An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-739

No. COA22-297

Filed 1 November 2022

Watauga County, No. 12-CvD-591

EDWARD MARCUS WINEBARGER, Plaintiff,

v.

LANA STEEN, Defendant.

Appeal by Plaintiff from order entered 10 June 2021 by Judge Hal G. Harrison in Watauga County District Court. Heard in the Court of Appeals 6 September 2022.

Epperson Law Group, PLLC, by James L. Epperson, for Plaintiff-Appellant.

Tamara C. DiVenere for Defendant-Appellee.

INMAN, Judge.

¶ 1 Plaintiff Edward Marcus Winebarger ("Father") appeals from a child support order imposing a $290.38 monthly child support obligation in favor of Defendant Lana Steen ("Mother"). Father contends that the child support order is deficient insofar as it fails to make adequate supported findings concerning the parties' incomes and expenses. After careful review, and in light of Mother's concession that remand is proper given the absence of any findings concerning her income and expenses, we vacate the trial court's order and remand for entry of an order containing all

necessary findings of fact.

I. FACTUAL AND PROCEDURAL HISTORY

¶ 2 Father and Mother were formerly married and had one child together in 2010. Following their divorce, the parties entered into a consent custody order providing for joint legal and physical custody. Mother also filed a motion to establish retroactive and prospective child support, which included a request to deviate from the North Carolina Child Support Guidelines (the "Guidelines"). The parties then settled the issue of retroactive child support by entry of a memorandum of judgment and proceeded to a hearing on Mother's request for prospective child support in deviation from the Guidelines.

¶ 3 The parties, both of whom are self-employed, submitted over 1,400 pages of evidence concerning their personal and business incomes and expenses. The trial court also received testimony from both parties during the motion hearing, as well as testimony from Father's business accountant.

¶ 4 On 10 June 2021, the trial court entered a child support order that imposed a $290.38 monthly obligation on Father consistent with the Guidelines. The order contains no findings or conclusions concerning Mother's income or expenses and, although it purported to incorporate an attached child support worksheet under the Guidelines, no such worksheet was attached. As for Father's financial status, the trial court found ten sources of income totaling $63,975.05 annually but, without

explanation, found his total annual income to be $52,781.05—a discrepancy of $11,194.00. Among the sources of income considered by the trial court was a Paycheck Protection Program Loan ("PPP Loan") of $4,967 that, per all the evidence submitted and available to the trial court at the time of the hearing, had not been forgiven by the federal government.[1] Father filed a timely notice of appeal from the order.

II. ANALYSIS

¶ 5 Father argues that the trial court's order is deficient in that it: (1) lacks adequate findings as to his gross income and self-employment expenses; (2) lacks any such findings as to Mother; and (3) erroneously treated the then-outstanding PPP Loan as income. Mother concedes that the order lacks any necessary findings as to her income and expenses, and she notes that the finding itemizing Father's sources of income does not match the total annual income found by the trial court. In light of these deficiencies and discrepancies, we vacate the trial court's order and remand for entry of an order containing all necessary findings of fact.

A. Standard of Review

¶ 6 We give substantial deference to a trial court's child support order, "and our

[1] Although the trial court's order includes the PPP Loan in its calculation of income, the trial court stated during the hearing that whether that loan would be forgiven was "speculative, and I don't see how I can use that as evidence in coming up with my ruling."

review is limited to a determination of whether there was a clear abuse of discretion." *Leary v. Leary*, 152 N.C. App. 438, 441, 567 S.E.2d 834, 837 (2002). That same deferential standard applies to a trial court's decision to conform the child support award to the Guidelines over a party's request for a deviation. *Ferguson v. Ferguson*, 238 N.C. App. 257, 260, 768 S.E.2d 30, 34 (2014). Even so, "[t]he trial court must . . . make sufficient findings of fact and conclusions of law to allow the reviewing court to determine whether a judgment, and the legal conclusions that underlie it, represent a correct application of the law." *Spicer v. Spicer*, 168 N.C. App. 283, 287, 607 S.E.2d 678, 682 (2005) (citation omitted). We do not, however, give deference to determinations of gross income, as "determinations of gross income in a child support order are conclusions of law reviewed de novo, rather than [as] findings of fact." *Craven Cnty. v. Hageb*, 277 N.C. App. 586, 2021-NCCOA-231, ¶ 10 (citation omitted).

B. The Order Lacks Necessary Findings

¶ 7 Our statutes require the imposition of child support:

> in such amount as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case.

N.C. Gen. Stat. § 50-13.4(c) (2021). A child support obligation entered under the Guidelines presumptively meets the requirements of the statute and, absent any

request or *sua sponte* decision to deviate from the Guidelines, a trial court need not make any supporting findings or conclusions of law concerning the needs of the child and the ability of the parents to pay. *Ferguson*, 238 N.C. App. at 260-61, 768 S.E.2d at 34. That is not true, however, when a party requests a deviation, as "the court must [in such instances] hear evidence and find facts related to the reasonable needs of the child for support and the parent's ability to pay." *Biggs v. Greer*, 136 N.C. App. 294, 297, 524 S.E.2d 577, 581 (2000). "In other words, evidence of, and findings of fact on, the parties' income, estates, and present reasonable expenses are necessary to determine their relative abilities to pay." *Ferguson*, 238 N.C. App. at 261, 768 S.E.2d at 34 (citation and quotation marks omitted). Further:

> In the course of making the required findings, the trial court must consider the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case. . . . These factors should be included in the findings if the trial court is requested to deviate from the Guidelines.

Id. (citation and quotation marks omitted) (cleaned up). The above requirements apply even if the trial court declines a party's request to deviate from the Guidelines. *Id.* at 263, 768 S.E.2d at 35. Further, where the parties are self-employed, gross income for purposes of the Guidelines "is calculated by subtracting the 'ordinary and necessary expenses required for self-employment or business operation' from the

gross receipts." *Craven Cnty.*, ¶ 13 (quoting N.C. Child Support Guidelines, at 3 (2019)).

¶ 8 The order before us, which imposed child support and resolved Mother's request to deviate from the Guidelines, fails to include the required findings. The trial court received copious evidence concerning the parties' respective incomes, living expenses, self-employment expenses, and child care costs, and yet made no findings concerning Mother's income or expenses.[2] While the trial court did make itemized findings as to the sources of Father's income, Mother concedes that its calculation of Father's total annual income does not match that itemization, and the order itself contains no express findings explaining this discrepancy. *See Ferguson*, 238 N.C. App. at 264, 768 S.E.2d at 35 (remanding a child support order adopting the Guidelines for failing "to actually make the required findings concerning the needs of the children and the parties' relative abilities to pay in a case in which a deviation from the guidelines has been requested"). Lastly, the findings by the trial court fail to adequately address the "ordinary and necessary expenses," if any, to be deducted

[2] Mother concedes that this failure to find facts as to her income and expenses, coupled with the trial court's failure to attach the completed Guidelines worksheet referenced in the order, requires remand. *See Head v. Mosier*, 197 N.C. App. 328, 337, 677 S.E.2d 191, 198 (2009) ("[A] copy of the worksheet used to determine a parent's presumptive child support obligation should be attached to the child support order, incorporated by reference in the child support order, or included in the case record.").

from Father's gross income.[3] *See Craven Cnty.*, ¶¶ 16-17 (holding the trial court failed to make adequate findings establishing gross income and remanding for findings "address[ing] which, if any, of Father's ordinary and necessary expenses the trial court considered in calculating Father's gross income for child support purposes, as well as how it calculated his gross income based upon its consideration of the evidence presented"). We therefore vacate and remand the trial court's order for further findings to fill these gaps in the facts. Because we remand the trial court's order on this basis, we do not address the parties' remaining arguments concerning Father's PPP Loan.[4]

III. CONCLUSION

¶ 9 The trial court's order lacks adequate findings required by N.C. Gen. Stat. §

---

[3] Mother notes that the trial court found "[t]hat [Father] intentionally used tactics to hide and co-mingle monies between numerous accounts for the purpose of reducing his child support obligation." While this may be true, the finding does not cure the deficiencies of the order because it does not find Father's business expenses to be incalculable or inappropriate for determination of Father's gross income. Nor does the finding foreclose the possibility that Father incurred some identifiable legitimate business expenses that could be deducted in determining his gross income.

[4] Mother's brief includes a hyperlink to the United States Small Business Administration website that purports to show the PPP Loan was forgiven 19 days after entry of the child support order. We decline to take judicial notice of the document as it is not necessary to our resolution of this appeal. *See Lineberger v. N.C. Dep't of Corr.*, 189 N.C. App. 1, 6, 657 S.E.2d 673, 677 (2008) (noting that appellate review is limited to the record on appeal, verbatim transcript, and any Rule 9 exhibits, but an appellate court may take judicial notice of facts "important" to the resolution of the appeal (citation and quotation marks omitted)). The trial court may, in its discretion, receive additional evidence, including this and other evidence that the PPP Loan was forgiven, on remand.

50-13.4(c) and does not contain sufficient findings as to the parties' gross incomes as self-employed individuals. On remand, the trial court shall make all findings necessary to resolve these issues. *See generally Ferguson*, 238 N.C. App. 257, 768 S.E.2d 30 (outlining the findings and conclusions required by N.C. Gen. Stat. § 50-13.4(c)); *Craven Cnty.*, 277 N.C. App. 586, 2021-NCCOA-231 (detailing the findings and conclusions necessary to calculate a self-employed person's gross income). "[O]n remand, the trial court shall rely upon the existing record, but may in its sole discretion receive such further evidence and further argument from the parties as it deems necessary and appropriate to comply with the instant opinion." *Holland v. Holland*, 169 N.C. App. 564, 572, 610 S.E.2d 231, 237 (2005) (citation and quotation marks omitted).

VACATED AND REMANDED.

Judges DILLON and MURPHY concur.

Report per Rule 30(e).