IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-468

No. COA21-314

Filed 5 July 2022

Wake County, No. 17 CVD 727

SRINIVAS JONNA, Plaintiff,

v.

SUDHA YARAMADA, Defendant.

Appeal by Plaintiff and cross appeal by Defendant from orders entered 21 September 2018 and 16 September 2019 by Judge Sam Hamadani in Wake County District Court. Heard in the Court of Appeals 26 April 2022.

Srinivas Jonna, pro se Plaintiff-Appellant, Cross-Appellee.

Sudha Yaramada, pro se Defendant-Appellee, Cross-Appellant.

COLLINS, Judge.

¶ 1 Plaintiff Srinivas Jonna appeals an equitable distribution order, arguing that the trial court erred by making various findings of fact which value and classify certain property and debts, and abused its discretion by unequally distributing the parties' marital estate. Plaintiff also appeals the trial court's denial of his Rule 52(b), Rule 59, and Rule 60 post-trial motions.

¶ 2 Defendant Sudha Yaramada appeals the same equitable distribution order, arguing that the trial court erred by making various findings of fact which classify and distribute certain property and debts. Defendant also appeals the trial court's denial of her Rule 52(b) and Rule 59 post-trial motions.

¶ 3 We find no error in the trial court's orders. We affirm the equitable distribution order, the trial court's order denying Plaintiff's post-trial motions, and the trial court's order denying Defendant's post-trial motions.

I. Background

¶ 4 Plaintiff and Defendant[1] were married on 26 July 2009 and separated on 5 December 2015. Plaintiff commenced the instant action against Defendant in January 2017 by filing a complaint for absolute divorce and equitable distribution of their marital estate. Defendant answered and filed a motion in the cause for equitable distribution.

¶ 5 Following a bench trial on equitable distribution, the trial court entered an Order: Equitable Distribution ("ED Order") on 21 September 2018. The ED Order was mailed to the parties the same day. The ED Order included a total of 186 findings

[1] This Court heard a previous appeal between these parties in *Jonna v. Yaramada*, 273 N.C. App. 93, 848 S.E.2d 33 (2020).

of fact and conclusions of law, spanning nearly 40 pages, and awarded the parties unequal shares of the marital estate.

¶ 6 Defendant filed a Motion for Relief Pursuant to Rules 52(b) and 59. Plaintiff filed a Motion to Amend Judgment pursuant to Rules 52(b), 59, and 60. Plaintiff also filed a supplement to his post-trial Motion to Amend. Defendant moved to dismiss Plaintiff's motion to amend, arguing that all motions were untimely.

¶ 7 The parties' motions came on for hearing on 11 September 2019. The trial court entered separate orders on 16 September 2019 denying each of the motions ("Order Denying Plaintiff's Post-trial Motions," "Order Denying Defendant's Post-trial Motions," and "Order Denying Defendant's Motion to Dismiss").

¶ 8 On 14 October 2019, Plaintiff filed written notice of appeal from the ED Order and the Order Denying Plaintiff's Post-trial Motions. On 12 November 2019, Defendant filed written notice of appeal from the ED Order, the Order Denying Defendant's Post-trial Motions, and the Order Denying Defendant's Motion to Dismiss.[2]

II. Discussion

¶ 9 The parties argue that the trial court erred in various ways in classifying,

[2] Defendant noticed her appeal of the Order Denying Defendant's Motion to Dismiss in her Notice of Appeal filed 12 November 2021. No issues pertaining to this order have been identified in her appellate brief and thus, are deemed abandoned pursuant to N.C. R. App. P. 28.

valuing, and distributing certain property in its ED Order.

A. Standard of Review

¶ 10 The standard of review on appeal from a judgment entered after a non-jury trial in an equitable distribution case is whether there is competent evidence to support the trial court's findings of fact and whether the findings support the conclusions of law and judgment. *Clark v. Dyer*, 236 N.C. App. 9, 13, 762 S.E.2d 838, 839 (2014) (citation omitted). The trial court's findings of fact are binding on appeal when competent evidence supports them, despite the existence of evidence to the contrary. *Id.*

¶ 11 While findings of fact are conclusive on appeal when supported by competent evidence, "[t]he classification of property in an equitable distribution proceeding requires the application of legal principles," and this Court "therefore review[s] de novo the classification of property as marital, divisible, or separate." *Green v. Green*, 255 N.C. App. 719, 724, 806 S.E.2d 45, 50 (2017) (citations omitted).

¶ 12 We review the trial court's distribution of property for an abuse of discretion. *Romulus v. Romulus*, 215 N.C. App. 495, 498, 715 S.E.2d 308, 311 (2011). Only a determination that the distribution was "so arbitrary that it could not have been the result of a reasoned decision," will establish an abuse of discretion. *Crowder v. Crowder*, 147 N.C. App. 677, 682, 556 S.E.2d 639, 642 (2001) (citations omitted).

B. Equitable Distribution Background

¶ 13 Under North Carolina General Statute § 50-20, equitable distribution is a three-step process: the trial court must (1) classify property as marital, divisible, or separate; (2) calculate the net value of the marital and divisible property; and (3) equitably distribute the marital and divisible property. *Cunningham v. Cunningham*, 171 N.C. App. 550, 555, 615 S.E.2d 675, 680 (2005). Only marital and divisible property are subject to equitable distribution. *Lund v. Lund*, 244 N.C. App. 279, 282, 779 S.E.2d 175, 178 (2015) (citing N.C. Gen. Stat. § 50-20(a) (2014)).

¶ 14 Marital property is defined, in part, as,

> all real and personal property acquired by either spouse or both spouses during the course of the marriage and before the date of the separation of the parties, and presently owned, except property determined to be separate property or divisible property. . . . 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 . . . .

N.C. Gen. Stat. § 50-20(b)(1) (2018). "[T]he net value for marital property is ascertained by calculating the fair market value of each asset, and subtracting the value of any debt or encumbrance on the property." *Crowder*, 147 N.C. App. at 681, 556 S.E.2d at 642 (citation omitted). Marital property is valued as of the date of separation. *Id.* Divisible property is defined, in part, as

> all appreciation and diminution in value of marital property and divisible property of the parties occurring

> after the date of separation and prior to the date of distribution, except that appreciation or diminution in value which is the result of post-separation actions or activities of a spouse shall not be treated as divisible property.

N.C. Gen. Stat. § 50-20(b)(4)(a) (2018). Separate property is defined, in part, as "all real and personal property acquired by a spouse before marriage or acquired by a spouse by devise, descent, or gift during the course of the marriage." *Id.* § 50-20(b)(2) (2018).

¶ 15 The distribution of marital and divisible property requires the trial court to determine an equitable distribution of the property. *Id.* § 50-20(a) (2018). The marital and divisible property shall be distributed equally, "unless the court determines that an equal division is not equitable." *Id.* § 50-20(c) (2018). "If the court determines that an equal division is not equitable, the court shall divide the marital property and divisible property equitably." *Id.* "The trial court has wide discretion to determine what constitutes an equitable distribution of marital property [and] the exercise of that discretion will not be upset absent clear abuse." *Crowder*, 147 N.C. App. at 681, 556 S.E.2d at 642 (quotation marks and citation omitted).

C. Plaintiff's Appeal

¶ 16 Plaintiff argues that the trial court erred by making various findings of fact which value and classify certain property and debts, and that the trial court abused

its discretion by unequally distributing the marital estate. Plaintiff also appeals the trial court's denial of his Rule 52(b), Rule 59, and Rule 60 motions.

1. Credits for Acura MDX Payments [3]

¶ 17 Plaintiff argues the trial court erred by not crediting him for post-separation payments made on the parties' marital vehicle, a 2015 Acura MDX. Plaintiff argues that because he made post-separation payments on the Acura MDX using his separate funds, he should have received a credit in the amount that the payments decreased the principal debt on the Acura MDX.

¶ 18 Where a party decreases the principal on a marital debt with his separate funds, he should be given a credit of "at least the amount by which he decreased the principal[.]" *McLean v. McLean*, 88 N.C. App. 285, 293, 363 S.E.2d 95, 100 (1987). However, where "the property is distributed to the spouse who had the post-separation use of it or who made post-separation payments relating to its maintenance, there is, as a general proposition, no entitlement to a credit or distributional factor. Nonetheless, the trial court may, in its discretion, weigh the equities in a particular case and find that a credit or distributional factor would be appropriate under the circumstances." *Walter v. Walter*, 149 N.C. App. 723, 732, 561 S.E.2d 571, 577 (2002). When considered, "[p]ost-separation payments may be

[3] Plaintiff's Issue II.

treated as a distributional factor or as a dollar-for-dollar credit in the division of the property." *Peltzer v. Peltzer*, 222 N.C. App. 784, 790, 732 S.E.2d 357, 362 (2012) (citation omitted).

¶ 19 Here, the trial court found:

> 36. The Acura MDX itself is marital property because it was acquired by the parties during the marriage in 2014 in Plaintiff's name. The parties owned the Acura MDX on the date of separation. The marital property presumption applies.
>
> . . . .
>
> 37. The Parties sold the Acura MDX in December 2016. Although the sale was one year after the Parties' date of separation, the parties stipulated to the date of separation value of the Acura MDX as $7,901. The Court accepts and adopts the Parties' stipulation of the date of separation value of the Acura MDX as $7,901. The Plaintiff kept the proceeds from the sale of the vehicle, so the $7,901 value shall be distributed to him.
>
> 38. The Plaintiff paid twelve (12) months of car payments in the amount of $841 per month on the Acura MDX before it was sold in December 2016 (total post-separation payment in the amount of $10,103.98). The Plaintiff, however, had exclusive use of this vehicle for eight (8) of those twelve (12) months. The Court considered the Plaintiff's post-separation payments and the Plaintiff's use of the vehicle post-separation as distributional factors.

¶ 20 Plaintiff did not challenge these findings of fact and they are binding on appeal. *Cushman v. Cushman*, 244 N.C. App. 555, 558, 781 S.E.2d 499, 502 (2016). Plaintiff was not entitled to a credit or distributional factor as he had exclusive post-separation

use of the MDX and the proceeds of its sale were distributed to him. Nonetheless, "the trial court's findings show that it considered [Plaintiff's] post-separation payment as a distributional factor and, accordingly, we find no abuse of discretion." *Peltzer*, 222 N.C. App. at 790, 732 S.E.2d at 362.

2. Valuation of Hyundai Elantra [4]

¶ 21 Plaintiff argues that the trial court incorrectly calculated the value of a 2010 Hyundai Elantra and that the trial court "ignored" that he made a $7,500 down payment on the Hyundai with his separate funds.

¶ 22 The trial court should determine the fair market value of marital property on the date of separation based on the evidence offered by the parties. *Walter*, 149 N.C. App. at 733, 561 S.E.2d at 577. The credibility of the evidence is a determination made by the trial court. *See, e.g.*, *Quesinberry v. Quesinberry*, 210 N.C. App. 578, 584, 709 S.E.2d 367, 373 (2011). The trial court "has the right to believe all that a witness testified to, or to believe nothing that a witness testified to, or to believe part of the testimony and to disbelieve part of it." *Id.* "It is not the function of this Court to reweigh the evidence on appeal." *Burger v. Smith*, 243 N.C. App. 233, 248, 776 S.E.2d 886, 896 (2015) (quotation marks and citation omitted).

¶ 23 Here, the trial court found:

> 43. The Elantra was acquired in July 2010 by Plaintiff.

[4] Plaintiff's Issue IV.A.

> The marital property presumption applies because the Elantra was purchased during the marriage by the Plaintiff and was owned by the Plaintiff on the date of separation. The Plaintiff failed to rebut the marital property presumption.
>
> 44. The Court rejects the Plaintiff's argument that the Elantra is his separate property. Plaintiff alleged that he used proceeds from the sale of his separate property, a car he owned prior to marriage, to put $7,500 down for the Elantra. However, Plaintiff did not provide credible or competent evidence of any such payment or the value of any proceeds received from his separate property that were used to purchase the Elantra. His mere allegation was insufficient to rebut the marital property presumption.
>
> 45. The Court values the Elantra at $5,000 as of the date of separation. Defendant submitted Kelly Bluebook values of both a 2010 and 2011 model as of July 2017, over one year after the Parties' separation, which showed the value as $5,000. Plaintiff submitted a CarMax value from 2018, over two years after the date of separation. The Court finds the Defendant's valuation more credible.

¶ 24 The trial court's valuation of the Elantra was based on competent evidence in the record. Moreover, the trial court rejected Plaintiff's evidence as not credible, and thus insufficient to rebut the marital property presumption. Plaintiff is asking this Court to reconsider the credibility and weight of the evidence, but that role is reserved for the trial court. *Sharp v. Sharp*, 116 N.C. App. 513, 526, 449 S.E.2d 39, 46 (1994). Plaintiff's arguments are meritless.

3. Valuation of Gold Bars [5]

¶ 25 Plaintiff next argues that the trial court erred by finding that it could not calculate the value of certain gold bars on the date of separation due to the fluctuating value of gold. Specifically, Plaintiff argues that the parties orally "stipulated" that the value of the gold bars at the time of trial was a "reasonable value" to use for purposes of equitable distribution.

¶ 26 "Stipulations are judicial admissions which, unless limited as to time or application, continue in full force for the duration of the controversy." *Fox v. Fox*, 114 N.C. App. 125, 131-32, 441 S.E.2d 613, 617 (1994) (emphasis and citation omitted). "In equitable distribution actions, our courts favor written stipulations which are duly executed and acknowledged by the parties." *Id.* at 132, 441 S.E.2d at 617 (emphasis and citation omitted). "Oral stipulations, however, are binding if the record affirmatively demonstrates: (1) the trial court read the stipulation terms to the parties, and (2) the parties understood the effects of their agreement." *Id.* (emphasis and citations omitted).

¶ 27 Plaintiff represents the following portion of the trial transcript as the parties' stipulation to the gold bars' value:

> MR. ALLEN: We will all agree--I think I can speak for my client in saying this--is that whatever the value is when we get to trial of gold is the reasonable value the court should

[5] Plaintiff's Issue IV.B.

> use. Even the number that you've provided is not going to be the date of trial number.
>
> MR. JONNA: I agree. But it's going to be closer, I think.

The record does not affirmatively demonstrate that "(1) the trial court read the stipulation terms to the parties, and (2) the parties understood the effects of their agreement." *Id.* Accordingly, the parties did not stipulate to the value of the gold bars.

¶ 28 The trial court found:

> 71. The Defendant purchased five (5) gold bars weighing thirty three (33) ounces during the marriage in November 2015. The Defendant owned the gold bars on the date of separation. The gold bars are marital property.
>
> 72. The Plaintiff alleged the value of the gold bars to be $7,035 and calculated the value based on price per bar. The Defendant alleged the value of the gold bars to be $6,630 and calculated the value based on price per ounce. The Court cannot value the gold bars on the date of separation because both of the values the Plaintiff and Defendant submitted estimate the bars' values in March 2018. The values in March 2018 are not credible evidence of the value on the date of separation because of the length of time from the date of separation (December 2015 to March 2018) and because the value of gold frequently fluctuates.
>
> 73. The Court cannot distribute the gold bars because it cannot value the gold bars.
>
> 74. The Defendant currently possesses the gold bars. The Court considered the Defendant's possession of the bars as a distributional factor.

¶ 29 The obligation to value marital property "exists only when there is credible evidence supporting the value of the asset." *Grasty v. Grasty*, 125 N.C. App. 736, 739, 482 S.E.2d 752, 754 (1997). As neither party offered evidence of the value of the gold bars on the date of separation, the trial court was not obligated to value the gold bars. Furthermore, the trial court did not abuse its discretion by considering Defendant's possession of the gold bars as a distributional factor. *See* N.C. Gen. Stat. § 50-20(c)(1) (weighing "the income, property, and liabilities of each party at the time the division of property is to become effective" as a distributional factor).

4. Loan to Ms. Vahini [6]

¶ 30 Plaintiff argues that the trial court miscalculated the value of outstanding debt owed to the parties by a family friend, Ms. Vahini, who had borrowed money from the parties during their marriage. Specifically, Plaintiff argues that part of Ms. Vahini's loan had already been paid back, and that the trial court's erroneous finding benefits Defendant.

¶ 31 Here, the trial court found:

> 119. The Parties stipulate to and the Court finds that the expected money Plaintiff loaned to Ms. Vahini during the marriage is marital property. The property interest at issue is the debt owed to the marriage by Ms. Vahini.
>
> 120. Both Parties agreed that $4,000 was originally loaned to Ms. Vahini through an oral agreement between the

[6] Plaintiff's Issue IV.D.

> Plaintiff and Ms. Vahini whereby Ms. Vahini would repay the Plaintiff the $4,000. Plaintiff alleged that $2,000 was transferred back to his parents by Ms. Vahini during the marriage, but Plaintiff presented insufficient credible evidence to show that the $2,000 was actually returned to the Parties. The Court values the expected money at $4,000 as of the date of separation.
>
> 121. The Court considered as a distributional factor that the money is owed and not currently possessed by either Party. The Plaintiff's receipt of this money is contingent upon Ms. Vahini's repayment.

¶ 32 Plaintiff testified that prior to the date of separation Ms. Vahini had repaid $2,000 of her outstanding $4,000 debt to his parents who had used the money to make purchases in India for the parties. Nonetheless, the trial court considered the evidence and found that "Plaintiff presented insufficient credible evidence to show that the $2,000 was actually returned to the Parties." Plaintiff is asking this Court to reconsider the credibility of the evidence, but that role is reserved to the trial court. *Sharp*, 116 N.C. App. at 526, 449 S.E.2d at 46.

5. Debt on Defendant's Citi Dividend Card [7]

¶ 33 Plaintiff next argues that the trial court erred in determining that it could not value, classify, or distribute the pre-separation debt on Defendant's Citi Dividend card. Specifically, Plaintiff argues that Defendant "stipulated" to having separate debt on her Citi Dividend card, and that the trial court thus erroneously found that

[7] Plaintiff's Issue V.C.

there was not competent evidence to classify, value, and distribute the debt.

¶ 34 The trial court found:

> 164. The Court heard insufficient credible evidence that a balance [on Defendant's Citi Dividend card] existed during the marriage. The only credible evidence presented was that a credit limit existed. The Court cannot distribute the debt because the Court cannot classify or value the debt.

¶ 35 Contrary to Plaintiff's allegation, the stipulations submitted by the parties do not include a Citi Dividend card. Both parties filed an equitable distribution inventory affidavit ("EDIA"). Defendant listed in her EDIA that there was $1,731 in separate debt on the Citi Dividend card, but specifically noted that she did not stipulate to the classification, amount, or distribution of this debt. Plaintiff also listed this amount in his EDIA, but cites to no evidence that would have allowed the trial court to classify and value the debt. The trial court was thus not obligated to classify or value the debt. *Grasty*, 125 N.C. App. at 739, 482 S.E.2d at 754.

¶ 36 To the extent that Plaintiff attempts to argue that the trial court erred by failing to consider Defendant's debt as a distributional factor pursuant to N.C. Gen. Stat. § 50-20(c)(1), we note that the trial court is obligated to consider separate debt "as a factor in deciding what constitutes an equitable division of the marital property" only if "sufficient evidence is presented as to the existence and valuation of any separate debt[.]" *Fox*, 114 N.C. App. at 135, 441 S.E.2d at 619. Here, there is no such evidence. Accordingly, we find no support for Plaintiff's challenge to this finding and

his argument is overruled.

6. Distributional Factors [8]

¶ 37 Plaintiff next argues the trial court abused its discretion in distributing the marital and divisible property unequally in Defendant's favor.

> N.C. Gen Stat. § 50-20(c) permits the trial court to order an unequal division of the parties' marital and divisible property, provided that the trial court considers the relevant statutory factors. *Asare v. Asare*, 2022-NCCOA-1, ...
>
> > 77. The Parties stipulated to the books' value as $2,000.
> >
> > 78. The Court cannot distribute the books because the Court cannot classify them.
> >
> > 79. These items were left in the marital residence when the Plaintiff moved out. Based on the credible evidence presented, the Court finds that these books were discarded by the Defendant. *The Court considered the value of these books and the fact that they were discarded by the Defendant as a distributional factor*.

(Emphasis added).

¶ 38 Plaintiff fails to explain how these actions constitute waste or conversion under N.C. Gen. Stat § 50-20(c)(11a). *See* N.C. Gen. Stat § 50-20(c)(11a) (2018) (providing, as a distributional factor, "Acts of either party to maintain, preserve, develop, or expand; or to waste, neglect, devalue or convert the marital property or divisible property, or both, during the period after separation of the parties and before the time

[8] Plaintiff's Issues VIII.B, VIII.C, VIII.D.

of distribution"). Nonetheless, his argument is without merit. Contrary to Plaintiff's assertions, the Uppal property had not been sold, as the trial court found that as of the time of distribution, "Defendant still holds title to the Uppal property." This finding is supported by competent evidence. Further, the trial court did consider the value of the discarded books as a distributional factor.

¶ 39 Accordingly, the trial court properly considered the factors enumerated in N.C. Gen. Stat. § 50-20(c) and did not abuse its discretion in ordering an unequal division of property. *See Asare,* 2022-NCCOA-1, ¶ 75.

7. Plaintiff's Motion to Strike [9]

¶ 40 Plaintiff argues that the trial court erred by denying his motion to strike Defendant's objection to Plaintiff's requests for admissions because Defendant did not timely object to the requests.

¶ 41 A matter requested for admission is deemed admitted "unless, within 30 days after service of the request, *or within such shorter or longer time as the court may allow*, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter[.]" N.C. Gen. Stat. § 1A-1, Rule 36 (2018) (emphasis added). A trial court's decision to shorten or lengthen the time allowed to answer or object is within the sound discretion of the

[9] Plaintiff's Issue VI.

trial court and will be overturned only upon a showing of abuse of discretion. *See In re Est. of Lowe*, 156 N.C. App. 616, 619, 577 S.E.2d 315, 317 (2003).

¶ 42 Plaintiff points the Court to no legal authority or evidence that would indicate an abuse of discretion in allowing Defendant a longer time to respond to Plaintiff's requests for admissions, and we find none. Plaintiff's argument is overruled.

8. Abandoned Arguments

¶ 43 Plaintiff has failed to make arguments or cite authorities sufficient for this Court to understand and address the remaining issues presented in his brief, including his appeal of the pre-trial order entered 6 September 2017.[10] These issues are deemed abandoned and we do not address them. *See* N.C. R. App. P. 28(b)(6) (stating that an appellant's brief must contain "[a]n argument, to contain the contentions of the appellant with respect to each issue presented. Issues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned").

D. Defendant's Cross Appeal

¶ 44 Defendant challenges the trial court's equitable distribution order, arguing that the trial court erred in its classification of certain items of property. Defendant also appeals the trial court's denial of her Rule 52(b) and Rule 59 post-trial motions.

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[10] Plaintiff's Issues I, III, IV.C, IV.E, V.A, V.B, V.D, VII, VIII.A1, VIII.A2.

1. ***Uppal Property*** [11]

a. Classification of Uppal Property as Marital

¶ 45 Defendant first argues that the trial court erred by classifying the Uppal property as marital property. Specifically, Defendant argues that despite being acquired during the marriage, the Uppal property was given to her as a gift from her father and brother, and thus is her separate property.

> The burden of proof is upon the party claiming that property is marital property to show by a preponderance of the evidence that the property: (1) was acquired by either spouse or both spouses; (2) during the marriage; (3) before the date of the separation of the parties; and (4) is presently owned. The claim that property is marital can be challenged by the other party, who claims the property is separate, by showing, by a preponderance of the evidence, that the property was: (1) acquired by that spouse by bequest, devise, descent, or gift from a third party during the course of the marriage; or (2) acquired by gift from the other spouse during the course of the marriage and the intent that it be separate property is stated in the conveyance; or (3) was acquired in exchange for separate property and no contrary intention that it be marital property is stated in the conveyance. However, when property is acquired during marriage by one spouse from his or her parent(s), a rebuttable presumption arises that the transfer is a gift to that spouse. In such a case, the presumption must be rebutted by the spouse resisting the separate property classification by showing a lack of donative intent.

[11] Defendant's Issue I.

Caudill v. Caudill, 131 N.C. App. 854, 857, 509 S.E.2d 246, 248-49 (1998) (citations omitted).

¶ 46 Here, the trial court found the following:

> 16. The Parties extensively litigated over a piece of developed real property located in India at H. No. 8-51/3, Ghatkesar (hereinafter referred to as "Uppal Property").
>
> The Uppal property was purchased in Defendant's name during the marriage on March 30, 2013. The Uppal property remained titled in Defendant's name as of the date of separation.
>
> 17. Two months after the Parties' separation in 2016, Defendant attempted to sell the Uppal property to a relative. Upon hearing of the sale, Plaintiff filed a partition action in India to determine who has title to the property and his rights to the property as a co-owner or as a married couple under Indian law. The partition action in India seeks different relief than the relief requested in this action for equitable distribution. The partition action in India is currently pending. The sale of the Uppal property also remains pending subject to the partition action. No final order or judgment from that action was presented to this Court. Defendant still holds title to the Uppal property.
>
> 18. Defendant alleged that the Uppal property was purchased by her father for her as a gift, which would trigger a rebuttable presumption of separate property. Based on the credible evidence presented at trial, this Court does not find that the Defendant's father purchased this property as a gift to the Defendant.
>
> > a. The Defendant produced testimony that her father provided the money necessary for the property's purchase price and that he intended the purchase to be a gift for the Defendant.

b. The Court, however, was presented with insufficient credible evidence that the Defendant's father was the transferor/vendor.

c. Defendant could not produce documentary evidence showing her father purchased the property or transferred the property to Defendant.

d. The Defendant did not produce credible documentary evidence to show that her father provided the money necessary for the property's purchase price.

e. The rebuttable separate property presumption does not apply.

f. Even if the separate property presumption applied, it has been rebutted by credible evidence showing that the Parties, during the marriage, sent substantial investment funds to India prior to the purchase of the property. Defendant admitted that the Parties wanted to invest in real property located in the same area that the Uppal property is located. Plaintiff and his father both testified that the purchase of the Uppal property was the Parties' investment and not a gift. Defendant admitted to Vishveswar Challagonda, a witness that testified at the hearing, that the Parties sent money to India to purchase a piece of property. The Uppal property is also located beside Plaintiff's parents' home. Plaintiff's parents collected the rental income for the property and managed the tenants, made repairs to the property, and handled the expenses related to the property.

19. The marital property presumption, pursuant to N.C. Gen. Stat. § 50-20(b)(1), applies to the Uppal property because the property was purchased by the Parties during the marriage and it was owned by the Parties on the date of separation. Defendant failed to rebut the marital

presumption for the reasons mentioned above.

¶ 47 At trial, Defendant and her father testified that the Uppal Property was a gift to Defendant from her father and brother, and was paid for entirely by her father. Defendant also offered the deed to the house, showing that her name alone was on the deed. Plaintiff, on the other hand, testified that the house was paid for with the parties' marital funds, which had been sent to Defendant's father in India to have him purchase an investment property on their behalf. Vishveswar Challagonda, a family friend of both parties, testified that Defendant had told him that the parties sent money to their fathers to purchase real estate in India as an investment venture. Mr. Challagonda testified that the parties, Plaintiff's father, and Defendant's parents had pooled their money to purchase the investment property.

¶ 48 The trial court detailed in its findings of fact the evidence it considered, credited, and discredited: it acknowledged that the house was titled in Defendant's name only, but found that Defendant's evidence was not credible to show that the house was a gift from Defendant's father. Determining the credibility of the evidence is within the trial court's discretion as finder of fact. *See Burger*, 243 N.C. App. at 248, 776 S.E.2d at 896. Therefore, the trial court did not err in finding that the rebuttable presumption that a gift from a parent is separate property did not apply, and that "[e]ven if the separate property presumption applied, it has been rebutted by credible evidence showing that the Parties, during the marriage, sent substantial

investment funds to India prior to the purchase of the property." *See Caudill*, 131 N.C. App. at 857, 509 S.E.2d at 249. The trial court did not err by classifying the Uppal Property as marital property.

b. Effect of Pending Litigation in India

¶ 49 Defendant also argues that this issue was precluded from the trial court's review because there is pending litigation in India to determine who holds title to the Uppal Property.

¶ 50 Here, the trial court first found that "[t]he partition action in India seeks different relief than the relief requested in this action for equitable distribution. The partition action in India is currently pending. No final judgment or order from that action was presented to this court." It then concluded in relevant part,

> 3. This Court has jurisdiction over the equitable distribution of the Uppal property despite a pending suit in India. Comity does not prevent this Court from taking action because no final judgment has been reached in India and that the judgment in India would not decide the issue of equitable distribution which is the issue in this case. *See State ex rel. Anson/Richmond Child Support Enforcement Agency v. Peele*, 136 N.C. App. 206, 211-12, 523 S.E.2d 125, 128-29 (1999) (discussing the doctrine of comity as a court choosing to enforce a foreign order because of "the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the right of its own citizens").
>
> 4. A pending suit in a foreign country will not bar this Court from entering a judgment. North Carolina courts

> have not dealt with what a court should do when a similar action is pending in a foreign country. However, other courts facing similar issues have held the court had jurisdiction when the courts of that state had at least an equally significant interest in the property. *See Sinha v. Sinha*, 834 A.2d 600 (Pa. Super. Ct. 2003) (exercising jurisdiction over a divorce action when a divorce action was also pending in India because the parties had stronger ties to Pennsylvania than India); *Maraj v. Maraj*, 642 So.2d 1103 (Fla. Dist. Ct. App. 1994) (exercising jurisdiction over an action despite a divorce suit also pending in Trinidad and Tobago, where the parties had lived, continued to live, and owned significant property in Florida).
>
> 5. The Parties have ties to North Carolina that are equal or greater than their ties to India because they are both employed here, showed no intent to move back to India, and the vast majority of their property except the Uppal property is located in North Carolina. North Carolina has a greater interest in this action than India. Thus, this Court can proceed despite the pending suit in India over the Uppal property.

This is a correct statement of the law regarding comity and estoppel, and the trial court correctly applied it where no final judgment has been entered. The trial court's conclusion that it had jurisdiction to distribute the value of the Uppal property as marital property while international litigation is pending was not error.

2. Classification of Appreciation on Plaintiff's IRA [12]

¶ 51 Defendant argues that the trial court erred by classifying the post-separation appreciation on Plaintiff's IRA account as his separate property. Specifically, she

[12] Defendant's Issue II.

argues that the appreciation was the result of "passive market factors" and not of Plaintiff's "active management" and thus, was marital property.

¶ 52 Divisible property includes the appreciation in value of marital property occurring after the date of separation and prior to the date of distribution, unless that appreciation is the result of post-separation actions or activities by a spouse, in which event it will be classified as the separate property of the spouse whose actions or activities gave rise to the appreciation. N.C. Gen. Stat. § 50-20(b)(4)(a) (2018); *Asare*, 2022-NCCOA-1, ¶ 70. There is a rebuttable presumption that all appreciation in value of marital property is divisible property. *See Wirth v. Wirth*, 193 N.C. App. 657, 661, 668 S.E.2d 603, 607 (2008). To rebut the presumption, the spouse seeking to have the appreciation classified as separate must put on evidence showing that his actions caused the appreciation to occur. *Romulus*, 215 N.C. App. at 502, 715 S.E.2d at 313-14. "Where the trial court is unable to determine whether the change in value of marital property is attributable to the actions of one spouse, this presumption has not been rebutted and must control." *Asare*, 2022-NCCOA-1, ¶ 70 (quotation marks and citation omitted).

¶ 53 Here, the trial court found in relevant part:

> 88. The parties stipulate that the Plaintiff's IRA Account value on the date of separation was $11,008 and that the account is marital. As of the date of distribution, the Plaintiff's IRA had appreciated in the amount of $7,766, without any additional contributions made by the Plaintiff

between the date of separation and the date of this hearing.

89. The Court finds the appreciation of the Plaintiff's IRA account after the date of separation to be the Plaintiff's separate property because it was the result of his active management and not passive market factors.

90. Post-separation appreciation of a marital asset is presumed to be divisible and the party seeking to claim it as active and separate must rebut the presumption by showing the appreciation was caused by the actions of one spouse. Appreciation of a marital investment account after separation can be active appreciation and thus separate property of one spouse.

91. Here, the Plaintiff exclusively, without the aid of a broker or anyone, made all the investment decisions for the account. He made 69 total transactions involving individual stocks over the two year period. He traded on 56 separate days over that period. He used the account to learn about investing and did his own research into the stocks. This evidence rebutted the presumption of passive appreciation. The active appreciation is the Plaintiff's separate property.

92. The Court values the appreciation at $7,766. Defendant elicited from Plaintiff that the stock market increased on its own that year around 20 percent. However, the Court finds the Plaintiff's testimony to be mere speculation regarding any passive market appreciation. The Court rejects Defendant's calculation that speculates the amount of passive market growth, if any.

93. The Court will not distribute the IRA account's appreciation because it is Plaintiff's separate property.

94. The Court considered as a distributional factor the fact that half of the money that the Plaintiff actively invested belonged to the Defendant as the Parties stipulated that

> those funds were marital.
>
> 95. The Court also considered as a distributional factor under N.C. Gen. Stat. § 50-20(c)(1) the Plaintiff's separate property in the amount of $7,766.

¶ 54 At trial, Plaintiff testified, "I did a lot of research and activity to make sure I grow this account, so I was using this account to learn and increase the value, so there were a number of transactions that I did. I was doing stock analysis, both the fundamental and technical analysis, before I purchase or sell a stock for the past three years." Plaintiff also introduced a list of the stock activity pertinent to the IRA. Defendant argues that that there was evidence that the market saw a passive growth of approximately 20%. Thus, she argues, the trial court overestimated the value of the appreciation attributable to Plaintiff's active management of the IRA. However, the trial court considered this evidence and nonetheless found the "testimony to be mere speculation regarding any passive market appreciation" and "reject[ed] Defendant's calculation that speculates the amount of passive market growth, if any." Despite Defendant's contention that the trial court "discredited Plaintiff's testimony about market forces as incredible, while simultaneously stating that Plaintiff had performed substantial market research in order to grow the IRA," the trial court, as the finder of fact in an equitable distribution case, has "the right to believe all that a witness testified to, or to believe nothing that a witness testified to, or to believe part of the testimony and to disbelieve part of it." *Grasty*, 125 N.C. App. at 739, 482 S.E.2d

at 754 (quotation marks and citations omitted).

¶ 55 Therefore, these findings are supported by competent evidence. The trial court did not err by determining that the evidence was sufficient to rebut the divisible property presumption and that the post-separation appreciation on Plaintiff's IRA account was his separate property.

3. Classification of Post-Separation Apartment Rent & Classification of Plane Ticket from India for Defendant's Mother [13]

¶ 56 Defendant argues that the trial court erred by classifying post-separation rent on the marital apartment as her separate debt. Specifically, she argues that the post-separation rent was marital debt in that it was incurred for their joint benefit during the marriage. Defendant also argues that the trial court erred by classifying an airfare charge incurred during the marriage as her separate debt. She contends that the couple purchased an airplane ticket for her mother so that she could travel from India to the U.S. to counsel both parties during a difficult time in the marriage, and thus, that the ticket was for the joint benefit of the parties and should be considered a marital debt.

¶ 57 Defendant's arguments ask us to determine whether there was sufficient evidence to support the findings. However, our record on appeal includes only disjointed excerpts from the trial transcript—excerpts which fail to provide testimony

[13] Defendant's Issues III and IV.

from the trial that is relevant to these issues. Further, Defendant provides no citation to evidence in the record and transcripts provided. Therefore, we cannot review these issues for sufficiency of the evidence. *See State v. Davis*, 191 N.C. App. 535, 539, 664 S.E.2d 21, 24 (2008) ("It is the duty of the appellant to ensure that all documents and exhibits necessary for an appellate court to consider his assignments of error are part of the record or exhibits."). Accordingly, Defendant has waived these issues on appeal. *See Gilmartin v. Gilmartin*, 263 N.C. App. 104, 106, 822 S.E.2d 771, 773 (2018) (affirming the trial court's order on issues that could not be reviewed for sufficiency of the evidence absent a complete transcript). Therefore, we affirm the trial court's order as to these challenged findings. *See id.*

4. Post-trial Rule 52 and Rule 59 Motions [14]

¶ 58 Defendant argues the trial court erred in denying her post-trial Rule 52(b) motion to amend the judgment and Rule 59 motion for a new trial.

¶ 59 Rule 52 of the North Carolina Rules of Civil Procedure provides in pertinent part that a trial court may, "[u]pon motion of a party made not later than 10 days after entry of judgment[,] . . . amend its findings or make additional findings and may amend the judgment accordingly." N.C. Gen. Stat. § 1A-1, Rule 52(b) (2018). "The primary purpose of a Rule 52(b) motion is to enable the appellate court to obtain a

[14] Defendant's Issue V.

correct understanding of the factual issues determined by the trial court. If a trial court has omitted certain essential findings of fact, a motion under Rule 52(b) can correct this oversight and avoid remand by the appellate court for further findings." *Branch Banking & Tr. Co. v. Home Fed. Sav. & Loan*, 85 N.C. App. 187, 198-99, 354 S.E.2d 541, 548 (1987). The denial of a Rule 52(b) motion is reviewed for abuse of discretion. *See White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985).

¶ 60 Rule 59 authorizes an aggrieved party to move for a new trial or, alternatively, alteration or amendment of a judgment, based upon a variety of expressly enumerated grounds, in addition to "[a]ny other reason heretofore recognized as grounds for new trial." N.C. Gen. Stat. § 1A-1, Rule 59(a), (e). The denial of a Rule 59 motion is likewise reviewed for abuse of discretion. *Spivey & Self, Inc. v. Highview Farms, Inc.*, 110 N.C. App. 719, 728, 431 S.E.2d 535, 540 (1993).

¶ 61 As explained above, the trial court's findings are supported by competent evidence, and those findings are sufficient to support the trial court's conclusions. After review of the record and transcripts, we cannot say that the trial court's denial of Defendant's Rule 52 and 59 motions was "so arbitrary that it could not have been the result of a reasoned decision." Accordingly, we affirm the trial court's Order Denying Defendant's Post-Trial Motions.

III. Conclusion

¶ 62 For the reasons contained herein, we affirm in full the trial court's Equitable Distribution Order, the trial court's Order Denying Plaintiff's Post-Trial Motions, and the trial court's Order Denying Defendant's Post-Trial Motions.

AFFIRMED.

Judges HAMPSON and GORE concur.

Report per Rule 30(e).