

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA24-37

Filed 1 October 2024

Wake County, No. 21CVD16904

MICHAEL SALYER, Plaintiff,

v.

MARIAN SALYER, Defendant.

Appeal by defendant from order entered 28 April 2023 by Judge Damion L. McCullers in Wake County District Court. Heard in the Court of Appeals 14 August 2024.

*McKnight Law, PLLC, by John McKnight and Lucas Helton, for plaintiff-appellee.*

*Sandlin Family Law Group, by Rachel Goodling and Susan Goetcheus, for defendant-appellant.*

FLOOD, Judge.

Defendant Marian Salyer appeals from an order of the trial court arguing the court erred in setting the amount of alimony, denying an award of attorney's fees, and classifying and distributing the marital estate without making sufficient findings of fact. Upon careful review, we vacate and remand for further findings of fact.

**I. Factual and Procedural Background**

Defendant and Plaintiff Michael Salyer were married on 18 May 1990 and separated after thirty years on 20 July 2020. Early in their marriage, Defendant used her teaching salary to pay for Plaintiff's graduate education. Once Plaintiff graduated, Defendant became a stay-at-home mother to their four children while Plaintiff worked. All four children reached the age of majority before entry of the challenged order, but Defendant never returned to the workforce, claiming she suffers from multiple physical and mental health ailments. Plaintiff works as a commercial education manager at Caris Life Sciences, and in the past, Plaintiff occasionally drove for DoorDash, Inc. During their marriage, the parties enjoyed a comfortable standard of living including taking various trips to Disney World in Florida and a few international trips, frequently dining out, and contributing up to ten percent of their net income to their church.

Plaintiff filed for absolute divorce on 21 December 2021. Defendant filed an answer and counterclaims for alimony, attorney's fees, and equitable distribution. Plaintiff filed a reply on 7 June 2022. Subsequently, the parties filed other motions not relevant here on appeal.

A hearing was held on 22 and 23 March 2023 for Defendant's claims of alimony, attorney's fees, equitable distribution, and other claims. The trial court entered an order on 28 April 2023 granting Defendant alimony, denying an award of attorney's fees, and classifying and distributing the marital estate.

The trial court found Defendant's actual monthly expenses could not be ascertained due to conflicting evidence regarding her actual needs and her spending habits. Nor could the trial court make a finding as to Defendant's monthly income; it found only that Defendant had the ability to sell secondhand items for profit. The trial court found that Plaintiff's monthly expenses totaled around \$8,432.34, which included paying for Defendant's "rent, cable, telephone, auto insurance bills, and paying off marital credit card balances." The trial court found Plaintiff's net income from Caris Life Sciences to be \$8,741.12 per month, and Plaintiff's total net income to be \$9,249 per month, combining both his career income and income gained from his occasional work driving for DoorDash, Inc. Based on these findings, among others, the trial court ordered Plaintiff to pay Defendant alimony in "the amount of \$2,900" per month until April 2035 or until certain conditions occurred prior to that date. Because Plaintiff financially supported Defendant and had previously given Defendant additional money for legal counsel in the amount of \$5,000, the trial court denied Defendant an award of attorney's fees. Regarding the marital estate, the trial court found the distribution of the marital estate should be unequal, and further, found several credit card debts to be marital debts.

During trial, Defendant presented evidence that Plaintiff may have engaged in illicit sexual behavior during the time of the parties' marriage. Defendant testified she had learned Plaintiff shared a hotel room and bed with another woman on a work trip during the parties' marriage. Defendant further testified, and video evidence

showed, that Plaintiff visited the woman's home after Defendant asked Plaintiff to stop seeing her. The trial court, however, made no findings of fact regarding the alleged affair.

Defendant timely appealed the order on 26 May 2023.

## **II. Jurisdiction**

This Court has jurisdiction to review this appeal from a final judgment pursuant to N.C. Gen. Stat. § 7A-27(b) (2023).

## **III. Analysis**

On appeal, Defendant argues the trial court erred in its failure to make sufficient findings of fact when: (A) setting the amount and duration of alimony without addressing several factors under N.C. Gen. Stat. § 50-16.3A; (B) denying Defendant an award of attorney's fees under N.C. Gen. Stat. § 50-16.4; and (C) classifying and distributing the marital estate under N.C. Gen. Stat. § 50-20.

Upon a thorough review of the Record, we conclude the trial court failed to make sufficient findings of fact to support its order on alimony, attorney's fees, and equitable distribution of the marital estate. We address each argument, in turn.

### **A. Alimony**

Defendant first contends the trial court erred in awarding her alimony of \$2,900 per month because it failed to make findings of fact regarding several factors under N.C. Gen. Stat. § 50-16.3A(b), upon which evidence was presented at trial. We agree.

“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.” *Brady v. Brady*, 282 N.C. App. 420, 429, 871 S.E.2d 565, 572 (2022) (citation omitted). The trial court’s “findings of fact are conclusive if they are supported by any competent evidence from the record.” *Id.* at 429, 871 S.E.2d at 572 (citation omitted). “Competent evidence is evidence that a reasonable mind might accept as adequate to support the finding.” *In re Adams*, 204 N.C. App. 318, 321, 693 S.E.2d 705 (2010) (quotation marks and citation omitted).

This Court reviews a trial court’s award of alimony for abuse of discretion. *Brady*, 282 N.C. App. at 423, 871 S.E.2d at 569. “A trial court may be reversed for abuse of discretion only upon a showing that its actions are manifestly unsupported by reason . . . [or] upon a showing that [the trial court’s decision] was so arbitrary that it could not have been the result of a reasoned decision.” *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985).

Under N.C. Gen. Stat. § 50-16.3A(a), “[t]he 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” N.C. Gen. Stat. § 50-16.3A(b) (2023). N.C. Gen. Stat. § 50-16.3A(b) provides that when determining an award of alimony,

the [trial] court *shall* consider all relevant factors including, *inter alia*, the following: marital misconduct of either spouse; the relative earnings and earning capacities of the spouses; the ages of the spouses; the amount and sources of earned and unearned income of both spouses; the duration of the marriage; the extent to which the earning power, expenses, or financial obligations of a spouse are affected by the spouse's serving as custodian of a minor child; the standard of living of the spouses during the marriage; the assets, liabilities, and debt service requirements of the spouses, including legal obligations of support; and the relative needs of the spouses.

*Hartsell v. Hartsell*, 189 N.C. App. 65, 69, 657 S.E.2d 724, 727 (2008) (reciting factors listed in N.C. Gen. Stat. § 50-16.3A(b) (2007)) (emphasis added).

N.C. Gen. Stat. § 50-16.3A(c) requires the trial court to “set forth . . . the reasons for its amount, duration, and manner of payment” if making an award of alimony, and the trial 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) (2023).

Because this Court “does not rely on speculation[,]” the trial court “must make sufficient findings to allow this Court to perform a meaningful review.” *Wise v. Wise*, 264 N.C. App. 735, 750, 826 S.E.2d 788, 799 (2019); *see also Rhew v. Rhew*, 138 N.C. App. 467, 470, 531 S.E.2d 471, 473 (2000) (“The trial court must . . . make findings sufficiently specific to indicate that the trial judge properly considered each of the factors . . . . In the absence of such findings, appellate courts cannot appropriately determine whether the order . . . is adequately supported by competent evidence, and

. . . [the] order must be vacated[,] and the case remanded for necessary findings.”  
(citations omitted)).

Defendant asserts the trial court erred in its findings regarding the following  
statutory factors under N.C. Gen. Stat. § 50-16.3A(b):

- (1) The marital misconduct of either of the spouses[];
- (2) The relative earnings and earning capacities of the spouses;
- (3) The ages and the physical, mental, and emotional conditions of the spouses;  
. . . .
- (6) The contribution by one spouse to the education, training, or increased earning power of the other spouse;  
. . . .
- (8) The standard of living of the spouses established during the marriage;  
. . . .
- (13) The relative needs of the spouses[.]

N.C. Gen. Stat. § 50-16.3A(b).

With regard to marital misconduct, Defendant argues the trial court failed to consider Plaintiff’s alleged affair. Although Defendant’s testimony suggests Plaintiff had an affair during the marriage, the trial court failed to make any findings of fact regarding the evidence of potential marital misconduct presented as required under N.C. Gen. Stat. § 50-16.3A(b)(1). Accordingly, we vacate the award of alimony and remand for further findings of fact regarding the issue of marital misconduct. *See*

N.C. Gen. Stat. § 50-16.3A(c).

Next, Defendant contends the trial court did not make sufficient findings of fact regarding the earnings and earning capacities of the spouses. The trial court made the following findings of fact regarding Defendant's earnings and earning capacities:

36. Defendant testified she has no expectation of returning to the work force due to severe health problems.

. . . .

40. Defendant received several monthly member deposits and Venmo deposits into her personal checking account, but she testified she could not remember where the deposits came from.

41. The [trial c]ourt considered these deposits as income to meet Defendant's monthly needs.

42. Defendant testified she has the ability to sell secondhand items for profit.

It is unclear from the trial court's order why it considered the various deposits as Defendant's income, nor is it clear what amount Defendant is earning from these deposits. Additionally, Plaintiff testified to earning bonuses, but the trial court failed to consider and include any bonuses as part of Plaintiff's income. Accordingly, we vacate the award of alimony and remand for further findings of fact regarding the earnings and earning capacities of the parties. *See* N.C. Gen. Stat. § 50-16.3A(c).

Next, Defendant contends the trial court failed to make sufficient findings of fact regarding the ages and the physical, mental, and emotional conditions of the

SALYER V. SALYER

*Opinion of the Court*

spouses. The only finding of fact regarding this factor is Finding of Fact 36, which states that Defendant testified “she has no expectation of returning to the work force due to severe health problems.” This is not a proper finding of fact, but rather a mere recitation of testimony. *See Lane v. Am. Nat’l Can Co.*, 181 N.C. App. 527, 531, 640 S.E.2d 732, 735 (2007), *disc. rev. denied*, 363 N.C. 654, 685 S.E.2d 103 (2009) (“This Court has long held that findings of fact must be more than a mere summarization or recitation of the evidence[.]”). The trial court made no findings as to the parties’ ages or health. Because the trial court is required to make a finding of fact on these factors when evidence is presented for them, we vacate and remand for further findings of fact regarding “the ages and the physical, mental, and emotional conditions of the spouses.” *See* N.C. Gen. Stat. § 50-16.3A(c).

Defendant next contends the trial court failed to consider one spouse’s contribution to the other spouse’s education and increased earning power. During trial, Defendant presented evidence that she used her teaching salary to help pay for Plaintiff’s graduate tuition. Defendant then testified that she remained a stay-at-home mother while Plaintiff went into the workforce. The trial court made no findings of fact on this factor. Because the trial court is required to make a finding of fact regarding one spouse’s contribution to the other spouse’s education and increased earning power when evidence is presented for it, we vacate and remand for further findings of fact regarding one spouse’s contribution to the other spouse’s education and increased earning power. *See* N.C. Gen. Stat. § 50-16.3A(c).

Defendant next contends the trial court failed to make sufficient findings of fact regarding “the standard of living of the spouses established during the marriage.” During trial, evidence was presented that the parties enjoyed several yearly trips to Disney World, had taken a few international trips, frequently dined out, and contributed up to ten percent of their net income to their church. Despite this evidence being presented, the trial court made no findings of fact as to the standard of living. Thus, we vacate and remand the alimony award for further findings of fact regarding the standard of living. *See* N.C. Gen. Stat. § 50-16.3A(c).

Lastly, Defendant contends the trial court failed to make sufficient findings of fact concerning the needs of the parties. The trial court made the following findings of fact regarding the needs of the parties:

26. [Plaintiff’s average monthly expenses are \$8,432.34.

27. Plaintiff’s average monthly expenses include expenses paid on behalf of Defendant, including her rent, cable, telephone, auto insurance bills, and paying off marital credit card balances.

.....

50. Defendant’s entries in her Financial Affidavit are inconsistent with her testimony regarding her spending habits, and it is unclear what Defendant’s present actual monthly needs are.

51. There was no clear evidence presented as to what Defendant’s present actual monthly needs are.

52. Defendant testified her monthly income or ability to earn an income is insufficient to meet her monthly needs.

Although the trial court ordered Plaintiff pay \$2,900 to Defendant in alimony each month until April 2035 or until certain conditions occurred prior to that date, the trial court never found that Defendant had monthly expenses in the amount of \$2,900. The trial court, instead, found that it is unclear “what Defendant’s present actual monthly needs are.” The trial court, thus, failed to set forth the reasons for the amount and duration of alimony as required by N.C. Gen. Stat. § 50-16.3A. We therefore also vacate and remand the alimony award for further findings of fact as to the issue of the parties’ needs. *See* N.C. Gen. Stat. § 50-16.3A(c).

Accordingly, we vacate the alimony award and remand the matter to the trial court to make the findings of fact as required by N.C. Gen. Stat. § 50-16.3A and to determine an alimony award supported by the findings.

### **B. Attorney’s Fees**

Defendant contends the trial court erred in denying Defendant an award of attorney’s fees under N.C. Gen. Stat. § 50-16.4. Specifically, Defendant argues the trial court failed to make sufficient findings of fact regarding Defendant’s ability to defray the costs of litigation. We agree.

“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.” *Barrett v. Barrett*, 140 N.C. App. 369, 374, 536 S.E.2d 642, 646 (2000); *see also* N.C. Gen. Stat. § 50-16.4 (2023) (“At any time that a dependent spouse would be entitled to alimony

. . . the court may . . . enter an order for reasonable counsel fees, to be paid and secured by the supporting spouse.”). The trial court must make a finding as to all three elements. *See Friend-Novorska v. Novorska*, 143 N.C. App. 387, 397, 545 S.E.2d 788, 795, *aff’d*, 354 N.C. 564, 556 S.E.2d 294 (2001) (reversing and remanding the trial court’s denial of attorney’s fees after the trial court failed to find whether the plaintiff could defray the litigation costs).

“Entitlement, i.e., the satisfaction of these three requirements, is a question of law, fully reviewable on appeal.” *Barrett*, 140 N.C. App. at 374, 536 S.E.2d at 646. Once a spouse is entitled to an award of attorney’s fees, this Court will then review the amount of fees awarded. *Id.* at 375, 536 S.E.2d at 647. “The amount awarded will not be overturned on appeal absent an abuse of discretion.” *Id.* at 375, 536 S.E.2d at 647.

Here, while the trial court found that Defendant was a dependent spouse and was entitled to an award of alimony, the trial court did not make a finding of fact as to whether Defendant had the means to defray the costs of litigation. The only relevant findings the trial court made were that Plaintiff “transferred \$5,000 to Defendant . . . for her to retain counsel[,]” and “[the trial c]ourt consider[ed] Plaintiff’s continued financial support to Defendant since the date of separation in denying Defendant’s claims for . . . [a]ttorney’s [f]ees.” These findings are insufficient under our case law. *See Friend-Novorska*, 143 N.C. App. at 397, 545 S.E.2d at 795. The trial court failed to find whether Defendant had the ability to defray the costs of

litigation. *See id.* at 397, 545 S.E.2d at 795.

Because the trial court failed to find whether Defendant had the ability to defray litigation costs before concluding she was not entitled to attorney's fees, we vacate and remand for further findings of fact on this matter and for an order awarding or denying Defendant attorney's fees supported by the findings. *See id.* at 397, 545 S.E.2d at 795.

### **C. Equitable Distribution**

Finally, Defendant argues the trial court erred in its classification and distribution of the marital estate under N.C. Gen. Stat. § 50-20. Specifically, Defendant argues the trial court: (1) failed to make sufficient findings of fact regarding several statutory equitable distribution factors under N.C. Gen. Stat. § 50-20(c), upon which evidence was presented at trial; (2) erroneously concluded that multiple debts were marital without sufficient findings to support its conclusion under N.C. Gen. Stat. § 50-20(b)(1); and (3) failed to “distribute passive gains on [Plaintiff's] Merz 401(k), while erroneously distributing [Plaintiff's] active depreciation on multiple retirement accounts” under N.C. Gen. Stat. § 50-20(b)(4)(d). We agree.

As with a trial court's award of alimony, this Court reviews for abuse of discretion a trial court's order for equitable distribution. *See Brady*, 282 N.C. App. at 429, 871 S.E.2d at 572. A trial court's determination “as to whether property is marital or separate . . . will not be disturbed on appeal if there is competent evidence

to support the findings.” *Warren v. Warren*, 241 N.C. App. 634, 636, 773 S.E.2d 135, 137 (2015) (citation omitted).

“In equitable distribution actions[,] the trial court is required to classify, value and distribute, if marital, the debts of the parties to the marriage.” *Id.* at 636, 773 S.E.2d at 137 (citation omitted). “N.C. Gen. Stat. § 50-20(j) mandates that written findings of fact be made in any order for the equitable distribution of marital property made pursuant to [the factors under] N.C. Gen. Stat. § 50-20.” *Brady*, 282 N.C. App. at 429, 871 S.E.2d at 572 (citation and internal quotation marks omitted).

#### 1. Findings of Fact

Defendant first contends the trial court failed to make sufficient findings of fact regarding several statutory equitable distribution factors under N.C. Gen. Stat. § 50-20(c). Specifically, Defendant argues the trial court failed to make sufficient findings of fact regarding the “duration of the marriage” and “the age and physical and mental health of both parties” factors, and Defendant’s contribution to Plaintiff’s career and as a homemaker. We agree.

Because the “duration of the marriage” and “the age and physical and mental health of both parties” and Defendant’s contribution to Plaintiff’s career and as a homemaker are each factors under the alimony statutory factors and the equitable distribution statute, per the relevant law delineated above in section A, the trial court erred in failing to make findings of fact regarding these factors where evidence was presented for them. *See* N.C. Gen. Stat. § 50-16.3A; *see also* N.C. Gen. Stat. § 50-20.

2. Distribution of Marital Debts

Next, Defendant contends the trial court erroneously concluded that multiple debts were marital without sufficient findings of fact to support this conclusion under N.C. Gen. Stat. § 50-20(b)(1).

The trial court made the following findings of fact regarding marital debts:

68. Plaintiff testified that certain credit cards, namely the State Employees' Credit Union #2953, the Disney Rewards #0050 and the Marriot Bonvoy #8241 were opened during the marriage and before the date of separation.

69. Defendant testified she made purchases using the Disney Rewards #0050 and Marriot Bonvoy #8241 credit cards during the marriage and included benefits and points as "marital" on her EDIA.

....

71. Credit card statements included various transactions during the marriage in Florida, specifically at Disney World.

72. Plaintiff testified the State Employees' Credit Union #2953 was used for the benefit of the marriage.

....

72. Plaintiff testified the SoFi Person Loan #9613 balance was incurred to pay off/consolidate marital credit card debt throughout the marriage.

....

75. Plaintiff's EDIA and testimony, and Defendant's testimony and credit card transactions support Plaintiff's position that. . . the State Employees' Credit Union #2953, the Disney Rewards #0050 and the Marriot Bonvoy #8241 are marital debts incurred before the date of separation, by both parties for the joint benefit of the parties.

76. Plaintiff's EDIA and testimony, and Defendant's testimony and credit card transactions support Plaintiff's position that the SoFi Personal Loan #9613 balance is a marital debt[.]

Based on these findings, the trial court concluded the State Employees' Credit Union #2953, the Disney Rewards #0050 and the Marriot Bonvoy #8241 credit card debts, and the SoFi Personal Loan were marital debts in their entirety.

"This Court has long held that a marital debt is one incurred during the marriage and before the date of separation by either spouse or both spouses for the joint benefit of the parties." *Warren*, 241 N.C. App. at 636, 773 S.E.2d at 137 (citation and internal quotation marks omitted); *see also* N.C. Gen. Stat. § 50-20(b)(1) (2023) ("Marital property means all real and personal property acquired by either spouse or both spouses during the course of the marriage and before the date of the separation of the parties[.]").

The trial court's findings of fact do not support a conclusion that the debts were marital in their entirety. There is no indication from the findings that all these debts, which totaled over \$65,000 together, were used for the joint benefit of the marriage nor were acquired during the course of marriage and before the date of separation. *See Warren*, 241 N.C. App. at 636, 773 S.E.2d at 137; *see also* N.C. Gen. Stat. § 50-20(b)(1).

### 3. Distribution of Retirement Accounts

Lastly, Defendant contends the trial court failed to "distribute passive gains

on [Plaintiff's] Merz 401(k), while erroneously distributing [Plaintiff's] active depreciation on multiple retirement accounts" under N.C. Gen. Stat. § 50-20(b)(4).

The trial court made the following findings:

55. During the marriage and before the date of separation, Plaintiff owned an Indivior 401(k), Merz 401(k), Fidelity IRA and Cornerstone 401(k).[.]

56. Plaintiff's retirement accounts have been depleted since the date of separation, specifically the Indivior 401(k), Fidelity IRA and Cornerstone 401(k), and the parties dispute how the [c]ourt should treat each asset's diminution in value for purposes of Equitable Distribution.

57. Both parties testified Plaintiff withdrew from Plaintiff's retirement accounts after the date of separation.

58. Plaintiff testified each withdrawal from Plaintiff's retirement accounts were deposited into the parties' joint checking account and that both parties had equal access to the withdrawals.

59. Plaintiff testified the withdrawals were for the benefit of both parties and the parties relied on all retirement withdrawals to pay monthly living expenses and bills.

60. Defendant testified she knew Plaintiff was making withdrawals from his retirement accounts and her testimony was unclear as to the exact amounts each party spent from the retirement withdrawals.

61. Plaintiff's Indivior 401(k), Fidelity IRA, and Cornerstone 401(k) each have present nominal balances, each under \$200.

62. The [c]ourt finds all Indivior 401(k), Fidelity IRA, and Cornerstone 401(k) retirement withdrawals were deposited into the joint bank account and was spent by both parties. The [c]ourt considers this money spent and gone

and is not distributing the money to either party.

63. The [c]ourt finds that Plaintiff's Merz 401(k) with an approximate date of separation value of \$142,882.69 was earned during his employment and is marital property.

64. The [c]ourt finds that Plaintiff's Merz 401(k) has a present value of \$126,311 and distributes it equally between the parties.

Based on these findings, the trial court ordered the Indivior 401(k), the Fidelity IRA, and half of the Merz 401(k) to be distributed to Plaintiff, and the other half of the Merz 401(k) to be distributed to Defendant. The Cornerstone 401(k) was left out of the distribution order.

Under N.C. Gen. Stat. 50-20(b)(4), divisible property includes “[a]ll appreciation and diminution in value of marital property . . . occurring after the date of separation and prior to the date of distribution, except that appreciation or diminution in value which is the result of postseparation actions or activities of a spouse shall not be treated as divisible property.” N.C. Gen. Stat. 50-20(b)(4)(a) (2023). Additionally, divisible property includes “[p]assive income from marital property received after the date of separation, including, but not limited to, interest and dividends.” N.C. Gen. Stat. 50-20(b)(4)(c) (2023).

Here, the trial court did not make any findings of fact as to the Indivior 401(k), Fidelity IRA, and Cornerstone 401(k) retirement accounts at the date of separation; instead, the trial court concluded any diminution in value of these accounts was spent by both parties, without making any findings of fact as to whether the accounts’

SALYER V. SALYER

*Opinion of the Court*

values were diminished as a result of “postseparation actions or activities of a spouse.” See N.C. Gen. Stat. 50-20(b)(4)(a). Defendant testified that she did not use the parties’ joint bank account, into which Plaintiff deposited his retirement fund withdrawals, as much as Plaintiff used the account. The trial court, however, made no findings of fact regarding the extent to which each party diminished the Indivior 401(k), Fidelity IRA, and Cornerstone 401(k) retirement accounts. The trial court’s findings do not support that the Indivior 401(k), Fidelity IRA, and Cornerstone 401(k) retirement accounts were properly valued and distributed under N.C. Gen. Stat. 50-20(b)(4)(a).

Defendant further argues the trial court failed to “distribute passive gains on [Plaintiff’s] Merz 401(k)[.]” At trial, Defendant presented evidence the Merz 401(k) experienced significant passive appreciation post-separation, appreciating from \$142,882.69 to \$194,358.10. By trial, however, the Merz 401(k) was diminished to \$126,311, which Defendant alleged was due to actions taken by Plaintiff. Like the other retirement accounts, the trial court failed to make sufficient findings of fact to support its valuation and distribution of the Merz 401(k) under N.C. Gen. Stat. 50-20(b)(4)(a).

Accordingly, we vacate the Equitable Distribution Order and remand this matter to the trial court with instructions to make further findings of fact as to: (1) statutory factors under N.C. Gen. Stat. § 50-20(c); (2) whether the debts were used for the joint benefit of the marriage and were acquired during the course of marriage

SALYER V. SALYER

*Opinion of the Court*

and before the date of separation under N.C. Gen. Stat. § 50-20(b)(1); and (3) the valuation of the retirement accounts under N.C. Gen. Stat. § 50-20(b)(4).

**IV. Conclusion**

Upon review, we conclude the trial court erred in its failure to make sufficient findings of fact when: (A) setting the amount and duration of alimony without addressing several factors under N.C. Gen. Stat. § 50-16.3A; (B) denying Defendant an award of attorney's fees under N.C. Gen. Stat. § 50-16.4; and (C) classifying and distributing the marital estate under N.C. Gen. Stat. § 50-20. We therefore vacate and remand the order for the trial court to make further findings of fact, consistent with this opinion.

VACATED AND REMANDED.

Judges MURPHY and COLLINS concur.

Report per Rule 30(e).