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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 22-647

Filed 18 July 2023

Catawba County, No. 20 CVD 1054

JAIRO CASTILLO MENDEZ, Plaintiff,

v.

MARIA CASTILLO MENDEZ, Defendant.

Appeal by Plaintiff from an order entered 29 December 2021 by Judge Robert A. Mullinax, Jr. in Catawba County District Court. Heard in the Court of Appeals 12 April 2023.

Arnold & Smith, PLLC, by Ashley A. Crowder, for the Plaintiff-Appellant.

No brief filed for Defendant-Appellee.

WOOD, Judge.

Plaintiff appeals from an order of child custody, child support and equitable distribution and argues that the trial court committed an abuse of discretion in making these determinations. Based on our reasoning below, we affirm in part and remand for a new trial on the issue of equitable distribution.

I. Factual and Procedural Background

Plaintiff and Defendant were married in 2013 and resided in Catawba County during their marriage. The parties have five children together, three daughters and two sons.¹ The parties separated on 26 March 2020, and on 8 April 2020, Plaintiff filed a complaint for child custody and child support, divorce from bed and board, and equitable distribution. Defendant was properly and timely served with the complaint.

Defendant subsequently filed a complaint for a domestic violence protection order. The trial court entered a domestic violence order of protection on behalf of Defendant and her five children against Plaintiff, on 26 May 2020 which was effective until 26 November 2020. The trial court found that Defendant observed slap marks and scratches on her children's faces, witnessed Plaintiff slap and throw, punch, and make derogatory remarks to his children, and had suffered acts of domestic violence committed by Plaintiff. On 15 June 2020, Defendant filed an Answer and Counterclaims for Equitable Distribution, and Child Custody; Motion for Emergency Child Custody; Motion for Psychological Evaluation; and Motion for Attorney's Fees.

Subsequently, on 28 August 2020, Plaintiff filed a Motion for Emergency Custody Order to Preserve Status Quo in order for the children to continue to live with Plaintiff. A temporary child custody hearing was held on 8 February 2021. The trial court entered an order on 29 March 2021 granting the parties joint temporary

¹ Pseudonyms have been used for the children in order to protect their identities.

legal custody of all five children. Primary physical custody of the female children was given to Defendant while primary physical custody of the male children was given to Plaintiff. In turn, the trial court granted the parent without primary custody alternating weekend visitation with the children.

On 29 July 2021, Defendant filed a motion for ex parte emergency custody, alleging that Plaintiff engaged in physical and sexual abuse of the minor children while in his care. Defendant made several specific allegations, and the trial court entered an order for ex parte emergency custody on 29 July 2021 granting Defendant temporary, exclusive physical and legal care, custody, and control of all five children and set a review hearing on 3 August 2021. On 3 August 2021, the trial court entered an order continuing the ex parte custody order. On 17 August 2021, a second order continuing the ex parte custody order was entered by the consent of both parties and a hearing was set for 7 September 2021. On 7 September 2021, a third order continuing the ex parte order was entered.

On 14 September 2021, another order was entered continuing the ex parte order due to an open DSS investigation and set a court date for 5 October 2021. On 5 October 2021, the parties entered into a Memorandum of Judgment/Order which granted the parties temporary joint legal custody of the two male children, provided Defendant primary physical custody of the two male children, subject to Plaintiff's visitation from Friday after school until Monday when school begins, and continued the ex parte order in effect as to the three female children. The Memorandum of

Judgment/Order also provided that Plaintiff “shall follow all recommendations as to the minor children’s doctor” and that the children are not to reside with or have contact with Plaintiff’s brother.

On 15 December 2021, a trial on the issues of child custody, child support and equitable distribution was held. At the hearing, Plaintiff, appearing *pro se*, testified that he and Defendant were married in 2013 and separated on 26 March 2020. Plaintiff explained that he lives with his sister and brother-in-law in a three-bedroom mobile home, and noted that during weekend visitations, his children sleep in his bedroom. Plaintiff testified that he is employed in remodeling homes, has worked in this position for two weeks, and works Monday through Friday, from 8 a.m. with no set finish time. Plaintiff testified that he is paid by the day and earns \$150.00 per day.

The trial court questioned Plaintiff while under oath about the 5 October 2021 Memorandum of Judgment/Order which granted Defendant temporary joint legal custody of their two sons, and visitation with her sons on alternating weekends. Plaintiff stated that he has followed this portion of the Memorandum. Plaintiff also testified that the Memorandum allowed an order prohibiting Defendant from having contact with his three daughters and confirmed that he has had no contact with his daughters since 5 October 2021. According to Plaintiff, he agreed to the Memorandum, and incidentally the temporary order, that prohibited his contact with

his daughters and prohibited his brother from having any contact with Plaintiff's children.

Defendant testified that since the children have come into her care, they have improved in their performance at school; she helps her children at home with their homework in the evenings and helps her children one at a time. Defendant stated that all of her children are attending therapy for post-traumatic stress disorder and separation anxiety and that attending therapy has helped the children with coping as well as progressing forward emotionally and psychologically.

Defendant testified that there have been incidents after weekend visitations with Plaintiff that have given her cause for concern. Defendant requested that the trial court grant her sole exclusive care, custody and control of her children "due to the ongoing injurious environment in which [she] believe[s] they live on [an] every other weekend schedule when they are with . . . [P]laintiff[.]" Defendant further testified that co-parenting with Plaintiff had been difficult because he tried to dictate what Defendant did at her home and what she fed the children.

When asked about her employment, Defendant stated that she works at Iredell County Detention Center as a supervisor, working a shift from 4 a.m. to 1 p.m., three or four days out of the week, and has served in this position for four months. Defendant is paid \$15.00 per hour and works forty hours per week. Defendant further explained that her partner can help provide care for the children when Defendant leaves for work early in the mornings.

At the hearing, the trial court orally made several findings of fact. The trial transcript reflects that the trial court took judicial notice of the parties' equitable distribution affidavits. The trial court read into the record the 5 October 2021 Memorandum of Judgment/Order entered into by the parties, and information about this case's previous court orders and hearings which were not entered as exhibits, elicited in the testimony of witnesses, or of which the trial court did not explicitly take judicial notice. The trial court entered a child custody, child support and equitable distribution order on 29 December 2021 which awarded legal and physical custody of the five minor children to Defendant; prohibited Plaintiff from any visitation with his three daughters; provided Plaintiff with visitation with his two sons on alternating Saturdays and Sundays from 9:00 a.m. to 5:00 p.m.; awarded Defendant child support in the amount of \$1,185.53 per month; divided the uninsured medical, dental, and vision expenses between the parties; and awarded Defendant a distributive award of \$5,000.00, as well as the children's baptismal outfits and the picture frame made by Defendant. Plaintiff filed a notice of appeal on 28 January 2022.

II. Analysis

On appeal, Plaintiff argues the trial court abused its discretion in making its child custody determination, the equitable distribution of the martial estate, and in calculating the parties' child support. We agree Plaintiff's argument regarding equitable distribution has merit but overrule Plaintiff's remaining arguments.

A. Child Custody

Plaintiff argues that the trial court abused its discretion when determining child custody because the “the trial court made extensive findings about DSS investigations and findings” with evidence that was not presented at trial. Rather, “this information was only available to the court at the temporary hearing and was not presented at the trial on permanent custody in either documentary evidence or testimonial evidence.” Plaintiff further argues that the trial court did not indicate it had taken judicial notice of prior pleadings, orders, or proceedings in the case. However, it is well settled that “[a] court may take judicial notice of its own prior proceedings.” *Georgia-Pacific Corp. v. Bondurant*, 81 N.C. App. 362, 367, 344 S.E.2d 302, 306 (1986) (citation omitted). Although Plaintiff argues the trial court impermissibly took several findings of fact from a motion for ex parte custody where no evidence supporting those allegations was presented, a careful review of the record reveals there was sufficient evidence presented at the hearing to support the trial court’s custody determination.

“In custody matters, the best interests of the child is the polar star by which the court must be guided.” *McRoy v. Hodges*, 160 N.C. App. 381, 386, 585 S.E.2d 441, 445 (2003). The findings in a custody order “bearing on the party’s fitness to have care, custody, and control of the child and the findings as to the best interests of the child must resolve all questions raised by the evidence pertaining thereto.” *In re Kowalzek*, 37 N.C. App. 364, 370, 246 S.E.2d 45, 48 (1978). These findings may

concern “physical, mental, or financial fitness or any other factors brought out by the evidence and relevant to the issue of the welfare of the child.” *Carpenter v. Carpenter*, 225 N.C. App. 269, 271, 737 S.E.2d 783, 785 (2013) (citation omitted).

“The custody order shall include sufficient findings of fact to support its conclusions of law concerning the best custody placement for the children.” *O’Connor v. Zelinske*, 193 N.C. App. 683, 687, 668 S.E.2d 615, 617 (2008). When reviewing a trial court’s decision, we “examine the trial court’s findings of fact to determine whether they are supported by substantial evidence.” *Shipman v. Shipman*, 357 N.C. 471, 474, 586 S.E.2d 250, 253 (2003). “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Id.* (quoting *State v. Smith*, 300 N.C. 71, 78-79, 265 S.E.2d 164, 169 (1980)). “In addition to evaluating whether a trial court’s findings of fact are supported by substantial evidence, this Court must determine if the trial court’s factual findings support its conclusions of law.” *Id.* at 475, 586 S.E.2d at 254. “[T]he findings of the trial judge regarding custody and support are conclusive when supported by competent evidence, is true even when the evidence is conflicting.” *Dixon v. Dixon*, 67 N. C. App. 73, 76, 312 S.E.2d 669, 671-72 (1984) (internal citations omitted). In our consideration of the trial court’s custody determination, “[a]bsent an abuse of discretion, the trial court’s decision in matters of child custody should not be upset on appeal.” *Everette v. Collins*, 176 N.C. App. 168, 171, 625 S.E.2d 796, 798 (2006) (citation omitted).

Plaintiff challenges several of the trial court’s findings of fact and argues that

“a review of the transcript and the exhibits entered by Defendant show that there was no testimony which tied any of these specific date references to any specific instance of alleged action by [Plaintiff].”

First, Plaintiff challenges finding of fact 11 which states: “On August 17, 2020 this Court ordered the Plaintiff to undergo a psychological evaluation. The Plaintiff failed to do so.” At the hearing, the transcript indicates that the trial court read portions of the 29 March 2021 temporary order of child custody into the court record. Before reading aloud this challenged finding, the trial court specifically referenced the temporary order by the following statement: “on March 29, 2021 this Court entered a temporary order of child custody with regards to the minor children” and proceeded to read aloud specific findings of the temporary order into the current record. The trial court’s oral recitation referenced the following earlier finding in the temporary order: “On August 17, 2020 this Court ordered the Plaintiff to undergo a psychological evaluation.” Addressing the remaining portion of the challenged finding, we note that the court record is absent of evidence verifying Plaintiff completed his psychological evaluation. The trial transcript further reveals that Plaintiff’s psychological evaluation was not presented to the trial court. Based upon the absence of the evaluation in the evidence, the trial court could reasonably presume that Plaintiff did not complete his evaluation. Therefore, this finding is supported by competent evidence and Plaintiff’s argument is overruled.

Next, Plaintiff contests finding of fact 12 which states: “On May 4, 2021, after

spending a weekend in the Plaintiff's home, the minor child, [Christine], was taken to Wilkes Medical Center, after informing a teacher that her arm hurt. [Christine] was diagnosed with a contusion of the left humerus." During the hearing, Defendant's trial counsel offered exhibit 2, a photograph of Christine with a bruise and scratch on her arm into evidence without objection from Plaintiff. Defendant testified that the photograph was taken after Christine returned from a visitation with Plaintiff on 24 May 2021. Additionally, Defendant's exhibit 15, a Wake Forest Baptist Medical Center medical report was admitted into evidence without objection. The medical report indicates that Christine was brought into the clinic by Defendant after the child's sibling stated that Plaintiff "struck the child in the left arm causing her to cry." The report, dated 24 May 2021, indicates that Christine suffered from a "contusion of left upper extremity, initial encounter." We disregard the reference to Christine informing a teacher that her arm hurt as this allegation is not supported by the record evidence and appears to be taken from the motion for ex parte emergency custody. Nonetheless, we conclude ample competent record evidence supports this finding. That the trial court inadvertently cited the wrong date for the child's injury is inconsequential.

Next, Plaintiff challenges finding of fact 13 which states: "On Sunday, July 4, 2021, the daughters returned from a weekend with [Plaintiff] with cockroaches coming out of the clothes they were wearing. The girls were covered in bug bites." There was sufficient evidence to support this finding as Defendant's exhibit 4, which

was admitted into evidence without objection, depicts a photograph taken by Defendant of a cockroach nestled in a pair of children's shorts. Further, the original photograph's date stamp indicates it was taken on 4 July 2021. At trial, Defendant provided testimony describing the photograph taken after Defendant discovered the cockroach in her daughter's shorts following a visit with Plaintiff.

Plaintiff next challenges finding of fact 14. The finding states: "On Friday, July 9, 2021, the parties' minor boys returned from the Plaintiff's home. The parties' youngest son had insect bites on his legs, left foot, right ear, right cheek, and back." At the hearing, Defendant testified about the allegations and entered into evidence Defendant's exhibit 6 depicting a bruise on top of her child's foot which resulted from "an allergic reaction he had when he got back from his dad's. They said it was a roach bite." Apart from this testimony and exhibit, there is insufficient evidence to tie the specific date reference to the alleged incident. Therefore, we overrule the portion of finding of fact 14 that references a specific date and mentions insect bites other than bites on the top of the child's foot.

Plaintiff also contends finding of fact 15 is not supported by competent evidence. Finding of fact 15 states: "On Sunday, July 18, 2021, the girls returned from a weekend at their father's home. On Monday, July 19, 2021, [Defendant] noticed in the corner of one of the girl's room a pair of size 6 underwear with blood in the crotch." At trial, Defendant provided testimony concerning a photograph of a bloodied child's underwear which was entered into evidence without objection.

Defendant testified that the underwear gave her great concern as her child came back from a visitation with Plaintiff with “bloody, unclean, soiled underwear.” At the hearing, Defendant offered exhibit 16, an in-home family services agreement, which was entered into evidence without objection. The agreement listed as behaviors of concern “recent sexual abuse reports from [Plaintiff] as the perpetrator.” Additionally, the agreement addressed the necessity for all involved parents to have “an understanding of safe and protective parenting” because “children have been placed with [Defendant] due to recent sexual abuse reports . . . [with Plaintiff] as the perpetrator.” Evidence in the record supports the portion of the finding discussing the appearance of the parties’ daughter’s bloodied underwear being discovered by Defendant after the daughter visited Plaintiff. Thus, Plaintiff’s argument is overruled.

Plaintiff challenges finding of fact 16 which states: “[O]n Monday, July 26, 2021, the girls informed [Defendant] that if they do not feed [Plaintiff’s] goats and chickens, that he would lock them in their room” because no testimony was elicited at the hearing nor exhibits entered into evidence to support this finding. We agree. Finding of fact 16 is overruled.

Next, Plaintiff challenges finding of fact 28 which states:

In July 2021, a report was made to [DSS] with allegations that minor children were being abused and neglected while in their father’s care. The Department completed [an] in-home services agreement. It described recent sexual abuse reports with the Plaintiff as the perpetrator. [DSS] agreed

to continue to provide counseling services for the children and resources to [Defendant]. In home family services agreement recorded an objective to allow [Defendant] to understand how to be a safe and protective parent with an ongoing parenting plan. No mention is made of [Plaintiff] in the in-home family services agreement.

Plaintiff's contention with finding of fact 28 appears to be challenging Defendant's testimony where she stated that the safety plan gave her "the care, custody and control of the kids" because Plaintiff was unsafe. While Defendant's testimony may arguably have mischaracterized exhibit 16, other evidence was presented sufficient to support the trial court's finding concerning the agreement.

The in-home services agreement described recent sexual abuse reports with Plaintiff as the perpetrator, stated that DSS would continue to provide counseling services for the children and additional resources to their mother, and listed as an objective that Defendant would learn how to be a safe and protective parent. Most notably, Plaintiff was not listed in the agreement. Therefore, Plaintiff's argument is overruled.

Finally, Plaintiff challenges finding of fact 31 which states:

As found herein the Defendant has demonstrated by clear, cogent and convincing evidence that the Plaintiff's inability to provide the basic necessities of life for his children, such as appropriate clean, living quarters as well as his inability to ensure the safety and sanitation of his minor daughters, renders him unfit to exercise the constitutionally protected status of one who is a biological parent to a child such that he has waived any such privilege.

Although Plaintiff's brief states that "[t]his finding is accurate," he argues "there was

not clear, cogent, and convincing evidence presented by Defendant.” He contends Defendant “could not identify the children in the photos, could not provide dates and proper authentication of the photographs,” did not produce evidence of recommendations from DSS that Plaintiff stay away from the minor children, and there was no evidence of any criminal prosecutions brought against Plaintiff. Thus, Plaintiff argues we should overrule this finding. We disagree.

Although some of the trial court’s findings appear to be taken from Defendant’s motion for ex parte custody and evidence regarding the allegations in the motion was not produced at the hearing and are hereby overruled, the remaining findings of the trial court are based upon sufficient evidence to support the trial court’s conclusion that Plaintiff is unfit to exercise his status as a biological parent to his children such that he has waived any such privilege. The evidence introduced at the hearing demonstrates that Plaintiff was unable to provide the basic necessities for his children. In addition to the testimony of Defendant, several exhibits were admitted into the record, without objection by Plaintiff, demonstrating injuries sustained by the parties’ children while in the care of their father.

Additionally, the trial court admitted into evidence a photograph taken of a pair of children’s shorts with a cockroach nestled inside after spending a weekend with her father. Similarly, the trial court admitted a photograph of a child’s bruised foot, indicating that the child had an allergic reaction from being bit by cockroaches, again, after a weekend visitation with Plaintiff. Based upon the exhibits entered into

the record, without objection from Plaintiff, the children's psychological records indicate that Plaintiff's daughters sustained sexual abuse by Plaintiff as well as the paternal uncle in the presence of Plaintiff. The psychological reports further indicated that the daughters recounted stories of being beaten by their father with his hands, a belt, and a shoe. Therefore, we conclude this finding of fact is supported by the competent evidence in the record.

B. Equitable Distribution

Next, Plaintiff challenges the trial court's distribution of the marital estate and argues that the trial court abused its discretion in its determination of the value and distribution of the marital property. Plaintiff argues the trial court did not provide an adequate identification, valuation, and distribution of the parties' property, did not refute the presumption of an in-kind distribution, and did not provide any findings about the liquid assets of Plaintiff's availability to pay a distributive award to Defendant. We agree.

Equitable distribution is governed by N.C. Gen. Stat. § 50-20, which requires the trial court to conduct a three-step process: "(1) classify property as being marital, divisible, or separate property; (2) calculate the net value of the marital and divisible property; and (3) distribute equitably the marital and divisible property." *Finney v. Finney*, 225 N.C. App. 13, 15, 736 S.E.2d 639, 641 (2013) (citation omitted). "Only a finding that the judgment was unsupported by reason and could not have been a result of a competent inquiry, or a finding that the trial judge failed to comply with

the statute N.C. [Gen. Stat.] § 50-20(c), will establish an abuse of discretion.” *Simon v. Simon*, 231 N.C. App. 76, 79, 417 S.E.2d 449, 451 (2013) (citation omitted). In valuing property, “the trial court is required to make specific findings of fact, based on competent evidence, to support its conclusions.” *Pott v. Pott*, 126 N.C. App. 285, 291, 454 S.E.2d 822, 827 (1997) (citation omitted). “Thus, the Act mandates a complete listing of marital property, and an order that fails to do so is fatally defective.” *Little v. Little*, 74 N.C. App. 12, 17, 372 S.E.2d 283, 288 (1985). “A distribution order failing to list all the marital property is fatally defective, and, further, marital property may not be identified by implication.” *Cornelius v. Cornelius*, 87 N.C. App. 269, 271, 360 S.E.2d 703, 704 (1987) (citation omitted). On appeal, we look to “whether there was competent evidence to support the trial court’s findings of fact and whether those findings of fact supported its conclusions of law.” *Casella v. Alden*, 200 N.C. App. 24, 28, 682 S.E.2d 455, 459 (2009) (citation omitted).

In cases where the trial court “determines that the presumption of an in-kind distribution has been rebutted, it must make findings of fact and conclusions of law in support of that determination.” *Urciolo v. Urciolo*, 166 N.C. App. 504, 507, 601 S.E.2d 905, 908 (2004) (citation omitted). “The judgment of equitable distribution must contain a finding of fact, supported by evidence in the record, that the presumption in favor of an in-kind distribution has been rebutted.” *Allen v. Allen*, 168 N.C. App. 368, 373, 607 S.E.2d 331, 334 (2005) (citation omitted).

In those cases, where a party “is ordered to pay the distributive award from a

non-liquid asset or by obtaining a loan, the equitable distribution award must be recalculated to take into account any adverse financial ramifications such as adverse tax consequences.” *Embler v. Embler*, 159 N.C. App. 186, 188-89, 582 S.E.2d 628, 630 (2003). Further, the trial court is “required to make findings as to whether the defendant has sufficient liquid assets from which he can make the distributive award payment.” *Sauls v. Sauls*, 236 N.C. App. 371, 375, 763 S.E.2d 328, 331 (2014) (citation omitted).

In its determination of equitable distribution, the trial court made two specific findings:

36. The parties have accumulated certain household goods after their marriage and prior to their separation that existed on the date of separation. Each of those items [are] in the Plaintiff’s possession. They have a net fair market value on the day of the parties’ separation of \$10,000.00. There existed four baptismal outfits for the children on the day of the parties’ separation as well as pictures made of the parties’ daughter.

37. The Court finds that an in-kind distribution of marital property is not practical and presumption toward the same has been rebutted. An equal distribution of marital property is equitable [as] to effectuate the equal distribution of marital property would require a \$5,000.00 distributive award to be paid to the Defendant by the Plaintiff.

Plaintiff argues that these “two findings are not supported by the evidence, much less supported by competent evidence” because the “order fails to follow the directives of *Little* and *Cornelius*, in that there is no listing of the marital property.” We agree.

The trial court used the vague term “certain household goods” to identify marital property which serves as an implication instead of a complete listing of marital property. While the trial court took judicial notice of Defendant’s affidavit filed on 5 August 2021 which listed a select few items of property, the majority of those items were not outlined in the trial court’s order. The trial court improperly identified what constituted marital property, and also improperly calculated the value of the items in question. The record indicates that the judicially noticed affidavit did not contain any values for the property, instead all items identified on the affidavit contained “TBD” in the value column. The calculation of the total amount of marital property came from Defendant’s testimony at the hearing, in which she estimated the value of the marital property to be “roughly \$10,000.” Based upon the other items listed in the affidavit, such as a Dodge Caravan, Honda Civic, Chevrolet Suburban, “cash on hand,” a checking account, and household furniture with no valuation provided, the record before the trial court showed that there were additional items of marital property that needed to be identified, valued and distributed pursuant to N.C. Gen. Stat. § 50-20.

Additionally, the trial court did not comply with N.C. Gen. Stat. § 50-20 in its distribution of the marital property. According to the order, the trial court awarded a distributive award to Defendant because the court found that “an in-kind distribution of marital property is not practical and presumption toward the same has been rebutted.” Yet, the trial court did not provide any findings as to how the

presumption was rebutted or the ability of Plaintiff to pay the contribution amount as required by *Sauls* and *Urciolo*. See *Sauls* 236 N.C. App. at 375, 763 N.C. App. at 331; *Urciolo*, 166 N.C. App. at 507, 601 S.E.2d at 908. Instead, the actual assets that were distributed were simply “household goods and furniture” with no mention of liquid assets or funds with which to satisfy this distributive award payment.

Most notably, the record evidence does not reflect the impossibility or impracticability of an in-kind distribution of the marital estate, so as to rebut the presumption of an in-kind distribution. The trial transcript demonstrates that the trial court failed to make sufficient findings as to the items making up the marital estate and marital property. The lack of identification and valuation of the marital property between the parties prevented the trial court from appropriately distributing the assets, much less providing a rebuttal of an in-kind distribution. Accordingly, there is insufficient evidence to support the trial court’s findings and determination of equitable distribution, such that this portion of the trial court’s order must be vacated and remanded.

C. Child Support

Finally, Plaintiff argues that the trial court abused its discretion in calculating Plaintiff’s child support obligation due to the court’s error in the child custody determination. Plaintiff does not challenge any of the trial court’s findings regarding child support but instead assumes “arguendo that [if] the custody decision is vacated and remanded, the child support would necessarily need to be recalculated to reflect

the appropriate worksheet based on the custodial schedule.” While this general principle is true, because we hold the trial court did not abuse its discretion in the child custody determination of the parties’ five children, there is no requirement for the child support to be recalculated. As we accord substantial deference to the trial court in entering the child support order, we hold the trial court did not abuse its discretion in setting the amount of the award. *Trevillian v. Trevillian*, 164 N.C. App. 223, 226, 595 S.E.2d 206, 208 (2004).

III. Conclusion

For the foregoing reasons, we affirm the trial court’s child custody and child support order. Because the trial court did not identify, properly value, and properly distribute the marital property, we vacate the trial court’s equitable distribution award and remand for further proceedings on the issue of equitable distribution.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.

Judges GORE and STADING concur.

Report per Rule 30(e).