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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-680

No. COA20-741

Filed 7 December 2021

Mecklenburg County, No. 18 CVD 8603

JANET SALVADORE, Plaintiff

v.

ANTHONY SALVADORE, Defendant

Appeal by Defendant from Orders entered 6 June 2019, 21 August 2019, and 4 December 2019 by Judge Tracy H. Hewett in Mecklenburg County District Court. Heard in the Court of Appeals 7 September 2021.

Miller Bowles Cushing, PLLC, by Nicholas L. Cushing and Brett C. Holladay, for plaintiff-appellee.

The Blain Law Firm, P.C., by Sabrina Blain, for defendant-appellant.

HAMPSON, Judge.

Factual and Procedural Background

¶ 1 Anthony Salvadore (Defendant) appeals from: (1) an Order entered 6 June 2019, which determined Defendant and Janet Salvadore (Plaintiff) separated on 16

July 2021; (2) an Equitable Distribution Order entered 21 August 2019; and (3) an Order entered 4 December 2019 denying Defendant's Rule 52, 59, and 60 Motions seeking amendments to the Equitable Distribution Order. The Record before us tends to reflect the following:

¶ 2 The parties were married on 17 June 1989. During the marriage, Defendant changed employers several times and, consequently, the parties relocated to different states during the marriage. When starting a job in a new state, Defendant typically stayed in hotels or campgrounds while Plaintiff remained in the old residence. Defendant would usually return home over the weekends to stay with Plaintiff until the parties moved together to the new state. At one point during the marriage, General Electric (GE) employed Defendant, and as a result, he acquired an interest in the GE Pension Plan before he moved on to the next job.

¶ 3 On 14 March 2017, Defendant accepted a new job at Corning in New York. As part of his employment agreement Corning granted Defendant 7,500 shares of Corning Restricted Stock. Specifically, the employment agreement provided:

> Given the compensation you will forfeit as a result of accepting Corning's offer . . . you will receive a grant of 7,500 shares of Corning Incorporated restricted stock (currently valued at $200,000) at the first meeting of the Compensation Committee of the Corning Board of Directors. The shares are subject to continued employment with Corning and are subject to transfer and forfeiture restrictions prior to the scheduled vesting dates; the shares will vest ratably (1/3 per year) over three years. You

> will receive the quarterly Corning stock dividend (currently $0.155 per share per quarter) on any unvested restricted shares as additional compensation through payroll until the shares vest.

¶ 4 Defendant began employment with Corning on 17 April 2017. At that time, the parties were living together in Mooresville, North Carolina. Defendant told Plaintiff he wanted a separation before beginning his new job on 17 April 2017. Nevertheless, Defendant continued his pattern of staying at campsites and hotels in New York and traveling back to North Carolina to stay at the marital residence almost every weekend between 17 April 2017 and 16 July 2017. The parties spent their last night together in the marital home on 16 July 2017, and Defendant closed on a new home in New York on 28 July 2017.

¶ 5 On 25 April 2018 Plaintiff filed a Complaint setting out causes of action for Alimony, Post-Separation Support, and Equitable Distribution. As part of her Complaint, Plaintiff alleged that the parties separated on or about 16 July 2017. In his Answer, Defendant alleged the parties separated 17 April 2017.

¶ 6 On 10 April 2019, prior to having a trial on the parties' Equitable Distribution claims, the court held an evidentiary hearing to determine the date of separation. Defendant—proceeding pro se—did not, however, appear for the hearing. The trial court found Defendant had adequate and proper notice of the hearing and proceeded without him.

¶ 7 At this hearing, Plaintiff testified that although Defendant expressed his desire to separate prior to beginning his job in New York, he did not immediately establish a separate residence in New York. Instead, consistent with the parties' usual pattern during the marriage, he stayed at hotels and campsites during the week and at the marital residence in North Carolina almost every weekend between 17 April 2017 and 16 July 2017. In support of this testimony, Plaintiff introduced Exhibit 1 which listed the dates that Defendant came back and stayed at the marital residence. Plaintiff based her contention as to the date of separation on the last night both parties stayed together in the marital residence. Plaintiff also submitted Exhibit 2, Defendant's Closing Disclosure Statement, to support her contention that Defendant did not establish a separate residence in New York until the end of July 2017. At the conclusion of this hearing, the trial court orally announced it determined, consistent with Plaintiff's allegation, the date of separation was 17 July 2017.

¶ 8 The parties' Equitable Distribution claims came on for trial on 6 June 2019. On the same day, prior to the start of the hearing, the trial court entered its written Order determining the parties' date of separation (Date of Separation Order). In the Date of Separation Order, the trial court made the following relevant Findings of Fact:

> 7. The Court does not find [Defendant's] allegations regarding the parties' date of separation to be credible.
>
> 21. During the marriage [Defendant] had multiple jobs and the parties moved multiple times. It was typical for [Defendant] to start a job at a new location and stay in hotels or campgrounds until [Plaintiff] moved to join him. So [Defendant] starting a job in New York while [Plaintiff] was in North Carolina was not unusual and was consistent with the pattern established during the marriage.
>
> 23. Between 17 April 2017 and 16 July 2017 the parties were not living in a manner in which those who come in contact with them would see they are not living together. Outside observers, such as the parties' neighbors, would have reasonably regarded the parties as living together during this period.
>
> 24. Between 17 April 2017 and 16 July 2017 there was not a complete cessation of cohabitation between the parties.

Based on these Findings the trial court concluded that the parties separated on 16 July 2017.

¶ 9 During the trial, the parties presented evidence on the classification, valuation, and distribution of marital property including, *inter alia*, the classification and valuation of the Corning Stock, the classification, valuation, and distribution of dividends from the Corning Stock, and the distribution of the GE Pension Plan.

Corning Stock

¶ 10 Plaintiff contended Defendant received all of the 7,500 shares of Corning Stock valued at $200,000 prior to the date of separation and, thus, the shares were all

marital property. To support her contention that the shares should be classified as marital property, Plaintiff entered Defendant's Corning offer letter into evidence as Plaintiff's Exhibit 12, which outlined the grant of the 7,500 shares valued at $200,000.

¶ 11 For his part, Defendant testified the Corning Board of Directors met on 26 April 2017 and granted him the 7,500 shares at this meeting. However, he disagreed with the classification of the Corning Stock as marital property because he still contended the parties separated on 17 April 2017 before the grant of the stock on 26 April 2017. Defendant also objected to the valuation of the stock at $200,000, claiming he had not received any payment for the stock and that he had only received two-thirds of the shares because the remaining one-third had not "vested" at the time of the trial. With respect to the Corning Stock, the trial court made the following Finding of Fact and Conclusion of Law:

> 16. Corning Restricted Stock: During the marriage [Defendant] received 7,500 shares of Corning Restricted Stock as a result of his employment with Corning. These shares were owned on the date of separation and are marital property. The net fair market value of these shares on the date of separation was $200,000. These shares vest at a rate of 1/3 per year, with the first 1/3 having vested in or about May 2018, the second 1/3 having vested in or about May 2019 and the final 1/3 expected to vest in or about May 2020. Therefore, out of this $200,000, approximately $133,333.33 has already vested and the remaining $66,666.66 will vest in or about May 2020. The already-vested shares should be distributed to [Defendant] at a value of $133,333.33. The value

> of the remaining unvested shares should be equally divided between the parties when the shares vest. Therefore, [Defendant] will owe [Plaintiff] an additional $33,333.33 at such time as the remaining shares vest, which is anticipated to occur in May 2020.
>
> . . . .
>
> 7. Corning Restricted Stock: The already-vested shares are distributed to [Defendant] at a value of $133,333.33. [Defendant] shall pay to [Plaintiff] the sum of $33,333.33 within 5 days after the remaining shares vest, which is anticipated to occur in May 2020. [Defendant] shall have an affirmative duty to notify [Plaintiff] within 24 hours after the remaining shares vest and to pay the $33,333.33 to [Plaintiff] by direct deposit to [Plaintiff's] account or by certified check in a manner that ensures [Plaintiff] receives the funds within 5 days after the shares vest.

Corning Stock Dividend

¶ 12 Plaintiff also contended the Corning Stock dividends paid out after the date of separation and prior to trial should be classified as divisible property and be valued at $10,462.50. In support of her position, Plaintiff referenced Defendant's offer letter, which was already in evidence, and gave the following testimony describing the dividends:

> Q: Now, sorry to make you do this. Go back to Tab 12 again. And go to page 56, please. Do you see in the second highlighted section where it says "You will receive the quarterly Corning [S]tock dividend, currently .155 per share per quarter, currently at 15 and a half cents per share per quarter on any unvested restricted shares as additional compensation through payroll until the shares vest"?
>
> A. Yes.

Q. And that is related to the two paragraphs above it of the 7,500 shares that Mr. Salvadore received, correct?

A. Correct.

Q. And so on Line Item 15 of our spreadsheet, did we include as divisible property the dividends paid on the Corning restricted stock?

A. Yes.

Q. And so if we take 7,500 shares times 15.5 cents, is that $1,162.50 per quarter that he would receive?

A. Right.

Q. Okay. And so then since March of 2017, there would've been -- well, January, February, March would've been one quarter of 2017, right?

A. Right.

Q. So there would be three more quarters in 2017, right?

A. Right.

Q. Okay. Fine. How many quarters would there have been in 2018?

A. Three.

Q. Four?

A. How many quarters? Four quarters in 2018.

Q. Yes. Okay.

> A. Sorry.
>
> Q. And then so far in 2019, how many --
>
> A. Two quarters.
>
> Q. -- two quarters. Okay. And so that would be a total then of how many quarters since March of 2017?
>
> A. Nine quarters.
>
> Q. Okay. And so if we take nine quarters times $1,162.50 what is the divisible property that he received from these dividends?
>
> A. $10,462.50.

Defendant did not challenge this testimony at trial. Further, Defendant agreed that once the amount was reduced to $8,056 to account for the tax consequences, these dividends should be distributed to him as divisible property. Based on this evidence, the trial court made the following Finding of Fact and Conclusion of Law:

> 25(o). Dividends Paid on Corning Restricted Stock: As described above, [Defendant] received 7,500 shares of Corning Restricted Stock which are marital property. [Defendant] has received quarterly dividends of $.155 per share for 7,500 shares = $1,162.50 per quarter. Since March 2017 there have been 3 quarters in 2017, 4 quarters in 2018 and 2 quarters in 2019 for a total of 9 quarters. $1,162.50 x 9 = $10,462.50. After considering the tax consequences of these dividends, the Court finds that the divisible property amount is $8,056 which should be distributed to [Defendant].
>
> . . . .
>
> 15(o). The Dividends Paid on Corning Restricted Stock are distributed to [Defendant] as his sole and separate property.

GE Pension Plan

¶ 13 Regarding the GE Pension Plan, Plaintiff contended the pension was marital property and should be divided by QDRO. In support of this position, Plaintiff testified that beginning in April 2025 Defendant will receive a monthly payment from the GE Pension Plan in the amount of $3,381.00 and requested that the monthly payments be divided equally by QDRO. Defendant agreed that the pension should be divided through a QDRO but objected to the inclusion of survivorship benefit rights. The parties subsequently discussed with the trial court the possibility of drafting a separate interest QDRO to transfer and assign one-half of the monthly payments to Plaintiff. Neither party objected to this suggestion, and the trial court continued onto the next line item listed in the Schedule. Specific to the GE Pension Plan, the trial court made the following Finding of Fact and Conclusion of Law:

> 19(h): GE Pension: During the marriage [Defendant] was employed by General Electric ("GE"). As a result of his employment with GE, [Defendant] acquired an interest in the GE Pension Plan. This interest was acquired during the marriage, was owned on the date of separation and is marital property. Beginning 1 April 2025, [Defendant] will receive a monthly payment from the GE Pension Plan in the amount of $3,381.00. The present value of [Defendant's] interest in the GE Pension Plan, both as of the date of separation and current, is $518,400. Each party should be distributed one-half of the monthly payments from the GE Pension Plan. The Court should enter a Qualified Domestic Relations Order, or other appropriate Order, to transfer and assign one-half of the monthly payments to

> [Plaintiff]. [Plaintiff] has requested that the Court award a Joint and Survivor Annuity, but the Court has denied [Plaintiff's] request. The Qualified Domestic Relations Order should use the separate interest approach to assign [Plaintiff's] share of the benefits to her, should provide that [Plaintiff] is entitled to a pro-rata share of any temporary early retirement supplements and should designate [Plaintiff] as the surviving spouse under the qualified pre-retirement survivor annuity.
>
> . . . .
>
> 10(h). GE Pension: There shall be distributed to [Plaintiff] a share of [Defendant's] interest in the GE Pension equal to one-half of the total account value as of June 6, 2019, plus or minus passive gains or losses through the date of distribution. Therefore, each party shall receive one-half of any and all monthly payments at such time as the payments begin. Said transfer shall be made by means of a Qualified Domestic Relations Order (QDRO) which shall be prepared by [Plaintiff's] attorney. The parties shall cooperate with one another so that the implementation of the QDRO may be facilitated. [Defendant] shall fully cooperate and provide such information and documentation as may be necessary in order to facilitate the preparation and implementation of said QDRO. The parties shall equally divide any fees required by the plan administrator for approval or implementation of said QDRO. The Qualified Domestic Relations Order shall use the "separate interest" approach to assign [Plaintiff's] share of the benefits to her, shall provide that [Plaintiff] is entitled to a pro-rata share of any temporary early retirement supplements and shall designate [Plaintiff] as the surviving spouse under the qualified pre-retirement survivor annuity.

¶ 14 The trial court entered its Equitable Distribution Order on 21 August 2019. On 12 September 2019, Defendant filed "Amended" Rule 52, 59 and 60 Motions for

relief from the Order for Equitable Distribution.[1] Defendant alleged the trial court erred in: classifying the 7,500 shares of Corning Stock as marital property and distributing it as such; treating the Corning Stock grant as "a stock option"; failing to reduce the value of the Corning Stock by Defendant's tax liability or any tax liability; and granting the use of a separate interest approach in the QDRO. Plaintiff responded to the Motions by filing a Rule 11 Motion for Attorney's Fees and Sanctions. On 4 December 2019 the trial court entered an Order Denying the Rule 52, 59, 60, and 11 Motions. The parties continued to prepare for trial on the Alimony claim which took place in May of 2020. The trial court entered its final Order Regarding Alimony and Attorney's Fees on 27 May 2020. Following this Order, Defendant filed a written Notice of Appeal on 15 June 2020.

Appellate Jurisdiction

¶ 15 This appeal is timely in accordance with N.C. Gen. Stat. § 50-19.1. Generally, a party has thirty days after entry of a judgment to file and serve a notice of appeal. N.C.R. App. P. 3(c)(1) (2021). In a family law case, N.C. Gen. Stat. § 50-19.1 gives a party the right to appeal from an equitable distribution order (or other order on any of the claims identified in that statute that if standing alone would constitute a final order or judgment) immediately after the entry of the order or judgment even if there

[1] The Record does not contain an original version of the Rule 52, 59 and 60 Motions.

are other pending claims in the action. N.C. Gen. Stat. § 50-19.1 (2019). However, a party does not forfeit their right to appeal if they do not do so immediately. *Id.* Instead, an appeal will still be timely if it is filed within thirty days after entry of judgment for the final, pending claim in the action. *Id.*

In this case, the Alimony claim was still pending at the time of the entry of the Equitable Distribution Order and the trial court did not enter the Alimony Order until 27 May 2020. Therefore, although Defendant could have filed a notice of appeal thirty days after the entry of the Equitable Distribution Order on 21 August 2019, he did not forfeit his right to do so. Instead, the appeal is timely because Defendant filed his Notice of Appeal on 15 June 2020—within thirty days after the entry of the Alimony Order on 27 May 2020.

Issues

¶ 16 The issues on appeal are whether: (I) the trial court's Findings of Facts support its Conclusion of Law fixing the Date of Separation as 16 July 2017; (II) the trial court erred in classifying the Corning Stock as marital property; (III) the trial court erred in calculating and distributing the Corning Stock dividends; (IV) the trial court erred in ordering a QDRO to divide the GE Pension; and (V) the trial court erred in denying Defendant's Rule 52, 59, and 60 Motions.

Analysis

I. Date of Separation

¶ 17 Defendant first contends the court erred in concluding that the parties separated on 16 July 2017, thereby establishing that date as the date upon which the marital property was to be classified and valued. "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." *Juhn v. Juhn*, 242 N.C. App. 58, 63, 775 S.E.2d 310, 313 (2015). "The finding regarding the date of separation is a mixed finding of fact and conclusion of law because it requires the application of a legal principal to a determination of facts." *Hall v. Hall*, 88 N.C. App. 297, 299, 363 S.E.2d 189, 191 (1987). Since Defendant does not challenge any specific Findings of Fact, they are binding on appeal and our review is limited to determining "whether the facts otherwise found by the court below are sufficient to support its legal determination that separation occurred." *Id.*

¶ 18 Defendant contends the trial court's Findings of Fact do not support its Conclusion of Law because Defendant told Plaintiff that he wanted to separate before he left for New York on 17 April 2017. "Separation as grounds for a divorce implies living apart for the entire period in such a manner that those who come in contact with them may see that the husband and wife are not living together." *In re Estate of Adamee*, 291 N.C. 386, 392, 230 S.E.2d 541, 546 (1976). Separation is not merely

the cessation of sexual relations, it is "living separately and apart from each other, the complete cessation of cohabitation." *Id.* Further, "separation may not be predicated upon evidence which shows that during the period the parties have held themselves out as husband and wife . . ." *Young v. Young*, 225 N.C. 340, 344, 34 S.E.2d 154, 157 (1945). When parties continue living together in the marital home, "they hold themselves out as man and wife in the ordinary acceptation of the descriptive phrase." *In re Adamee*, 291 N.C. at 392, 230 S.E.2d at 546. Conversations "behind the closed doors of the matrimonial domicile" are not enough to effectuate a separation. *Id.*

¶ 19 In this case, the trial court found "even though there was communication between the parties discussing a separation, Defendant continued to come back to North Carolina and stay at the marital residence almost every weekend between 17 April 2017 and 16 July 2017." Additionally, the trial court found during the marriage Defendant had multiple jobs and the parties moved multiple times. When he started a new job, Defendant typically stayed at hotels or campsites during the week before Plaintiff moved to join him in the new state. Thus, it was not unusual, given the pattern established during the marriage, for Defendant to stay in a different state during the week and then come home on the weekend.

¶ 20 Based on these Findings, the trial court did not err in concluding that the parties separated on 16 July 2017 because the evidence showed that the parties did not completely cease cohabitating until that date. The trial court's Findings indicate that prior to 16 July 2017 the parties continued to cohabitate together consistent with the pattern established during the marriage, that this continued cohabitation was of such a character as to give the appearance that they were husband and wife living together, and that they held themselves out to be such. These Findings are sufficient to support the Conclusion that separation did not occur until 16 July 2017. Thus, the trial court did not err in determining the parties separated on 16 July 2017. Therefore, the trial court also did not err in utilizing this as the date of separation for purposes of equitable distribution.

II. Classification, Valuation, & Distribution of the Corning Stock

A. Classification of Corning Stock

¶ 21 Defendant contends the trial court erred in classifying the entirety of the Corning Stock as marital property. Specifically, Defendant first contends since the remaining one-third of the Corning Stock did not "vest" until May 2020, after the date of separation, the trial court should have classified this one-third of the Corning Stock as divisible property.

¶ 22 "In equitable distribution actions, the trial court must classify, value, and distribute marital property and divisible property." *Fountain v. Fountain*, 148 N.C. App. 329, 332, 559 S.E.2d 25, 29 (2002). "The classification of property in an equitable distribution proceeding requires the application of legal principles, and we therefore review de novo the classification of property as marital, divisible, or separate." *Romulus v. Romulus*, 215 N.C. App. 495, 500, 715 S.E.2d 308, 312 (2011) (citation omitted). Our statutes define "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 . . . Marital property includes all vested and nonvested pensions, retirement, and other deferred compensation rights.

N.C. Gen. Stat. § 50–20(b)(1) (2019). "Divisible property" includes:

> [a]ll property, property rights, or any portion thereof received after the date of separation but before the date of distribution that was acquired as a result of the efforts of either spouse during the marriage and before the date of separation, including, but not limited to, commissions, bonuses, and contractual rights.

N.C. Gen. Stat. § 50–20(b)(4)(b) (2001).

¶ 23 Here, the parties separated on 16 July 2017. The trial court heard the parties' equitable distribution claims on 6 June 2019 and entered its Equitable Distribution Order on 21 August 2019. Accepting Defendant's premise—that the final one-third of the stock grant did not vest and was, thus, not "received" until May 2020—then

the last one-third of the stock grant was not received until *after* the date of distribution. Thus, Defendant's argument that one-third of the stock grant should have been classified as divisible property fails because, by definition, in order for the grant to be classified as divisible property it would have to be received prior to the date of distribution. N.C. Gen. Stat. § 50-20(b)(4).[2] Therefore, the trial court did not err by failing to classify the remaining one-third of Corning Stock as divisible property.[3]

¶ 24 Alternatively, Defendant contends the stock is his separate property—again, not because it was received before the date of marriage or after the date of separation and distribution, but rather because the trial court did not find the stock grant was acquired as the result of the efforts of Defendant during the marriage. In reviewing

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[2] Notably, Defendant makes no argument on appeal that the remaining one-third of the stock grant constituted non-distributable property—that is, property that is neither marital nor divisible, but that also falls outside the statutory definition of separate property—and should, therefore, not be included in any equitable distribution of marital and divisible property. *See Cunningham v. Cunningham*, 171 N.C. App. 550, 556, 615 S.E.2d 675, 680 (2005) ("A trial court must value all marital and divisible property—collectively termed distributable property—in order to reasonably determine whether the distribution ordered is equitable.").

[3] Moreover, even if the one-third of the stock grant should have been classified as divisible property, it is unclear how Defendant would contend this would alter the trial court's distribution or valuation of the marital and divisible estate, as even if the property is classified as divisible, it would be included in the estate to be distributed as divisible property. N.C. Gen. Stat. § 50-20(a). Because this argument is not before us, we do not address it. *See* N.C.R. App. P. 28(a) ("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.").

a trial court's findings this Court determines "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." *Stancill v. Stancill*, 241 N.C. App. 529, 531, 773 S.E.2d 890, 892 (2015) (citation and quotation marks omitted). "Where there is competent evidence to support the trial court's findings of fact, those findings are binding on appeal." *Id.*

¶ 25 In this case, the trial court found Defendant received the stock "as a result of his employment with Corning." This Finding was supported by Defendant's Offer Letter that stated: "Given the compensation you will forfeit as a result of accepting Corning's Offer . . . You will receive a grant of 7,500 shares of Corning Incorporated restricted stock . . . ." This language indicates Defendant received the stocks as consideration for accepting the job offer and, thus, forfeiting compensation to which he would otherwise have been entitled. Defendant accepted the job offer on 14 March 2017, prior to the date of separation. Indeed, Defendant himself testified at trial that he actually "received" the stock grant of the 7,500 shares in April 2017 prior to the date of separation. Thus, it is evident that the grant of stock, which Defendant conceded occurred on a date prior to the date of separation as found by the trial court, was the result of Defendant's efforts during the marriage. Therefore, the trial court did not err, on this basis, in classifying the stock grant as marital.

B. Application of N.C. Gen. Stat. § 50-20.1(d)

¶ 26 Alternatively, Defendant contends if the trial court correctly identified the Corning Stock as marital property, then it erred by failing to distribute the Corning Stock using the mathematical formula found in N.C. Gen. Stat. § 50-20.1(d). N.C. Gen. Stat. § 50-20.1(d) states, in relevant part:

> When the amount of the [pension, retirement, or deferred compensation benefit] payable by the plan, program, system or fund to the participant-spouse is determined in whole or part by the length of time of the participant-spouse's employment, the marital portion shall be determined using the proportion of time the marriage existed (up to the date of separation of the parties) simultaneously with the total time of the employment which earned the benefit subject to equitable distribution, to the total amount of time of employment that earned the benefit subject to equitable distribution.

N.C. Gen. Stat. § 50-20.1(d) (2019). Although our statutes do not define "deferred compensation," in the context of the equitable distribution statutes, this Court has interpreted the term to include "only items of the same kind as those words which come before it in N.C. Gen. Stat. § 50-20(b)(1)"—namely pension and retirement benefits. *Green v. Green*, 255 N.C. App. 719, 725, 806 S.E.2d 45, 50 (2017). In addition, this Court has also applied § 50-20.1 in the context of stock options. *See Fountain*, 148 N.C. App. at 337, 559 S.E.2d at 32 ("Like retirement benefits, stock options are a salary substitute or a deferred compensation benefit and if received during the marriage and before the date of separation and acquired as a result of the

efforts of either spouse during the marriage and before the date of separation, stock options are properly classified as marital property, even if they cannot be exercised until a date after the parties divorce.”).

¶ 27 Indeed, this Court in *Ubertaccio v. Ubertaccio* grappled with the question of how to deal with stock grants, similar to the one at issue here, and how they should be categorized and classified. The plaintiff in *Ubertaccio* received, contemporaneous with her employment engagement, the right to receive a stock grant of 10,000 shares so long as she remained an employee for a specific duration. *Ubertaccio v. Ubertaccio*, 161 N.C. App. 352, 353, 588 S.E.2d 905, 906 (2003). The plaintiff had executed the employment agreement, which created her right to those shares, during the marriage, but actually received and sold the stock after the date of separation and prior to the date of distribution. *Id.*

¶ 28 The panel of this Court considering the case split three-ways with Judge Tyson authoring the lead opinion, Judge Levinson concurring in the result with a separate opinion, and Judge Wynn dissenting. The lead opinion determined the grant of stock was synonymous to a stock option. *Id.* at 355, 588 S.E.2d at 908. Judge Levinson, concurring in the result only, disagreed with this analysis, and would have instead concluded the plaintiff received a stock grant—not a stock option—because the stock grant lacked the “essential characteristics of stock options”—“the right to purchase

shares at a specific price during a specific duration with reference to a collateral price." *Id.* at 362, 588 S.E.2d at 912. Thus, according to Judge Levinson's concurring opinion, "Because there are no stock options in this case, this Court's opinion in *Fountain v. Fountain*, is not directly implicated. In addition, the provisions of N.C. Gen. Stat. § 50-20.1 do not control the classification and distribution of these assets." *Id.* at 363, 588 S.E.2d at 912. Ultimately, our Supreme Court affirmed the majority result but did so adopting Judge Levinson's reasoning. *Ubertaccio v. Ubertaccio*, 359 N.C. 175, 604 S.E.2d 912 (2004) (per curiam). Thus, ultimately, N.C. Gen. Stat. § 50-20.1 did not apply to the classification and distribution of the stock grants in *Ubertaccio* because a stock grant does not fall into the judicially constructed definition of deferred compensation. *Id.*

¶ 29 Here, like *Ubertaccio*, Defendant received a grant of stock upon beginning his employment with Corning and not a stock option. Defendant's stock grant did not involve an option to purchase stock at a set price, but rather a right to receive a set number of shares upon remaining employed by Corning for three years. Thus, the stock grant is not a type of deferred compensation contemplated by our equitable distribution statute and specifically under N.C. Gen. Stat. § 50-20.1. Therefore, the trial court did not err by not applying the valuation method in § 50-20.1(d).

C. Net Value of the Corning Stock

¶ 30 Defendant also contends the trial court erred in valuing the Corning Stock grant because the trial court did not calculate the "net value" of the stock taking into account tax consequences. "Where there is no settled approach as to the valuation of an asset, we will accept a method of valuation that reasonably approximates the net value of the asset and is based on competent evidence and on a sound valuation method or methods." *Fountain*, 148 N.C. App. at 338, 559 S.E.2d at 32. Because we review valuation for abuse of discretion, "findings of fact concerning valuation are binding if supported by competent evidence." *Id.* Here, the evidence presented at trial showed the value of the stock grant was $200,000. Defendant did not present evidence as to any tax implications of the restricted stock, and therefore, the trial court did not err by failing to consider any theoretical tax implications in the valuation of the stock. Instead, the trial court properly valued the stock based on the evidence of value presented.

III. Calculation of the Corning Stock Dividends

¶ 31 Defendant contends the trial court erred in its distribution of the Corning Stock dividends arguing the evidence did not support the Finding of Fact regarding the valuation of the dividends. "In reviewing a trial judge's findings of fact, this Court's role is strictly limited to determining whether the trial judge's underlying findings of fact are supported by competent evidence in which event they are

conclusively binding on appeal . . . ." *State v. Williams*, 362 N.C. 628, 632, 669 S.E.2d 290, 294 (2008) (citation and quotation marks omitted). Here, the trial court made the following Finding of Fact:

> 25. Dividends Paid on Corning Restricted Stock: As described above, [Defendant] received 7,500 shares of Corning Restricted Stock which are marital property. [Defendant] has received quarterly dividends of $.155 per share for 7,500 shares = $1,162.50 per quarter. Since March 2017 there have been 3 quarters in 2017, 4 quarters in 2018 and 2 quarters in 2019 for a total of 9 quarters. $1,162.50 x 9 = $10,462.50. After considering the tax consequences of these dividends, the Court finds that the divisible property amount is $8,056 which should be distributed to [Defendant].

¶ 32 The evidence at trial consisted of Defendant's Offer Letter stating that Defendant would receive dividends in the amount of $0.155 per share per quarter and Plaintiff's testimony. Plaintiff testified that Defendant had worked with Corning for nine quarters, that 7,500 shares times 15.5 cents equals $1,162.50 per quarter, and that nine times $1,162.50 equals $10,462.50—the total amount of dividends that Defendant received. Defendant did not object to this testimony or offer another formula for calculating the dividends at trial. The only evidence Defendant offered had to do with the tax implications of the dividends, which the trial court accounted for by reducing the gross amount by 23%. Therefore, the trial court properly found the value of the Corning Stock dividends to be $8,056 based on the evidence presented at trial.

IV. QDRO - GE Pension

¶ 33 Defendant contends that the trial court erred in ordering a QDRO for the GE Pension. "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). "When reviewing an equitable distribution order, the standard of review is limited to a determination of whether there was a clear abuse of discretion." *Langston v. Richardson*, 206 N.C. App 216, 218, 696 S.E.2d 867, 869 (2010). "A trial court may be reversed for abuse of discretion only upon a showing that its actions are manifestly unsupported by reason." *Id.*

¶ 34 "Absent an agreement between the parties, there are only two methods for a trial court to distribute a vested pension, which are codified in N.C. Gen. Stat. § 50–20.1(a)(3) and (a)(4)." *Lund v. Lund*, 244 N.C. App. 279, 283, 779 S.E.2d 175, 178 (2015). The first method, referred to as "the present value method" is codified in N.C. Gen. Stat. § 50–20.1(a)(3) and "allows the trial court to award one hundred percent (100%) of the future pension benefits to the employee-spouse and to 'offset' this award by awarding a larger percentage of the other marital assets to the non-employee spouse." *Id.* The second method, referred to as "the fixed percentage method" is codified in N.C. Gen. Stat. § 50–20.1(a)(4) and "allows the trial court to award the

non-employee spouse a 'fixed percentage' of the marital portion of the pension benefits as they are paid out in the future." *Id.*

¶ 35 In this case, the trial court found during the marriage Defendant was employed by GE, and subsequently acquired an interest in the GE Pension Plan. Because this interest was acquired during the marriage and was owned on the date of separation, the trial court properly classified this interest as marital property. After classifying the property as marital, the trial court determined the present value of Defendant's interest in the GE Pension Plan and then properly distributed the interest using the "fixed percentage" method permitted by N.C. Gen. Stat. § 50-20.1. On appeal, Defendant does not challenge the present valuation of the pension or the fixed percentage method. Instead, Defendant challenges the use of the QDRO to effectuate the award. Notably, Defendant did not object to nor present a viable alternative to the separate interest QDRO at trial. Therefore, the trial court properly exercised its discretion in its use of the QDRO to effectuate the distribution of the pension.

V. Post-Trial Motions

¶ 36 Defendant contends that the trial court erred in denying his Rule 52, 59, and 60 Motions regarding the Equitable Distribution Order. Post-trial motions for relief are within the discretion of the trial court and will not be overturned absent an abuse of discretion. *Borg-Warner Acceptance Corp. v. Johnston*, 107 N.C. App. 174, 178, 419

S.E.2d 195, 197 (1992); *see also Vuncannon v. Vuncannon*, 82 N.C. App. 255, 258, 346 S.E.2d 274, 276 (1986). An abuse of discretion occurs when the trial court's ruling is "so arbitrary that it could not have been the result of a reasoned decision." *White v. White*, 312 N.C. 770, 324 S.E.2d 829 (1985). Defendant contends the trial court erred in denying his Motions for post-trial relief for the same reasons as are the subject of this appeal. Thus, because we have concluded the trial court did not commit prejudicial error in classifying, valuing, and distributing the Corning Stock, the dividends, or in distributing the GE Pension through a separate interest QDRO the trial court did not err in the denying Defendant's post-trial motions.

¶ 37 Therefore, we conclude the trial court did not err in determining the parties' date of separation and did not commit prejudicial error in classifying, valuing, or distributing the parties marital and divisible property, and did not err in denying Defendant's post-trial motions. Consequently, we uphold the trial court's Equitable Distribution Order entered in this case.

Conclusion

¶ 38 Accordingly, for the foregoing reasons, we affirm the Order setting the date of separation as 16 July 2017, the Equitable Distribution Order, and the Order denying Defendant's Rule 52, 59, and 60 Motions.

AFFIRMED.

Judges WOOD and GORE concur.

Report per Rule 30(e).