineyard -- the vineyard and the---

[LESLIE'S COUNSEL]: Actually, there are some other things that [Michael] Smith did not include in his value.

THE COURT: That's correct.

[LESLIE'S COUNSEL]: And there will be testimony about things that are associated with the vineyard, the inventory, some of the specialized equipment, and so there will be testimony about that. And, you know, he didn't include those, but essentially, yes.

property, the real estate, with Zimmerman Vineyards, LLC, the business entity. No inquiry was made by the trial court into the parties' understanding of the terms of the agreement, and it is clear Norman, representing himself *pro se*, did not understand the terms or legal effects of such a stipulation or agreement. The trial court's conclusion based on Leslie's counsel's representation was an abuse of discretion, and the trial court should have valued and distributed the Zimmerman property and Zimmerman Vineyards, LLC separately. We vacate this portion of the *Equitable Distribution Order* and remand to the trial court so it can determine the value of Zimmerman Vineyards, LLC, separate and apart from the value of the Zimmerman property.

2. Randolph County School Retirement Pension

¶ 17 Next, Norman argues the trial court erred in awarding line number 68, "½ Randolph Co. School Retirement," to Leslie and not including the other half of the retirement pension in any line number item distributed to Norman. Norman relies on Finding of Fact 7.F.1 in arguing it was "the trial court's intention to distribute fifty percent (50%) of the [retirement pension] to [Norman]."

¶ 18 Finding of Fact 7.F.1 states:

1. Randolph Co. School Retirement. This is a defined benefit plan. The parties agreed and stipulated this asset contains a marital property component. The parties further agreed and stipulated that the marital component value of this asset as of the date of separation is \$37,953.25.

ZIMMERMAN V. ZIMMERMAN

2021-NCCOA-485

Opinion of the Court

The parties further agreed and stipulated that the marital component of this asset shall be divided equally which will result in an approximate monthly payment of \$759.94 at the time these funds are disbursed from [Leslie's] defined benefit plan.

¶ 19 This finding of fact is not challenged by either party and is therefore binding on us. *Juhnn v. Juhnn*, 242 N.C. App. 58, 63, 775 S.E.2d 310, 313 (2015) (“It is well established by this Court that where a trial court’s findings of fact are not challenged on appeal, they are deemed to be supported by competent evidence and are binding on appeal.”).

¶ 20 In distributing the marital property, the trial court made the following finding of fact:

10. Based upon the foregoing, the [trial court] has determined and finds that an equal distribution of marital assets and debts is not equitable and that the assets and debts should be divided as follows:

[Leslie] – Wife

...

68) #275 ½ Randolph Co. School Retirement

The other half of the Randolph County School retirement pension is not listed anywhere in the *Equitable Distribution Order* and nothing from the retirement pension is expressly allocated to Norman. The trial court also heard the following testimony regarding the Randolph County School retirement pension at the equitable distribution hearing:

[LESLIE'S COUNSEL:] With regard to item -- on Schedule 7, 275. This says Randolph County School retirement. . . .

. . . .

[LESLIE'S COUNSEL]: So if I can -- what I'm going to find for the finding of fact is the parties stipulate that it's marital ---

. . . .

THE COURT: That's correct.

[LESLIE'S COUNSEL]: ---and that [Norman] will receive half of the marital share of the benefit---

THE COURT: On the date of distribution.

¶ 21 According to Finding of Fact 7.F.1 and the testimony heard by the trial court, Norman should have been awarded the other half of the retirement pension and it was error for the trial court to exclude it from the *Equitable Distribution Order*. We remand this portion of the *Equitable Distribution Order* to the trial court with instructions to include “#275 ½ Randolph Co. School Retirement” on the list of assets awarded to Norman.

3. Zimmerman Line of Credit⁶

¶ 22 Norman argues “[t]he trial court further failed to distribute the [Zimmerman] Line of Credit in the name of Norman Zimmerman and Zimmerman Vineyards, LLC

⁶ Norman refers to this line of credit as the “Wells Fargo Line of Credit” in his briefs, but a review of the Record reveals the trial court refers to this line of credit in the *Equitable Distribution Order* as the “Zimmerman Line of credit.”

ZIMMERMAN V. ZIMMERMAN

2021-NCCOA-485

Opinion of the Court

with an outstanding balance owed in the amount of approximately \$18,000.00 as of the date of trial.” Norman challenges Finding of Fact 7.H.4 and argues, without pointing us to any portions of the Record, “[t]he trial court mistakenly found that the line of credit . . . had been paid in full by [Leslie] prior to trial.”

¶ 23 Finding of Fact 7 sets out the real and personal property the parties acquired during the marriage in various schedules. Part H is titled “Schedule XI. Debts That Are Not Secured.” The relevant portions of this section are as follows:

5. Zimmerman Line of [C]redit. The parties agreed and stipulated that [this] debt is marital debt. The parties also agreed and stipulated that the amount of the debt on the date of separation was \$20,056.84. *This loan was paid in full by [Leslie] after the date of separation.*

(Emphasis added).

¶ 24 There is competent evidence in the Record to support the trial court’s finding that Leslie paid off the Zimmerman Line of Credit loan in full after the date of separation. At the hearing, Leslie testified:

[LESLIE’S COUNSEL:] Okay. [Leslie], with regard to item number 351, this is called a Zimmerman line of credit. If you’d tell us about this.

[LESLIE:] So this is our business line of credit associated with Wells Fargo also, which is our Zimmerman Vineyards line of credit.

[LESLIE’S COUNSEL:] All right. And how did you-all use the line of credit?

[LESLIE:] Sometimes we used it to purchase -- pay for our

ZIMMERMAN V. ZIMMERMAN

2021-NCCOA-485

Opinion of the Court

wines. We used it for anything -- large bills that we didn't have the cash for at that time.

[LESLIE'S COUNSEL:] Okay. So, for example, when you were saying that you paid Childress the custom crush, it would come out of this money?

[LESLIE:] Correct.

[LESLIE'S COUNSEL:] Okay. So I'm going to show you what I've marked as Plaintiff's Exhibit Number 15. Does this appear to be a bank statement---

....

[LESLIE:] Correct.

[LESLIE'S COUNSEL:] ---for the Zimmerman Vineyards, LLC, Norman J. Vineyard -- Norman J. Zimmerman line of credit, and this is a closing date on the statement of [19 October2016]?

[LESLIE:] Correct.

[LESLIE'S COUNSEL:] And does this show an existing balance of \$20,056.84?

[LESLIE:] Correct.

....

[LESLIE'S COUNSEL:] And after the date of separation, what happened with the line of credit?

[LESLIE:] Monthly I have an automatic payment, and it just takes it from Zimmerman Vineyards Wells Fargo. So it goes down. It goes up. It goes down.

[LESLIE'S COUNSEL:] So have you continued to use it as necessary for the operation of the vineyard?

ZIMMERMAN V. ZIMMERMAN

2021-NCCOA-485

Opinion of the Court

[LESLIE:] About a year ago, I put a freeze on it so nothing could be used after we made a payment for something like \$24,000[.00] worth of wine to Childress.

[LESLIE'S COUNSEL:] All right.

[LESLIE:] So it's not being utilized anymore, always being paid off.

[LESLIE'S COUNSEL:] Okay.

THE COURT: And so I apologize. So it has she paid. That doesn't mean you paid it off like the other ones, correct? That debt still exists?

[LESLIE]: That debt probably doesn't exist anymore. There's---

THE COURT: Does not?

[LESLIE]: Correct. Because then it's -- it's gone up since then additional and then it's gone down again. So that debt's been paid. Since then, we had another [\$]24,000[.00] but that's down to now [\$]18,000[.00].

[LESLIE'S COUNSEL:] So, in other words, it was paid off, but then more was put on it because---

THE COURT: After [the date of separation]?

[LESLIE]: Correct.

[LESLIE'S COUNSEL:] Correct. But the date of separation balance is [\$]20,056.84.

¶ 25 “The credibility of the evidence in an equitable distribution trial is for the trial court.” *Grasty v. Grasty*, 125 N.C. App. 736, 739, 482 S.E.2d 752, 754, *disc. rev. denied*, 346 N.C. 278, 487 S.E.2d 545 (1997). “The trial court, as the finder of fact in

an equitable distribution case, has the right to believe all that a witness testified to, or to believe nothing that a witness testified to, or to believe part of the testimony and to disbelieve part of it.” *Id.* (marks and citation omitted). Here, the trial court made Finding of Fact 7.H.5—that Leslie paid off the Zimmerman Line of Credit debt in full after the date of separation. The trial court believed Leslie’s testimony and it is not our job to reweigh the evidence. *See id.* Finding of Fact 7.H.5 is supported by competent evidence and the trial court did not err in relying upon this fact in awarding unequal distribution in Leslie’s favor.

4. John Deere Tractor Debt

¶ 26 Norman argues “[t]he trial court further failed to distribute . . . the loan on the John Deere tractor with an outstanding balance owed in the amount of approximately \$16,514.00 at the date of separation and which had increased to \$23,500.00 at the date of trial.”

¶ 27 The parties agree the John Deere tractor debt is a marital debt. However, there is no finding of fact in the *Equitable Distribution Order* addressing the John Deere tractor debt. The following testimony took place at the equitable distribution hearing regarding the John Deere tractor debt:

[LESLIE’S COUNSEL:] All right. And is there a debt associated with the John Deere [tractor]?

[LESLIE:] Yes.

ZIMMERMAN V. ZIMMERMAN

2021-NCCOA-485

Opinion of the Court

[LESLIE'S COUNSEL:] And was this a debt that existed prior to you and [Norman] separating in October of--

[LESLIE:] Yes.

[LESLIE'S COUNSEL:] ---2016?

[LESLIE:] Yes.

[LESLIE'S COUNSEL:] And have you been making the payments on that debt since then?

[LESLIE:] Yes.

[LESLIE'S COUNSEL:] All right. I'm going to show you what I've marked as Plaintiff's Exhibit Number 6. Does this appear to be a transaction history from John Deere Financial?

.....

[LESLIE:] Yes.

[LESLIE'S COUNSEL:] And is John Deere Financial who your payment is due to on the John Deere?

[LESLIE:] Correct.

[LESLIE'S COUNSEL:] All right. And you actually printed this out in October of 2019. Does it list each monthly payment as it comes due along with the running principal balance?

[LESLIE:] Yes.

[LESLIE'S COUNSEL:] And so if we go back to [7 October 2019], does this indicate a balance of \$16,514.18?

[LESLIE:] Correct.

[LESLIE'S COUNSEL:] Are you saying that's the correct balance on that debt?

[LESLIE:] As of that date.

....

THE COURT: Just so I can understand, is this basically like a line of credit that you have with John Deere?

[LESLIE]: Yes. So they -- financing it, I had zero percent interest, and that's what's owed on the piece of equipment.

....

[LESLIE]: And that includes the bucket too, though. The bucket is part of that.

¶ 28

The above testimony reflects evidence was presented as to the value of the John Deere tractor debt. Because evidence was presented as to its value, the trial court was obligated to address the John Deere tractor debt in the *Equitable Distribution Order*. See *Grasty*, 125 N.C. App. at 738-39, 482 S.E.2d at 754 (marks and citations omitted) (“This Court has repeatedly held that the trial court has an obligation to make specific findings regarding the value of any property classified as marital[.] . . . This obligation, however, exists only when there is credible evidence supporting the value of the asset.”). As the trial court did not make a finding of fact regarding the value of the John Deere tractor debt, we remand the portion of the *Equitable Distribution Order* entitled “H. Schedule XI. Debts That Are Not Secured[]” to the trial court to make the appropriate finding of fact regarding the value of this debt.

C. Equitable Distribution in Favor of Leslie

¶ 29 Lastly, Norman argues the trial court abused its discretion in entering an unequal distribution of marital property in favor of Leslie.

¶ 30 After the trial court classifies property as marital, divisible, or separate, it “shall provide for an equitable distribution of the marital property and divisible property between the parties in accordance with [N.C.G.S. § 50-20].” N.C.G.S. § 50-20(a) (2019).

There shall be an equal division by using net value of marital property and net value of divisible property unless the [trial] court determines that an equal division is not equitable. If the [trial] court determines that an equal division is not equitable, the [trial] court shall divide the marital property and divisible property equitably.

N.C.G.S. § 50-20(c) (2019). “Where the trial court decides that an unequal distribution is equitable, the [trial] court must exercise its discretion to decide how much weight to give each factor supporting an unequal distribution. A single distributional factor may support an unequal division.” *Mugno v. Mugno*, 205 N.C. App. 273, 278, 695 S.E.2d 495, 499 (2010) (citation omitted).

¶ 31 Here, the trial court determined “that an equal distribution of marital assets and debts is not equitable[,]” and found these factors as justification for an unequal division:

9. In considering whether an equal distribution would be equitable, the [trial court] has considered all the evidence relating to the statutory factors set out in [N.C.G.S. §] 50-20(c), and specifically including the following for which

ZIMMERMAN V. ZIMMERMAN

2021-NCCOA-485

Opinion of the Court

evidence was offered:

A. The income, property and liabilities of each party at the time the division of property is to become effective.

B. The length of the marriage. The parties were married approximately twenty-eight years.

C. The relative age and health of the parties. [Leslie] is sixty-one (61) years old and is in relatively good health. . . . [Norman] was injured in a fall in 2005 which resulted in a number of hip surgeries and issues with reoccurring depression. Since the accident, [Norman] has been unable to work a[] typical 8-5pm job, but has worked at the Vineyard, both planting and harvesting, and doing various maintenance tasks. [Norman] testified, and the [trial] court finds his testimony credible, that his health has improved in that he has stopped taking all of the previously prescribed medications and as of the date of this hearing was only taking anti-anxiety medications.

D. Acts of either party to maintain, preserve, develop or expand, or to waste, neglect, devalue or convert the [marital] or divisible property or both during the period after separation of the parties and before the time of distribution. The actual, physical vineyard was in a state of decline prior to the separation of the parties. Furthermore, the Vineyard was operating at a net financial loss for several consecutive years prior to the date of separation. After the date of separation, [Leslie] engaged a number of experts to assist her in bringing the physical state of the Vineyard back to a state of healthy production. [Leslie] also developed an actual business plan for the Vineyard which the parties lacked prior to the date of separation. Furthermore, since the date of separation, [Leslie] has been solely responsible for implementing said business plan and for the marketing strategies utilized which have resulted in the Vineyard's first year of profitability since 2010.

E. Payments on marital debts since separation. [Leslie] paid off all of the debts on Schedule XI. with mostly separate funds obtained by [Leslie] upon the death of [her] mother. As of the date of distribution there are no remaining unsecured marital debts.

F. The use by [Leslie] of the marital residence after the date of separation.

G. Other. The marital estate's valuation is considerable; however, this equitable distribution matter is mostly a one-asset estate consisting of realty and a marital business, "Zimmerman Vineyard" worth \$965,000.00. Thus, the one asset being a marital business and the fact that there were simply not enough other assets to make in-kind distributions equitable, a distributive award will be necessary in order to make a fair, just and equitable distribution of marital assets. [Leslie] has the ability to make a distributive award to [Norman] of \$415,000.00. [Norman] believed he could secure enough resources to pay [Leslie] a distributive award of between \$175,000.00 to \$200,000.00 though he had not discussed borrowing this amount from his proposed benefactors. Thus, as of the date of this hearing, only [Leslie] had the actual means and ability to pay the necessary distributive award to make an equitable distribution.

¶ 32 Based upon the errors in valuation and distribution discussed above, the primary findings of factors supporting the unequal distribution are factually incorrect. Due to these errors, we are unable to determine whether the trial court abused its discretion in granting an unequal distribution in favor of Leslie. We must vacate this portion of the *Equitable Distribution Order* and remand to the trial court for proper consideration of equitable distribution. As such, we do not reach Norman's argument regarding the unequal distribution on appeal, rendering this challenge

moot. On remand, Norman may assert this argument to the trial court should this issue arise again.

CONCLUSION

¶ 33 The *Equitable Distribution Order* is reversed and we remand to the trial court for further proceedings consistent with this opinion. “On remand, within 30 days after mandate issues on this opinion, either party may file a written request with the trial court for a hearing to present additional evidence or argument,” and in the event a party files a timely request, “the trial court shall hold a hearing ‘to hear arguments and receive evidence from both parties on remand, in order to address the errors discussed above and to properly identify, classify, and value the parties’ property as required by statutory law and case law.’” *Watson v. Watson*, 261 N.C. App. 94, 105, 819 S.E.2d 595, 603 (2018) (quoting *Dalgewicz v. Dalgewicz*, 167 N.C. App. 412, 424, 606 S.E.2d 164, 172 (2004)). “If neither party files a timely written request for hearing on remand, the trial court may, in its sole discretion, determine whether to hold an additional hearing or to enter a new order based upon the evidence presented at the prior hearing.” *Id.*

AFFIRMED IN PART; VACATED IN PART AND REMANDED.

Judges TYSON and JACKSON concur.

Report per Rule 30(e).