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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-267

No. COA21-72

Filed 19 April 2022

Iredell County, No. 15 CVD 981

DEBORAH DAVIDSON, Plaintiff,

v.

GEOFFREY DAVIDSON, Defendant.

Appeal by plaintiff from order entered 2 October 2020 by Judge Carole Hicks in Iredell County District Court. Heard in the Court of Appeals 14 December 2021.

Wyrick Robbins Yates & Ponton LLP, by Charles W. Clanton and K. Edward Greene, for plaintiff-appellant.

Pope McMillan, PA, by Alex Graziano, for defendant-appellee.

ZACHARY, Judge.

¶ 1 Plaintiff Deborah Davidson appeals from an order modifying Defendant Geoffrey Davidson's alimony obligation. After careful review, we remand to the trial court for entry of an order containing additional findings of fact regarding the trial court's determination of the parties' respective incomes.

Background

¶ 2 Plaintiff and Defendant married in 1988, separated in 2014, and divorced in 2016. There were two children born to the parties' marriage: Megan, born in 1995, and Casey, born in 1998. Defendant remarried in 2017.

¶ 3 On 27 April 2015, after the parties' separation, Plaintiff filed a complaint seeking, *inter alia*, permanent alimony. On 1 May 2015, the trial court entered a consent order executed by the parties, pursuant to which Defendant, as the supporting spouse, would pay alimony to Plaintiff, the dependent spouse, for a term of 14 years. The order obligated Defendant, *inter alia*, to pay Plaintiff $4,500.00 per month in alimony until Casey turned 18 and graduated from high school; at that point, Defendant's alimony obligation increased to $5,300.00 per month.

¶ 4 On 24 April 2019, Defendant filed a motion to modify alimony, alleging that there had been a substantial change of circumstances since the entry of the 2015 consent order, warranting a modification in his alimony obligation. Defendant's motion came on for hearing in Iredell County District Court on 1 September 2020.

¶ 5 In sum, the evidence before the trial court tended to show that Defendant's income had decreased significantly since 2015. In 2017, he left a lucrative job as a division manager at Hitachi Data Systems because of a change in corporate direction, and accepted a position earning significantly less as a sales representative at Connection Enterprise. While employed at Connection Enterprise, however, Defendant and his spouse formed a contracting company offering residential

construction project design and project management services. In addition, Defendant received his general contractor's license, he repaired and renovated his several rental properties, and he worked as a handyman. Defendant was terminated from his position at Connection Enterprise in March 2019. At the time of the hearing, Defendant continued to run the contracting company, repair and renovate the rental properties, and work as a handyman, but he was earning substantially less than when he was employed by either Hitachi or Connection Enterprise. However, Defendant continued to seek more remunerative employment.

¶ 6 Plaintiff has not held a full-time job since 1998, when she voluntarily terminated her position at Discovery Place earning $20,000.00 per year in order to care for the parties' children. At the time of the hearing, Plaintiff spent a substantial amount of time volunteering as the vice-president of a successful non-profit corporation, as well as volunteering for other organizations. Plaintiff testified that she travels to California for two months out of the year for the non-profit, during which time she works "nonstop"; otherwise, she works approximately ten hours per month for the corporation, in addition to her other significant volunteer commitments.

¶ 7 After hearing testimony and reviewing the documentary evidence, including the parties' financial affidavits, the trial court made extensive findings of fact. The

court found the following, in relevant part, regarding Defendant's financial circumstances:

> 7. At the time of entry of the Consent Order, Defendant was employed at Hitachi Data Systems making approximately $15,000.00 per month in gross income. The Consent Order specifically includes a finding that Defendant had earned $180,000.00 in income at Hitachi in 2014.
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> . . . .
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> 9. In 2015, Hitachi began to experience changes as a company. The leadership of Hitachi began to downsize and reorganize the workforce. The company also made a significant change in its product offerings. Defendant had significant experience in data systems; however, Hitachi began transitioning to different product offerings that were inconsistent with Defendant's experience.
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> 10. In late 2015, Defendant took another position with Hitachi and moved to Richmond, Virginia. Defendant continued to do well financially and had very good income in 2016 and 2017.
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> 11. In 2017, Defendant became concerned with the continuing corporate changes at Hitachi and the company's inability to deliver products on time to customers. Many of Defendant's colleagues on the east coast sales team left the company. Defendant decided to start looking for other positions and took a position with Connection Enterprise in North Carolina.
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> 12. The position with Connection Enterprise paid significantly less than what Defendant was making at Hitachi but it was his intent to earn at a similar level after payment of commissions and bonuses.
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> 13. Defendant struggled professionally and financially at Connection Enterprise. Defendant was under the

assumption that many accounts he was familiar with prior to taking the position would be his accounts at Connection Enterprise. Many of these accounts belonged to other sales team members or Connection Enterprise was unable to secure their business. Due to the unprofitability of Defendant's region, his ability to travel was significantly limited.

14. While Defendant was struggling at Connection Enterprise, he formed G2 Contracting, LLC to help supplement his income.

15. Defendant holds a degree in Architecture from Virginia Tech. At G2 Contracting, Defendant provides project design and project management services to residential clients. Defendant was working under G2 Contracting while also employed at Connection Enterprise.

16. In March of 2019, Defendant was involuntarily terminated from Connection Enterprise due to sales performance.

17. The Court does not find that Defendant's changes in employment, Hitachi and then Connection Enterprise, were bad faith attempts by Defendant to suppress his income and avoid his alimony obligation.

18. Up until the Coronavirus Pandemic in April, 2020, Defendant complied with the alimony obligation. Even during the pandemic, Defendant has made partial payments.

19. After losing his position with Connection Enterprise, Defendant began working full-time for G2 Contracting, LLC. G2 Contracting, LLC has been successful at times, but Defendant has also struggled in 2020 due to the economic effects of the pandemic. Defendant has recently been working as a "handyman" to help supplement his income at G2 Contracting, LLC.

20. Defendant has performed and continues to perform a good faith job search to obtain employment that would enable him to meet the alimony obligation. Defendant has applied for hundreds of positions in his past industries and outside of them. He has no geographic limitations and has applied for positions in and out of the Charlotte area. Defendant hired an individual to take professional headshots, write a professional resumé, and optimize his LinkedIn profile.

21. Defendant has sought additional licenses and certifications to make himself more marketable to potential employers. Defendant obtained his General Contractor license and is now Scrum Master Certified.

22. While struggling financially at Connection Enterprise, Defendant has taken out numerous loans to comply with the alimony obligation. In total, Defendant has taken out approximately $105,000.00 in loans to specifically meet the alimony obligation.

. . . .

38. Defendant has significant debt obligations. He is one-half responsible for the home he owns with his wife. He also has debt associated with properties and assets that were acquired while his income was good and stable. He has incurred significant secured and unsecured debt in an effort to comply with this obligation.

. . . .

42. Defendant's income is difficult to establish. His income is now entirely derived from G2 Contracting, however G2 is struggling at the present time. Furthermore, Defendant's gross income at G2 is then reduced by his tax burden, cost of goods, and various business expenses. Defendant certainly has the ability to earn at a higher level than $25.00 per hour as a "handyman." Defendant has multiple rental properties and business entities that hold

> those properties, however the properties are heavily leveraged in debt and Defendant derives little to no income from those properties. Defendant purchased his interest in these properties while he was doing well financially and has since taken out significant debt against at least one of the properties in order to comply with the alimony obligation.
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> 43. By the preponderance of evidence, Defendant earns $100,000.00 per year currently between his work at G2 Contracting, his handyman services, and any other sources of income. His net monthly income is approximately $6,800.00. This is not an imputation but is a determination of his current income according to the evidence before the Court.
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> 44. Defendant has reasonable monthly needs of $4,801.47. The Court did not consider any housing expenses . . . other than the one-half of the mortgage for the residence that Defendant shares with his wife. Thus, his total monthly expenses and debts of $9,504.59 is reduced to $4,801.47. Defendant's other stated expenses are appropriate and reasonable.

¶ 8 The trial court found the following, in relevant part, regarding Plaintiff's financial circumstances:

> 24. Since the entry of the [Consent] Order, Plaintiff has not held any full-time employment. From the date of separation in 2014 through August of 2019, Plaintiff was only able to provide one job she held as a barn worker, six prospective positions that did not result in employment, and fourteen contacts she made looking for employment.
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> 26. Plaintiff holds a Bachelor of Science degree in Forestry and Wildlife Management from Virginia Tech.

27. Plaintiff has over thirty years of non-profit formal and informal science education experience. She has no physical limitations or disabilities.

28. Plaintiff has had some seasonal employment and recently worked at Lazy 5 Ranch until the pandemic affected that employment.

29. Plaintiff has invested a significant amount of time doing "volunteer" work, for which she is not compensated.

30. Most recently, Plaintiff has worked for a California non-profit, Math/Science Nucleus. Plaintiff is the Vice President and is on the Board of Directors of the non-profit. She is the second in command, with only the owner . . . having more responsibility and authority. Math/Science Nucleus is a successful non-profit, with approximately $400,000 in revenue each year. There are at least three paid employees.

31. Plaintiff has significant responsibilities with Math/Science Nucleus that require a time investment similar to that of a full-time job. . . .

. . . .

33. Plaintiff also testified to other volunteer jobs she has held that were not compensated, including the management of family[-]owned land, animal rehabilitation, and animal fostering.

. . . .

37. Other than her mortgage and loans taken out for the purpose of covering expenses related to her adult children, Plaintiff has little to no debt. Her vehicle is paid off.

. . . .

39. If Plaintiff devoted herself to a good faith job search as diligently as she has worked in part-time and

> uncompensated positions, she would likely be able to obtain a job that would cover most, if not all, of her reasonable monthly needs.
>
> 40. Plaintiff has the means and ability to earn a salary of at least $40,000.00 per year given her extensive experience, her skills, her current abilities, and current responsibilities in uncompensated positions. An imputation of income to Plaintiff would be appropriate because she has failed to earn according to her earning capacity in bad faith. Plaintiff's net monthly income based on this imputation is approximately $2,000.00 per month.
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> 41. Plaintiff has reasonable monthly expenses of $3,966.90. The Court does not consider the expenses related to adult children to be reasonable monthly expenses relevant to a modification of alimony and therefore has removed those from Plaintiff's needs. The "PennMutual" loans were obtained to pay for expenses related to the adult children and therefore should not be considered either. The Court removed the amount for household repairs, as Plaintiff did not testify as to any recurring repairs that would reasonably amount to $682.00 per month. The Court also removed the amounts for Service Contracts and Garden & Yard Work, as Plaintiff testified she no longer has those expenses. Plaintiff did not present any credible evidence to establish $500.00 per month in uninsured medical expenses and the Court therefore removes that expense. Plaintiff testified to lesser amounts for other items. However, the Court finds the above amount reasonable.
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> 45. Thus, Plaintiff is in need of spousal support in the amount of $1,966.90 and Defendant has the ability to pay that amount.

¶ 9 Based on the above findings regarding Plaintiff's and Defendant's financial circumstances, the trial court concluded, *inter alia*:

> 2. Plaintiff is a dependent spouse and Defendant is a supporting spouse. Plaintiff is substantially in need of support from Defendant in the amount ordered herein.
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> 3. Plaintiff has willfully suppressed her income and not made good faith efforts to earn at her capacity.
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> 4. Defendant has the means and ability to comply with the modified alimony payment as set forth herein.
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> 5. There has been a substantial change in circumstances since the prior Order necessitating a modification of the alimony payment.

¶ 10 On 2 October 2020, the trial court entered its order reducing Defendant's monthly alimony obligation from $5,300.00 to $1,966.90, effective as of 1 May 2019. On 30 October 2020, Plaintiff filed written notice of appeal.

Discussion

¶ 11 On appeal, Plaintiff argues that the trial court erred by (1) concluding that a change of circumstances had occurred, justifying modification of Defendant's existing alimony obligation as set forth in the prior alimony consent order; (2) imputing income to Plaintiff after determining that she had suppressed her income in bad faith; (3) failing to consider the tax ramifications of its modified alimony order; (4) ordering that Defendant's modified alimony obligation apply retroactively; (5) failing to include expenses relating to the parties' adult children as part of Plaintiff's reasonable monthly expenses; and (6) making findings regarding the parties' incomes without competent evidence to support those findings.

¶ 12 For the reasons explained below, we conclude that the evidence sufficiently supports the trial court's findings regarding issues (1) through (5), and that these findings support the court's corresponding conclusions. Nonetheless, we remand the matter to the trial court for additional findings of fact regarding the parties' incomes.

I. Standard of Review

¶ 13 "Generally, the trial court's decision regarding alimony" is "left to the sound discretion of the trial [court] and will not be disturbed on appeal unless there has been a manifest abuse of that discretion." *Shirey v. Shirey*, 267 N.C. App. 554, 559, 833 S.E.2d 820, 824 (2019) (citation omitted), *disc. review denied*, 376 N.C. 675, 853 S.E.2d 159 (2021). "An abuse of discretion has occurred if the decision is manifestly unsupported by reason or one so arbitrary that it could not have been the result of a reasoned decision." *Kelly v. Kelly*, 228 N.C. App. 600, 601, 747 S.E.2d 268, 272–73 (2013) (citation and internal quotation marks omitted).

¶ 14 "In reviewing orders entered by a trial court in non-jury proceedings, this Court is strictly limited to determining whether the record contains competent evidence to support the trial court's findings of fact and whether those findings, in turn, support the trial court's conclusions of law." *Setzler v. Setzler*, 244 N.C. App. 465, 470, 781 S.E.2d 64, 67 (2015) (citation and internal quotation marks omitted). "If the court's findings of fact are supported by competent evidence, they are conclusive on appeal, even if there is contrary evidence." *Collins v. Collins*, 243 N.C. App. 696, 699, 778

S.E.2d 854, 856 (2015). In performing this review for competent evidence, this Court may not conduct a de novo review of the evidence, nor "substitute its judgment for that of the trial court." *Setzler*, 244 N.C. App. at 470, 781 S.E.2d at 67 (citation omitted). Neither will this Court determine de novo "the weight and credibility to be given to evidence disclosed by the record on appeal." *Id.* (quoting *Coble v. Coble*, 300 N.C. 708, 712–13, 268 S.E.2d 185, 189 (1980)).

¶ 15 Further, "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." *Kabasan v. Kabasan*, 257 N.C. App. 436, 440, 810 S.E.2d 691, 696 (2018) (citation omitted). However, we review de novo a trial court's conclusions of law. *Robbins v. Robbins*, 240 N.C. App. 386, 395, 770 S.E.2d 723, 728, *disc. review denied*, 368 N.C. 283, 775 S.E.2d 858 (2015).

II. Modification of Alimony Award

¶ 16 "The court shall award alimony to the dependent spouse upon a finding that one spouse is a dependent spouse, that the other spouse is a supporting spouse, and that an award of alimony is equitable after considering all relevant factors, including those set out in subsection (b) . . . ." N.C. Gen. Stat. § 50-16.3A(a) (2021).

¶ 17 An original alimony order "may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party[.]" *Id.* § 50-16.9(a). "To determine whether a change of circumstances under [N.C. Gen. Stat.

§] 50-16.9 has occurred, it is necessary to refer to the circumstances or factors used in the original determination of the amount of alimony awarded" pursuant to N.C. Gen. Stat. § 50-16.3A(b). *Rowe v. Rowe*, 305 N.C. 177, 187, 287 S.E.2d 840, 846 (1982). "Although N.C. Gen. Stat. § 50-16.3A(b) sets forth 16 factors to be considered in the establishment of alimony," the trial court does not need "to address each of these upon a motion for modification; the trial court needs to address only those that are relevant to the motion to modify." *Kelly*, 228 N.C. App. at 606, 747 S.E.2d at 275. "As a general rule, the changed circumstances necessary for modification of an alimony order must relate to the financial needs of the dependent spouse or the supporting spouse's ability to pay." *Rowe*, 305 N.C. at 187, 287 S.E.2d at 846.

A. Substantial Change of Circumstances

1. Voluntary Reduction in Income

¶ 18 Plaintiff initially asserts that "the trial court committed reversible error in concluding that a change of circumstances had occurred justifying modification of the prior order" because Defendant voluntarily effected the change in his income. This change, Plaintiff argues, was made in bad faith or in disregard of Defendant's obligations; as such, she contends that the trial court should have refused to modify Defendant's obligation on the basis of his earning capacity. Specifically, Plaintiff challenges the court's finding that Defendant's changes in employment were not bad-faith attempts to suppress his income and avoid his alimony obligation.

¶ 19 "To base an alimony obligation on earning capacity rather than actual income, the trial court must first find that the party has depressed [his] income in bad faith." *Works v. Works*, 217 N.C. App. 345, 347, 719 S.E.2d 218, 219 (2011) (citation omitted). "In the context of alimony, bad faith means that the spouse is not living up to income potential in order to avoid or frustrate the support obligation." *Id.* (citation omitted). The trial court may find bad faith from "evidence that a spouse has refused to seek or to accept gainful employment; willfully refused to secure or take a job; deliberately not applied himself or herself to a business or employment; or intentionally depressed income to an artificial low." *Nicks v. Nicks*, 241 N.C. App. 487, 503, 774 S.E.2d 365, 377 (2015) (citation omitted). However, "evidence of a voluntary reduction in income is insufficient, without more, to support a finding of deliberate income depression or bad faith." *Walton v. Walton*, 263 N.C. App. 380, 386, 822 S.E.2d 780, 785 (2018) (citation omitted).

¶ 20 In the present case, Plaintiff maintains that Defendant's employment changes were "voluntary and deliberate[,]" "showing disregard for his duty to meet his obligation to pay alimony[,]" and that "[t]he court's Findings of Fact 9 – 20 to the contrary are not supported by the evidence." However, this Court may not "substitute its judgment for that of the trial court[,]" nor determine de novo the "weight and credibility to be given to evidence disclosed by the record on appeal." *Setzler*, 244 N.C. App. at 470, 781 S.E.2d at 67 (citation omitted). Instead, we must determine "whether

the record contains competent evidence to support the trial court's findings of fact and whether those findings, in turn, support the trial court's conclusions of law." *Id.* (citation omitted).

¶ 21 Here, there is sufficient competent evidence to support the trial court's determination that Defendant did not act in bad faith to suppress his income and avoid his alimony obligation, and that, in fact, "Defendant has performed and continues to perform a good faith job search to obtain employment that would enable him to meet the alimony obligation." The trial court heard Defendant's testimony and found it credible: although Defendant left his job at Hitachi "by choice," he started his position at Connection Enterprise immediately, leaving "[n]o gap" in his employment. Defendant believed that he would make approximately the same salary at Connection Enterprise as he had at Hitachi, and he obtained $105,000.00 in loans to meet his alimony obligation once his salary was no longer sufficient to cover the payments, which he verified with documentary evidence. Defendant also testified that he attempted to make himself more marketable by earning certificates in his field and obtaining professional assistance to improve his resumé and LinkedIn profile following his termination from Connection Enterprise. Defendant testified that he applied for hundreds of positions; he estimated that he "appl[ied] for 15 to 18 [jobs] on weekends" and at least one per day during the week. He also started his own company in the hopes of "earning enough money to pay [his] bills[.]"

¶ 22 The trial court's findings reflect a reduction in Defendant's income that was substantial and sustained, affecting his ability to satisfy his alimony obligation, and which Defendant did not engineer in bad faith. The findings support the court's conclusion that Defendant demonstrated a change of circumstances sufficient to justify a modification of his alimony obligation. The record contains competent evidence to support the trial court's findings of fact, which support its conclusion of law regarding the existence of a substantial change of circumstances. *Id.* As such, the trial court did not abuse its discretion in determining that Defendant acted in good faith and that there was a substantial change of circumstances, justifying a modification of his alimony obligation. *See Kelly*, 228 N.C. App. at 601, 747 S.E.2d at 272–73. Plaintiff's argument to the contrary is overruled.

2. Defendant's Ability to Pay Alimony Obligation

¶ 23 Plaintiff next argues that the trial court erred by concluding that Defendant demonstrated a change of circumstances sufficient to justify a modification of his alimony obligation because the court failed to properly consider certain factors relevant to Defendant's ability to pay. Specifically, Plaintiff contends that the trial court failed to properly consider evidence of "Defendant's assets and liabilities, Defendant's expenses and expenditures, and Defendant's benefits from payment by others[,]" particularly his current spouse. Plaintiff asserts that in determining Defendant's ability to pay his alimony obligation, the trial court should have

considered the "significant assets" that Defendant could have liquidated "to generate funds to pay alimony," as well as his current spouse's income and payment of expenses.

¶ 24 "As a general rule, a supporting spouse will not be required to deplete his estate to pay alimony." *Hill v. Hill*, 261 N.C. App. 600, 619, 821 S.E.2d 210, 225 (2018). However, in ruling on a motion to modify alimony, "the trial court may consider whether depletion of the supporting spouse's estate would be fair" when both spouses claim their estates are insufficient to meet their reasonable needs and obligations. *Id.* "In considering whether depletion of the estate is fair, the trial court must compare the estates and needs of the parties." *Id.* at 620, 821 S.E.2d at 225.

¶ 25 In the case at bar, the trial court appropriately considered Defendant's assets and his current spouse's income in making the modified award. The court plainly considered Defendant's assets in determining the modified amount of alimony, finding that "Defendant has multiple rental properties and business entities that hold those properties[;] however the properties are heavily leveraged in debt and Defendant derives little to no income from those properties." Plaintiff does not challenge this finding; it is therefore "deemed to be supported by competent evidence and [is] binding on appeal." *Kabasan*, 257 N.C. App. at 440, 810 S.E.2d at 696 (citation omitted). Moreover, the court considered both Plaintiff's and Defendant's affidavits of financial standing and testimony regarding their retirement accounts

and debt obligations; it then determined that Plaintiff willfully suppressed her income in bad faith. Finding of fact 39—stating that Plaintiff "would likely be able to obtain a job that would cover most, if not all, of her reasonable monthly needs" if she "devoted herself to a good faith job search as diligently as she has worked in part-time and uncompensated positions"—indicates that the trial court considered liquidating Defendant's assets unnecessary because the original award overcompensated Plaintiff relative to her current needs. In that the court reduced the alimony award, it follows that the court deemed it unfair to require Defendant to deplete his estate to satisfy the original obligation. The trial court appropriately exercised its discretion in choosing not to require the depletion of Defendant's estate in consideration of Defendant's ability to pay. *See Hill*, 261 N.C. App. at 619, 821 S.E.2d at 225.

¶ 26 Additionally, the trial court properly considered the contributions by Defendant's current spouse to the payment of Defendant's expenses when calculating the modified award. As stated in finding of fact 44—which Plaintiff does not challenge and which is binding on appeal, *Kabasan*, 257 N.C. App. at 440, 810 S.E.2d at 696—the court "did not consider any housing expenses [listed] in . . . Defendant's Affidavit of Financial Standing other than the one-half of the mortgage for the residence that Defendant shares with his wife." The trial court accordingly reduced Defendant's expenses from $9,504.59 to $4,801.47 per month, thus increasing the amount of

income available to Defendant to fulfill his alimony obligation.

¶ 27 Therefore, Plaintiff's argument on these grounds is overruled.

B. Determining the Alimony Obligation

¶ 28 Once the trial court has determined that the supporting spouse has demonstrated a change of circumstances sufficient to justify a modification of the original alimony obligation, the court must determine the appropriate amount and duration of the alimony obligation upon consideration of the factors listed in N.C. Gen. Stat. § 50-16.3A. *See Hill*, 261 N.C. App. at 618–19, 821 S.E.2d at 224. "Although N.C. Gen. Stat. § 50-16.3A(b) sets forth 16 factors to be considered in the establishment of alimony," the trial court is not required "to address each of these upon a motion for modification; the trial court needs to address only those that are relevant to the motion to modify." *Kelly*, 228 N.C. App. at 606, 747 S.E.2d at 275. One of the factors to be considered upon a motion to modify is the "relative earnings and earning capacities of the spouses." N.C. Gen. Stat. § 16.3A(b)(2).

1. Imputing Income to Plaintiff

¶ 29 Plaintiff next maintains that the trial court erred in imputing income to her because (1) imputing income to a dependent spouse is inappropriate on a motion to modify where there is no allegation of a change in the dependent spouse's income, (2) the findings supporting the imputation of income were not supported by the evidence adduced at the hearing, and (3) the issue of Plaintiff's "lack of income" was not raised

in Defendant's motion to modify. We disagree.

¶ 30 First, Plaintiff asserts that "[t]he trial court erred as a matter of law in concluding that [she] ha[d] willfully suppressed her income in bad faith" because "[o]nce an order for alimony is entered, any duty of self-support on the part of the dependent spouse has been adjudicated and quantified by the terms of the order itself[,] . . . both as to amount and duration." In sum, Plaintiff argues that because income was not imputed to her at the time the consent order was entered, it cannot be imputed to her on a motion to modify; pursuant to the original order, Plaintiff had no duty of self-support for 14 years. We find this argument unavailing.

¶ 31 "The question of earning capacity may arise in the original order for alimony or in a motion to modify it." 2 Suzanne Reynolds, *Reynolds on North Carolina Family Law* § 5.16(c)(5) (6th ed. 2020); *see, e.g.*, *Honeycutt v. Honeycutt*, 152 N.C. App. 673, 677–78, 568 S.E.2d 260, 263 (2002) (addressing the trial court's finding of dependent spouse's earning capacity in proceeding on a motion to terminate alimony obligation). On a motion to modify alimony, "[i]t is appropriate for the trial court to consider whether the dependent spouse's financial need . . . has changed[,]" in accordance with the factors listed in N.C. Gen. Stat. § 50-16.3A(b), *Cunningham v. Cunningham*, 345 N.C. 430, 437, 480 S.E.2d 403, 407 (1997), including "[t]he relative earnings and earning capacities of the spouses[,]" N.C. Gen. Stat. § 50-16.3A(b)(2).

¶ 32 In the present case, the trial court examined the "relative earnings and earning

capacities of the spouses" at the time of the modification hearing and concluded that the facts justified imputing income to Plaintiff. *See id.* Because "[t]he relative earnings and earning capacities of the spouses" is specifically delineated as a relevant factor in determining a party's alimony obligation on a motion to modify, *see id.*, the trial court did not err as a matter of law in imputing income to Plaintiff in a proceeding to modify alimony when income was not imputed to her at the entry of the alimony consent order.

¶ 33 Plaintiff next challenges the trial court's findings regarding the bad faith suppression of her income, arguing that the findings should be rejected because they are "misleading" and "not supported by the evidence." After reviewing the record to determine whether competent evidence supports the trial court's findings and whether those findings support the court's conclusions regarding Plaintiff's bad faith, we disagree. *See Setzler*, 244 N.C. App. at 470, 781 S.E.2d at 67.

¶ 34 "Bad faith for the dependent spouse means shirking the duty of self-support." *Nicks*, 241 N.C. App. at 503, 774 S.E.2d at 377 (citation omitted). A trial court may find that a dependent spouse has acted in bad faith, or with "the intent to avoid reasonable support obligations, from evidence that a spouse has refused to seek or to accept gainful employment; willfully refused to secure or take a job; deliberately not applied himself or herself to a business or employment; or intentionally depressed income to an artificial low." *Works*, 217 N.C. App. at 347, 719 S.E.2d at 219 (citation

omitted). "Evidence of intent such as 'bad faith' generally can be proven, if at all, only by circumstantial evidence." *Wachacha v. Wachacha,* 38 N.C. App. 504, 509, 248 S.E.2d 375, 378 (1978).

¶ 35 The record contains sufficient competent evidence to support the trial court's determination that Plaintiff "failed to earn according to her earning capacity in bad faith" and willfully suppressed her income. Plaintiff testified that since the entry of the alimony order in 2015, she has not had a full-time job, and that the only gainful employment she has had since 2015 was as a part-time barn worker, despite having a college degree and extensive professional experience. Over a period of five years, she contacted approximately 14 employers and had about six job opportunities, each of which ultimately "did not work out[.]" However, Plaintiff spent much of her time working as an uncompensated volunteer: she was the vice-president of a financially successful California non-profit corporation, Math/Science Nucleus, and served on its board of directors; she managed family-owned land in Halifax County; she rehabilitated and fostered animals; and she performed public forestry services "as a favor to the county." Indeed, the trial court found that "Plaintiff ha[d] significant responsibilities with Math/Science Nucleus that require[d] a time investment similar to that of a full-time job." Based on this evidence, the trial court found that Plaintiff could likely obtain gainful employment if she "devoted herself to a good faith job search as diligently as she has worked in part-time and uncompensated positions[.]"

These findings are supported by competent evidence; thus, "they are conclusive on appeal, even if there is contrary evidence." *Collins*, 243 N.C. App. at 699, 778 S.E.2d at 856.

¶ 36 We therefore conclude that, although the evidence could support a conclusion to the contrary, the trial court's determinations that Plaintiff willfully suppressed her income and that "[a]n imputation of income to Plaintiff would be appropriate because she has failed to earn according to her earning capacity in bad faith" are adequately supported by its findings. *See id.* Accordingly, the trial court did not abuse its discretion in imputing income to Plaintiff.

¶ 37 Finally, Plaintiff contends that the trial court erred by considering Plaintiff's lack of income because this issue was not specifically raised in Defendant's motion to modify. Rule 15(b) of the North Carolina Rules of Civil Procedure provides, in relevant part, that "[w]hen issues not raised by the pleadings are tried by the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings." N.C. Gen. Stat. § 1A-1, Rule 15(b). Here, Plaintiff did not object to the introduction of evidence related to this issue at the hearing, and she made arguments involving this issue in her closing argument. As such, Plaintiff waived any challenge on this basis.

2. Tax Ramifications of Alimony Award

¶ 38 Plaintiff next argues that the trial court "erred in modifying the alimony

amount because it did not consider the potential tax ramifications of the alimony award." She asserts that because "[t]he alimony payable under the 2015 Order has been taxable income to Plaintiff and tax-deductible by Defendant[,]" the court "must therefore make findings and potentially a decree as to the tax consequences and tax status of the modified alimony." We disagree.

¶ 39 "The federal, [s]tate, and local tax ramifications of the alimony award" is one of the 16 factors that a trial court must consider, if relevant, in determining an alimony award. *Id.* § 50-16.3A(b)(14). The court is required to make a specific finding of fact on this factor "*if evidence is offered*" on this issue at trial. *Id.* § 50-16.3A(c) (emphasis added); *Nicks*, 241 N.C. App. at 505, 774 S.E.2d at 378 (remanding for specific findings regarding the tax ramifications of an alimony modification where the dependent spouse presented evidence on this factor). However, where no evidence is offered concerning the tax ramifications of an alimony award, it is not error for the trial court to make no factual findings regarding that factor. *See Putnam v. Putnam*, 268 N.C. App. 667, 2021-NCCOA-401, ¶ 34 (concluding that the trial court was not required to make findings as to the tax ramifications of an alimony award because "[n]o evidence was offered" at trial regarding that factor).

¶ 40 In the case at bar, neither party offered evidence as to the tax ramifications of the alimony award. Defendant's 2016, 2017, and 2019 tax returns were admitted into evidence to establish Defendant's income and earning history, and both parties

submitted and subsequently amended financial affidavits listing their incomes and expenses, including their federal and state tax deductions. Moreover, Plaintiff argued at the hearing that Defendant's tax returns and financial affidavit established that he could afford to maintain his existing alimony obligation. Neither party referenced or argued the potential tax ramifications of the alimony award, either modified or unmodified. Thus, the trial court considered the parties' financial evidence for the purposes for which it was proffered—whether and how to modify the award—and it was not required to make findings regarding the tax implications of the alimony obligation because the parties offered no evidence relating to that factor. *See* N.C. Gen. Stat. § 50-16.3A(c); *Putnam*, 268 N.C. App. 667, 2021-NCCOA-401, ¶ 34.

¶ 41 Accordingly, we conclude that the trial court did not abuse its discretion by declining to make any findings regarding the potential tax ramifications of the alimony award, and Plaintiff's assertion to the contrary is without merit.

3. Effective Date of Modification

¶ 42 Plaintiff further claims that "[t]he provision modifying Defendant's obligation retroactively, to May 2019, is unsupported by either findings of fact or evidence." This argument is unavailing.

¶ 43 "Alimony is ordinarily determined by a party's actual income, from all sources, at the time of the order." *Kowalick v. Kowalick*, 129 N.C. App. 781, 787, 501 S.E.2d 671, 675 (1998) (emphasis omitted). Alimony awarded from the filing of a party's

motion to modify is not "retroactive alimony"; rather, it is prospective alimony. *See Hill v. Hill*, 335 N.C. 140, 145, 435 S.E.2d 766, 768 (1993) (concluding that because the effective date of the modification order "was subsequent to the . . . filing of [the] plaintiff's motion, the trial court's order was not a retroactive modification"). Our Supreme Court has reasoned that "[b]ecause a trial court has the discretion to modify an alimony award as of the date the petition to modify is filed, it follows, then, a trial court has discretion to make the modification effective as of any ensuing date after a petition to modify is filed." *Id.* (citation and internal quotation marks omitted).

¶ 44 As a matter that is left to the discretion of the trial court, "appellate review is limited to a determination of whether there was a clear abuse of discretion." *Mackins v. Mackins*, 114 N.C. App. 538, 549, 442 S.E.2d 352, 359 (citation omitted), *disc. review denied*, 337 N.C. 694, 448 S.E.2d 527 (1994). A trial court abuses its discretion when its actions are "manifestly unsupported by reason" or its decision was "so arbitrary that it could not have been the result of a reasoned decision." *Kelly*, 228 N.C. App. at 601, 747 S.E.2d at 272–73 (citation omitted).

¶ 45 In the present case, Defendant filed his motion to modify alimony on 24 April 2019. The trial court, in its discretion, made its order modifying the alimony award effective 1 May 2019, one week after Defendant's motion to modify was filed. *See Hill*, 335 N.C. at 145, 435 S.E.2d at 768. Plaintiff does not argue, and the record does not suggest, that the trial court's ruling was "manifestly unsupported by reason[,]" or

that it was "so arbitrary that it could not have been the result of a reasoned decision." *Kelly*, 228 N.C. App. at 601, 747 S.E.2d at 272–73 (citation omitted). Consequently, Plaintiff's argument fails.

4. Trial Court's Determination of Plaintiff's Monthly Expenses

¶ 46 Plaintiff next challenges as unsupported by the evidence the trial court's finding of fact that the expenses relating to her adult children were not relevant to a modification of alimony. Plaintiff argues that excluding these expenses was improper because "the determination of the [modified] alimony amount must be based on the accustomed standard of living of the parties during the marriage, not a later date[,]" and the "[e]xpenses relating to the parties' children would be part of that accustomed standard."

¶ 47 "The court shall exercise its discretion in determining the amount, duration, and manner of payment of alimony." N.C. Gen. Stat. § 50-16.3A(b). The standard of living of the spouses established during the marriage is one of the factors the trial court is to consider, if relevant, upon a motion to modify. *See Rowe*, 305 N.C. at 187, 287 S.E.2d at 846 (concluding that a trial court must consider the "accustomed standard of living of the parties" to determine whether a change of circumstances has occurred, if that factor was "used in the original determination of the amount of alimony awarded"); *accord* N.C. Gen. Stat. § 50-16.3A(b)(8). "However, as a practical matter, the marital standard of living is merely one of the factors the court takes into

account when calculating the parties' reasonable expenses, and as such, the two are separate and distinct considerations." *Bryant v. Bryant*, 139 N.C. App. 615, 617, 534 S.E.2d 230, 232, *disc. review denied*, 353 N.C. 261, 546 S.E.2d 91 (2000). "The determination of what constitutes the reasonable needs and expenses of a party in an alimony action is within the discretion of the trial [court]," and the court "is not required to accept at face value the assertion of living expenses offered by the litigants themselves." *Id.* at 618, 534 S.E.2d at 232 (citation omitted); *see also Parsons v. Parsons*, 231 N.C. App. 397, 401, 752 S.E.2d 530, 534 (2013) (concluding that "[t]he reasonableness of the expenses is an issue for the trial court to determine in its discretion" on a motion to modify).

¶ 48 In that the determination of a party's reasonable expenses is within the discretion of the trial court, *Parsons*, 231 N.C. App. at 401, 752 S.E.2d at 534, we review the issue for an abuse of discretion, *Kelly*, 228 N.C. App. at 601, 747 S.E.2d at 272–73. As explained above, an abuse of discretion occurs "if the decision is manifestly unsupported by reason or one so arbitrary that it could not have been the result of a reasoned decision." *Id.* (citation and internal quotation marks omitted).

¶ 49 The trial court addressed Plaintiff's reasonable expenses in finding of fact 41:

> 41. Plaintiff has reasonable monthly expenses of $3,966.90. *The Court does not consider the expenses related to adult children to be reasonable monthly expenses relevant to a modification of alimony and therefore has removed those from Plaintiff's needs. The "PennMutual" loans were*

> *obtained to pay for expenses related to the adult children and therefore should not be considered either*. The Court removed the amount for household repairs, as Plaintiff did not testify as to any recurring repairs that would reasonably amount to $682.00 per month. The Court also removed the amounts for Service Contracts and Garden & Yard Work, as Plaintiff testified she no longer has those expenses. Plaintiff did not present any credible evidence to establish $500.00 per month in uninsured medical expenses and the Court therefore removes that expense. Plaintiff testified to lesser amounts for other items. However, the Court finds the above amount reasonable.

(Emphasis added).

¶ 50 The record contains competent evidence to support the trial court's findings, and its findings support its determination that "the expenses related to adult children" were not "reasonable monthly expenses relevant to a modification of alimony[.]" In her financial affidavit from January 2020, $1,487.80 of Plaintiff's total $6,816.70 monthly expenses were related to her adult children; Plaintiff included in her average monthly expenses the cost of the adult children's school supplies, food, and transportation. The parties testified that both of their children were college graduates, living independently, and employed full-time. At the time of the hearing, Megan and Casey were 25 and 22 years old, respectively. The trial court found this testimony credible, and exercised its discretion in declining to include these expenses as part of Plaintiff's reasonable monthly expenses.

¶ 51 Thus, the record contains competent evidence to support the trial court's

findings regarding Plaintiff's reasonable expenses, which support its conclusion that "the expenses related to adult children" were not "reasonable monthly expenses relevant to a modification of alimony[.]" The trial court's determination of Plaintiff's reasonable expenses was not "manifestly unsupported by reason[,]" or "so arbitrary that it could not have been the result of a reasoned decision[,]" *id.* (citation omitted), and Plaintiff does not argue such. Consequently, Plaintiff's argument fails.

5. Calculation of Incomes

¶ 52 Lastly, Plaintiff challenges the sufficiency of evidence supporting the trial court's findings of fact that (1) Defendant earned an annual income of $100,000.00, and (2) "Plaintiff ha[d] the means and ability to earn at least $40,000.00 per year."

a. Defendant's Actual Income

¶ 53 "Alimony is ordinarily determined by a party's actual income, from all sources, at the time of the order." *Works,* 217 N.C. App. at 347, 719 S.E.2d at 219 (emphasis omitted) (citation omitted). Where a trial court fails to make sufficient findings of fact about a party's actual income at the time of the order, the alimony order must be remanded. *See Quick v. Quick,* 305 N.C. 446, 457, 290 S.E.2d 653, 661 (1982), *superseded in part on other grounds*, N.C. Gen. Stat. § 50-13.4(f)(9) (1983); *Collins*, 243 N.C. App. at 705, 778 S.E.2d at 859.

¶ 54 In the present case, the trial court made the following findings of fact regarding its determination that Defendant had an annual income of $100,000.00:

> 42. Defendant's income is difficult to establish. His income is now entirely derived from G2 Contracting, however G2 is struggling at the present time. Furthermore, Defendant's gross income at G2 is then reduced by his tax burden, cost of goods, and various business expenses. Defendant certainly has the ability to earn at a higher level than $25.00 per hour as a "handyman." Defendant has multiple rental properties and business entities that hold those properties, however the properties are heavily leveraged in debt and Defendant derives little to no income from those properties. Defendant purchased his interest in these properties while he was doing well financially and has since taken out significant debt against at least one of the properties in order to comply with the alimony obligation.
>
> 43. By the preponderance of evidence, Defendant earns $100,000.00 per year currently between his work at G2 Contracting, his handyman services, and any other sources of income. His net monthly income is approximately $6,800.00. This is not an imputation but is a determination of his current income according to the evidence before the Court.

¶ 55 In making these findings, the trial court considered Defendant's financial affidavit from December 2019 and Defendant's testimony at the modification hearing regarding, *inter alia*, his net income from G2 Contracting and from his rental properties, as well as the fact that his income had markedly decreased due to the COVID-19 pandemic. Findings of fact 42 and 43 indicate that the trial court considered the evidence presented to determine Defendant's current earnings. Nonetheless, we conclude that more detailed findings are necessary to enable full appellate review of this issue, in that the trial court failed to articulate how this evidence justified its ultimate calculations of Defendant's gross annual income and

net monthly income.

¶ 56 While "the trial court need not recite all of the evidentiary facts[,]" it still "must find those material and ultimate facts from which it can be determined whether the findings are supported by the evidence and whether they support the conclusions of law reached." *Kelly*, 228 N.C. App. at 606–07, 747 S.E.2d at 276 (citation omitted). Accordingly, because we cannot determine how the trial court used the evidence presented to calculate Defendant's current income, we remand for additional findings of fact concerning this issue.

b. Plaintiff's Imputed Income

¶ 57 Once a trial court has determined that a spouse has acted in bad faith by depressing his or her income, the court may impute income to that spouse based on his or her earning capacity. *See Lasecki v. Lasecki*, 246 N.C. App. 518, 535, 786 S.E.2d 286, 299 (2016). As explained above, "the standard of review on appeal is whether there was competent evidence to support the trial court's findings of fact and whether its conclusions of law were proper in light of such facts." *Kelly*, 228 N.C. App. at 601, 747 S.E.2d at 272 (citation omitted).

¶ 58 In the instant case, Plaintiff asserts that "[t]he trial court's finding that Plaintiff has the means and ability to earn a salary of at least $40,000.00 per year is not supported by the evidence." The trial court's modification order states:

> 40. Plaintiff has the means and ability to earn a salary of

> at least $40,000.00 per year given her extensive experience, her skills, her current abilities, and current responsibilities in uncompensated positions. An imputation of income to Plaintiff would be appropriate because she has failed to earn according to her earning capacity in bad faith. Plaintiff's net monthly income based on this imputation is approximately $2,000.00 per month.

¶ 59 When a trial court imputes income to a party, there must be competent evidence on which to base the amount. *See Burger v. Burger*, 249 N.C. App. 1, 7, 790 S.E.2d 683, 688 (2016). First, there must be competent evidence that the party is employable and capable of earning income—that is, evidence of the party's employment potential. *See id.* at 5, 790 S.E.2d at 686–87. Additionally, there must be competent evidence of the amount of income that the party is capable of earning. *See Harnett Cty. v. De La Rosa*, 240 N.C. App. 15, 24, 770 S.E.2d 106, 113 (2015). Evidence relevant to that issue would include evidence that establishes the individual's occupational qualifications, the earnings level for the occupation for which the individual is qualified, the current job market, and the individual's recent job history and earnings. *See id.*

¶ 60 In finding of fact 40, the trial court plainly determined that Plaintiff was abundantly qualified and able to earn an income and contribute to her support, and this determination is amply supported. Nonetheless, this finding does not disclose, and we are unable to ascertain, *how* the trial court made its determination of the level of Plaintiff's earning capacity; the order does not reveal the basis for the trial

court's determination that Plaintiff was capable of earning at least $40,000.00 per year. Hence, we remand for additional findings of fact on the issue of Plaintiff's earning capacity.

Conclusion

¶ 61 We conclude that Defendant demonstrated a substantial change of circumstances warranting a modification of his alimony obligation and that the trial court did not err by imputing income to Plaintiff or declining to address the tax ramifications of the alimony order. In addition, the trial court acted within its discretion in its determination of Plaintiff's reasonable expenses and the effective date of the modification of Defendant's alimony obligation. However, we cannot determine whether the evidence supported the trial court's calculation of Defendant's income and Plaintiff's earning capacity. Accordingly, we remand for additional findings of fact as to this issue. On remand, the trial court may enter a new order on the existing record, or conduct further proceedings, in the trial court's discretion.

REMANDED.

Judges WOOD and GRIFFIN concur.

Report per Rule 30(e).