

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA24-109

Filed 15 October 2024

Mecklenburg County, No. 20 CVD 11008

CHRISTINE WHITE, Plaintiff,

v.

DAVID WHITE, Defendant.

Appeal by defendant from orders and judgment entered 30 May 2023 by Judge Karen D. McCallum in District Court, Mecklenburg County. Heard in the Court of Appeals 10 September 2024.

*James, McElroy & Diehl, P.A., by Preston O. Odom, III and Katherine W. Smith, for plaintiff-appellee.*

*Plumides, Romano & Johnson, PC, by Richard B. Johnson, for defendant-appellant.*

ARROWOOD, Judge.

David White (“defendant”) appeals from judgment and orders entered on 30 May 2023 for equitable distribution. On appeal, defendant argues the trial court abused its discretion in distributing the marital assets unequally and awarding sanctions to plaintiff. For the following reasons, we affirm.

I. Background

Christine White (“plaintiff”) and defendant were married on 3 May 2008 and legally separated 25 July 2020. No children were born to the marriage. During the marriage, both parties owned and resided in a house located at 12201 Pine Valley Club Drive in Charlotte. The residence was secured by a mortgage with Branch Banking & Trust (“BB&T Mortgage”). Additionally, at the time of separation, the parties jointly owned three separate business entities: 1) 339 Circle, LLC (“339 Circle”); 2) Beads, Inc. (“Beads”); and 3) Union Market, LLC (“Union Market”). 339 Circle was operated to own and manage a commercial property located at the namesake address, Beads was primarily operated and managed by plaintiff, and Union Market was primarily operated and managed by defendant.

On 17 August 2020, plaintiff filed a divorce complaint and motion for interim distribution, including a claim for equitable distribution. On 30 October 2020, defendant filed an answer, affirmative defenses, and counterclaims, also including a claim for equitable distribution.

On 6 June 2022, plaintiff filed motions for temporary restraining order and preliminary injunction, for interim distribution, and to appoint a receiver. Plaintiff alleged that defendant’s conduct damaged and devalued the jointly owned business entities, specifically alleging the following in pertinent part:

- a. The Business Entities have historically employed David Wurst, CPA (“Mr. Wurst”) as their accountant. Mr.

Wurst has served the Business Entities professionally and competently. In recent months, however, Defendant/Husband and his father have harassed Mr. Wurst to the point that Mr. Wurst has terminated his professional relationship with Defendant/Husband and Union Market. Specifically:

- i. Defendant/Husband and his father's recent behavior includes . . . providing payment owed to Mr. Wurst in the form of a bad check; appearing unannounced at Mr. Wurst's office on multiple occasions . . . and threatening to contact the state CPA licensing board to "report" Mr. Wurst . . . .
  - ii. . . . Defendant/Husband did not cease his harassment of Mr. Wurst. Instead, he filed a complaint with the CPA state licensing board.
  - iii. Since filing his complaint with the CPA state licensing board (the "Board"), Defendant/Husband has continued to contact the Board, making outlandish and blatantly false statements regarding Beads, Plaintiff/Wife, and Mr. Wurst — including, most recently, accusing Mr. Wurst and Plaintiff/Wife of engaging in an illicit relationship (which could not be further from the truth). . . .
- b. In addition to his harassment of Mr. Wurst and his colleagues, Defendant/Husband has directly disrupted the day-to-day operations of Beads since the parties separated. Specifically, and by way of example, although Defendant/Husband has not been actively engaged in the operations or finances of Beads for years, Defendant/Husband continues to be the "President" of the corporation. Defendant/Husband uses this position to effectively hold Beads hostage, including bombarding Plaintiff/Wife with demands and nonsense correspondence and, in addition, threatening Plaintiff/Wife with legal action. For example, in late January 2022, Defendant/Husband demanded the production of numerous records and financial documents related to Beads, Inc. He demanded that this production occur within five (5) days. Counsel for Plaintiff/Wife responded to counsel for Defendant/Husband that any documents could be made available for viewing at Mr. Wurst's office.

WHITE V. WHITE

*Opinion of the Court*

Instead of simply setting up a time to view and copy the documents, Defendant/Husband bombarded Plaintiff/Wife with correspondence via both email and U.S. Mail threatening legal action.

Furthermore, plaintiff contended that defendant's demands, threats, and generally bizarre behavior "have cost the Business Entities and the parties' thousands of dollars in unnecessary attorney's fees and accountant's fees[.]" prevented plaintiff and the businesses from entering into new contracts, and on at least one occasion defendant took \$4,000.00 earmarked for payroll for personal use.

Following a hearing on the motions, the trial court entered a temporary restraining order on 17 June 2022 enjoining defendant from:

(1) interfering in the current and historical ordinary course of business of Beads and 339 Circle; (2) entering or accessing the facilities or real property owned and operated by Beads and 339 Circle; (3) accessing, using, disposing of, transferring, or liquidating any funds held in bank accounts in the names of Beads or 339 Circle; and (4) contacting any clients, employees, vendors, or other contractors of Beads and 339 Circle.

The trial court found that since the date of separation, defendant had in fact taken steps and engaged in a course of conduct that continued to damage and devalue the businesses, and accordingly concluded that plaintiff had shown good cause for temporary relief.

The trial court entered an additional order on the motions on 5 December 2022, restating the substance of the prior TRO while further addressing interim distribution and the motion to appoint a receiver. The trial court found that

defendant had not presented sufficient evidence to show good cause that interim distribution should not be made, and that without an interim distribution, defendant would continue to devalue Beads and 339 Circle. Accordingly, the trial court found that it was equitable to distribute Union Market and the marital home to defendant, further concluded that good cause existed to distribute Beads and 339 Circle to plaintiff, and granted plaintiff's motion for interim distribution.

On the motion to appoint a receiver for Union Market, the trial court found "that not enough competent evidence was presented regarding whether or not [defendant] is engaging in the same problematic acts" as with the other businesses and concluded that plaintiff had not demonstrated a need to appoint a receiver for Union Market. The order directed defendant to sign over his stock certificate/membership interests in Beads and 339 Circle to plaintiff, deliver any certificates, endorsements, or transfer documents reasonably necessary to effect interim transfer, and take any other necessary steps to ensure plaintiff's unfettered access and control over Beads and 339 Circle. On 23 January 2023, the trial court entered an order allowing defendant's trial counsel to withdraw for good cause shown.

On 23 February 2023, plaintiff filed a motion for contempt, alleging that defendant refused to sign the requested transfer documents and willfully failed to comply with the terms of the interim distribution order. The trial court entered an order to show cause the following day, finding there was probable cause to believe that civil contempt had occurred and ordering defendant to appear. On

WHITE V. WHITE

*Opinion of the Court*

27 February 2023, defendant filed a motion to compel discovery responses and for a court-appointed expert witness. Defendant contended he had “made numerous good faith attempts to acquire information” from plaintiff regarding the businesses, but plaintiff and her counsel had “engaged in a pattern of tactics and behavior to blatantly avoid production of documents.” Defendant further contended he had been denied “knowledge and access to accounting, finances and basic day-to-day knowledge of” Beads and 339 Circle, and had “no way to hire an expert to value either entity.” The matters were scheduled for trial to begin on 5 April 2023.

On the date of the trial, defendant was not initially present, and the trial court began by hearing plaintiff’s motion in limine to exclude certain expert reports from defendant that had not been provided to plaintiff until four business days prior to the hearing. The trial court orally granted plaintiff’s motion. Defendant arrived approximately thirty minutes late and the trial court proceeded to address equitable distribution.

Among the assets at issue are household personal items that total to an amount of \$103,567.00. In evaluating the value of these personal assets, plaintiff testified that she conducted brief research on Facebook Marketplace, Ebay, or Google to determine the value of any item under \$1,000.00 instead of determining what it would cost to buy the item as new. Otherwise, for anything over \$1,000.00, plaintiff stated she had supporting documentation for the value of all of these items.

Defendant did not provide any documentation or supporting evidence to establish the value of these personal items.

During the hearing, the trial court acknowledged that there was evidence of defendant harassing plaintiff in her place of business and throughout the litigation. Evidence presented through the testimony of Ms. Anne Todd, plaintiff's sister and business associate, shows that plaintiff had to sell personal items to pay for her attorney's fees for the litigation.

For distributional factors, the trial court found that plaintiff "has had to liquidate investments, close retirement accounts, and sell personal property in order to litigate her claim for equitable distribution," which the trial court noted had been "delayed and obstructed" by defendant, who was "not forced to liquidate or touch any of his retirement or savings accounts." The trial court found that during the marriage, plaintiff "worked to ensure that the parties' businesses were in good standing with their vendors and customers[.]" but when the parties separated, defendant "hurt those relationships[.]" notably the business relationship with their accountant Mr. Wurst.

As to the difficulty of evaluating component assets or business interests, the trial court found the following:

Defendant/Husband's obstructionist behavior with respect to the discovery and delay of this case has been egregious. Defendant/Husband took nearly nine (9) months to respond to Plaintiff/Wife's basic discovery requests and, when he did respond, he refused to produce even basic bank

WHITE V. WHITE

*Opinion of the Court*

statements, claiming it would cost him between \$5,000 and \$8,000 to obtain the same. Ironically, Defendant/Husband boasted during the trial that he kept every bank statement and had copies of the same (which he had refused for years to provide to Plaintiff/Wife in response to discovery). The documents that Defendant/Husband did produce (nine (9) months later) were produced for “inspection” in an unairconditioned basement of Defendant/Husband’s then-attorney’s office and were packaged in thirty-seven (37) unorganized bankers’ boxes. This gamesmanship was typical of Defendant/Husband’s general behavior and approach to the litigation over the course of three (3) years and made valuing his business interests next to impossible, among prejudicing Plaintiff/Wife in other ways, both financial and emotional.

Further, Defendant/Husband and his family members have harassed Plaintiff/Wife, her place of business, her staff, her family members, and her agents . . . since the date of the parties’ separation. Defendant/Husband’s own witnesses . . . testified, and this Court so finds, that Defendant/Husband’s behavior had a negative impact on Beads and 339 Circle. . . . It is imperative that Plaintiff/Wife’s and Defendant/Husband’s business interests be clearly separated.

Regarding efforts to maintain or waste marital or divisible property, the trial court found that defendant “repeatedly paid the mortgage [for the marital residence] nearly thirty (30) days late, incurring unnecessary late fees each month” in addition to the aforementioned gamesmanship, obstruction, and harassment.

Based on these findings, the trial court ordered defendant to pay plaintiff a sum of \$200,000.00 as a distributive award after finding that defendant had the ability to pay the award. The trial court found that an unequal distribution would be fair and equitable to both parties because of defendant’s economic misconduct and



interference in plaintiff's businesses. Defendant's net distribution was \$1,009,607.50, or 44 percent of the marital estate, and plaintiff's net distribution was \$1,285,279.50, or 56 percent of the marital estate.

Finally, the trial court entered a separate order on plaintiff's motion for sanctions, ordering the defendant to pay the plaintiff's attorney's fees in the amount of \$120,000.00 due to defendant's behavior during the divorce action and his willful obstruction of the proceedings and unreasonable delay.

Defendant filed notice of appeal on 26 June 2023.

## II. Discussion

On appeal, defendant argues that the trial court abused its discretion in: 1) its valuation and distribution of the parties' personal property; 2) awarding plaintiff more than half of the marital estate; 3) ordering defendant to pay a lump sum of \$200,000.00 to plaintiff; 4) ordering defendant to refinance the mortgage on 12201 Pine Valley Club Drive; and 5) in ordering defendant to pay plaintiff \$120,000.00 in attorney's fees. We address each contention in turn.

### A. Standard of Review

For equitable distribution orders, this Court reviews "a trial court's equitable distribution order to determine '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.'" *Crago v. Crago*, 268 N.C. App. 154, 157 (2019) (quoting *Casella v. Alden*, 200 N.C. App. 859, 861 (2004)). "The division of property in an equitable

distribution ‘is a matter within the sound discretion of the trial court.’” *Id.* (quoting *Cunningham v. Cunningham*, 171 N.C. App. 550, 555 (2005)). “A trial court may be reversed for abuse of discretion only upon a showing that its actions are manifestly unsupported by reason.” *White v. White*, 312 N.C. 770, 777 (1985).

B. Equitable Distribution

In equitable distribution actions, N.C.G.S. § 50-21(a) mandates:

Within 90 days after service of a claim for equitable distribution, the party who first asserts the claim shall prepare and serve upon the opposing party an equitable distribution inventory affidavit listing all property claimed by the party to be marital property and all property claimed by the party to be separate property, and the estimated date-of-separation fair market value of each item of marital and separate property.

When determining the value of property at the date of separation, evidence of pre-separation and post-separation occurrences or values may be used as corroborative evidence. *See* N.C.G.S. § 50-21(b).

“There 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.G.S. § 50-20(c). If a trial court determines that equal distribution is not equitable, the court shall consider the following factors:

- (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.

WHITE V. WHITE

*Opinion of the Court*

(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.

(11b) In the event of the death of either party prior to the entry of any order for the distribution of property made pursuant to this subsection:

a. Property passing to the surviving spouse by will or through intestacy due to the death of a spouse.

b. Property held as tenants by the entirety or as joint tenants with rights of survivorship passing to the surviving spouse due to the death of a spouse.

c. Property passing to the surviving spouse from life insurance, individual retirement accounts, pension or profit-sharing plans, any private or governmental retirement plan or annuity of which the decedent controlled the designation of beneficiary (excluding any benefits under the federal social security system), or any other retirement accounts or contracts, due to the death of a spouse.

d. The surviving spouse's right to claim an "elective share" pursuant to G.S. 30-3.1 through G.S. 30-33, unless otherwise waived.

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

N.C.G.S. § 50-20(c).

1. Value and Distribution of Personal Property

On appeal, defendant argues that plaintiff improperly offered the value of personal property at the time of the hearing rather than at the date of separation. The defendant argued that the plaintiff did not present proof of any value of items less than \$1,000.00 and only offered her process of calculating the monetary values of these items during the equitable distribution hearing. Subjective opinions about the value of property are admissible and are considered competent evidence for the value of property at the date of separation. *See Zurosky v. Shaffer*, 236 N.C. App. 219, 240 (2014).

Here, plaintiff testified to how she came up with the monetary values of

personal property on the date of separation. Plaintiff stated that she had documentation for property valued over \$1,000.00 and used websites like Facebook Marketplace, Ebay, and Google to determine a value for items under \$1,000.00. Because there was no further evidence of the value of these items, plaintiff offered her subjective opinion on the date of separation value and gave a process she used to determine these values.

Plaintiff's subjective opinion was admissible and could be considered competent evidence for the value of the personal property. *Zurosky*, 236 N.C. App. at 240. This will be considered competent evidence because a party's subjective opinion may be used to determine the date of separation value. Furthermore, the defendant did not offer any counterevidence as to the value of these items. The trial court based its valuation of the personal property at issue on competent evidence, which has a factual basis, and received no competent evidence from defendant. Therefore, the court did not abuse its discretion in the valuation of personal property.

## 2. Unequal Distribution of Marital Assets

Next, defendant argues that the court abused its discretion when it awarded the plaintiff more than 50 percent of the marital estate. Defendant argues that the trial court had no basis for determining that equal distribution of the marital estate would be inequitable because it relied mostly on defendant's behavior during litigation. This argument is not well founded. A trial court may consider factors relating to the economy of the marriage when distributing assets unequally. *See*

*Smith v. Smith* 111 N.C. App. 460, 502 (1993). In *Smith*, the Court ruled that misconduct of the party which is not related to the economic condition of the marriage may not be considered for division of marital property. *See id.* (citing *Smith v. Smith*, 314 N.C. 80, 81 (1985)).

Here, however the trial court specifically found that defendant's actions post-separation hurt plaintiff's business and business relationships thereby decreasing its value. Next, the trial court noted that because of defendant's obstruction of the proceedings, plaintiff has had to liquidate assets to litigate her claim for equitable distribution. Finally, the trial court found that defendant and defendant's family members harassed plaintiff at her place of business, her staff, her family members, and her collaborators in the business. All these findings support a determination that defendant's actions affected the economy of the marriage. Because plaintiff and plaintiff's business were financially impacted by defendant's misconduct following the separation of the parties and during the pendency of this litigation, the trial court did not abuse its discretion by considering defendant's conduct when distributing the marital estate.

Defendant further contends that the trial court abused its discretion by ordering defendant to pay a specific dollar amount rather than retaining a percentage of the marital estate. Defendant argues that the trial court arbitrarily picked the amount of \$200,000.00 for the defendant to pay without basing it on a percentage of the marital estate. It is well established that trial courts do not need to impose

monetary values on the facts it considers for equitable distribution. *See Gum v. Gum*, 107 N.C. App. 734, 739 (1992).

Here, defendant's contention that the trial court arbitrarily picked \$200,000.00 as the distributive amount is unsupported by the proceedings. The trial court specifically noted that the distributive award was meant to divide the marital estate so that 44 percent of the estate goes to the defendant and 56 percent of the marital estate goes to the plaintiff. Furthermore, the trial court based this award on numerous factors, including the length of the marriage, defendant's consistent late payments of the mortgage, and the need for plaintiff to liquidate her assets to pay for the litigation in this case, all of which are proper considerations under N.C.G.S. 50-20(c).

Finally, defendant contends that the trial court's findings related to the distributional factors listed in the order were not supported by competent evidence. Specifically, defendant claims that the findings of fact related to the distributional factors were mere recitations of the evidence. However, if the trial court receives evidence "from which a reasonable finder of fact could determine that an equal division would be inequitable, the trial court is required to consider the factors set forth in N.C.G.S. § 50-20(c), . . . [and] must make findings and conclusions which support its division of marital property." *Armstrong v. Armstrong*, 322 N.C. 396, 404 (1988). This Court has previously found that testimony based on knowledge of the property and some basis for the opinion was competent evidence for a trial court's

finding of fact regarding the value of the property. *See Finney v. Finney*, 225 N.C. App. 13, 17 (2013).

Here, the trial court listed over fifty findings of fact in its order for equitable distribution based on testimony from several parties, including testimony from defendant, justifying its analysis of each distributional factor considered for this order. Therefore, the court did not abuse its discretion in its analysis of the distributional factors used for unequal distribution of marital assets.

3. Lump Sum Award

Defendant further contends that the trial court abused its discretion by ordering him to pay a lump sum of \$200,000.00 as a distributive award. Specifically, defendant argues that the trial court's finding that he had the ability to pay \$200,000.00 within ninety (90) days was unsupported by evidence.

"[I]f a party's ability to pay an award with liquid assets can be ascertained from the record, then the distributive award must be affirmed." *Pellom v. Pellom*, 194 N.C. App. 57, 69 (2008). This Court has affirmed similar findings, ruling that money derived from refinancing the mortgage can be considered a source of liquid assets available to a party. *See Allen v. Allen*, 168 N.C. App. 368, 376 (2005); *Peltzer v. Peltzer*, 222 N.C. App. 784, 791 (2012).

Here, the trial court found that defendant had substantial assets and property and unlike plaintiff, he had not been forced to liquidate those assets to pay for litigation relating to the divorce proceedings. Furthermore, defendant had made



previous statements during litigation and outside litigation stating that he had thousands of dollars and had sources of money that had been unaffected by the divorce proceedings. Given defendant's statements and the discrepancies in assets owned by both parties at the time of these proceedings and defendant's ability to obtain the funds when he refinanced the former marital home, the court did not abuse its discretion in finding that defendant had the ability to pay the distributive award.

4. Order to Refinance Mortgage

Next, defendant contests the trial court's order requiring him to refinance the mortgage for the marital home in his name without findings of fact to justify such an order. In support of his contention defendant cites *Green v. Green*, 255 N.C. App. 719 (2017), where this Court affirmed the trial court's order that distributed the marital home and mortgage to the defendant and denied plaintiff's arguments that the court should have also ordered defendant to refinance the mortgage out of her name. However, defendant is improperly interpreting *Green*. In *Green*, this Court did not consider the method in which the mortgage was distributed because the defendant in that case failed to preserve the issue for appeal. *See Green v. Green*, 255 N.C. App. 719, 729 (2017). Furthermore, in *Green*, this Court did not hold that specific findings of fact are necessary to order a party to refinance a marital home solely in the party's name. *See id.* The Court noted that there was no existing case law requiring mortgages to be refinanced to have the other party removed, however, it does not suggest that such an order would not be allowed. *See id.* at 729.

Given these considerations, the trial court was within its discretion to order the mortgage to be refinanced in defendant's name only. Considering the marital home was distributed solely to defendant, and that defendant repeatedly paid the mortgage late during the period of separation when he was in sole possession of the marital home, the trial court did not abuse its discretion in ordering defendant to refinance the home solely in his name.

5. Award of Attorney's Fees

Finally, defendant argues that the trial court abused its discretion by ordering defendant to pay \$120,000.00 in attorney's fees as a sanction for his misconduct during the litigation. First, defendant contends that he did not receive notice that the hearing on sanctions would occur at the same time as the equitable distribution trial. Here, the trial court specifically found that defendant received adequate notice of the hearing on 5 April 2023 at 9:00 a.m. Additionally, plaintiff issued a notice to seek sanctions on 20 March 2023. Taken together this is sufficient to establish that defendant had notice of plaintiff's intention to seek sanctions and notice of the court hearing on sanctions.

Next, the defendant contends that the award for attorney's fees was not reasonable. Specifically, he argues that the trial court did not make a finding as to whether plaintiff's attorney's fees were in line with a customary fee, or a detailed accounting of the work done by plaintiff's attorney.

As a general rule, attorney fees are not recoverable in an equitable distribution

claim. *Eason v. Taylor*, 245 N.C. App. 16, 23 (2016) (citation omitted). However, our statutes permit parties to recover “reasonable attorneys’ fees” as a sanction where “[t]he willful obstruction or unreasonable delay of the proceedings is or would be prejudicial to the interests of the opposing party.” N.C.G.S. § 50-21(e)(2).

Here, the trial court made several factual findings when awarding attorney’s fees as sanctions. As previously discussed, there was significant evidence of defendant’s obstruction and unreasonable delay, and the resulting prejudice to plaintiff. Regarding the reasonableness of the fees, the trial court considered an affidavit from plaintiff’s trial counsel Jonathan Feit (“Mr. Feit”) detailing the fees incurred for prosecuting plaintiff’s claim, Mr. Feit’s experience as a domestic relations attorney in Mecklenburg County, and “Mr. Feit’s hourly rate, the time involved, the nature and value of the services rendered, and the skill and ability called for” in handling this matter. All these findings taken together showed that the trial court did consider whether Mr. Feit’s fees were in line with lawyers with similar experience. The court did not abuse its discretion in awarding \$120,000.00 in attorney’s fees to plaintiff.

### III. Conclusion

For the foregoing reasons, we affirm the trial court’s orders and judgment.

AFFIRMED.

Judges MURPHY and GRIFFIN concur.

Report per Rule 30(e).