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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-799

Filed 7 October 2026

Wake County, No. 19CVD008466-910

JOSEPH LEE HARKLEY, Plaintiff,

v.

MARIA HARKLEY, Defendant.

Appeal by plaintiff from order entered 24 April 2023 and judgment entered 29 May 2024 by Judge Anna Worley in Wake County District Court. Heard in the Court of Appeals 13 August 2026.

Lebedev Law Services, by Anton M. Lebedev, for plaintiff-appellant.

Sandlin Law Firm, P.A., by Caroline J. Lonon, for defendant-appellee.

ZACHARY, Judge.

Plaintiff Joseph Lee Harkley (“Husband”) appeals from an order holding him in contempt of court and an equitable distribution judgment dividing the marital assets of Husband and Defendant Maria Harkley (“Wife”). After careful review, we dismiss Husband’s appeal of the contempt order, vacate the equitable distribution judgment, and remand the case for further proceedings.

I. Background

Husband and Wife were married on 26 May 2012, had four children together, and separated on 13 June 2019. Husband filed a complaint for child custody on 24 June 2019. On 16 July 2019, Wife filed an answer and counterclaims for custody, support, post-separation support and alimony, equitable distribution, and attorney's fees. Husband filed an amended complaint on 23 November 2020, in which he added a claim for equitable distribution and requested an unequal distribution.

Wife served a copy of her first request for production of documents on Husband on 30 April 2021. Husband moved for an extension of time to respond to the request on 10 May 2021, which the trial court granted.

On 23 July 2021, Wife filed a motion to compel Husband to respond to her request for production of documents, alleging that although Husband's responses were received on 29 June, "[t]he responses were not verified and were incomplete." Wife stated that her counsel had sent Husband an email "setting forth specific deficiencies . . . and requesting full responses no later than" 15 July, to no avail. The trial court granted the motion to compel on 18 November 2021, ordering Husband to fully respond to 3 of the sections and to produce all documents related to 12 of the sections within 14 days.

On 22 April 2022, Wife filed a motion for an order to show cause and motion for contempt, alleging that Husband had "not served a verified response to [Wife's] [discovery requests] and ha[d] not provided [any] of the documents or the responses that he was ordered to provide." On 28 April 2022, the court issued an order to

Husband to appear and show cause why he should not be held in contempt of court. On 8 June 2022, the order to show cause came on for hearing. The trial court entered an order finding that the parties agreed that Husband was in willful civil contempt of the show cause order and that Husband could purge himself of his contempt by complying on or before 18 July 2022.

At the review hearing on 22 July 2022, the trial court determined that Husband had “made a good faith effort to comply with the [o]rder to [c]ompel” but that some of the requested documents had yet to be produced. The court ordered Husband to produce the outstanding documents on or before 19 August 2022.

On 31 January 2023, the trial court issued a second order to Husband to appear and show cause why he should not be held in contempt of court for his failure to comply with the purge conditions. On 24 April 2023, the court entered an order holding Husband in contempt. The court found that Husband had “not provided statements for several bank or other financial accounts in his name and vehicles which are considered marital property, as well as proof of his income.” As a sanction, the court ordered that Husband was to “sign any and all releases for financial information that he receives from [Wife’s] counsel within [three] days of the request.” The court further ordered that for any assets Husband had not disclosed or for which he had failed to produce documentation, it would “consider only the documents obtained by [Wife] and shall use the valuation of said asset as set forth in the documents [Wife] presents.”

HARKLEY V. HARKLEY

Opinion of the Court

The trial court conducted the equitable distribution hearing on 8 and 9 September 2023, and entered the judgment on 29 May 2024. The court determined that “an unequal distribution of the net marital and divisible property in [Wife’s] favor [was] equitable,” and distributed the property according to the following chart, which was included in the judgment:

Assets/Debts (Marital and/or Divisible)	To [Wife]	To [Husband]
[Marital Home]	\$365,000	
2013 Cadillac Escalade	\$14,000	
2006 Toyota 4Runner		\$10,400
SECU xxx9		\$291.34
SECU xxx1		\$25.29
Wells Fargo Checking xxx0		\$476.48
Wells Fargo Savings xxx5		\$28.00
One Main Financial 401k		\$29,480 (+ 3% gains)
Wyndham Time Share	\$25,000	
Wyndham Time Share Debt	<\$14,279.20>	
2013 Cadillac Escalade Loan		<[\$]14,000>
[Marital Home] Mortgage	<\$313,930.96>	
[Marital Home] -post DOS mortgage payments	<\$6,000>	<\$4,060>
TOTAL	\$69,789.84	\$22,641.11

In addition, the court ordered Wife to pay a distributive award of \$18,555 to Husband.

Husband timely appealed the trial court’s equitable distribution judgment.

II. Discussion

Husband raises two issues on appeal: whether the trial court erred 1) “in holding [Husband] in contempt and in ordering the sanctions against [him]” and 2) “in entering the equitable distribution judgment.”

A. Contempt Order

Husband first argues that the trial court erred “in holding [him] in contempt and in ordering the sanctions against [him],” because the court failed “to find that [Husband] willfully obstructed or unreasonably or attempted to unreasonably delay the discovery proceedings or the equitable distribution proceeding.” However, Husband has failed to properly appeal this order.

Rule of Appellate Procedure 3(d) “provides that an appellant’s notice of appeal shall designate the judgment or order from which appeal is taken. An appellant’s failure to designate a particular judgment or order in the notice of appeal generally divests this Court of jurisdiction to consider that order.” *Yorke v. Novant Health, Inc.*, 192 N.C. App. 340, 347, 666 S.E.2d 127, 133 (2008) (extraneity omitted), *disc. review denied*, 363 N.C. 260, 677 S.E.2d 461 (2009).¹

¹ “Notwithstanding the jurisdictional requirements in Rule 3(d), our Court has recognized that even if an appellant omits a certain order from the notice of appeal, our Court may still obtain jurisdiction to review the order pursuant to N.C. Gen. Stat. § 1-278.” *Yorke*, 192 N.C. App. at 348, 666 S.E.2d at 133. “Review under [N.C. Gen. Stat.] § 1-278 is permissible if three conditions are met.” *Id.* (extraneity omitted). One condition is that “the order must be interlocutory and not immediately appealable.” *Id.* (extraneity omitted). Here, Husband attempts to appeal from a contempt order. Yet, “[t]he appeal of any contempt order affects a substantial right and is therefore immediately appealable.” *Thompson v. Thompson*, 223 N.C. App. 515, 517, 735 S.E.2d 214, 216 (2012) (extraneity omitted). Thus, the § 1-278 exception does not apply.

In the case at bar, Husband’s “Notice of Appeal” states that Husband “gives notice of appeal . . . of the following attached court order” and lists the equitable distribution judgment. There is no reference to the contempt order in the notice of appeal. Accordingly, this Court lacks jurisdiction to consider Husband’s appeal of the contempt order.

In Husband’s brief on appeal, he asserts that “[t]o the extent that the 24 April 2023 sanctions and contempt order . . . is not properly before this Court,” this Court “should treat this opening brief as a petition for writ of certiorari and should nonetheless review the arguments.” We decline Husband’s invitation.

“This Court does have the authority pursuant to North Carolina Rule of Appellate Procedure 21(a)(1) to treat the purported appeal as a petition for writ of certiorari and grant it in our discretion.” *Luther v. Seawell*, 191 N.C. App. 139, 142, 662 S.E.2d 1, 3 (2008) (extraneity omitted). Nonetheless, exercise of this authority “is truly rare and something that this Court chooses to do on its own initiative; it is not something that a litigant should request.” *Doe v. City of Charlotte*, 273 N.C. App. 10, 23, 848 S.E.2d 1, 11 (2020). “Instead, a litigant who seeks issuance of a writ of certiorari should petition for one in the manner described in the Rules of Appellate Procedure.” *Id.*

Husband failed to notice appeal from the contempt order and to petition for writ of certiorari. Accordingly, we dismiss the appeal as to the challenged contempt order.

B. Equitable Distribution Judgment

Husband next argues that “[t]he trial court erred in entering the equitable distribution judgment.” Specifically, Husband contends that 1) “[t]he trial court erred in treating the purchase price of the marital house and the Cadillac Escalade as competent evidence of its value at the time of separation”; 2) the trial court failed to determine that an equal distribution of property would be inequitable; 3) “[t]he trial court did not enter sufficient findings reflecting proper consideration and weighing of all relevant [N.C. Gen. Stat.] § 50-20(c) factors”; 4) “[t]he trial court erred in applying the statutory factor under [N.C. Gen. Stat.] § 50-20(c)(11a)” (waste); and 5) “[t]he trial court erred in awarding an unspecified increase in the value of the property to” Wife. We agree with Husband that the trial court lacked competent evidence to value the marital home and the Cadillac and, therefore, vacate the order.

1. Standard of Review

“[T]he standard of review on appeal from a judgment entered after a non-jury trial,” such as an equitable distribution judgment, “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.” *Kabasan v. Kabasan*, 257 N.C. App. 436, 440, 810 S.E.2d 691, 696 (2018). “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.” *Id.* (extraneity omitted). “[C]onclusions of law are reviewable de novo.” *Id.* at 441, 810 S.E.2d at 696 (emphasis omitted).

“Finally, this Court reviews the trial court’s actual distribution decision for abuse of discretion.” *Id.* “A ruling committed to a trial court’s discretion is to be accorded great deference and will be upset only upon a showing that it 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).

2. Value of Cadillac and Marital Home

Husband argues that the trial court’s valuation of the Cadillac and the marital home was not based on competent evidence. We agree.

“[T]o enter a proper equitable distribution judgment, the trial court must specifically and particularly classify and value all assets and debts” of the parties “at the date of separation.” *Watson v. Watson*, 261 N.C. App. 94, 97, 819 S.E.2d 595, 598 (2018). Section 50-21(b) establishes the relevant valuation dates:

(b) For purposes of equitable distribution, marital property shall be valued as of the date of the separation of the parties, and evidence of preseparation and postseparation occurrences or values is competent as corroborative evidence of the value of marital property as of the date of the separation of the parties. Divisible property and divisible debt shall be valued as of the date of distribution.

N.C. Gen. Stat. § 50-21(b) (2025).

“Our Supreme Court has held that evidence of value from a date other than the relevant date may still be admissible if the ‘other’ date is not too remote in time.” *Cunningham v. Cunningham*, 302 N.C. App. 578, 581, 927 S.E.2d 46, 49 (2026)

(concluding that an account statement showing the value of an account six weeks before the hearing was competent evidence of the present value of the account).

“[A]d valorem tax records are not competent to establish the market value of real property.” *Edwards v. Edwards*, 251 N.C. App. 549, 551, 795 S.E.2d 823, 825 (2017). Nevertheless, a trial court is permitted to consider these records “for whatever probative value [they] may have” when they are admitted into evidence without objection. *Id.* at 552, 795 S.E.2d at 825.

In the present case, the trial court found that “the uncontroverted value of the marital residence as of the date of separation [was] \$365,000.” This finding was based on Wife’s testimony that she and Husband “paid \$365,000 for the house,” on which they closed in September 2012. Husband submits that this finding is “clearly erroneous” in that “there was no competent evidence presented that the family home was worth \$365,000 at the time of separation” in 2019. He further contends that the value of the marital home was not “uncontroverted” because the 2019 property tax records—documenting a 2019 tax value of \$425,407—were admitted into evidence without objection. Thus, the records were “entitled to be considered for whatever probative value [they] may have.” *Id.*

In *Fitzgerald v. Fitzgerald*, this Court considered a trial court’s determination of the date of separation value of a marital home where the evidence as to the value of the home consisted of an appraisal completed one year after the date of separation and a second appraisal completed three years after the date of separation. 161 N.C.

App. 414, 419, 588 S.E.2d 517, 521 (2003). We concluded that the appraisals were insufficient to support a finding of the fair market value of the house on the date of separation, reversed the order, and remanded the case “for the taking of further evidence and findings of fact on this issue.” *Id.*

Here, the trial court declined to consider the 2019 tax records. Hence, the only evidence of the value of the marital home was the purchase price six years prior to the date of separation. Thus, there was no evidence upon which to base a finding of the marital home’s date of separation value.

In a similar vein, Husband argues that trial court’s finding as to the value of the Cadillac was “erroneous and not based on competent evidence.” The only evidence of the Cadillac’s value that was admitted into evidence was Wife’s testimony that its trade-in value “would be somewhere *as of today* between \$13,247 and \$15,896.” (emphasis added). Although there was no evidence presented of the date of separation value of the Cadillac, the trial court found that the parties “purchased a 2013 Cadillac Escalade using funds earned during the marriage,” and that its value as of the date of separation was \$14,000.

The trial court’s findings as to the value of the marital home and the Cadillac—based exclusively on six-year-old and four-year-old evidence, respectively—relied on evidence that was “too remote in time,” *see Cunningham*, 302 N.C. App. at 581, 927 S.E.2d at 49, to support findings of the date of separation values. The equitable distribution order must be vacated.

3. Husband's Remaining Issues

Although we have determined that the equitable distribution judgment must be vacated, we address Husband's remaining issues to provide guidance to the trial court on remand.

Finding that Unequal Distribution was Equitable

Husband asserts that the trial court erred because it “never determined that the equal division of the property would be inequitable. To the contrary, it only determined that the unequal division of the property would be equitable.” We disagree.

When a court “provide[s] for an equitable distribution of the marital property and divisible property,” there must 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. Gen. Stat. § 50-20(a), (c). The court must determine whether an equal division is not equitable through consideration of the twelve factors delineated in N.C. Gen. Stat. § 50-20(c).

“[I]f the trial court makes the determination to divide a marital estate other than equally, the trial court must first find that an equal division is not equitable and explain why.” *Smith v. Smith*, 292 N.C. App. 443, 450, 899 S.E.2d 1, 6 (2024) (extraneity omitted), *aff'd as modified*, 387 N.C. 255, 912 S.E.2d 762 (2025). Nevertheless, “[t]his Court has made clear . . . that there is no case law requiring a trial court to use ‘magic words’ indicating that an equal distribution is not equitable.”

Id. (extraneity omitted). That is, the trial court need not use “verbatim language from N.C. Gen. Stat. § 50-20(c) to indicate that an equal division of the marital property is not equitable” as long as it “addresse[s] and applie[s] the factors from N.C. Gen. Stat. § 50-20(c) to the evidence presented.” *Id.*

In the instant case, the trial court listed four of the § 50-20(c) factors and made findings as to each of these factors. In doing so, the court “addressed and applied the factors from N.C. Gen. Stat. § 50-20(c) to the evidence presented” and thus satisfied the requirements of that subsection. *Id.* Nonetheless, the better practice is to explicitly state that an equal distribution is not equitable where the court intends to make an unequal distribution.

Evidence in Support of § 50-20(c) Factors

Husband next argues that “the trial court’s findings fail to show that it gave due consideration of the evidence presented by the parties in support of the relevant [§ 50-20(c)] factors.”

“In determining whether an equal distribution is equitable, the trial court must make findings of fact showing its due consideration of the evidence presented by the parties in support of the factors enumerated under [§] 50-20(c).” *Daetwyler v. Daetwyler*, 130 N.C. App. 246, 249, 502 S.E.2d 662, 665 (1998), *aff’d per curiam*, 350 N.C. 375, 514 S.E.2d 89 (1999). “The trial court need not make exhaustive findings of the evidentiary facts, but must include the ultimate facts considered.” *Id.* (extraneity omitted). The findings must be sufficiently specific “to permit the appellate court on

review to determine from the record whether the judgment—and the legal conclusions that underlie it—represent a correct application of the law.” *Patton v. Patton*, 318 N.C. 404, 406, 348 S.E.2d 593, 595 (1986).

“It is not required that the trial court make findings revealing the exact weight assigned to any given [§ 50-20(c)] factor. It is necessary, however, where evidence is presented on the [§] 50-20(c) factors, that the trial court make findings showing its consideration of these factors.” *Daetwyler*, 130 N.C. App. at 250, 502 S.E.2d at 665 (citation omitted).

In the present case, the trial court made the following findings of fact pursuant to N.C. Gen. Stat. § 50-20:

- a. 50-20 (c) (1)- The income, property and liabilities of each party at the time the division is to become effective. [Husband] is a[n] executive branch manager for CitiFinancial formerly known as One Main Financial² and has been employed there for thirty-one years earning a substantial living.
- b. 50-20 (c) (3)- The duration of the marriage and the age and physical and mental health of both parties. The parties were married 7 years. [Husband] has high blood pressure and diabetes.
- c. 50-20 (c) (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. [Wife] has resided in the former marital residence with the four minor children since the separation. [Wife] has reduced the principal on the mortgage while residing there. The former

² We note that Husband testified that he was currently employed with One Main Financial, which was formerly known as Citi Financial.

marital residence is the only home the minor children have known and it is important for them to remain in that home for schooling purposes and structure.

d. 50-20 (c) (11a)- Acts of either party to maintain, preserve, develop or expend; 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 the distribution. [Husband] has utilized vacation points without paying the associated fees in order to travel on his own.

Husband does not allege that the trial court failed to consider certain § 50-20(c) factors that it was obligated to consider; rather, he argues that “the ages of the parties [were] not discussed in the order,” that Wife’s “specific income, age, and other relevant circumstances [were] not addressed,” that “the judgment contains no discussion of his housing status or its effect on his financial condition,” and that the findings concerning his employment were erroneous. We agree with Husband in part.

The trial court found that Husband was employed, “earning a substantial living,” and that he had “high blood pressure and diabetes.” The term “a substantial living” is effectively meaningless, as it could include a wide range of incomes depending on an individual’s circumstances. No finding, either specific or general, was made as to Wife’s salary, nor were there findings as to the parties’ ages, despite testimony from both parties on that issue. The court found that Husband had multiple health issues but failed to address Wife’s relative good health. The trial court’s failure to make sufficiently specific findings on these factors, which are explicitly listed in N.C. Gen. Stat. § 50-20(c), was error.

By contrast, some of Husband's complaints as to this issue lack merit. While Husband testified that he was homeless and living in a camper, he fails to argue before this Court why this was relevant to the trial court's inquiry. Furthermore, Husband's testimony regarding the effect that this had on his financial situation was vague and did not provide the trial court with competent evidence to support a finding.

Lastly, while Husband is correct that portions of Finding 29a are erroneous, he has failed to demonstrate how these errors prejudiced him. *See Crutchfield v. Crutchfield*, 132 N.C. App. 193, 196, 511 S.E.2d 31, 34 (1999) ("To obtain relief on appeal, an appellant must not only show error, but that appellant must also show that the error was material and prejudicial." (extraneity omitted)). Husband testified that he had been employed at One Main Financial, previously named Citi Financial, throughout the parties' marriage, and that, at the time of the hearing he earned \$72,000 per year as a branch manager. A finding that more accurately reflected this testimony would have carried the same weight as the finding that appears in the judgment.

Time Share Vacation Points

Husband next contends that "[t]he trial court erred in failing to classify the vacation points as marital or divisible property."

N.C. Gen. Stat. § 50-20(a) provides that "the 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.” Wife testified that when she and Husband purchased the Wyndham time share, they received 105,000 vacation points as part of a promotion. By reference to these points in the finding addressing § 50-20(c) factor (11a)—waste of property—it is manifest that the trial court considered the points to be part of the time share, thus categorizing them as marital property.

Husband also takes issue with the basis of this finding, arguing that “the transcript of the proceedings does not show any competent testimony that [Husband] ever traveled by himself.” While there was no testimony that Husband traveled alone, he has not demonstrated any prejudice arising from the erroneous portion of this finding. Husband used travel points which were marital property, thereby decreasing the value of the marital property “during the period after separation of the parties and before the time of distribution.” *Id.* § 50-20(c)(11a).

Increase in the Value of the Marital Home

Finally, Husband argues that the trial court erred in awarding an unspecified increase in the value of the home to Wife. Although according to the current order this was a valueless award and therefore not prejudicial, we direct the trial court’s attention to this award should it be made again upon remand.

“A passive increase or decrease in the value of the marital residence between the date of separation and date of distribution is divisible property and must be distributed by the trial court.” *Lund v. Lund*, 252 N.C. App. 306, 309, 798 S.E.2d 424, 426 (2017).

Here, the trial court ordered that Wife was to receive the “[i]ncrease in value of the former marital residence” but did not place a value on this increase. It does not appear that the trial court could have placed a value on this increase, based on the evidence it chose to consider. Nonetheless, as determined above, the court’s valuation of the home was erroneous and any increase in value may be evaluated on remand.

4. Remand

“This Court is hesitant to remand equitable distribution cases and even more hesitant to reverse an equitable distribution judgment and grant the appellant a new trial.” *Glaspy v. Glaspy*, 143 N.C. App. 435, 444, 545 S.E.2d 782, 788 (2001).

We conclude, as we did in *Glaspy*, that a new trial is not the appropriate solution, although the court may, in its discretion, consider additional evidence. *Id.* at 445, 545 S.E.2d at 788. Rather, we remand with these instructions: first, the trial court is to make more thorough findings under § 50-20(c). Second, the trial court is to revalue the former marital home as of the date of separation, determine the passive increase or decrease in value of the marital home from the date of separation until the date of distribution, and distribute the home as well as any passive increase or decrease in value. Because Husband did not object to the admission of the 2019 tax records, the court may consider them “for whatever probative value [they] may have.” *Edwards*, 251 N.C. App. at 552, 795 S.E.2d at 825. Furthermore, we remind the court that where a party fails to carry his or her burden to introduce competent evidence of property value, the trial court does not abuse its discretion by declining to distribute

that property. *See Montague v. Montague*, 238 N.C. App. 61, 68–69, 767 S.E.2d 71, 76–77 (2014). On remand, “[t]he trial court may modify its division of property as appropriate.” *Glaspy*, 143 N.C. App. at 445, 545 S.E.2d at 788.

III. Conclusion

For the foregoing reasons, we dismiss Husband’s appeal from the contempt order, vacate the trial court’s equitable distribution judgment, and remand to the trial court for further proceedings consistent with this opinion.

DISMISSED IN PART; VACATED IN PART AND REMANDED.

Judge GORE concurs.

Judge WOOD concurs in result only.

Report per Rule 30(e).