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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA21-652

Filed 21 March 2023

Wake County, No. 19 CVD 15100

VERNON W. PUGH, Plaintiff,

v.

MAGDA R. PUGH; TRIANGLE SINUS CENTER, PLLC (FORMERLY ENT AND ALLERGY ASSOCIATES OF NORTH CAROLINA, PLLC); EXCELENT LLC; and NEOSINUS HEALTH, LLC, Defendants.

Appeal by plaintiff from orders entered 27 April 2021 by Judge J. Brian Ratledge in District Court, Wake County. Heard in the Court of Appeals 24 May 2022.

Connell & Gelb PLLC, by Michelle D. Connell, and Fox Rothschild LLP, by Kip D. Nelson, and Wyrick Robbins Yates & Ponton LLP, by Robert A. Ponton and R. Maria Hawkins, for plaintiff-appellant.

Tharrington Smith, LLP, by Jeffrey R. Russell, Alice C. Stubbs, and Casey C. Fidler, for defendant-appellee Magda R. Pugh.

STROUD, Chief Judge.

Plaintiff-appellant Vernon W. Pugh (“Husband”) appeals from an Alimony Order, Equitable Distribution Judgment, and Attorney’s Fees Order all entered 27

April 2021 in favor of Magda R. Pugh (“Wife”). Husband raised arguments regarding all three orders on appeal, and for the reasons below, we affirm all three.¹

I. Background

Husband and Wife were married in June 1983, and after 35 years of marriage the parties permanently separated in November 2018. Both parties are physicians, and prior to separation they had discussed Wife’s retirement from the practice of medicine in 2017 due to her age and declining health. Wife retired in December 2017 but returned to work in June 2018 after discovering “[Husband] was having an extra-marital affair with [“Nurse”], a nurse with whom he worked (and still works)[.]” Wife returned to practice because “she was left without income and necessary means to sustain herself both in the short-term and long-term.”

Husband’s affair began in approximately December 2017. Husband and Nurse would regularly stay overnight at the same local hotel, without Wife’s knowledge, and Husband paid for twenty overnight hotel stays during the time between the start of the affair in December 2017 and the parties’ separation in November 2018. The trial court found Husband and Nurse were still in a romantic relationship throughout these proceedings, up until and during the November 2020 trial.

On 4 November 2019, Husband filed a complaint for absolute divorce; Wife

¹ Triangle Sinus Center, PLLC, excelENT LLC, and Neosinus Health, LLC, were ordered dropped as parties pursuant to North Carolina General Statute § 1A-1, Rule 21, or in the alternative Husband’s claims were dismissed against these parties pursuant to Rule 12(b), by an order of the trial court filed 27 April 2021. Husband did not appeal this order.

filed an answer and counterclaims for postseparation support, alimony, attorney's fees, and equitable distribution, alleging Husband engaged in illicit sexual behavior and had an extra-marital affair, Husband was in a stronger financial position, and Wife needed support to maintain her standard of living and defray the costs of litigation. On 20 December 2019 the trial court entered an Absolute Divorce Judgment.

The trial court held hearings on the alimony and equitable distribution claims on 5-6 November and 19 November 2020. Both parties presented evidence, including financial affidavits and testimony. On 27 April 2021 the trial court entered three orders based upon the November 2020 hearings: an Alimony Order, an Equitable Distribution Judgment, and an Attorney's Fees Order. The Alimony Order concluded Wife "is a dependent spouse, as she is substantially in need of maintenance and support from" Husband and Husband "is a supporting spouse[.]" then awarded \$10,000 per month in alimony to Wife. The Equitable Distribution Judgment inventoried the parties' marital and separate property and concluded: (1) "[t]he presumption of an equal distribution of marital and divisible property and debt . . . has been rebutted" and (2) "[a]n unequal distribution of the parties' net marital and divisible estate is equitable" because of Husband's greater income and earning potential, Wife's declining health, and Husband's waste of marital assets and then made an unequal division of the marital property that favored Wife based on its conclusions. The Attorney's Fees Order concluded Wife "is a dependent spouse,

entitled to [alimony], and without sufficient means to defray the costs” of pursuing alimony from Husband; the trial court ordered Husband to pay \$65,000 of Wife’s approximately \$100,000 in attorney’s fees. Husband appealed from all three orders.

II. Alimony Order

We first review the trial court’s Alimony Order.

A. Standard of Review

“[W]hen the trial court sits without a jury, the standard of review on appeal is whether . . . competent evidence . . . support[s] the trial court’s findings of fact and whether its conclusions of law were proper in light of such facts.” *Collins v. Collins*, 243 N.C. App. 696, 699, 778 S.E.2d 854, 856 (2015) (quotation marks omitted) (ellipses and brackets in original). “If the court’s findings of fact are supported by competent evidence, they are conclusive on appeal, even if there is contrary evidence.” *Id.* “The trial court’s unchallenged findings of fact are presumed to be supported by competent evidence and are binding on appeal.” *Peltzer v. Peltzer*, 222 N.C. App. 784, 787, 732 S.E.2d 357, 360 (2012) (citation omitted).

“[A]limony is comprised of two separate inquiries[,]” whether a spouse is entitled to alimony and if so, the amount. *Barrett v. Barrett*, 140 N.C. App. 369, 371, 536 S.E.2d 642, 644 (2000). Whether a spouse is entitled to alimony is a question of law, reviewed *de novo*. *Id.*; *Collins*, 243 N.C. App. at 699, 778 S.E.2d at 856 (citations omitted). “Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment’ for that of the lower tribunal.” *State v. Williams*, 362

N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (quotation omitted). “Decisions regarding the amount of alimony are left to the sound discretion of the trial judge and will not be disturbed on appeal unless there has been a manifest abuse of that discretion.” *Kelly v. Kelly*, 228 N.C. App. 600, 601, 747 S.E.2d 268, 272 (2013) (citation omitted). “An abuse of discretion has occurred if the decision is ‘manifestly unsupported by reason or one so arbitrary that it could not have been the result of a reasoned decision.’” *Id.* at 601, 747 S.E.2d at 272-73 (quoting *Briley v. Farabow*, 348 N.C. 537, 547, 501 S.E.2d 649, 656 (1998)).

B. Analysis

“[A]limony is comprised of two separate inquiries[,]” entitlement and amount. *Barrett*, 140 N.C. App. at 371, 536 S.E.2d at 644. Husband’s arguments are: (1) Wife is not a dependent spouse because her actual income from all sources at the time of trial was greater than represented by the trial court’s findings; (2) the trial court “fail[ed] to consider all of the factors required” by North Carolina General Statute § 50-16.3A(b); and (3) the trial court inadequately explained its decision to award \$10,000 monthly alimony.

1. Entitlement to Alimony

An alimony award is governed by North Carolina General Statute § 50-16.3A:

(a) Entitlement. — In an action brought pursuant to Chapter 50 of the General Statutes, either party may move for alimony. The court shall award alimony to the dependent spouse upon a finding that one spouse is a dependent spouse, that the other spouse is a supporting

spouse, and that an award of alimony is equitable after considering all relevant factors, including those set out in subsection (b) of this section. . . . If the court finds that the supporting spouse participated in an act of illicit sexual behavior, as defined in G.S. 50-16.1A(3)a., during the marriage and prior to or on the date of separation, then the court *shall* order that alimony be paid to a dependent spouse.

N.C. Gen. Stat. § 50-16.3A (2021) (emphasis added).

A dependent spouse is one “who is actually substantially dependent upon the other spouse for his or her maintenance and support *or* is substantially in need of maintenance and support from the other spouse.” N.C. Gen. Stat. § 50-16.1A(2) (2021) (emphasis added). “A party is ‘actually substantially dependent’ upon her spouse if she is currently unable to meet her own maintenance and support.” *Carpenter v. Carpenter*, 245 N.C. App. 1, 4, 781 S.E.2d 828, 832 (2016) (quoting *Barrett*, 140 N.C. App. at 370, 536 S.E.2d at 644). “A spouse is ‘substantially in need of maintenance’ if he or she will be unable to meet his or her needs in the future, even if he or she is currently meeting those needs.” *Barrett*, 140 N.C. App. at 371, 536 S.E.2d at 644-45. A supporting spouse is one “upon whom the other spouse is actually substantially dependent for maintenance and support *or* from whom such spouse is substantially in need of maintenance and support.” N.C. Gen. Stat. § 50-16.1A(5) (2021) (emphasis added). “A surplus of income over expenses is sufficient in and of itself to warrant a supporting spouse classification.” *Barrett*, 140 N.C. App. at 373, 536 S.E.2d at 645. “If the court finds that the supporting spouse participated in an

act of illicit sexual behavior, as defined in G.S. 50-16.1A(3)a., during the marriage and prior to or on the date of separation, then the court *shall* order that alimony be paid to the dependent spouse.” N.C. Gen. Stat. § 50-16.3A(a) (emphasis added). “Illicit sexual behavior” is distinguished from other forms of marital misconduct as it mandates an award of alimony to a dependent spouse, whereas other forms of marital misconduct may simply be considered as a factor, in the trial court’s discretion, in determining alimony. *See Romulus v. Romulus*, 215 N.C. App. 495, 521-22, 715 S.E.2d 308, 325 (2011); N.C. Gen. Stat. § 50-16.3A(b)(1).

Because Husband did not specifically challenge any of the trial court’s findings of fact, they are binding on appeal. *See Yeun-Hee Juhnn v. Do-Bum Juhnn*, 242 N.C. App. 58, 62-63, 775 S.E.2d 310, 313 (2015) (“[D]efendant fails to set forth any *specific* challenges to the findings of fact and instead presents a broad argument which merely contends that ‘the evidence at trial [did] not support a finding that [defendant] acted in bad faith, warranting the imputation of income to [defendant.]’” (emphasis added)). The trial court made extensive findings of fact regarding Husband’s extra-marital affair and found that he had engaged in “illicit sexual behavior” during the marriage. The trial court also made detailed findings regarding the statutory factors under North Carolina General Statute § 50-16.3A(b)(2)-(6), (8), (13), and (15). The court’s findings include findings addressing the parties’ incomes; the ages and health of the parties; the parties’ earning capacities, sources of both earned and unearned income, and the general income disparity between the parties’; the duration of the

marriage; contributions by Wife for Husband's education; the parties' "comfortable and extravagant" standard of living during the marriage; the needs of both Husband and Wife; and several other factors "relating to the economic circumstances of the parties that the court [found] to be just and proper[.]" including Wife's pending retirement and significant business interests. *See* N.C. Gen. Stat. § 50-16.3A(b)(15).

Husband's arguments address the trial court's legal conclusions and application of Chapter 50 of the General Statutes, and we need only determine whether the trial court's unchallenged findings of fact support its conclusions. *See Collins*, 243 N.C. App. at 699, 778 S.E.2d at 856. Although labeled as findings of fact, the Alimony Order also included conclusions of law, *see In re Helms*, 127 N.C. App. 505, 510-11, 491 S.E.2d 672, 675-76 (1997) ("[A]ny determination requiring the exercise of judgment, . . . or the application of legal principles, . . . is more properly classified a conclusion of law."), which we review *de novo*. *See Barrett*, 140 N.C. App. at 371, 536 S.E.2d at 644. The challenged "conclusions of law" are:

5. [Wife] is, indeed, a dependent spouse. Although [Wife] is not actually substantially dependent on [Husband] for her maintenance and support, the Court finds she is substantially in need of maintenance and support from [Husband]. [Wife] is without means to maintain her accustomed standard of living during the marriage without alimony from [Husband].

6. [Husband] is a supporting spouse. [Wife] is substantially in need of maintenance and support from [Husband]. As detailed herein, [Husband] has a surplus of monthly income over his monthly expenses.

7. An award of alimony is equitable after considering all relevant factors, including those set out in N.C. Gen. Stat. § 50–16.3A(b).

8. The Court considered all relevant factors, including those set forth in N.C. Gen. Stat. § 50–16.3A(b) for which evidence was offered during trial, when determining the amount, duration, and manner of payment of the alimony awarded herein.

(Formatting altered.) The trial court ordered Husband to pay \$10,000 to Wife per month until either party dies, Wife remarries, or Wife cohabitates as part of another relationship as defined in North Carolina General Statute § 50-16.9.

Husband does not challenge the court’s findings that he engaged in marital misconduct and “illicit sexual behavior” prior to the parties’ separation. Under North Carolina General Statute § 50-16.3A(a), the trial court was therefore *required* to award Wife alimony upon a finding that she was a dependent spouse and Husband was a supporting spouse. *See* N.C. Gen. Stat. § 50-16.3A(a); *Romulus*, 215 N.C. App. at 521-22, 715 S.E.2d at 325. Because Husband does not challenge any findings of fact, we limit our review to the trial court’s conclusions of law.

a. Wife is a Dependent Spouse

North Carolina General Statute § 50-16.3A(b)(1) requires alimony be awarded to a dependent spouse when the other spouse participates in illicit sexual behavior. *See* N.C. Gen. Stat. § 50-16.3A(b)(1); *Romulus*, 215 N.C. App. at 521-22, 715 S.E.2d at 325.

Reviewed *de novo*, *Barrett*, 140 N.C. App. at 371, 536 S.E.2d at 644, the trial

court did not err in concluding Wife is entitled to alimony. Contrary to Husband's argument, Wife "is, indeed, a dependent spouse." The trial court found:

10. N.C. Gen. Stat. § 50–16.3A(b)(2):

A. [Husband's] relative earnings are greater than [Wife's].

B. [Husband's] earning capacity is greater than [Wife's].

C. [Wife] retired on December 31, 2017, nearly ten (10) months before the parties separated.

D. Though [Husband] contended [Wife] actually quit due to personnel disputes [Wife] had at her then-place of employment, it is nonetheless uncontroverted [Wife] and [Husband] ultimately discussed [Wife] was, one way or another, leaving the practice of medicine altogether. The parties initially began discussing [Wife's] retirement in June 2017.

E. [Husband] was ultimately in agreement with [Wife's] exit from the workplace, and he told [Wife] not to worry about income during retirement. Abundantly clear to this Court is that [Wife] only returned to working in medicine after later learning [Husband] was having an extra-marital affair with [Nurse]. [Wife] had to seek employment because she was left without income and necessary means to sustain herself both in the short-term and long-term.

F. Though [Wife] still has marketable skills, it is both foreseeable and reasonable for [Wife] to retire due to her health and her age.

11. N.C. Gen. Stat. § 50–16.3A(b)(3):

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D. [Wife] has high blood pressure, osteoarthritis, anxiety, and back pain.

E. In recent years, [Wife] has endured back surgery (where rods were infused in 2015), along with arm surgery and gynecologic surgery.

F. [Wife's] physical conditions interfere with her ability to work as a surgeon because performing surgery requires long hours of standing and fine motor movements. [Wife] currently attends physical therapy to help her deal with the physical demands of standing while working given her age and health. Though accomplished and the first female ENT surgeon in Raleigh, [Wife] cannot perform surgery as effectively after age 70 due to the fine motor movements necessary, along with standing for extended periods of time.

G. [Wife's business partner] testified regarding [Wife], as they have worked together and still share existing business interests. [Wife's business partner] noted how years ago [Wife] was happy and engaged with her patients; however, over the past couple of years, [Wife's] pace and energy level noticeably slowed. [Wife's business partner] also recalled how [Wife] has repeatedly expressed her desire[] to retire.

12. N.C. Gen. Stat. § 50–16.3A(b)(4):

A. [Husband's] gross monthly income is \$41,354.

B. [Husband's] monthly income tax is \$11,716.

C. [Husband's] net monthly income, before payment of his reasonable monthly expenses, totals \$29,638.

D. [Wife's] gross monthly income is \$6,829, with her net take-home pay being \$5,342 according to her Amended Financial Affidavit dated October 12,

2020.

E. Through October 11, 2020, evidence at trial showed [Wife] receiving at least \$58,000 in distributions from Triangle Sinus for 2020.

13. N.C. Gen. Stat. § 50–16.3A(b)(5): The duration of the marriage was over 35 years. This is [Husband’s] first marriage and [Wife’s] third marriage.

14. N.C. Gen. Stat. § 50–16.3A(b)(6): [Wife] contributed to [Husband’s] education, training, and earning power during the marriage when she supported [Husband] while he completed two years of medical school, his residency, and his fellowship.

15. N.C. Gen. Stat. § 50–16.3A(b)(8):

A. [Husband] and [Wife] enjoyed a comfortable and extravagant lifestyle during the marriage. In sum, money was never an issue during the marriage.

B. [Husband] and [Wife] built a custom marital home which was in excess of 9,200 square feet and encumbered by a monthly mortgage payment in excess of \$5,000. This home was well-furnished with all the amenities, both indoor and outdoor.

C. [Husband] and [Wife] purchased a beach house, which [Wife] described as her “happy place.”

D. The parties drove luxury cars during the marriage.

E. The parties frequently traveled, including internationally, to accommodate their shared interest in Diving. They also enjoyed fine dining establishments and the arts.

F. The parties employed personal trainers and had health club memberships.

16. N.C. Gen. Stat. § 50–16.3A(b)(13):

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....

D. [Wife's] reasonable monthly expenses total more than \$16,000. Some of her expenses are excessive, such as her monthly rent/mortgage of \$2,400 and \$800 for Eating Out/Dining (separate from \$1,000 in Food and household supplies). In addition, various other projected expenses are also high as well, such as \$600 for Clothing, \$500 for International family visits and \$1,000 for Gym Membership. Though a basis exists to assert such expenses, the Court is not persuaded [Wife] will incur all of these projected expenses to the extent claimed due to her age and current health.

E. [Wife] needs alimony in the amount of \$10,000.00 monthly to meet her reasonable monthly expenses.

(Formatting altered.) The trial court then concluded Wife was a dependent spouse because “she is substantially in need of maintenance and support from [Husband]. [Wife] is without means to maintain her accustomed standard of living during the marriage without alimony from [Husband].” The above findings support the trial court’s conclusion Wife is a dependent spouse. Husband challenges the trial court’s decision to award alimony and argues “an alimony award is supposed to analyze income at the time of the award—not what may happen in the future. The trial court said that [Wife] *may* retire in the near future, and that that possibility somehow supports an award of alimony.” (Emphasis in original.) But this is not a situation where the trial court was speculating about what Wife may do in the future. The trial court’s analysis was based upon the fact that Wife had returned to work, despite her

age, health, and prior retirement, only because it became necessary due to Husband's affair and the separation of the parties. Husband did not challenge the trial court's finding of fact that Wife had retired, with Husband's consent, prior to their separation, and "[Wife] *only* returned to working in medicine after later learning [Husband] was having an extra-marital affair with [Nurse]. [Wife] had to seek employment because she was left without income and necessary means to sustain herself both in the short-term and long-term." (Emphasis added.) Based upon the findings as to Wife's income and her expenses based upon the parties' accustomed standard of living established during the marriage, the trial court found Wife was "substantially in need of maintenance" from Husband. "A spouse is 'substantially in need of maintenance' if he or she will be unable to meet his or her needs *in the future, even if he or she is currently meeting those needs.*" *Barrett*, 140 N.C. App. at 371, 536 S.E.2d at 644-45 (emphasis added). And a spouse "substantially in need of maintenance and support from the other spouse" is a dependent spouse. N.C. Gen. Stat. § 50-16.1A(2).

Wife had already retired during the marriage once and only returned to work because of Husband's affair. The court found "[Wife's] physical conditions interfere with her ability to work as a surgeon[;]" [Wife] currently attends physical therapy to help her deal with the physical demands of standing while working given her age and health[;]" and "[Wife] cannot perform surgery as effectively after age 70[.]" Wife is in need of maintenance and support because she will be unable to continue working

in the near future, due to present health concerns. The court ultimately found “[Husband’s] marital misconduct, [Wife’s] *age and health*, and the duration of the marriage support the duration of alimony awarded herein.” Our case law has defined a dependent spouse “substantially in need of maintenance” as one whose future needs will go unmet, regardless of the spouse’s current income. *See Barrett*, 140 N.C. App. at 371, 536 S.E.2d at 644-45.

Husband also argued the court failed to consider Wife’s total income, including income from a previous practice. This argument is not persuasive. The Alimony Order addressed several sources of income for Wife, as well as her previous attempt to retire, and Husband has not challenged these findings. Essentially, Husband argues the trial court should have viewed the evidence differently, finding his evidence more credible, but ultimately, the trial court determines the weight and credibility of the evidence. *See Williamson v. Williamson*, 217 N.C. App. 388, 392, 719 S.E.2d 625, 628 (2011) (“Because the trial court is in the best position to weigh the evidence, determine the credibility of witnesses and the weight to be given their testimony, we refuse to re-weigh the evidence on appeal.” (quotation marks and brackets omitted)). The trial court made findings for statutory factors under North Carolina General Statute § 50-16.3A(b)(2), “[t]he relative earnings and earning capabilities of the spouses[,]” and North Carolina General Statute § 50-16.3A(b)(4), “[t]he amount and sources of earned and unearned income of both spouses, including, but not limited to, earnings, dividends, and benefits such as medical, retirement,

insurance, social security, or others[.]” N.C. Gen. Stat. §50-16.3A(b)(2), (4). When determining Wife’s earnings capabilities and income the trial court made findings as to Wife’s retirement, Wife’s income “according to her Amended Financial Affidavit[.]” and that Wife received “at least \$58,000 in distributions from” Wife’s business in 2020. The trial court further considered Wife’s business interests when making findings as to North Carolina General Statute § 50-16.3A(b)(15), “[a]ny other factor relating to the economic circumstances of the parties that the court finds to be just and proper[:.]”

17. N.C. Gen. Stat. § 50–16.3A(b)(15):

A. Although retirement is reasonable and a realistic next-step for [Wife], the Court does not overlook her business interests. To this end, it is foreseeable [Wife] will receive financial benefit(s) from Triangle Sinus and excelENT, LLC in the future even though those benefits may vary from the levels received in 2019 and 2020.

Should [Wife] retire as indicated at trial, then it is reasonable to conclude that benefits will likely inure to her in the form of a buyout or transfer of her interest in Triangle Sinus. Should she, instead, continue work in some significantly reduced capacity in the years ahead, then she will receive reduced income from Triangle Sinus accordingly.

As for excelENT, LLC, the Court is persuaded there is residual value for a nasal rinse device which could flow to [Wife] annually should she decide to retain her interest in excelENT, LLC and not sell or transfer to someone else.

B. [Husband] is able to comfortably meet his and [Nurse’s] needs, and [Husband] can meet [Wife’s] reasonable monthly needs.

N.C. Gen. Stat. § 50-16.3A(b)(15). This finding indicates the trial court considered all of Wife's income.

Though the issue of alimony is separate from the issue of equitable distribution, the trial court also "considered the equitable distribution of marital and divisible property in this case," giving it a fuller view of the parties' financial status. Thus, reading the trial court's orders together, the trial court clearly considered all the sources of funds available to Wife. "Judgments must be interpreted like other written documents, not by focusing on isolated parts, but as a whole. The interpreting court must take into account the pleadings, issues, the facts of the case, and other relevant circumstances." *Reavis v. Reavis*, 82 N.C. App. 77, 80, 345 S.E.2d 460, 462 (1986) (citations omitted). The trial court extensively discussed Wife's business interests in the Equitable Distribution Judgment.

Husband cites a portion of the transcript and argues "there is no discussion of the interest or principal from the money that [Wife] received from her previous practice[.]" but the transcript Husband cites involves a discussion about a 401k profit sharing plan from "Carolina Ear, Nose & Throat," which is expressly discussed and distributed in the Equitable Distribution Judgment. Husband also directs our attention to two documentary exhibits, a BB&T IRA and a CUNA Mutual Group Traditional IRA, which are both also addressed in the Equitable Distribution Judgment.

The trial court adequately considered all sources of income and funds available

to Wife. The trial court's conclusion "[Wife] is a dependent spouse, as she is substantially in need of maintenance and support from [Husband, and Wife] is without means to maintain her accustomed standard of living during the marriage without alimony from [Husband,]" is supported by its unchallenged findings of fact. For the reasons discussed above, Husband's arguments that Wife is not a dependent spouse are overruled.

b. Husband is a Supporting Spouse

There is also no doubt that Husband is a supporting spouse within the meaning of North Carolina General Statute § 50-16.3A. First, a "supporting spouse" is defined in Chapter 50 as "a spouse, whether husband or wife, upon whom the other spouse is actually substantially dependent for maintenance and support or from whom such spouse is substantially in need of maintenance and support." N.C. Gen. Stat. § 50-16.1A(5) (2021). We have already determined that Wife is "substantially in need of maintenance and support" from Husband. Second "[a] surplus of income over expenses is sufficient in and of itself to warrant a supporting spouse classification." *Barrett*, 140 N.C. App. at 373, 536 S.E.2d at 645. The trial court found that Husband's monthly surplus income, after reasonable expenses and taxes, was \$23,000 per month while Wife was unable to meet her reasonable monthly expenses. Husband's significant surplus income over and above both his own and Wife's reasonable expenses classifies him a supporting spouse within the meaning of North Carolina General Statute § 50-16.3A. *See id.*

c. The Trial Court Properly Considered “All” of the North Carolina General Statute § 50-16.3A(b) Factors

Husband also argued the trial court’s Alimony Order failed to consider *every* factor under North Carolina General Statute § 50-16.3A(b) and is therefore invalid as a matter of law. Husband cites North Carolina General Statute § 50-16.3A(c) and argues, “The General Assembly has decreed that when awarding alimony, the trial court ‘shall make a specific finding of fact on each of the factors’ listed. N.C. Gen. Stat. § 50-16.3A(c).” Husband’s argument is not persuasive because the relevant portion of North Carolina General Statute § 50-16.3A(c) states “the court shall make a specific finding of fact on each of the factors in subsection (b) of this section *if evidence is offered on that factor.*” N.C. Gen. Stat. § 50-16.3A(c) (emphasis added). This conditional language dictates when a finding is required, which is *only* when evidence was offered on that statutory factor.

The trial court made findings for § 50-16.3A(b)(1)-(6), (8), (13), and (15). The court did not make findings for § 50-16.3A(b)(7), (9)-(12), (14), and (16), which are listed below:

- (7) The extent to which the earning power, expenses, or financial obligations of a spouse will be affected by reason of serving as the custodian of a minor child;

. . . .

- (9) The relative education of the spouses and the time necessary to acquire sufficient education or training to enable the spouse seeking alimony to find employment to meet his or her reasonable economic

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needs;

(10) The relative assets and liabilities of the spouses and the relative debt service requirements of the spouses, including legal obligations of support;

(11) The property brought to the marriage by either spouse;

(12) The contribution of a spouse as homemaker;

....

(14) The federal, State, and local tax ramifications of the alimony award;

....

(16) The fact that income received by either party was previously considered by the court in determining the value of a marital or divisible asset in an equitable distribution of the parties' marital or divisible property.

N.C. Gen. Stat. § 50-16.3A(b). The court did not need to make findings as to North Carolina General Statute § 50-16.3A(b)(7), (9), and (12) because evidence was not presented regarding these factors. As to North Carolina General Statute § 50-16.3A(b)(7), (9), and (12), the parties' children have both reached the age of majority; both parties are well-educated and do not need to seek additional education or training to find employment or meet their needs; and neither spouse was a homemaker. *See* N.C. Gen. Stat. § 50-16.3A(b)(7), (9), (12). Both Husband and Wife were career medical practitioners.

As to North Carolina General Statute § 50-16.3A(b)(10) and 50-16.3A(b)(11),

the court considered the parties' marital and separate property and entered a separate Equitable Distribution Judgment addressing these factors. Husband argues the court's failure to list these factors specifically on the Alimony Order instead of the Equitable Distribution Judgment constituted a failure to "comply with the statute [N.C. Gen. Stat. § 50-16.3A(c)]." But on the same date, the trial court entered three orders based upon the hearing held on both equitable distribution and alimony, and it is apparent the trial court considered the award of alimony based upon the equitable distribution. *See Reavis*, 82 N.C. App. at 80, 345 S.E.2d at 462. Contrary to Husband's argument, this Court *can* clearly observe, in Husband's words, "how the [trial] court factored into its analysis the parties' education, assets, liabilities, and property brought to the marriage." The trial court factored these elements into a concurrently entered Equitable Distribution Judgment, the purpose of which was addressing those very factors, and this can be found in the Alimony Order: "21. The Court has considered the equitable distribution of marital and divisible property in this case."

As to North Carolina General Statute § 50-16.3A(b)(14), it appears that no evidence regarding the tax ramifications of alimony was presented during any of the hearings. Both the transcript and the documentary exhibits are silent as to this factor. The tax evidence introduced at trial appears to be limited to the parties' tax returns and the tax returns for their businesses and rental properties. Because there is no testimony or documentary evidence regarding the tax ramifications of alimony,

the trial court did not need to make a finding addressing this factor. *See* N.C. Gen. Stat. § 50-16.3A(c).²

Furthermore, there is no finding as to North Carolina General Statute § 50-16.3A(b)(16). Because the Equitable Distribution Judgement was entered concurrently with the Alimony Order the court did not need to consider any income “previously considered by the court in determining the value of a marital or divisible asset in an equitable distribution of the parties’ marital or divisible property” as the parties’ marital property was valued and distributed in the separate but contemporaneous Equitable Distribution Judgment. Finally, Husband advances various other arguments that do not render the trial court’s determination Wife was entitled to alimony erroneous. Ultimately, the trial court found various parts of Husband’s testimony to not be credible, some of Husband’s expenses were not reasonable, and how assets were paid for post-separation was unclear. In other words, the evidence supports the determination that Wife was entitled to alimony.

Accordingly, Husband’s arguments regarding alimony are overruled. The trial court did not err in determining that Wife was entitled to alimony. We now turn to whether the amount of alimony awarded constitutes an abuse of discretion. *See Barrett*, 140 N.C. App. at 371, 536 S.E.2d at 644.

² Wife also notes recent changes in federal tax law means alimony is no longer taxable or tax-deductible at the federal level. *See generally* Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054, 2089-90 (2017).

2. Amount of Alimony

We review the amount of alimony the trial court awarded for an abuse of discretion. *See id.* The trial court must consider 16 statutory factors when “determining the amount, duration, and manner of payment of alimony.” N.C. Gen. Stat. § 50-16.3A.

The trial court must at least make findings sufficiently specific to indicate that the trial judge properly considered each of the factors . . . for a determination of an alimony award. . . . In the absence of such findings, appellate courts cannot appropriately determine whether the order of the trial court is adequately supported by competent evidence, and therefore such an order must be vacated and the case remanded for necessary findings.

Rhew v. Rhew, 138 N.C. App. 467, 470, 531 S.E.2d 471, 473 (2000) (citations and quotation marks omitted).

Husband has not demonstrated that the trial court’s decision to award \$10,000 per month in alimony was an abuse of discretion. *Kelly*, 228 N.C. App. at 601, 747 S.E.2d at 272-73 (“An abuse of discretion has occurred if the decision is ‘manifestly unsupported by reason or one so arbitrary that it could not have been the result of a reasoned decision.’”). Husband argues “[t]he trial court failed to explain the reasoning for its alimony award.” Husband argues without specific findings as to each of Wife’s expenses against which to compare the alimony award, it is impossible to determine if the amount awarded is appropriate. Husband also argues the court failed to provide a rationale for the indefinite duration of alimony.

We note, as discussed above, the trial court made extensive findings for each factor for which evidence was offered. The court did not abuse its discretion in only considering the factors relevant to the parties' circumstances. *See* N.C. Gen. Stat. § 50-16.3A(c). Aside from the specific findings addressing the North Carolina General Statute § 50-16.3A(b) factors, the trial court also made ultimate findings providing a rationale for its alimony award:

18. [Husband's] marital misconduct, [Wife's] age and health, and the duration of the marriage support the duration of alimony awarded herein.

19. [Husband's] marital misconduct, earnings capacity, gross monthly income, age, health, relative needs, and monthly surplus of income, [Wife's] medical and emotional condition, monthly income, age, and relative needs, and the parties' standard of living established during the marriage support the amount of alimony awarded herein.

. . . .

21. The Court has considered the equitable distribution of marital and divisible property in this case.

(Formatting altered.)

After a consideration of the relevant factors enumerated in North Carolina General Statute § 50-16.3A(b), the trial court determined \$10,000 per month was adequate alimony for Wife to meet her reasonable needs. Considering Wife's income, expenses, and business valuations, and Husband's income and expenses, the court found Husband had greater relative earnings and greater earning capacity. The trial court found Husband would be able to continue working and earning approximately

\$23,000 per month after taxes and expenses were deducted, whereas Wife only earned approximately \$7,000 per month, and received at least \$58,000 in 2020 in business distributions, but would also have to retire again in the near future due to her declining health. Wife's income was also insufficient to meet her reasonable needs, even after the court considered both parties' expenses and found both parties had unreasonable expenses.

The court determined Wife's reasonable expenses were more than \$16,000 per month, but only awarded \$10,000 per month to meet her needs, which still allowed Husband to comfortably meet both his, Nurse's, and Wife's monthly needs. The court chose not to credit Wife for many of the expenses she listed in her financial affidavit, and Husband's argument appears to take issue with the fact the trial court did not list the amount of each individual expense it considered in calculating the alimony award. Although this sort of detailed calculation is sometimes included in alimony orders and is entirely appropriate, it is not required if the findings of fact are sufficient for this Court to review the trial court's determination of the alimony obligation. *See Rhew*, 138 N.C. App. at 470-72, 531 S.E.2d at 473-75. The trial court did not abuse its discretion when it did not break down each of Wife's individual expenses. The trial court's findings were "sufficiently specific to indicate that the trial judge properly considered each of the [North Carolina General Statute § 50-16.3A(b)] factors." *Id.* at 470, 531 S.E.2d at 473.

The trial court's ultimate findings identify the rationale for the alimony award,

specifically Husband's marital misconduct, including his extra-marital affair and waste of marital assets; Husband's greater earnings; Wife's declining health and advanced age; and the parties' 35-year marriage, which was "comfortable and extravagant" and in which "money was never an issue" until Husband's extra-marital affair. The trial court's failure to list Wife's expenses with granularity in the Alimony Order was not an abuse of discretion. As discussed above, the trial court considered all North Carolina General Statute § 50-16.3A(b) factors for which evidence was offered, and this Court cannot conclude the Alimony Order shows a "decision . . . 'manifestly unsupported by reason or one so arbitrary that it could not have been the result of a reasoned decision.'" *Kelly*, 228 N.C. App. at 601, 747 S.E.2d at 272-73.

Because the trial court did not err in determining that Wife was entitled to alimony, and because the trial court did not abuse its discretion in determining the amount of alimony to award, the Alimony Order is affirmed.

III. Equitable Distribution Judgment

We next review the trial court's Equitable Distribution Judgment.

A. Standard of Review

Similar to the Alimony Order, this Court reviews the Equitable Distribution Judgment for "whether there is competent evidence to support the trial court's findings of fact and whether the findings support the conclusions of law and ensuing judgment. The trial court's findings of fact are binding on appeal as long as competent evidence supports them, despite the existence of evidence to the contrary." *Stovall v.*

Stovall, 205 N.C. App. 405, 407, 698 S.E.2d 680, 683 (2010) (citation omitted). “The trial court’s unchallenged findings of fact are presumed to be supported by competent evidence and are binding on appeal.” *Peltzer*, 222 N.C. App. at 787, 732 S.E.2d at 360 (citation omitted).

We review the Equitable Distribution Judgment for an abuse of discretion:

A trial court is vested with wide discretion in family law cases, including equitable distribution cases. Accordingly, a trial court’s ruling in an equitable distribution award . . . will be disturbed only if it is so arbitrary that [it] could not have been the result of a reasoned decision.

Wright v. Wright, 222 N.C. App. 309, 311, 730 S.E.2d 218, 220 (2012) (citations and quotation marks omitted) (brackets in original). “Only a finding that the judgment was unsupported by reason and could not have been a result of competent inquiry, or a finding that the trial judge failed to comply with the statute, will establish an abuse of discretion.” *Wiencek-Adams v. Adams*, 331 N.C. 688, 691, 417 S.E.2d 449, 451 (1992) (citations omitted).

B. Analysis

North Carolina General Statute § 50-20 governs the equitable distribution of marital and divisible property. *See* N.C. Gen. Stat. § 50-20 (2021). North Carolina General Statute § 50-20(c) mandates “[t]here shall be an equal division by using net value of marital property and net value of divisible property unless the court determines that an equal division is not equitable.” N.C. Gen. Stat. § 50-20(c). North Carolina General Statute § 50-20 sets forth 12 factors the trial court must consider,

and “[i]n any order for the distribution of property made pursuant to [North Carolina General Statute § 50-20], the court shall make written findings of fact that support the determination that the marital property and divisible property has been equitably divided.” N.C. Gen. Stat. § 50-20(j).

Where the trial court decides that an unequal distribution is equitable, the court must exercise its discretion to decide how much weight to give each factor supporting an unequal distribution. *Mugno v. Mugno*, 205 N.C. App. 273, 278, 695 S.E.2d 495, 499 (2010) (citation omitted). We have further stated that “[t]he trial court must . . . make specific findings of fact regarding each factor specified in N.C. Gen. Stat. § 50–20(c) (2001) on which the parties offered evidence.” *Embler v. Embler*, 159 N.C. App. 186, 188, 582 S.E.2d 628, 630 (2003) (citing *Rosario v. Rosario*, 139 N.C. App. 258, 260–61, 533 S.E.2d 274, 275–76 (2000)). A blanket statement that the trial court considered or gave “due regard” to the distributional factors listed in N.C. Gen. Stat. § 50–20(c) is insufficient as a matter of law. *Rosario*, 139 N.C. App. at 262, 533 S.E.2d at 276.

Peltzer, 222 N.C. App. at 788, 732 S.E.2d at 360. “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 the property.” *Watson v. Watson*, 261 N.C. App. 94, 97, 819 S.E.2d 595, 598 (2018).

[T]o 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.

Id. (emphasis added). Marital property “*must* be valued as of the date of the separation of the parties, since the marital estate is ‘frozen’ at that time.” *Khajanchi v. Khajanchi*, 140 N.C. App. 552, 557, 537 S.E.2d 845, 849 (2000) (emphasis added) (citation omitted).

Husband makes several arguments as to why the Equitable Distribution Judgment “does not support an unequal division of the marital estate.” (Capitalization altered.) Husband argues (1) the trial court erred by not making a finding about the net value of the marital estate; (2) the trial court relied on date-of-separation values and “failed to make findings regarding the date-of-distribution value” of certain marital property; (3) the trial court failed to explain why it ordered \$1,388,738 of his retirement account transferred to Wife, “over and above the unequal division of ‘non-retirement assets/debts’ based upon incomplete, inconsistent values assigned by the court[.]” (4) the trial court failed to adequately explain why it was dividing the marital estate unequally; (5) “the trial court made insufficient findings of fact regarding the distributional factors delineated in section 50-20(c)[.]” including a challenge to one finding of fact; and (6) the trial court erroneously considered the parties’ incomes as a distributional factor because it incorrectly calculated Wife’s income.

First, Husband cites *Robinson v. Robinson*, 210 N.C. App. 319, 323, 707 S.E.2d 785, 789-90 (2011) (citing *Carr v. Carr*, 92 N.C. App. 378, 379, 374 S.E.2d 426, 427 (1988)), to argue “an equitable distribution order is incomplete when it fails to contain findings of fact concerning the net value of the total marital estate.” The trial court did not make a finding as to the aggregate net value of all marital assets and debts but did make findings as to each individual asset and debt. These findings comply with North Carolina General Statute § 50-20. North Carolina General Statute § 50-20(c) requires the trial court to use the “net value” of marital and divisible property, not find the net value of the marital estate, when making a division of marital property. See North Carolina General Statute § 50-20(c). North Carolina General Statute § 50-20(j) simply requires “the court shall make written findings of fact that support the determination that the marital property and divisible property has been equitably divided.” N.C. Gen. Stat. § 50-20(j). The statute does not require an ultimate finding of fact that aggregates the sum net value of all marital and divisible property. See N.C. Gen. Stat. § 50-20(c), 50-20(j). The distinction here, unlike in *Robinson* and *Carr*, is that the trial court did make sufficient findings of the values of each item of marital property such that this Court can review the distribution of all marital and divisible property, even though the trial court did not make a separate finding aggregating the net value of all marital property.

Robinson and *Carr* are distinguishable from this case because the trial court in *Carr* made “[n]o findings . . . as to the *net* value of the total marital estate, or the

properties distributed to each party, or of the three tracts of maritally owned real estate.” Carr v. Carr, 92 N.C. App. 378, 379, 374 S.E.2d 426, 428 (1988) (second emphasis added). *Robinson* relied on *Carr* because the trial court in *Robinson* made “no finding with respect to the total net value of the parties’ marital estate” or findings “as to the classification or value of the marital residence[,]” a specific item of marital property. *Robinson v. Robinson*, 210 N.C. App. 319, 323, 707 S.E.2d 785, 789-90 (2011). These cases, *Robinson* and *Carr*, were addressing the net value of the marital estate because the trial court failed to make findings as to specific items of marital property and failed to “*classify all of the property* and make a finding as to the value of all marital property.” *Id.* at 324, 707 S.E.2d at 790 (emphasis added); *see Carr*, 92 N.C. App. at 379, 374 S.E.2d at 427 (“The equitable distribution judgment appealed from is incomplete and erroneous in several respects. To enter a proper equitable distribution judgment the trial court must classify all property owned by the parties or either of them as either marital or separate; must determine the net market value of the marital property as of the separation date; must determine what division of the marital property is equitable; and must distribute the property to the parties accordingly.”). The Court in *Robinson* and *Carr* discussed how it was impossible for the trial courts to have properly divided the parties’ property under North Carolina General Statute § 50-20 because the trial courts had failed to make findings sufficient to calculate the total marital estate. *See Robinson*, 210 N.C. App. at 324, 707 S.E.2d at 790; *Carr*, 92 N.C. App. at 379, 374 S.E.2d at 427.

Here, the lack of an ultimate finding aggregating the net value of all marital property is not reversible error because the trial court made extensive findings of fact inventorying each piece of marital and separate property and included these values for equitable distribution in a spreadsheet attached to and incorporated into the Equitable Distribution Judgment. Although an ultimate finding summarizing the net value of all marital assets and debts may be the better practice, the trial court here sufficiently identified all marital property and made findings of fact as to the value of each individual piece of marital property.³ The lack of an ultimate finding aggregating the net value of all marital property does not preclude review by this Court, and the application of the statutory factors enumerated in North Carolina General Statute § 50-20(c) is addressed below. Husband's argument is overruled.

Second, we address Husband's arguments as to date of separation and date of distribution valuations of marital property. *Robinson* confirms the use of the date of separation to value the marital property: "[T]o 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.*" *Robinson*, 210 N.C. App. at 323, 707 S.E.2d at 789 (emphasis in original) (quotation marks omitted). Husband asserts the trial court "failed to make findings regarding the date-of-distribution value" of marital property, and specifically challenged the trial court's

³ We note Husband does not argue the trial court failed to identify, classify, or value any marital asset or debt, only that the values assigned to certain items of property were incorrect or inaccurate.

findings as to the value of Triangle Sinus Center. The trial court's finding as to the value of Wife's business states:

28. **Triangle Sinus Center.** Prior to the date of separation, [Wife] started The Triangle Sinus Center, PLLC ["Triangle Sinus"] with [her business partner].

A. On October 1, 2018, [Wife] and [her business partner] executed an operating agreement wherein each became a fifty percent (50%) member. Thereafter, [Wife] and [her business partner] began organizing the company, invested funds, and negotiated leases and other agreements for Triangle Sinus.

B. In late-October 2018, bank records show [Wife] invested \$5,000.00 into Triangle Sinus and the 2018 capital account for Triangle Sinus was \$10,000.00. The Court values [Wife's] 50% in Triangle Sinus at \$5,000.00 on the date of separation, and this value should be distributed to [Wife].⁴

C. Triangle Sinus is currently operational, and [Wife] and [her business partner] remain the Member/Managers of the PLLC.

D. [Wife's] fifty percent (50%) ownership interest in Triangle Sinus is a marital asset and should be distributed.

E. [Wife's business partner] manages the business and daily operations of Triangle Sinus. Though the business has seen a decrease in new patients due to the Covid-19 pandemic, they have remained profitable. *From January 1, 2020 through October 11, 2020, [Wife] received at least \$58,000 in*

⁴ The parties separated 2 November 2018.

distributions from Triangle Sinus.

(Emphasis added and formatting altered.) Contrary to Husband’s argument, the trial court considered the post-separation value of Wife’s business. Although the trial court did not make a finding affirmatively stating the “date-of-distribution value” of Triangle Sinus, the trial court did find that Wife had received “at least \$58,000” from her business between the date of separation and date of distribution. The trial court further considered the post-separation value of Wife’s businesses when making findings under North Carolina General Statute § 50-20(c):

E. N.C. Gen. Stat. § 50–20(c)(10). Though identifying the percentage of [Wife’s] ownership interests in Triangle Sinus and excelENT was not problematic, placing a monetary value on these business interests was more difficult particularly given the ongoing, residual value these interests have provided to [Wife].

(Formatting altered.) The trial court then treated the post-separation payments from Triangle Sinus to Wife as income when entering its Alimony Order:

12. N.C. Gen. Stat. § 50–16.3A(b)(4):

....

D. [Wife’s] gross monthly income is \$6,829, with her net take-home pay being \$5,342 according to her Amended Financial Affidavit dated October 12, 2020.

E. Through October 11, 2020, evidence at trial showed [Wife] receiving at least \$58,000 in distributions from Triangle Sinus for 2020.

(Formatting altered.) The trial court treated post-separation distributions to Wife as

income because she continued to work at Triangle Sinus after the parties' separation and distributed the entirety of the marital portion of the property, Wife's interest in Triangle Sinus, to Wife. See N.C. Gen. Stat. § 50-20(b)(4) (defining divisible property). Husband's challenge to the trial court's consideration of Wife's business interest is overruled.

Husband also noted two of Wife's retirement accounts were valued as of the date of separation and another account was valued as of the date of trial. The findings Husband refers to state:

29. **Carolina Ear, Nose, and Throat 401(k).** During the marriage and prior to the date of separation, [Wife] funded Carolina Ear, Nose, and Throat 401(k) Profit Sharing Plan ["ENT 401(k)"]. As of the date of separation, the ENT 401(k) had a balance of \$112,016. The ENT 401(k) was marital property. After the date of separation, [Wife] transferred the balance of the ENT 401(k) into BB&T IRA [] and CUNA Mutual IRA []. No further distribution is required for the ENT 401(k), and the two IRAs are addressed below. The difference between the *date of separation* balance of the ENT 401(k) and the *date of trial balances* of the two (2) IRAs in the amount of \$8,524 is divisible property and should be distributed to [Wife].

30. **BB&T IRA [].** With a portion of the funds from the ENT 401(k), [Wife] funded BB&T IRA [] after the date of separation. The funds used to open the account were marital property. The account's *date of trial balance* was \$60,459. BB&T IRA [] should be distributed to [Wife].

31. **CUNA Mutual IRA [].** With a portion of the funds from the ENT 401(k), [Wife] funded CUNA Mutual IRA [] after the date of separation. The funds used to open the account were marital property. The account's *date of separation balance* was \$60,081. The account should be

distributed to [Wife].

(Emphasis added.) These accounts were also included in the trial court's spreadsheet aggregating marital assets and debts, and the values in findings 30 and 31 are equal to the values on the spreadsheet. Both the BB&T IRA and the CUNA IRA were distributed to Wife, and both were annotated "DOS balance + passive gain[.]" Reading the Equitable Distribution Judgment as a whole, it appears that the trial court's reference to the date of trial balance of the BB&T IRA in finding 30 but reference to the date of separation balance of the CUNA IRA in finding 31 is a simple clerical error. As to findings 30 and 31, the trial court is merely recounting how Wife transferred marital funds from one retirement account to two separate retirement accounts. The two newer accounts were then untouched up through trial and entry of the Equitable Distribution Judgment and were comprised entirely of marital and divisible funds. The full value of each account was then distributed to Wife as marital or divisible property, and there was no separate property value that the trial court needed to consider when distributing these accounts. *See* N.C. Gen. Stat. § 50-20(b)(4) ("Divisible property' means all real and personal property as set forth below: . . . 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[.]"). Husband's argument as to Wife's retirement accounts is overruled.

Next, we address Husband's third argument regarding the trial court's order that \$1,388,738 from Husband's retirement account must be transferred to Wife.

First, we note Husband argues this transfer from his retirement account to Wife is not supported by the “incomplete, inconsistent values assigned by the court” to the parties’ nonretirement assets and debts. Other than the above challenges regarding Triangle Sinus Center and Wife’s retirement accounts, Husband does not identify which of the values calculated by the trial court are incomplete or inconsistent, or why. Husband does not identify any error in the trial court’s valuation of non-retirement assets or debts. Nor does Husband challenge any finding of fact in this argument. Husband makes a reference to the spreadsheet incorporated into the Equitable Distribution Judgment, but Husband does not identify any mathematical or classification error in the spreadsheet. Because Husband has not identified any potentially erroneous values in the spreadsheet or in the trial court’s valuation of non-retirement marital property, other than discussed above, there is nothing for this Court to review, and we must assume the trial court’s valuations of marital property were correct. *See Peltzer*, 222 N.C. App. at 786-87, 732 S.E.2d at 359-60. Husband’s argument about the “unequal distributions of ‘non-retirement assets/debts’” and “different, unequal division of [Husband’s] retirement account,” as well as the order to transfer \$1,388,738 from Husband’s retirement account to Wife can be addressed by the trial court’s application of the North Carolina General Statute § 50-20(c) distributional factors below.

We next address Husband’s fourth and fifth arguments that “the trial court made insufficient findings of fact regarding the distributional factors delineated in

section 50-20(c)” and failed to adequately explain its reasoning for the unequal division of marital property. North Carolina General Statute § 50-20(c) sets forth 12 factors the trial court must consider when equitably, but not equally, dividing marital property:

- (1) The income, property, and liabilities of each party at the time the division of property is to become effective.
- (2) Any obligation for support arising out of a prior marriage.
- (3) The duration of the marriage and the age and physical and mental health of both parties.
- (4) The need of a parent with custody of a child or children of the marriage to occupy or own the marital residence and to use or own its household effects.
- (5) The expectation of pension, retirement, or other deferred compensation rights that are not marital property.
- (6) Any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts or expenditures and contributions and services, or lack thereof, as a spouse, parent, wage earner or homemaker.
- (7) Any direct or indirect contribution made by one spouse to help educate or develop the career potential of the other spouse.
- (8) Any direct contribution to an increase in value of separate property which occurs during the course of the marriage.
- (9) The liquid or nonliquid character of all marital

property and divisible property.

- (10) The difficulty of evaluating any component asset or any interest in a business, corporation or profession, and the economic desirability of retaining such asset or interest, intact and free from any claim or interference by the other party.
- (11) The tax consequences to each party, including those federal and State tax consequences that would have been incurred if the marital and divisible property had been sold or liquidated on the date of valuation. The trial court may, however, in its discretion, consider whether or when such tax consequences are reasonably likely to occur in determining the equitable value deemed appropriate for this factor.
- (11a) 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 of distribution.

....

- (12) Any other factor which the court finds to be just and proper.

N.C. Gen. Stat. § 50-20(c). The trial court made extensive findings as to individual factors, including North Carolina General Statute § 50-20(c)(1), (3), (5), (7), (10), (11a), and (12). Husband does not challenge the trial court's consideration of the distributional factors or the trial court's decision not to address certain factors. Instead, Husband argues "the trial court gave passing acknowledgement that an investment or ownership interest was being considered as a distributional factor, but then failed to expound." Husband specifically challenges finding 27.A and finding

27.D and as to the other factors argues “[p]assively acknowledging distributional factors is insufficient to order an unequal division of property.”

The trial court did not “passively acknowledge” the distributional factors in North Carolina General Statute § 50-20(c). Findings 27.A and 27.D state:

27. **excelENT, LLC.** This entity was created on September 6, 2016, by [Wife’s business partner] and [Wife] [“excelENT”] to shield any liability for the development of a nasal rinse device for which [Wife] and [Wife’s business partner] applied for a patent prior to the date of separation.

A. In 2017 and 2018, prior to the date of separation, [Husband] and [Wife] deposited \$49,352.00 of marital funds into excelENT for the development of a nasal rinse device. The Court has considered [Husband’s] and [Wife’s] investment as a distributional factor.

. . . .

D. In 2018, the capital account for excelENT was \$802.00. Therefore, excelENT should be valued at \$802.00 on the date of separation and the date of distribution, and the same should be distributed to [Wife]. The Court further considers [Wife’s] post-date of separation transfer of ownership interest as a distributional factor.

(Formatting altered.)

Finding 27 is one of sixteen findings, many with various sub-parts, in which the trial court was inventorying Husband’s and Wife’s marital and separate assets and debts. This was not a passive exercise; the trial court was valuing assets for

purposes of distribution.⁵ Further, we do not find persuasive Husband’s argument that, “[a]lthough the trial court was not required to recite in detail the evidence considered in determining what division of the property would be equitable, it *was* required to make findings sufficient to address the statutory factors and support the division ordered[.]” (emphasis in original), because the trial court expressly addressed Wife’s businesses in its findings as to the § 50-20(c) factors. The trial court directly addressed the statutory factors beginning on the same page of the Equitable Distribution Judgment where it finished inventorying Husband’s separate debts, and made unchallenged “findings sufficient to address the statutory factors and support the” unequal division of marital assets and debts:

37. The Court has considered the following factors, in accordance with and pursuant to N.C. Gen. Stat. § 50–20(c), in its determination of whether an unequal distribution is equitable:

A. N.C. Gen. Stat. § 50–20(c)(1).

i) [Husband’s] monthly income is \$41,354.

ii) [Wife’s] monthly income is \$6,829.

iii) [Wife] retired on December 31, 2017 with the agreement of [Husband], but she went back to work after learning [Husband] was having an affair.

iv) Given [Husband’s] age and stage of his career, he has several years’ worth of

⁵ Although the trial court identified Wife’s business interests when making a finding under North Carolina General Assembly § 50-20(c)(10), these findings would be appropriate under factors (1), (10), or (12). *See* N.C. Gen. Stat. § 50-20(c).

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significant, high-earning income ahead in his profession.

v) Due to the income disparity at the time the division of this property is to become effective, an unequal distribution of marital and divisible property to [Wife] is equitable.

B. N.C. Gen. Stat. § 50–20(c)(3).

i) The duration of the marriage was over 35 years.

ii) [Husband] is 62 years old and in good health other than having high blood pressure.

iii) At [the] time of trial [Wife] was 72 years old but turned 73 years old in January 2021.

iv) [Wife] has high blood pressure, osteoarthritis, anxiety, and back pain.

v) In recent years, [Wife] has endured back surgery, along with arm surgery and gynecologic surgery.

vi) [Wife's] physical conditions interfere with her ability to work as a surgeon because performing surgery requires long hours of standing and fine motor movements.

vii) It is reasonable for [Wife] to retire due to her health and her age.

viii) Due to [Wife's] age in comparison to [Husband's] age, along with [Wife's] ailments which have affected her ability to continue working, an unequal division of marital and divisible retirement assets is equitable.

C. N.C. Gen. Stat. § 50–20(c)(5). [Husband] has an expectation of pension, retirement, or other deferred compensation rights which is not marital property.

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D. N.C. Gen. Stat. § 50–20(c)(7). [Wife] contributed to [Husband's] education, training, and earning power during the marriage when she supported [Husband] while he completed two years of medical school, his residency, and his fellowship.

E. N.C. Gen. Stat. § 50–20(c)(10). Though identifying the percentage of [Wife's] ownership interests in Triangle Sinus and excelENT was not problematic, placing a monetary value on these business interests was more difficult particularly given the ongoing, residual value these interests have provided to [Wife].

F. N.C. Gen. Stat. § 50–[20](c)(11a).

i) [Husband] wasted marital property and/or divisible property by his use of the BB&T Credit Line [] after the date of separation for his own purposes without [Wife's] knowledge, authorization, or consent, and his use of marital funds to fund his affair with [Nurse] through use of his American Express card to pay for over twenty (20) one-night hotel stays in Raleigh during the marriage and prior to the date of separation.

ii) [Husband] failed to meet his burden to show he used his separate funds to make the post date of separation payments on [the parties' real property]. *Cushman v. Cushman*, 244 N.C. App. 555, 563, 781 S.E.2d 499, 504 (2016). The Court exercises its discretion by not considering these payments as a distributional factor in favor of [Husband].

G. N.C. Gen. Stat. § 50–20(c)(12).

i) [Wife's] physical limitations interfere with her ability to work as a surgeon because performing surgery requires long hours of standing and fine motor movements. The Court finds it is reasonable and foreseeable for [Wife]

to retire due to her age and existing health.

ii) Though [Wife's] post-date of separation \$1.00 transfer of her interest in excelENT does not affect the classification of this business interest as marital property, the timing of her actions are suspect, at best, and a sham, at worst. Although one is freely able to contract and sell assets for a bargained-for price, it is difficult to reasonably construe this transfer as anything other than an attempt [to] divert certain marital assets from being part of the Equitable Distribution proceedings. This transfer by [Wife] was not viewed favorably by the Court in these proceedings.

iii) [Husband's] testimony lacked significant credibility at several key moments throughout the trial. More specifically:

(1) [Husband] testified he did not communicate with [Wife] prior to advancing \$163,000 (not including interest) on the BB&T Credit Line on [the marital home] after the date of separation. According to [Husband], [Wife] had changed her phone number so he was not able to find her. [Husband's] claim he was not able to locate or communicate [with] her is not credible. Somehow forgotten or overlooked by [Husband] is that the parties share two (2) adult children who could have provided him with [Wife's] necessary contact information.

(2) At [Husband's] September 2020 deposition, he claimed he "had no clue" if he was going to rent or buy a home with [Nurse]. In Court, he stated he was testifying truthfully at trial and also contended he testified truthfully at his deposition. Evidence

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at trial, however, revealed he had signed a Buyer's Checklist on a residential home eleven (11) days prior to the deposition. Furthermore, records showed he made an initial down payment of \$3,000 on a home, followed by three (3) additional payments in the summer months of 2020. When confronted, [Husband] finally admitted: "I was not truthful then" – a reference to his deposition. [Husband's] eventual truthfulness emerged only when it became obvious he could no longer cover-up his lies. This testimony weighed significantly, particularly as the Court considered whether [Husband's] testimony on the Bank of America Commercial Loan [] was truly a marital debt despite the date in which records show it was initially obtained.

(3) The Court is not persuaded by [Husband's] testimony as to why he failed to communicate with [Wife] prior to liquidating a substantial portion of his marital retirement account to purchase a home with [Nurse] because he could not get in touch with [Wife] to discuss it. [Wife] was represented by Tharrington Smith, LLP at the time of the liquidation in 2020. At minimum, [Husband] knew where [Wife] worked and he had ample opportunity to take reasonable steps to contact [Wife] or her counsel. This particular rationale is not credible.

In sum, [Husband's] overall lack of truthfulness and accessing marital assets and/or debt without first notifying [Wife], among other concerns, raised serious credibility issues before this Court. As such, the Court cannot reasonably conclude to what extent, if any, he actually used separate funds to pay for [the marital home] and [the vacation home] during the period of post-

separation.

(Formatting altered.) These findings were not “insufficient” or a “passive acknowledgment,” as asserted by Husband. The trial court made extensive detailed findings as to each relevant statutory factor, and Husband does not challenge any of the findings applying the statutory factors or the court’s lack of finding as to any particular factor the court decided not to weigh. The trial court considered the parties’ incomes, Husband’s marital waste and marital misconduct, Wife’s business interests, the age and health of the parties, the parties’ future income expectations, Wife’s suspect post-separation transfer of business interests, and Husband’s lack of truthfulness before the trial court and in his deposition, and then concluded “[t]he presumption of an equal distribution of marital and divisible property and debt pursuant to N.C. Gen. Stat. § 50–20(c) has been rebutted by the greater weight of the evidence. An unequal distribution of the parties’ net marital and divisible estate is equitable.” The trial court then exercised its discretion, after considering the statutory factors, and divided the parties’ property. Husband’s argument is overruled.

Husband finally argues “[i]t is unclear how much emphasis the trial court put on the monthly income of the parties, but to the extent that the trial court miscalculated [Wife’s] income . . . any unequal distribution based upon her incorrect income should be reversed and remanded for that reason as well.” As addressed above, the trial court did not err in determining Wife’s income. The trial court

considered all forms of income and funds available to Wife. And, as to “how much emphasis the trial court put on the monthly income of the parties,” our role in reviewing the trial court’s decision is to ensure that the court did not abuse its discretion and considered the factors under North Carolina General Statute § 50-20(c). *See* N.C. Gen. Stat. § 50-20(c); *Wright*, 222 N.C. App. at 311, 730 S.E.2d at 220. The trial court made express findings considering the first North Carolina General Statute § 50-20(c) factor, “[t]he income . . . of each party at the time the division of property is to become effective[,]” N.C. Gen. Stat. § 50-20(c)(1), and found: “Due to the income disparity at the time the division of this property is to become effective, an unequal distribution of marital and divisible property to [Wife] is equitable.” The trial court also made findings as to the other sources of funds available to Wife, and also contemporaneously entered the Alimony Order which included findings on Wife’s income. It is clear the trial court considered the total income and wealth disparity between the parties. Our role is not to second-guess the emphasis the trial court placed on the parties’ respective incomes or the trial court’s weighing of the North Carolina General Statute § 50-20(c) factors as to the parties’ incomes and wealth compared to other factors. Husband’s argument is overruled.

Husband’s arguments allege the trial court’s explanation for the unequal division of marital property was “not ‘specific and detailed enough’ to enable this Court to determine what was done and its correctness.” We disagree. The trial court addressed the statutory factors in North Carolina General Statute § 50-20(c), as

discussed above, and attached a detailed spreadsheet showing its valuation of the marital property. The trial court also included detailed findings as to the value of individual items of marital property. The trial court's findings reflect valuations for multiple bank accounts, vehicles, parcels of real property, investment accounts, credit card debts, mortgages, Husband's 2018 bonus, credit card points and rewards, proceeds from the sale of real estate, Wife's business interests, both parties' retirement accounts, and both parties' separate property and debts; these findings include Husband's extensive marital waste and Wife's suspicious post-separation transfer of business interests. The trial court then ultimately found:

38. An unequal division of the parties' net marital and divisible estate is equitable.

(Formatting altered.) The trial court then concluded, before dividing the parties' property:

3. The presumption of an equal distribution of marital and divisible property and debt pursuant to N.C. Gen. Stat. § 50-20(c) has been rebutted by the greater weight of the evidence. An unequal distribution of the parties' net marital and divisible estate is equitable.

4. The presumption of an in-kind distribution of all marital and divisible property and debt pursuant to N.C. Gen. Stat. § 50-20(e) has been rebutted by the greater weight of the evidence. An in-kind distribution of all marital and divisible property is not equitable. The distributive award ordered herein achieves equity between the parties.

(Formatting altered.)

We cannot find any abuse of discretion in the trial court's distribution of the marital and divisible property or debt. "Equitable distribution is vested in the discretion of the trial court and will not be disturbed absent a clear abuse of that discretion." *Wiencek-Adams*, 331 N.C. at 691, 417 S.E.2d at 451. "The record before us reflects that the trial judge's decision is supported by reason and complies with the statute." *Id.* at 692, 417 S.E.2d at 451. The trial court made appropriate findings as to the relevant North Carolina General Statute § 50-20(c) factors and equitably divided the parties' property, including transferring \$1,388,738 to Wife since Wife would need to retire soon and Husband "has several years' worth of significant, high-earning income ahead in his profession" and had even "liquidat[ed] a substantial portion of his marital retirement account to purchase a home with [Nurse.]" We affirm the Equitable Distribution Judgment.

IV. Attorney's Fees Order

Husband also appealed from the Attorney's Fees Order. "When the trial court sits as the trier of the facts, its findings of fact that are supported by competent evidence become binding on this Court." *Kuttner v. Kuttner*, 193 N.C. App. 158, 160, 666 S.E.2d 883, 885 (2008) (citation omitted). Unchallenged findings of fact are binding on appeal. *See id.* (citing *Koufman v. Koufman*, 330 N.C. 93, 97-98, 408 S.E.2d 729, 731 (1991)).

North Carolina General Statute § 50-16.4 authorizes an award of attorney's fees: "At any time that a dependent spouse would be entitled to alimony pursuant to

G.S. 50-16.3A, . . . the court may, upon application of such spouse, enter an order for reasonable counsel fees[.]” N.C. Gen. Stat. § 50-16.4 (2021). This Court has interpreted North Carolina General Statute § 50-16.4 to mean:

A spouse is entitled to attorney’s fees if that spouse is (1) the dependent spouse, (2) entitled to the underlying relief demanded (e.g., alimony and/or child support), and (3) without sufficient means to defray the costs of litigation. *Clark v. Clark*, 301 N.C. 123, 135–36, 271 S.E.2d 58, 67 (1980). Entitlement, i.e., the satisfaction of these three requirements, is a question of law, fully reviewable on appeal. *Id.* at 136, 271 S.E.2d at 67.

Barrett, 140 N.C. App. at 374, 536 S.E.2d at 646.

With regard to the determination of whether a dependent spouse has sufficient funds to defray the costs of litigation, “a court should generally focus on the disposable income and estate of just that spouse, although a comparison of the two spouses’ estates may sometimes be appropriate.” *Id.* (citing *Van Every v. McGuire*, 348 N.C. 58, 62, 497 S.E.2d 689, 691 (1998)). “Once a spouse is entitled to attorney’s fees, our focus then shifts to the amount of fees awarded. The amount awarded will not be overturned on appeal absent an abuse of discretion.” *Barrett*, 140 N.C. App. at 375, 536 S.E.2d at 647.

Husband argues Wife is not entitled to fees because she is not a dependent spouse, she is not entitled to alimony, and she has sufficient means to defray the cost of litigation. He argues Wife’s income, business distributions, retirement accounts, and property awarded under the Equitable Distribution Judgment provide ample

funds for the payment of litigation expenses. Husband does not make any argument regarding the amount of fees awarded. Wife argues she was entitled to fees because she is a dependent spouse entitled to alimony; she depleted her savings to litigate this case while Husband was able to buy two luxury vehicles and a new house for himself and Nurse; and she has a monthly deficiency in paying her reasonable expenses. Because Husband only challenged Wife's entitlement to fees, we need not discuss the amount the trial court awarded. *See* N.C. R. App. P. 28(a) ("Issues not presented and discussed in a party's brief are deemed abandoned.").

We have already addressed the first two components of entitlement; Wife is a dependent spouse and entitled to alimony. Therefore, the sole remaining determination is whether Wife is "without sufficient means to defray the costs of litigation." *Barrett*, 140 N.C. App. at 374, 536 S.E.2d at 646. The trial court's findings relevant to entitlement state:

5. [Wife] does not have sufficient disposable income to pay her attorney's fees.

6. [Husband] is a supporting spouse. [Wife] is substantially in need of maintenance and support from [Husband]. As detailed below, [Husband] has a surplus of monthly income after paying his own reasonable monthly expenses.

7 [Husband's] gross monthly income is \$41,354.

8. [Husband's] monthly income tax is \$11,716.

9. [Husband's] net monthly income, before payment of his reasonable monthly expenses, totals \$29,638.

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10. [Wife's] gross monthly income is \$6,829 according to her Amended Financial Affidavit dated October 12, 2020.

11. [Husband's] gross monthly income, less his payment for taxes owed on that income, his reasonable monthly expenses, and a monthly cash payment of alimony in the amount of \$10,000.00 to [Wife], still leave [Husband] with excess monthly income.

12. Since the date of separation, [Wife] has had to substantially spend her limited savings from her PNC checking account. She has spent much of her estate's liquidity during the separation on attorney's fees to meet [Husband] as litigant.

13. Since the date of separation, [Husband] purchased two (2) Teslas and a house in Holly Springs for him and [Nurse], the nurse with whom he engaged in illicit sexual behavior during the marriage and prior to the date of separation. He also continued to consistently contribute to his retirement since the date of separation.

. . . .

21. [Husband] has the present ability to pay the attorney's fees awarded herein below in the ordering clause via the [proceeds from the sale of the marital home] distributed to him in the amount of \$89,179 and his excess monthly income, among other sources of money available to him.

22. [Husband] shall pay attorney's fees to [Wife] in the amount of \$65,000, and the Court finds this amount to be reasonable.

(Formatting altered.) Aside from the determination that Wife is a dependent spouse, which we discussed above when reviewing the Alimony Order, the only other finding Husband challenges is finding 12, as Husband argues "contrary to what is stated in the attorney fees order . . . the record does not show that [Wife] reduced her bank

accounts by paying attorney fees.”

First, we note we are bound by the trial court’s remaining unchallenged findings. *See Kuttner*, 193 N.C. App. at 160, 666 S.E.2d at 885. This includes the trial court’s findings as to Wife’s “insufficient disposable income” and the disparity between the parties’ incomes. Therefore, we need only determine whether the trial court’s conclusion that “[Wife] is a dependent spouse, entitled to [alimony], and without sufficient means to defray the costs of this litigation” is supported by the unchallenged findings of fact. *See id.*

The trial court’s conclusion is supported by its findings of fact. Husband only challenged Wife’s depletion of her savings, not whether she had sufficient disposable income to pay her attorney’s fees. Although Husband does argue Wife’s income is greater than represented in the trial court’s orders, as addressed above, he does not challenge the court’s finding that this income, regardless of what the true value of her income is, is insufficient to pay the “attorney’s fees and expenses of \$101,277 to prosecute her alimony claim.” “While [Wife] is an individual of some means by contemporary standards, the law does not impose upon her the obligation to deplete her separate estate to meet the financial burdens imposed by this litigation.” *Clark v. Clark*, 301 N.C. 123, 137, 271 S.E.2d 58, 68 (1980).

The trial court’s unchallenged findings of fact establish that Wife, although of significant means, is still “without sufficient means to defray the costs of litigation[.]” particularly where Wife has accrued \$101,277 in fees prosecuting her claim for

alimony. As stated by the trial court, “[t]his is a complex alimony case” requiring Wife to prove Husband’s marital misconduct and waste of marital property; Husband is of even greater means than Wife; and “[Wife] does not have sufficient disposable income to pay her attorney’s fees.” Because Wife is a dependent spouse, entitled to alimony, and without sufficient means to pay her attorney’s fees, we affirm the Attorney’s Fees Order. *See Barrett*, 140 N.C. App. at 374, 536 S.E.2d at 646.

V. Conclusion

For the reasons above, the trial court did not err in determining Wife is entitled to alimony and did not abuse its discretion in awarding alimony of \$10,000 per month. The trial court considered the requisite factors for equitable distribution under North Carolina General Statute § 50-20(c) and did not abuse its discretion in unequally dividing the parties’ marital property. The trial court did not err in determining Wife is entitled to attorney’s fees. We affirm the trial court’s Alimony Order, Equitable Distribution Judgment, and Attorney’s Fees Order.

AFFIRMED.

Judges DILLON and GRIFFIN concur.

Report per Rule 30(e).