An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

2022-NCCOA-182

No. COA21-256

Filed 15 March 2022

Buncombe County, No. 18 SP 845

WILLIAM KENNETH PATTON, JR. KIMBERLY A. PATTON, Petitioners,

v.

THADDEUS B. PATTON, Respondent.

Appeal by Respondent from order entered 11 February 2021 by Judge Stephen R. Warren in Buncombe County Superior Court. Heard in the Court of Appeals 1 December 2021.

Stone & Christy, P.A., by William H. Christy, for Petitioners-Appellees.

Ferikes & Bleynat, PLLC, by H. Gregory Johnson, for Respondent-Appellant.

DILLON, Judge.

¶ 1 This matter concerns the distribution of the net proceeds among the owners of certain real property following the partition of that property by sale. Respondent appeals from the 11 February 2021 Order distributing these proceeds.

I. Background

¶ 2 In 2009, Petitioner William Kenneth Patton, Jr., and Respondent Thaddeus Patton inherited certain real property from their father. Thereafter, Respondent

made repairs and improvements to the property and collected rent from tenants. In late 2018, Petitioners filed a Petition for Partition Sale of Real Estate as to the property. On 11 March 2019, after a hearing on the matter, the superior court ordered the partition sale. Affidavits were filed from the parties regarding the distribution of sale proceeds. On 1 August 2019, the property was sold. Thereafter, the Commissioner filed the Final Report and Account of Private Sale.

¶ 3 Over a year later, in September 2020, after a hearing on the matter, the superior court entered its Order distributing the proceeds from the sale. (The matter was on appeal from orders entered by the clerk.) The court found that Respondent spent $35,560.93 in taxes and repairs for the property and received $70,123.71 in rent over a five-year period.

¶ 4 Based on these findings, the court awarded Petitioners $110,731.46 and Respondent $76,168.69 from the sale proceeds of the property. The court cited "the receipt of rents by Respondent in assessing the relative equities on the issue of the distribution of proceeds in this case." Respondent appealed the Order.

II. Analysis

¶ 5 Respondent argues that the superior court erred in distributing a greater share of partition sale proceeds to Petitioners. We disagree and affirm the trial court's Order.

¶ 6 On appeal from a trial court's order, we consider "whether competent evidence

exists to support the trial court's findings of fact and whether the conclusions reached were proper in light of the findings." *In re Foreclosure of Azalea Garden Bd. & Care, Inc.*, 140 N.C. App. 45, 50, 535 S.E.2d 388, 392 (2000).

¶ 7 Whether a partition of land is "fair and equitable" is a "question of fact to be determined by the Judge of the Superior Court upon an appeal from a judgment of the clerk[.]" *West v. West*, 257 N.C. 760, 762, 127 S.E.2d 531, 532 (1962). The trial court's findings of fact are conclusive and binding on appeal if there is any evidence in the record to support them. *Id.* at 762, 127 S.E.2d at 532.

¶ 8 Our Supreme Court has stated that "[p]etitions for partition are equitable in nature, and the court has jurisdiction to consider the rights of the parties under the principles of equity and to do justice between the parties." *Henson v. Henson*, 236 N.C. 429, 430, 72 S.E.2d 873, 873 (1952). A trial court may apply equitable principles to "a partition by sale because, in this State partition proceedings have been consistently held to be equitable in nature, and the court has jurisdiction to adjust all equities in respect to the property." *Tarr v. Zalaznik*, 264 N.C. App. 597, 602, 826 S.E.2d 245, 250 (2019) (internal quotation marks and citation omitted). Our General Statutes direct that upon receipt of the sale proceeds, the trial court "shall secure to each cotenant the cotenant's ratable share in severalty of the proceeds of sale." N.C. Gen. Stat. § 46A-85(d) (2018).

¶ 9 Respondent does not challenge the partition sale itself, but the trial court's

unequal distribution of the sale proceeds. However, Respondent did not challenge any specific findings of fact. Therefore, the trial court's findings are binding on appeal. *Durham Hosiery Mill Ltd. P'ship v. Morris*, 217 N.C. App. 590, 592, 720 S.E.2d 426, 427 (2011). In any event, the trial court's findings would be binding in this case because there was evidence in the record to support them.

¶ 10 The trial court apparently considered and rejected some of Respondent's assertions, as was within its discretion. *See Sauls v. Sauls*, 236 N.C. App. 371, 373, 763 S.E.2d 328, 330 (2014) (internal quotation marks omitted) ("It is the duty of the trial judge to weigh and consider all competent evidence, and pass upon the credibility of witnesses, the weight to be given their testimony and the reasonable inferences to be drawn therefrom.").

¶ 11 The trial court's findings likewise support its conclusions of law, wherein it equitably distributes the sale proceeds from the property. The trial court considered Respondent's receipt of rent proceeds from the property, which he did not share with Petitioners. We conclude that the trial court did not err in its findings of fact or conclusions of law relating to the distribution of sale proceeds from the property.

III. Conclusion

¶ 12 We affirm the trial court's Order distributing the sale proceeds of the property to Petitioners and Respondent.

AFFIRMED.

Judges ZACHARY and COLLINS concur.

Report per Rule 30(e).