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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-826

Filed 16 September 2026

Mecklenburg County, No. 20CVD007354-590

ERIC JOHNSON, Plaintiff/Husband,

v.

TAMMY JOHNSON, Defendant/Wife and Third-Party Plaintiff,

v.

ES JOHNSON BUILDERS, LLC and CITE, LLC, Third-Party Defendants.

Appeal by Plaintiff and Defendant from order and judgment entered 2 December 2024 by Judge Paige B. McThenia in Mecklenburg County District Court. Heard in the Court of Appeals 2 June 2026.

Amy Elizabeth Simpson for Plaintiff-Appellant/Cross-Appellee.

Gardner Skelton, PLLC, by Preston O. Odom, III, and James, McElroy & Diehl, P.A., by Jon R. Burns, for Defendant-Appellee/Cross-Appellant.

GRIFFIN, Judge.

Plaintiff Eric Johnson (“Husband”) and Defendant Tammy Johnson (“Wife”) each appeal from the trial court’s order and judgment equitably distributing property and granting Wife alimony. Husband argues the court erred in its determinations

regarding Wife's monthly debt payments; the amount and duration of alimony; the valuation of goodwill in ES Johnson Builders, LLC; the distributive award; and in the delay in the trial court's corrected order. Wife argues the trial court erred in its determinations regarding Husband's income for alimony and equitable distribution, and in the trial court's failure to account for a contribution Husband made to a retirement account. We vacate the order and remand.

I. Factual and Procedural Background

This appeal arises out of equitable distribution ("ED") and alimony claims between Husband and Wife. Husband and Wife married on 29 August 1996. They resided in Mecklenburg County, North Carolina. The parties separated on 2 April 2019 and divorced on 28 January 2021. Wife asserted a claim for postseparation support, and the trial court ordered Husband to pay Wife \$4,696 per month. Settlement negotiations eventually failed, and Husband filed suit on 28 May 2020 asserting claims for equitable distribution and attorneys' fees. Wife impleaded their business entities, ES Johnson Builders, LLC ("ESJ"), and CITE, LLC ("CITE"). Wife also asserted counterclaims against Husband for postseparation support, alimony, attorneys' fees, and equitable distribution. The trial court entered an interim distribution order on 25 February 2021. An ED and alimony trial was completed in February 2023.

The trial court entered a Corrected Order and Judgment ("the Order") regarding equitable distribution and alimony on 2 December 2024, making the

following findings of fact and conclusions of law: Husband founded ESJ and CITE during the marriage. ESJ and CITE are owned by both parties. Husband was the lead designer for ESJ. Husband withdrew \$1,262,061.00 from ESJ during the period between the date of separation and trial. The relevant tax filings for ESJ classified the withdrawals as “distributions.” CITE was used for the purpose of owning the office occupied by ESJ. Wife was the homemaker during the marriage, and Husband operated the businesses.

The trial court also used a “normalized net income” to represent Husband’s annual income. The trial court found Husband’s income to be \$170,000 per year or \$14,167 per month from ESJ. Husband did not take a true “salary” from ESJ; he only received payments in the form of “distributions.”

For the purposes of alimony, the trial court found that Wife was a homemaker during the marriage and worked part-time jobs after separation. Wife also attended community college and pursued a degree in interior design. Wife’s gross income per month was \$1,239.45, and her net income per month was \$1,106.14. The trial court found that due to Wife’s health conditions she had not acted in bad faith in failing to earn more money. Wife has reasonable and necessary monthly expenses of \$6,298.67 and monthly debt payments of \$3,345.11. Thus, Wife’s total reasonable and necessary expenses, coupled with her debt payments, are \$9,643.78 per month. Wife, therefore, has a deficit of \$8,537.64 each month. The trial court found Wife to be a

dependent spouse and ordered Husband to pay Wife alimony in the amount of \$4,000 per month for 10 years.

For the ED claim, the trial court found the total value of the marital estate to be \$2,401,158.89. Using N.C. Gen Stat. § 50-20(c), the trial court found that Husband had a much higher income than Wife, and Wife had much more debt than Husband. The trial court found it equitable to award forty-five percent of the estate to Husband and fifty-five percent of the estate to Wife. The trial court found that Husband could pay Wife \$150,000 per year until the distributive award of \$427,182.00 is paid.

During the period between the end of trial and entry of the Order, the trial court communicated with both parties that it would be willing to hear new evidence regarding the value of ESJ. Both parties declined the trial court's offer to enter new evidence.

Husband and Wife each timely appeal.

II. Analysis

Both Husband and Wife contend the trial court erred in its valuations for equitable distribution and the amount and duration of alimony. Husband further contends the trial court's delayed Order was prejudicial, and therefore the distributive award owed to Wife should be reevaluated.

A. Standard of Review

"The standard of review on appeal from a judgment entered after a non-jury trial is whether there is competent evidence to support the trial court's findings of

fact and whether the findings support the conclusions of law and ensuing judgment.” *Stovall v. Stovall*, 205 N.C. App. 405, 407, 698 S.E.2d 680, 683 (2010) (citation omitted). “The trial court’s findings of fact are binding on appeal as long as competent evidence supports them, despite the existence of evidence to the contrary.” *Resort Realty of the Outer Banks, Inc. v. Brandt*, 163 N.C. App. 114, 116, 593 S.E.2d 404, 408 (2004) (citations omitted). Conclusions of law are reviewed de novo on appeal. *Mugno v. Mugno*, 205 N.C. App. 273, 276, 695 S.E.2d 495, 498 (2010) (citation omitted).

An abuse of discretion standard of review on appeal is applied to a trial court’s equitable distribution judgment. *Stovall*, 205 N.C. App. at 407, 698 S.E.2d at 683. A trial court’s judgment may only be reversed if its actions are “manifestly unsupported by reason.” *Id.* at 407–08, 698 S.E.2d at 683 (citation omitted).

B. Equitable Distribution

In a trial for equitable distribution, the trial court “shall determine what is the marital property and divisible property and shall provide for an equitable distribution of the marital property and divisible property between the parties.” N.C. Gen. Stat. § 50-20(a) (2025).

A trial court must identify and account for all property owned by the spouses as marital property or property owned by the spouses separately. *Clemons v. Clemons*, 265 N.C. App. 113, 115, 828 S.E.2d 501, 504 (2019) (citations omitted). Appreciation of marital property must be equitably divided between spouses. *See*

Cable v. Cable, 76 N.C. App. 134, 136–37, 331 S.E.2d 765, 767 (1985) (citations omitted). Any increase in equity that occurs using marital funds is divisible. See *Bailey v. Bailey*, --- N.C. App. ----, ----, 928 S.E.2d 325, 330 (2026).

1. Distributions from ESJ to Husband

Husband and Wife each appeal the trial court’s consideration of distributions received by Husband from ESJ. Husband argues the trial court reversibly erred in classifying \$646,002.40 in payments from ESJ to Husband as divisible property. Wife argues the trial court failed to classify and distribute as divisible property \$616,058.50 of the \$1,262,061.00 in distributions Husband received from ESJ between the date of separation and date of trial.

“If the corporation was created during the marriage, and it was owned and operated by the parties, it is a marital asset regardless of the stock ownership.” *Hill v. Hill*, 229 N.C. App. 511, 518, 748 S.E.2d at 358 (2013). Retained earnings by a corporation are owned by the corporation and are not marital property. *Allen v. Allen*, 168 N.C. App. 368, 375, 607 S.E.2d 331, 336 (2005) (citations omitted). However, once retained earnings have been distributed to shareholders, they become marital property. *Simon v. Simon*, 231 N.C. App. 76, 82, 753 S.E.2d 475, 479 (2013) (citations omitted). Further, any distributions received postseparation are also marital property if “the right to receive those funds was acquired during the marriage and before the separation.” *Id.* (quoting *Allen*, 168 N.C. App. at 374, 607 S.E.2d at 335).

Husband received \$1,262,061.00 in distributions from ESJ after the date of

separation. The trial court found that ESJ was marital property because it was created during the marriage. Neither party contests whether ESJ was marital property. Because the company is marital property, the distributions received from ESJ by Husband are also marital property and should have been considered as such by the trial court. *Id.* The trial court erred by failing to consider the entire amount of distributions Husband received from ESJ between the date of separation and trial.

The issue is complicated by the fact that Husband never received a true “salary” from ESJ. His only compensation came in the form of distributions. Nevertheless, our Court has held that all distributions received from a business to a shareholder are to be accounted for as long as the corporation is marital property. *Id.* Thus, we hold the trial court erred by classifying only some of the distributions received by Husband from ESJ as divisible marital property.

We vacate the Order’s equitable distribution and remand. On remand, the trial court should equitably distribute the parties’ property considering all distributions Husband received from ESJ.

2. Goodwill

Husband further argues the trial court erred by including personal goodwill in its valuation of ESJ.

Wife argues that Husband made no affirmative argument for why the trial court should have excluded personal goodwill from the valuation of ESJ and thus the

issue is abandoned pursuant to N.C. R. App. P. 28(b)(6).¹ However, Husband raised the issue that the trial court should have explained in its findings why it declined to exclude personal goodwill from the valuation. Thus, because Husband raised the issue, it is not abandoned on appeal.

The Supreme Court of North Carolina has recently distinguished enterprise goodwill from personal goodwill. *Sneed v. Johnston*, No. 130PA24, --- N.C. ----, ----, -- S.E.2d ----, ----, 2026 WL 2358122, at *1 (N.C. Aug. 14, 2026). In *Sneed*, our Supreme Court held that “the personal goodwill of a professional practice does not qualify as marital property for equitable distribution purposes.” *Id.* at ----, --- S.E.2d at ----, 2026 WL 2358122, at *8.

Husband argues the trial court should have made findings as to why it declined to exclude personal goodwill from the valuation of ESJ. In Finding of Fact 26, the trial court used the valuation determined by South Park Advisors, LLC (“SPA”) and did “not exclude goodwill from the value of ESJ.” Wife argues Finding of Fact 26 is not “the only finding made by the trial court as to goodwill” but also “Findings of Fact 27, 28, 55, 56, 57, and **Exhibit A** of the ED/Alimony Ruling join Finding of Fact 26 in addressing goodwill by including” both personal and enterprise goodwill based on Husband’s own expert’s valuation. Per Exhibit A attached to the Order, SPA’s notes indicate that the ESJ valuation was comprised of the “SPA value including goodwill.”

¹ “Issues not presented in a party’s brief, or in support of which no reason or argument is stated, will be taken as abandoned.” N.C. R. App. P. 28(b)(6).

The record indicates that in a 3 July 2024 email, the trial judge stated that “I am finding that there is no personal goodwill and that the distributions taken after [the] date of separation are not divisible property and are accounted for in the business valuation.” However, the Order does not actually specify that personal goodwill was excluded from the ESJ valuation.

In light of *Sneed*, on remand, the trial court should revisit the goodwill valuation of ESJ consistent with our Supreme Court’s opinion in *Sneed* to the extent the trial court may have impermissibly included personal goodwill in conflict with *Sneed*.

3. Marital Fund Contribution to Husband’s SEP/IRA

Wife further argues the trial court erred by failing to consider a marital fund contribution that Husband made to an SEP/IRA account.

Husband made a \$40,000 contribution to his SEP/IRA using marital funds after the date of separation. The Interim Distribution Agreement does not appear to take this contribution into account when it was entered. Because this Court has held that all property should be designated as marital or separate, and the trial court did not make such a designation as it relates to the \$40,000 contribution, the trial court erred by failing to account for the contribution. *Clemons*, 265 N.C. App. at 115, 828 S.E.2d at 504.

Further, Husband does not dispute that he made a marital-fund contribution to the SEP/IRA. Instead, Husband argues that Wife has not made a showing that the

failure by the trial court to identify this contribution was prejudicial. Husband also argues that Wife did not show that the contribution had not already been accounted for in the ED order. However, no precedent requires Wife to show that the trial court's failure to account for Husband's contribution to the SEP/IRA was prejudicial. The law requires the contribution must be accounted for under N.C. Gen. Stat. § 50-20. *Id.* Additionally, Husband conceded that the \$40,000 contribution should be divided.

On remand, the trial court should equitably distribute the parties' property accounting for Husband's contribution to the SEP/IRA account.

4. Husband's Ability to Pay and Unequal Distribution

Husband argues the trial court's decision that Husband could pay the distributive award of \$498,425.20 lacks competent evidence. Husband also asserts the trial court did not make findings of fact to support its decision that Wife was entitled to an unequal distribution in her favor. Because our disposition here already remands for new determinations on equitable distribution, we decline to evaluate the trial court's findings regarding these issues. Rather, the trial court may reassess its findings on remand.

5. Delayed Order

Husband argues the delay between the conclusion of the trial and the entry of the trial court's Order constitutes reversible error.

Evaluating whether a delay in the entering of an order is prejudicial is determined on a case-by-case basis. *See Wall v. Wall*, 140 N.C. App. 303, 314, 536 S.E.2d 647, 654 (2000). The delay must have been prejudicial to remand the case for further evaluation. *See Britt v. Britt*, 168 N.C. App. 198, 202, 606 S.E.2d 910, 912 (2005). Our Court has declined to overturn cases in which there was a lengthy delay, but the complaining party was not prejudiced. *Id.* at 203, 606 S.E.2d at 913. A bald assertion that circumstances have changed is insufficient to establish prejudice to the complaining party. *Id.* at 202–03, 606 S.E.2d at 913.

Husband asserts the twenty-one-month delay between conclusion of trial and the entry of its Order was prejudicial because of the potential change in value of ESJ, and therefore Husband’s ability to pay the distributive award was impacted. Here, trial concluded in February 2023, and the trial court entered its Order on 2 December 2024. We agree with Husband that the delay in the trial court’s entering its Order was more than *de minimus* under *Wall*. *Wall*, 140 N.C. App. at 314, 536 S.E.2d at 654. However, we disagree with Husband’s assertion that his ability to pay the distributive award was impacted when both parties neglected to reopen evidence after the trial court offered to allow new evidence to be presented. Because *Britt* establishes a case-by-case analysis, and Husband only argues the value of ESJ could have potentially changed, we cannot hold the trial court’s delayed Order to be prejudicial.

C. Alimony

First, Wife argues the trial court erred when it determined Husband's annual income to be his "normalized net compensation" instead of his "actual" income; Husband also argues his income was inflated. Second, Husband argues the trial court's findings of fact in its determination of Wife's reasonable and necessary expenses are not supported by competent evidence. He further asserts the credit card debt was "double-counted" and that Wife did not present evidence to demonstrate her credit card debt was not already included in her financial affidavits. Third, Husband argues the trial court abused its discretion in its determination of the duration of alimony. Fourth, Husband argues the trial court erred by failing to expressly release him from the Postseparation Support ("PSS") Order.

The trial court "shall exercise its discretion in determining the amount, duration, and manner of payment of alimony." N.C. Gen. Stat § 50-16.3A(b) (2025). The trial court must consider "all relevant factors," which include:

- (1) The marital misconduct of either of the spouses. Nothing herein shall prevent a court from considering incidents of post date-of-separation marital misconduct as corroborating evidence supporting other evidence that marital misconduct occurred during the marriage and prior to date of separation;
- (2) The relative earnings and earning capacities of the spouses;
- (3) The ages and the physical, mental, and emotional conditions of the spouses;
- (4) The amount and sources of earned and unearned income of both spouses, including, but not limited to,

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earnings, dividends, and benefits such as medical, retirement, insurance, social security, or others;

(5) The duration of the marriage;

(6) The contribution by one spouse to the education, training, or increased earning power of the other spouse;

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

(8) The standard of living of the spouses established during the marriage;

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

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

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

(12) The contribution of a spouse as homemaker;

(13) The relative needs of the spouses;

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

(15) Any other factor relating to the economic circumstances of the parties that the court finds to be just and proper.

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

N.C. Gen. Stat. § 50-16.3A(b).

The trial court is not required to list findings of fact for each factor if “findings of fact have been made on the ultimate facts at issue in the case, and the findings of fact show the trial court properly applied the law in the case.” *Friend-Novorska v. Novorska*, 143 N.C. App. 387, 395, 545 S.E.2d 788, 794 (2001) (citations omitted). The trial court is not required to detail the weight that it gave any of the factors in determining whether alimony should be awarded. *Id.*

1. Determination of Husband’s Income for Alimony Purposes

Wife argues the trial court erred when it determined Husband’s annual income to be his “normalized net compensation” instead of his “actual” income. Husband argues that there is evidence of “double-dipping” to inflate his income for alimony purposes.

Determination of the gross income of a spouse is a conclusion of law and is therefore reviewed de novo. *Green v. Green*, 255 N.C. App. 719, 732, 806 S.E.2d 45, 54 (2017) (citations omitted). Alimony is based on a spouse’s “actual income, from all sources, at the time of the order.” *Allport v. Allport*, 301 N.C. App. 262, 276, 924 S.E.2d 376, 387 (2025) (citation omitted).

In this case, the alimony award must be reconsidered because the trial court used Husband’s “normalized net income” instead of Husband’s actual income, which includes his distributions from ESJ. *See Simon*, 231 N.C. App. at 83, 753 S.E.2d at

480. The trial court must reconsider the factors listed in N.C. Gen. Stat. § 50-16.3A(b) to determine the amount and duration of alimony using Husband's actual income at the time of the hearing. *Allport*, 301 N.C. App. at 294, 924 S.E.2d at 398.

However, consideration of the past distributions Husband received from ESJ for ED and again for calculation of alimony does not constitute double-dipping or an inflation of his assets. If, on remand, the trial chooses to once again distribute ESJ wholly to Husband, it will be his sole property and the distributions drawn from that point forward will be assets from which Husband can pay alimony. The trial court may look at prior distributions as a basis to determine future earnings. N.C. Gen. Stat. § 50-16.3A(b)(16). A trial court may consider the history of a corporation's income production as a basis for determining an alimony award.

We vacate the Order's alimony award and remand. On remand, the trial court should calculate Husband's actual income and then reassess the amount of alimony given the appropriate values.

2. Wife's Reasonable and Necessary Expenses

Husband argues the trial court's findings of fact in its determination of Wife's reasonable and necessary expenses are not supported by competent evidence. He further asserts the credit card debt was "double-counted," and Wife did not present evidence to demonstrate her credit card debt was not already included in her financial affidavits.

The trial court's findings of fact regarding Wife's reasonable and necessary

expenses are supported by competent evidence. Wife presented financial statements to the trial court. The trial court then determined Wife's reasonable and necessary expenses based upon that evidence. Our Court may not reweigh the evidence presented to the trial court. *Saul v. Saul*, 236 N.C. App. 371, 373, 763 S.E.2d 328, 330 (2014).

Additionally, Husband asserts Wife's credit card debt was likely double-counted because Wife did not "present evidence or testify how the monthly amounts paid for the credit card debt are not already part and parcel of her determination of the amounts she included for each specific category in her financial affidavits." Husband contends the evidence was clear Wife's financial statements included credit card debt accrued to pay monthly expenses. But the credit card debt amounts and the total expense amounts were both submitted to the trial court, which weighed them in its calculations. Again, it is in the trial court's discretion to decide the amount of alimony. *Kelly v. Kelly*, 228 N.C. App. 600, 601, 747 S.E.2d 268, 272 (2013). The trial court's findings are supported by competent evidence because the court heard testimony from Wife about her finances, including her credit card debt, and made its determination from that information.

Thus, the trial court did not err in its determination of Wife's reasonable and necessary expenses.

3. Duration of Alimony

Husband also asserts that the trial court abused its discretion when deciding the duration of alimony.

N.C. Gen. Stat. § 50-16.3A(b) provides the trial court must exercise its discretion when deciding the duration of alimony. N.C. Gen. Stat. § 50-16.3A(b). The statute further lists sixteen factors to guide the trial court's decision. *Id.* The trial court must make "finding[s] of fact on each of the factors in subsection (b) of this section if evidence is offered on that factor." *Id.* § 50-16.3A(c).

The trial court made a substantial number of findings in accordance with the factors outlined in N.C. Gen. Stat. § 50-16.3A(b). The trial court's findings of fact related to section 50-16.3A(b) do not need to be expressly attached to the factors from the statute, which are listed in the Order. *See Rea v. Rea*, 262 N.C. App. 421, 431, 822 S.E.2d 426, 433 (2018). The Order is to be considered holistically. *See id.* The trial court considered the factors outlined in the statute and did not abuse its discretion in its determination of the duration of alimony.

4. Release from the Postseparation Support Order

In addition, Husband argues the trial court erred by not expressly releasing him from the PSS Order. We disagree.

Spousal support is to be paid until (a) the date specified in the postseparation support order; (b) the entry of an order awarding or denying alimony; (c) the dismissal of an alimony claim; (d) the entry of judgment for an absolute divorce in which there is no pending alimony claim; or, (e) the termination of postseparation support in

accordance with N.C. Gen. Stat § 50-16.9(b). N.C. Gen. Stat. § 50-16.1A(4) (2025). The earliest of any of the aforementioned events terminates postseparation support. *Id.* Therefore, Husband was released from the PSS Order when the trial court issued its Order awarding ED and alimony on 31 July 2024.

The trial court did not err by failing to expressly release Husband from the PSS Order. The trial court is under no obligation to make an express release on remand.

III. Conclusion

We hold there was no prejudice in the trial court's delayed Order. We affirm the trial court's decision for Wife's reasonable and necessary expenses for alimony purposes and the trial court's award for the duration of alimony. We also hold the trial court did not err by failing to expressly release Husband from the PSS Order. We nonetheless vacate the Order's equitable distribution and alimony award, and instruct the trial court to: reconsider evaluation of ESJ's goodwill in light of our Supreme Court's recent opinion in *Sneed*; classify as marital property all distributions Husband received from ESJ, consider the contributions Husband made to his SEP/IRA account, and thereafter redistribute property as it deems appropriate; and calculate Husband's actual income and recalculate the alimony award accordingly.

VACATED AND REMANDED.

Judges CARPENTER and STADING concur.

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Report per Rule 30(e).