IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-309

No. COA21-104

Filed 3 May 2022

Wilkes County, No. 16 CVD 1465

ROBIN SHORES HUFFMAN, Plaintiff,

v.

MICHAEL GILBERT HUFFMAN, Defendant.

Appeal by defendant from orders entered on or about 7 January 2020 and 22 June 2020 by Judge William F. Brooks in District Court, Wilkes County. Heard in the Court of Appeals 16 November 2021.

Anné C. Wright for plaintiff-appellee.

Wayne O. Clontz Law Firm, by Wayne O. Clontz, for defendant-appellant.

STROUD, Chief Judge.

¶ 1 Defendant-Husband appeals from trial court judgments and orders equitably distributing the marital estate, awarding Plaintiff-Wife alimony, and denying his motion under Rules of Civil Procedure 59 and 60 for new trial and relief from judgment. Because Defendant withdrew his argument as to the denial of his Rule 59 and 60 motion, we do not address the issue and affirm the trial court's order denying the motion. Because the trial court had competent evidence to support its Findings

of Fact and made the required Findings based upon the evidence presented, we affirm the trial court's equitable distribution order. Finally, because Defendant's alimony argument relies on his contentions of error in the trial court's equitable distribution order and we find no such errors, we affirm the trial court's alimony order and judgment.

I. Background

¶ 2 Plaintiff-Wife and Defendant-Husband were married in 1991 and separated in 2016. On or about 19 December 2016, Plaintiff filed a verified complaint against Defendant for divorce, post-separation support, equitable distribution, and attorney fees. On 14 March 2017, Defendant answered Plaintiff's complaint and counterclaimed for equitable distribution.

¶ 3 The trial court held a hearing on permanent alimony and equitable distribution on 22 May 2019. At the hearing the trial court heard testimony from four witnesses: (1) the parties' adult son, (2) Plaintiff's friend, (3) Defendant, and (4) Plaintiff's mother. Plaintiff was not available to testify because of a neurological condition.

¶ 4 Plaintiff's son testified about her disability and need for care. Specifically, Plaintiff was living with her son because she was unable to care for herself following an aneurysm that required surgery and ongoing medical care. He also testified about Plaintiff's income and expenses. He testified Plaintiff would need to move to an

assisted living facility in the near future and had only Medicare to pay for all of her medical expenses. Plaintiff had not received additional financial assistance from the government or family to cover these expenses.

¶ 5 Plaintiff's friend testified about the reasons for the parties' separation. Specifically, Plaintiff told her friend Defendant had been physically abusive, including an incident at Plaintiff's mother's house that resulted in a restraining order. The trial court later took judicial notice of a motion for a domestic violence protective order from Plaintiff against Defendant that led to the civil restraining order.[1] Plaintiff's friend also testified Plaintiff said she feared Defendant. Finally, Plaintiff's friend testified Defendant had been physically distant from Plaintiff and would not touch her in the months leading up to their separation, and Plaintiff believed Defendant "was running around with [a] woman" because of all the phone calls he made to the woman and Defendant leaving her alone on weekends. The parties' son later corroborated that Defendant sometimes left Plaintiff alone for periods of time.

¶ 6 Defendant testified about several topics relevant to equitable distribution and alimony. First, Defendant recounted his income and expenses and how he handled

[1] As the court later explained in an unchallenged Finding of Fact, Plaintiff "filed a 50 B Domestic Violence Action . . ., which was resolved by the entry of a Civil restraining order rather tha[n] a Domestic Violence Order."

the money when the parties were married. Defendant also testified about the parties' assets including the marital home, a pickup truck and motorcycle he drove, and a car Plaintiff drove, which she received from her father.

¶ 7 Defendant also testified about two debts incurred during the marriage. The first debt was the mortgage on the marital home. Plaintiff had resided in the home immediately after their separation and had failed to make mortgage payments, and Defendant later resumed living in the home after Plaintiff moved to live with the parties' son. Defendant refinanced the mortgage several times during the course of the marriage to pay off Plaintiff's debts. Defendant also testified about the condition of the house and presented pictures showing damage caused to the house by Plaintiff's neglect and waste during the time she lived there post-separation. The court accepted the pictures into evidence but no evidence was presented of the cost to repair the damage; the court sustained an objection to Defendant's testimony about a repair estimate of $36,000. Defendant also testified about a loan against his 401(K) account; this debt was incurred to pay off other loans during the marriage.

¶ 8 Lastly as to equitable distribution, Defendant testified Plaintiff removed some furniture from the house. Defendant introduced a list of items of furniture and did not provide any other evidence regarding the furniture Plaintiff took, only the items left in the home. Other witnesses testified the furniture Plaintiff had taken had been a gift to Plaintiff from her father. Defendant also testified Plaintiff took a can

containing assorted items of scrap gold and silver, but the trial court sustained an objection when Defendant offered his opinion as to its value. The parties' son later testified he put all the items Plaintiff took from the house into a storage unit.

¶ 9 At the hearing, Defendant also denied Plaintiff's allegations of his marital misconduct. First, he addressed the physical abuse allegations by explaining he was at Plaintiff's mother's house on the day in question to confront Plaintiff about a $12,000 withdrawal Plaintiff made from their joint account, but Defendant denied grabbing Plaintiff. Defendant later brought up the $12,000 withdrawal when being questioned on marital debts, but this withdrawal occurred before the date of separation. Defendant also denied having an affair with a woman or leaving Plaintiff alone on the weekends. However, he refused to answer and invoked his Fifth Amendment privilege when asked if he was involved in a romantic relationship with the woman. In response, Plaintiff introduced into evidence Defendant's phone records, which showed hundreds of phone calls and texts to and from the woman in the months leading up to the parties' separation.

¶ 10 The final witness at the hearing was Plaintiff's mother. She testified about the incident which led to the civil restraining order.

¶ 11 On or about 7 January 2020, the trial court entered an equitable distribution and alimony order and judgment. The order included Findings regarding the parties' income and expenses. The trial court then made Findings regarding the allegations

of marital misconduct including: the physical abuse that led to a civil restraining order; the phone calls between Defendant and the woman with whom he allegedly had a romantic relationship; and Defendant's invocation of his Fifth Amendment right not to answer when asked about that woman. The trial court made Findings regarding the marital home, including Plaintiff's failure to pay the mortgage payments and to maintain the home, leaving the home in "a state of despair [sic]." The trial court also found Defendant paid mortgage payments on the marital residence once he moved back into the house. The trial court continued with Findings identifying and valuing the items of marital and separate property, including the net values of the marital home and the 401(K) account on the date of separation. Specifically, the trial court counted as marital property: (1) the marital residence with a value of $150,000 minus the $130,000 mortgage for a net value of $20,000 and with Plaintiff's portion of the equity offset by the $5,000 of waste she caused; (2) the net value of Defendant's 401(K) retirement account, taking into account the $8,000 loan balance; (3) Defendant's truck and motorcycle; and (4) personal property. The only separate property listed was Plaintiff's car, as the trial court found this was a gift to Plaintiff from her father.

¶ 12 Based on those Findings, the trial court concluded equal distribution was proper aside from the $5,000 waste caused by Plaintiff that would be counted against her portion of the equity in the marital residence. Further, the trial court concluded

Plaintiff was the dependent spouse and Defendant was the supporting spouse and that she was entitled to alimony for 48 months. The trial court finally concluded Defendant engaged in marital misconduct by leaving Plaintiff during the weekends, withdrawing from Plaintiff, and "involving himself in a questionable relationship with another lady."

¶ 13 On 15 January 2020, Defendant filed a motion pursuant to North Carolina Rules of Civil Procedure 59 and 60 requesting a new trial and relief from judgment. On 22 June 2020, the trial court denied Defendant's Rules 59 and 60 motion.

¶ 14 Defendant filed written notice of appeal from both the equitable distribution and alimony judgment and order as well as from the order denying his Rule 59 and 60 motion.[2]

II. Rules 59 and 60

¶ 15 Defendant's first listed issue is that the trial court improperly denied his Rule

[2] Defendant filed his notice of appeal on 21 July 2020, well after the 30 day period normally required under North Carolina Appellate Rule 3(c) given the trial court issued the initial written order on or about 7 January 2020. However, Defendant filed a Rule 59 motion on 15 January 2020. The trial court ruled on the motion on 22 June 2020. A Rule 59 motion tolls the 30 day period of time for taking an appeal until "entry of an order disposing of the motion and then runs as to each party from the date of entry of the order." N.C. R. App. P. 3(c)(3); *see also Lovallo v. Sabato*, 216 N.C. App. 281, 283, 715 S.E.2d 909, 911 (2011) (explaining a Rule 59 motion tolls the time for taking appeal such that "the full time for appeal commences to run and is to be computed from the date of entry of an order upon the motions" (quotations, citation, and alterations omitted)). Neither party disputes this timeline or the timely nature of Defendant's appeal; we mention it only for clarity since the notice of appeal might otherwise appear untimely.

59 motion. Defendant did not make any argument regarding the denial of these motions in his brief and specifically notes in the brief that "Defendant elects to withdraw the appeal of the issues related to the denial of the Defendants [sic] Rule 59/60 Motion given the arguments regarding the Final Order as argued above in the sincere belief that the issues raised will be properly determined in the prior arguments." Thus, this issue is abandoned and we need not address it. *See* N.C.R. App. P. 28(b)(6) ("Issues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned."); N.C.R. App. P. 28(a) ("Issues not presented and discussed in a party's brief are deemed abandoned.").

III. Equitable Distribution

¶ 16 Defendant challenges the trial court's fact-finding process as to equitable distribution. First, Defendant notes this appeal was more difficult because the parties failed to file equitable distribution affidavits and the clerk of court allegedly lost certain exhibits. Next, Defendant contends specified Findings of Fact (Findings 9, 11, 22, and 24) are not properly supported by the evidence. Finally, Defendant argues the trial court failed to make necessary Findings on certain issues. We review each of those subjects in turn.

A. Difficulties in Appeal

¶ 17 Defendant begins by noting this appeal is "more difficult tha[n] most appeals due in large part to the failure of any requirement for the filing of 'Equitable

Distribution [Inventory] Affidavits'" ("EDIAs"). North Carolina General Statute § 50-21(a) (2021) requires both parties to file EDIAs, and based on the record before us, it does not appear either party filed an EDIA. Other required events also are not completely reflected in our record. For example, § 50-21(d) requires the court to hold a pretrial conference and set dates for certain pretrial events. N.C. Gen. Stat. § 50-21(d). While the trial court noted it held a pretrial conference at the start of the hearing on equitable distribution and alimony, our record does not contain a pretrial order.

¶ 18 Defendant did not raise the issue of Plaintiff's failure to file an EDIA before the trial court, nor did Defendant himself file an EDIA. As Defendant did not raise this issue before the trial court and also failed to comply with § 50-21(a) by filing his own EDIA, he has waived any right to review by this Court. *See* N.C. R. App. P. 10(a)(1) ("In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion . . . .").

¶ 19 Defendant's second identified "difficulty" is the absence of certain exhibits from the record, which Defendant alleges "were apparently lost or misplaced by the Clerk's office." Although Defendant's argument in his brief does not identify the missing exhibits, his "Statement of the Facts" complains Defendant's Exhibit 1 and Exhibit 2 are missing. (Capitalization altered.) From the list of exhibits we have in the record, Defendant's Exhibit 1 was a "packet of photos depicting [the marital] house" and his

Exhibit 2 was a "list of personal property in [the] residence as of [the] date of separation." (Capitalization altered.) No argument on appeal requires us to review these exhibits, so Defendant has failed to show prejudice. Further, Defendant did not seek to provide copies of these exhibits—his *own* exhibits—if the clerk did lose them, and he did not raise any issue as to settlement of the record or seek to supplement the record. N.C. R. App. P. 9(b)(5)(a) ("If the record on appeal as settled is insufficient to respond to the issues presented in an appellant's brief or the issues presented in an appellee's brief pursuant to Rule 10(c), the responding party may supplement the record on appeal with any items that could otherwise have been included pursuant to this Rule 9."); *see also* N.C. R. App. P. 11(a)–(c) (governing settling record on appeal). Plaintiff's exhibits were phone records and three deeds; our record includes the phone records but not the deeds. There is no issue on appeal regarding the deeds or the associated property which would require review of the deeds. *See also Crowell Constructors, Inc. v. State ex rel. Cobey*, 328 N.C. 563, 563, 402 S.E.2d 407, 408 (1991) (per curiam) ("The appellant has the burden to see that all necessary papers are before the appellate court.").

¶ 20 The record before us is sufficient to review the issues raised by Defendant. Any "difficulties" in the appeal were created by Defendant's failure to raise an issue before the trial court and by his failure to include his own exhibits in the record. Either way, these "difficulties" have no effect upon our review.

B. Challenged Findings of Fact

¶ 21 Defendant's first substantive argument challenges several Findings of Fact (Findings 9, 11, 22, and 24) on the ground they are not supported by the evidence.

> Our review of an equitable distribution order is limited to determining whether the trial court abused its discretion in distributing the parties' marital property. Accordingly, the findings of fact are conclusive if they are supported by any competent evidence from the record.
>
> However, even applying this generous standard of review, there are still requirements with which trial courts must comply. Under N.C.G.S. § 50–20(c), equitable distribution is a three-step process; the trial court must (1) determine what is marital and divisible property; (2) find the net value of the property; and (3) make an equitable distribution of that property.
>
> In fact, to enter a proper equitable distribution judgment, the trial court must specifically and particularly classify and value all assets and debts maintained by the parties at the date of separation. In determining the value of the property, the trial court must consider the property's market value, if any, less the amount of any encumbrance serving to offset or reduce the market value. Furthermore, in doing all these things the court must be specific and detailed enough to enable a reviewing court to determine what was done and its correctness.
>
> As to the actual distribution ordered by the trial court, when reviewing an equitable distribution order the standard of review is limited to a determination of whether there was a clear abuse of discretion. A trial court may be reversed for abuse of discretion only upon a showing that its actions are manifestly unsupported by reason.

Watson v. Watson, 261 N.C. App. 94, 96–97, 819 S.E.2d 595, 598–99 (2018) (citations, quotation marks, and ellipses omitted).

¶ 22 The challenged Findings of Fact are conclusive "if they are supported by any competent evidence from the record." *Id.*, 261 N.C. App. at 97, 819 S.E.2d at 598. "Competent evidence is evidence 'that a reasonable mind might accept as adequate to support the finding.'" *Eley v. Mid/East Acceptance Corp. of N.C., Inc.*, 171 N.C. App. 368, 369, 614 S.E.2d 555, 558 (2005) (quoting *Andrews v. Fulcher Tire Sales & Serv.*, 120 N.C. App. 602, 605, 463 S.E.2d 425, 427 (1995)). We review each challenged Finding in turn.

1. Finding of Fact 9

¶ 23 Defendant first challenges Finding of Fact 9:

> 9. The Plaintiff offered evidence that she has monthly living expenses of a minimum of $1650.00 per month. Evidence was presented that she has outstanding unpaid medical expenses, and that while she is currently residing with her son, it is expected she will have to go into an assisted living facility. It is uncertain whether Medicare or other governmental programs will be available to pay [the] cost of care and treatment. At present, there is no health insurance.

Defendant contends the portion of Finding 9 about Medicare availability is unsupported because Plaintiff's son testified Plaintiff is covered by Medicare.

¶ 24 Defendant misunderstands Finding 9's statement regarding Medicare. Finding 9 is not saying it is uncertain *whether* Plaintiff has any Medicare coverage for her medical expenses. The evidence shows Plaintiff has Medicare coverage, but "[i]t is uncertain" if Medicare of another governmental program will pay for an

"assisted living facility." This finding is supported by the evidence, specifically testimony from Plaintiff's son regarding her medical condition, her Medicare coverage, and her need for an assisted living facility. As a result, Finding of Fact 9 is supported by competent evidence.

2. Finding of Fact 11

¶ 25 Defendant next challenges Finding of Fact 11:

> 11. Plaintiff presented evidence alleging marital misconduct, in that Defendant left her alone on weekends without explanation, was physically abusive to her on at least one occasion, and had a romantic relationship with [another woman].

Defendant only challenges the portion of Finding 11 concerning the romantic relationship. Defendant contends the evidence of a romantic relationship "was at best circumstantial" and that his invocation of the Fifth Amendment when questioned "should not be construed to establish any relationship not otherwise proven by the evidence."

¶ 26 We first note the trial court also made a Conclusion of Law, which is not challenged by Plaintiff on appeal, that

> The Defendant engaged in marital misconduct pursuant to NCGS 50-16[.]3A(b)(1); in that he did withdraw from the marital relationship by leaving the Plaintiff during weekends and other times without explanation, withdrawing from the Plaintiff emotionally and physically, and involving himself in a questionable relationship with another lady.

Defendant did not challenge the portion of Conclusion of Law 5 which finds that he was involved "in a questionable relationship with another lady," so this is binding on appeal.

¶ 27 But even if we consider Defendant's argument regarding evidence to support this Finding to be proper, despite his failure to challenge any portion of Conclusion of Law 5, there was more than sufficient evidence to support the Finding. First, the phone records presented showed frequent and extensive communications between Defendant and the other woman. For example, in a one-month period ending a week before Defendant and Plaintiff separated, Defendant made 116 calls to the woman and also texted with her during that time. While Defendant correctly identifies this evidence as circumstantial, that does not undermine its impact because circumstantial evidence "when sufficiently strong, is as competent as positive evidence to prove a fact." *Planters Nat. Bank & Trust Co. of Rocky Mount v. Atlantic Coast Line R. Co.*, 208 N.C. 574, 576, 181 S.E. 635, 636 (1935). Further, our Supreme Court has explained "[a]dultery is nearly always proved by circumstantial evidence." *In re Estate of Trogdon*, 330 N.C. 143, 148, 409 S.E.2d 897, 900 (1991). Thus, the phone calls provide competent evidence of a romantic relationship even though it is circumstantial.

¶ 28 Further, Defendant invoked the Fifth Amendment when asked if he was

romantically involved with the other woman. In a civil case, the finder of fact "may use a witness's invocation of his fifth amendment privilege against self-incrimination to infer that his truthful testimony would have been unfavorable to him." *Clark v. Clark*, 2021-NCCOA-653, ¶ 54 (quoting *In re Estate of Trogdon*, 330 N.C. at 152, 409 S.E.2d at 902). Here, Defendant's invocation of the Fifth Amendment allowed the trial court, as finder of fact, to infer Defendant was in a romantic relationship with the other woman since that would be unfavorable to him. As a result, the trial court had competent evidence to support Finding of Fact 11.

3. Finding of Fact 22

¶ 29 Defendant also challenges Finding of Fact 22, which "is a list of marital property, the party in possession of said item of property, along with the Court's net value of said marital property of the parties on the date of Separation." The list includes the marital residence, Defendant's 401(K) retirement account, a motorcycle, a truck, and personal property such as furniture, appliances, antiques, and personal belongings. Defendant contends Finding of Fact 22 is "fatally defective" because the trial court "failed to make any proper findings of fact which classified the debt as either marital or divisible debt, determined the value[,] and distributed the debt." Defendant also argues debt related to a mortgage on the parties' marital residence should have been classified as divisible debt assigned to Plaintiff because the mortgage debt reflected refinancing to pay Plaintiff's personal debts.

¶ 30 Addressing first Defendant's general argument regarding a failure to classify debts, "to enter a proper equitable distribution judgment, the trial court must specifically and particularly classify and value all assets and *debts* maintained by the parties at the date of separation." *Watson*, 261 N.C. App. at 97, 819 S.E.2d at 598 (emphasis added). At the equitable distribution hearing, Defendant presented evidence of only two debts existing as of the date of separation, a mortgage on the marital residence and a loan against Defendant's 401(K). Both debts were incurred during the marriage. The trial court valued and classified both of those debts in Finding of Fact 22. Specifically, Finding 22 notes a $130,000 mortgage on the marital residence and an $8,000 "loan on account at time of separation" for the "401K Retirement Account of Defendant." Both of those are listed in Finding 22, which is "a list of marital property," and not in Finding 23, which is "a list of property deemed to be separate property." By including the debts in Finding 22, the trial court classified the property and associated debts as marital. Since the trial court classified and valued the two debts, we reject Defendant's argument the trial court failed to properly address the debt.

¶ 31 Defendant also argues the debt on the mortgage should have been classified as separate debt to be assigned to Plaintiff rather than marital debt. Defendant contends, citing *Riggs v. Riggs*, 124 N.C. App. 647, 652, 478 S.E.2d 211, 214 (1996), a marital debt is one incurred during the marriage and before the date of separation

that is "for the joint benefit of the [parties]." *Id.* (quotation and citations omitted). He then argues the mortgage debt was refinanced to help pay the personal debts of Plaintiff.

¶ 32 While Defendant contends Plaintiff's personal debts during the marriage were her separate debts, these debts were paid by the proceeds of refinancing during the marriage and the debts did not exist on the date of separation. Once the debts were paid off via the mortgage refinancing, the trial court did not need to look further back in time because the trial court distributes the value of assets and debts existing on the date of separation. N.C. Gen. Stat. § 50-21(b); *see also Carlson v. Carlson*, 127 N.C. App. 87, 90, 487 S.E.2d 784, 786 (1997) ("In making a determination as to net market value of a marital asset, the trial court is required to only consider evidence of the value of the property as of the date of separation."). The trial court's Finding as to the net value of the marital residence was not challenged on appeal, and this valuation accounted for the mortgage debt as of the date of separation. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) ("Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal."). There was no evidence to support any argument the mortgage debt was not marital. It was incurred during the marriage and was presumed to be marital in the absence of evidence it was separate. N.C. Gen. Stat. § 50-20(b)(1) ("It is presumed that all property acquired after the date

of marriage and before the date of separation is marital property except property which is separate property under subdivision (2) of this subsection. . . . . [The] presumption may be rebutted by the greater weight of the evidence."); *see Huguelet v. Huguelet*, 113 N.C. App. 533, 536, 439 S.E.2d 208, 210 (1994) (explaining the court saw "no rationale for treating debts differently from assets" in reference to § 50-20(b)(1) before defining marital debt as "one incurred during the marriage and before the date of separation by either spouse or both spouses for the joint benefit of the parties"). Finally, Defendant himself testified he agreed to take out the refinancing to pay Plaintiff's debt during the marriage without mentioning any agreement she would repay the money if they ever divorced. Therefore, we reject Defendant's challenges to Finding of Fact 22.

4. Finding of Fact 24

¶ 33 In his final challenge to a specific Finding, Defendant contests Finding of Fact 24, which states:

> 24. The Plaintiff has caused at least $5,000 in waste and damages to the former marital residence and the same should be deducted from her portion of the equity in said property.

Defendant challenges only the valuation of the waste and not the trial court's method of accounting for the reduction in value of the marital home. Defendant objects the damage was greater than $5,000; he argues he "in great detail described the terrible

conditions, amounting to waste." Further, Defendant asserts he stated his opinion that the damages were $36,000 but the trial court improperly rejected that evidence as hearsay.

¶ 34 We reject both of Defendant's arguments. Addressing Defendant's second argument first, the record shows Defendant was not asserting his own opinion the damage was $36,000. Defendant explicitly said it was an estimate of the damage to the house: "It's destroyed. It – there's -- well, there's $36,000 in damage. *I had an estimate*." (Emphasis added.) The trial court sustained an objection to evidence of the estimate as hearsay, and Defendant did not raise any argument on appeal challenging the trial court's exclusion of the evidence. Defendant did not present any other evidence of an estimate of the cost to repair the home or the diminution in value of the home from the damage caused by Plaintiff's neglect.

¶ 35 After excluding Defendant's proffered testimony about getting an estimate to repair damages to the house, the only evidence before the trial court was the testimony and photos of the house Defendant presented. That testimony is competent evidence to support the trial court's Finding of Fact valuing the damage as $5,000. Defendant's disagreement with how the trial court weighed the evidence does not change the result because the trial court had competent evidence to support the Finding. *See Johnson v. Johnson*, 117 N.C. App. 410, 413, 450 S.E.2d 923, 926 (1994) ("If there was competent evidence to support the findings, they are conclusive on

appeal '*even though the evidence might sustain findings to the contrary.*'" (emphasis in original) (quoting *In re Estate of Trogdon*, 330 N.C. at 147, 409 S.E.2d at 900)).

C. Absence of Findings of Facts

¶ 36 Lastly, Defendant contends the trial court erred by not making Findings of Fact on two matters: (1) Plaintiff's removal of $12,000 from their joint bank account; and (2) accounting for "household furnishings including the approximately 25 pounds of scrap gold and silver removed from the marital dwelling" by Plaintiff. Defendant argues there was evidence these events happened and that the items had value that would have changed the equitable distribution if included. We reject Defendant's arguments because the trial court did not need to make Findings of Fact on either subject.

1. Withdrawal from Joint Bank Account

¶ 37 Defendant first argues the trial court erred by not making Findings on Plaintiff's removal of $12,000 from their joint bank account. Specifically, Defendant contends the funds were marital funds and he should have been given credit for his share of the funds in the equitable distribution. The only evidence the trial court had about the $12,000 withdrawal was Defendant's testimony about it:

> Q. Okay. Are there any other outstanding debts that you're aware of other than this mortgage?
> A. For?
> Q. Arising out of your mortgage.
> A. No, that was the -- the 12ish thousand that she took out

> of the bank, half of that or approximately was going to pay for the remainder of her medical bills that she had. Then we was [sic] going to put a new roof on the house too. That would have 100 percent cleared us of any and all debt.
> Q. Okay. That's the money I think was alluded to earlier that caused the argument that eventually led to your separation, correct?[3]
> A. Yes.
> Q. The 12,000?
> THE COURT: But at the time of separation the only indebtedness you all had was the consolidated indebtedness on the mortgage loan of approximately $130,000; is that correct?
> THE WITNESS: Correct.

Defendant did not enter bank statements into evidence to show the date or amount of any withdrawals by Plaintiff.

¶ 38 According to Defendant's own evidence, the withdrawal in question happened before the date of separation. Specifically, Defendant agreed Plaintiff's withdrawal of the money "caused the argument that eventually led to [his] separation." The trial court distributes the value of assets existing on the date of separation. N.C. Gen. Stat. § 50-21(b); *Carlson*, 127 N.C. App. at 90, 487 S.E.2d at 786 ("In making a determination as to net market value of a marital asset, the trial court is required to

[3] Defendant had earlier mentioned the $12,000 when explaining the incident that happened at Plaintiff's Mother's house that led to the civil restraining order; he explained he went to the house after finding out Plaintiff had "drained our account of approximately $12,000" because he was upset about the money. The trial court addressed that incident, including that the $12,000 withdrawal was the reason Plaintiff went to the house in Findings 12 and 13.

only consider evidence of the value of the property as of the date of separation."). As a result, the trial court did not need to account for or make Findings of Fact about a pre-separation withdrawal.

2. Items Removed from Marital Residence

¶ 39 Defendant asserts the trial court erred by not making Findings of Fact on household furnishings Plaintiff "removed from the marital dwelling" including "numerous items of expensive antique furniture" and "approximately 25 pounds of scrap gold and silver."

¶ 40 The only evidence of the scrap gold and silver is again Defendant's testimony. When Defendant initially testified about the gold and silver, the court sustained an objection to his attempt to give its valuation:

> Q. (By Ms. Crumpton) And those are things that you still have or Robin has?
> A. She's got it.
> THE COURT: And what was -- what was that amount?
> THE WITNESS: For everything it would be around a hundred thousand. I bet -- we had a can in my basement in my gun safe. I bet there was 25 pounds of gold and silver in that thing; of course, melted down weight.
> MS. HUFFMAN: That my daddy gave me.
> THE WITNESS: No.
> There was melted-down weight. I mean, I figure at a very small estimate, 12 ounces out of that at market value is over 12 grand all by itself.
> MR. FREEMAN: Object, Your Honor. There's no indication that he's qualified to make these kinds of valuations.
> THE COURT: Well, that –
> THE WITNESS: Oh, it'd be easy to do.

> THE COURT: -- I'll sustain. That objection I'll sustain because I don't believe he would be.

The other time Defendant discussed the gold and silver, he again could only estimate its weight:

> Q. Okay. Are these coins? Are they -- what forms does this gold and silver take?
> A. A lot of it was scrap jewelry, but a lot of it was coins, yes. It was both. It was mixed. And the coins have a greater monetary value than the jewelry did as far as scrap.
> Q. So you bought of all that?
> A. We purchased and traded and on and on, yeah. We just kind of acquired it through the years.
> THE COURT: You testified there was a bucket of it?
> THE WITNESS: It was like, you know, those tin cookie cans. It was plumb full. I guarantee it weighed 25 pounds.
> THE COURT: Tin cookie can. Where was it located?
> THE WITNESS: In my safe, locked.
> THE COURT: So it was in the gun safe?
> THE WITNESS: Yes, sir. But it wasn't when I got back.
> THE COURT: I don't have – it's not been presented to me.

¶ 41 As the trial court indicated at the end of this second discussion about the gold and silver, the actual can of scrap metal was not in evidence. And there was no evidence as to the actual content of the gold and silver or of the value. Even assuming the parties did have a can of coins and "scrap jewelry" on the date of separation, the trial court must make specific Findings of Fact identifying and valuing marital property "only when there is credible evidence supporting the value of the asset." *Grasty v. Grasty*, 125 N.C. App. 736, 738–39, 482 S.E.2d 752, 754 (1997). Because the trial court weighs the credibility of evidence in an equitable distribution

proceeding, it does not err in failing to value an asset based on evidence it finds to be unreliable. *Zurosky v. Shaffer*, 236 N.C. App. 219, 242, 763 S.E.2d 755, 769 (2014) (citing *Gratsy*, 125 N.C. App. at 739, 482 S.E.2d at 754). And since the parties did not file EDIAs listing items of property and values, the trial court had only the evidence presented at trial to consider. Given the lack of evidence for the value of the scrap gold and silver as well as the trial court's implicit determination that Defendant's testimony as to the weight of the metals was unreliable, the trial court did not err by not including Findings of Facts on the matter.

¶ 42 The trial court did not err for similar reasons as to the furniture. Defendant's primary piece of evidence as to the furniture was a list of items he alleged were missing from the residence. While Defendant admitted that list into evidence, that list is not in our record, and as we discussed above, Defendant did not make any effort to add the list to our record. The rest of Defendant's testimony consists of descriptions of the furniture left at the house.[4] Notably, Defendant did not present any testimony as to the value of the furniture removed from the residence, so the trial court was not required to make specific Findings of Fact about the furniture. *Gratsy*, 125 N.C. App. at 738–39, 482 S.E.2d at 754. Therefore, we reject these arguments from Defendant about the absence of Findings of Fact.

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[4] The only other testimony about the furniture came from the couple's son and Plaintiff's mother; both testified Plaintiff's father had given her at least some of the furniture.

IV. Alimony

¶ 43 Defendant's only remaining argument relates to alimony, and Defendant contends errors in the Findings of Fact and equitable distribution caused errors in the alimony award. Defendant does not raise any independent issues as to the alimony award or calculation. As we have already determined, the trial court did not err in the equitable distribution, so Defendant's alimony issue necessarily fails.

V. Conclusion

¶ 44 Defendant presents three arguments, and we reject all of them. Defendant withdrew his argument regarding the trial court's order denying his motion under Rules 59 and 60, so that order is affirmed. We also reject all Defendant's arguments as to the trial court's equitable distribution because the challenged Findings of Fact are supported by competent evidence and the trial court was not required to make Findings of Fact on the remaining items. Finally, we reject Defendant's alimony argument because it relied on finding an error in the trial court's equitable distribution and we found no such error.

AFFIRMED.

Judges ARROWOOD and JACKSON concur.

Report per Rule 30(e).