

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-950

Filed 20 August 2024

Wake County, No. 20 CVD 7284

CALISTA INMAN REISS, Plaintiff,

v.

LOREN BLAIR REISS, Defendant.

Appeal by defendant from order entered 13 March 2023 by Judge J. Brian Ratledge in Wake County District Court. Heard in the Court of Appeals 11 June 2024.

Smith Debnam Narron Drake Saintsing & Myers, L.L.P., by Alicia Journey, for plaintiff-appellee.

Rik Lovett & Associates, by S. Thomas Currin II, for defendant-appellant.

ZACHARY, Judge.

Defendant Loren Blair Reiss appeals from the trial court's order awarding alimony to Plaintiff Calista Inman Reiss, his former spouse. After careful review, we dismiss Defendant's appeal.

I. Background

Defendant and Plaintiff were married in 1994, and thereafter, two children were born of the marriage. Plaintiff stayed home full-time to raise the children while

Defendant worked outside the home as an engineer. In 2019, the parties separated.

On 2 July 2020, Plaintiff filed a complaint for equitable distribution, postseparation support, alimony, absolute divorce, and attorney's fees. On 19 November 2020, Defendant filed an answer and counterclaim, which he amended on 23 December 2020. On 15 January 2021, Plaintiff filed a reply to Defendant's amended answer and counterclaim.

After a hearing on 4 March 2021, the trial court entered an order on 23 April 2021 that, *inter alia*, resolved the claim for postseparation support. The trial court found that Plaintiff is an "actually substantially dependent" spouse, and that Defendant is a supporting spouse. Accordingly, the trial court ordered Defendant to pay Plaintiff \$5,500.00 per month in postseparation support. The trial court also ordered that Defendant transfer to Plaintiff an interim distribution of \$200,000.00 and pay Plaintiff's attorney's fees.

On 18 June 2021, the parties obtained an absolute divorce. The parties settled the equitable distribution claims, and on 22 October 2021, the trial court entered a consent equitable distribution judgment and order.

On 19 December 2022, Plaintiff's claim for alimony came on for hearing. At the close of Plaintiff's evidence, Defendant moved for an involuntary dismissal, *see* N.C. Gen. Stat. § 1A-1, Rule 41(b) (2023), arguing that Plaintiff had not presented sufficient evidence of his present income and expenses. The trial court denied Defendant's motion to dismiss. Defendant then presented his case-in-chief.

On 13 March 2023, the trial court entered an order awarding Plaintiff alimony and attorney’s fees. The trial court again found that Plaintiff “is and has been actually substantially dependent upon Defendant for her maintenance and support,” and that Defendant is a supporting spouse. Accordingly, and upon extensive findings of fact, the trial court ordered Defendant to pay Plaintiff \$5,500.00 per month for one year and eight months, then \$3,000.00 per month for six years and four months, and then \$1,000.00 per month for four years. Defendant filed timely notice of appeal.

II. Discussion

Defendant’s only argument on appeal is that the trial court erred by failing to grant his motion for involuntary dismissal at the close of Plaintiff’s evidence. However, as explained below, Defendant waived appellate review of this proposed issue by presenting his own evidence after the trial court denied his motion. Accordingly, we must dismiss his appeal.

A. Standard of Review

In an alimony case, the trial court is tasked by statute with “two separate inquiries.” *Madar v. Madar*, 275 N.C. App. 600, 604, 853 S.E.2d 916, 921 (2020) (citation omitted). The trial court’s first determination—whether a party is entitled to alimony—is reviewed de novo. *Id.* “If the trial court determines that a party is entitled to alimony, then a second determination is made as to the amount of alimony to be awarded, which we review for abuse of discretion.” *Id.* “A trial court abuses its discretion when it renders a decision that is manifestly unsupported by reason or one

so arbitrary that it could not have been the result of a reasoned decision.” *Shirey v. Shirey*, 267 N.C. App. 554, 560, 833 S.E.2d 820, 825 (2019) (cleaned up), *disc. review denied*, 376 N.C. 675, 853 S.E.2d 159 (2021).

“When the trial court sits without a jury, the standard of review on appeal is whether there was competent evidence to support the trial court’s findings of fact and whether its conclusions of law were proper in light of such facts.” *Groseclose v. Groseclose*, 291 N.C. App. 409, 412, 896 S.E.2d 155, 159 (2023) (citation omitted). “When the trial judge is authorized to find the facts, its findings, if supported by competent evidence, will not be disturbed on appeal despite the existence of evidence which would sustain contrary findings.” *Id.* (cleaned up). “Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal.” *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

B. Analysis

The sole issue raised by Defendant on appeal is whether the trial court erred by failing to grant his motion for involuntary dismissal pursuant to Rule 41(b), made at the close of Plaintiff’s evidence. *See* N.C. Gen. Stat. § 1A-1, Rule 41(b) (“After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief.”).

Here, Defendant made his motion at the close of Plaintiff's evidence, at which time the trial court denied the motion. However, "Defendant then presented evidence of [his] own to the court. By doing so, [he] waived the right to have reviewed on appeal the question whether [his] motion made at the close of [P]laintiff's evidence was erroneously denied." *Mayo v. Mayo*, 73 N.C. App. 406, 409, 326 S.E.2d 283, 285 (1985); *see also Karger v. Wood*, 174 N.C. App. 703, 706, 622 S.E.2d 197, 200 (2005) ("[B]y presenting evidence, [the] defendant waived his right to appeal the denial of his motion to dismiss made at the close of [the] plaintiff's evidence."), *appeal withdrawn*, 360 N.C. 481, 630 S.E.2d 665 (2006).

Although the partial transcript included in the record on appeal ends after the trial court denied Defendant's motion, it is otherwise evident that Defendant presented evidence in his case-in-chief. The trial court reported in its alimony order that "[i]n addition to the parties and other witnesses heard by the [c]ourt, the [c]ourt received testimony from . . . a Certified Financial Planner, who testified as an expert in Defendant's case[-]in[-]chief regarding Plaintiff." In addition, the appellate record contains several of Defendant's documentary exhibits, which were introduced during Defendant's case-in-chief. Finally, the trial court made voluminous findings concerning the evidence presented in Defendant's case-in-chief, including determinations of the relative credibility of both Defendant and his expert witness and findings regarding Defendant's documentary exhibits.

Because Defendant elected to introduce evidence after the trial court denied

his Rule 41(b) motion to dismiss, Defendant waived appellate review of the question of whether the trial court erroneously denied his motion. *See Mayo*, 73 N.C. App. at 409, 326 S.E.2d at 285. Accordingly, Defendant's contention here is not properly before this Court.

III. Conclusion

For the foregoing reasons, Defendant's appeal is dismissed.

DISMISSED.

Judges COLLINS and GRIFFIN concur.

Report per Rule 30(e).