An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA25-818

Filed 4 November 2026

Mecklenburg County, No. 22CVD010577-590

ALEXANDRA WARBER, Plaintiff-Mother,

v.

TYLER WARBER, Defendant-Father.

Appeal by defendant from order entered 25 January 2025 by Judge Roderick G. Davis in Mecklenburg County District Court. Heard in the Court of Appeals 11 August 2026.

Marcellino & Tyson, PLLC, by Danielle J. Walle, for the plaintiff-appellee.

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

TYSON, Judge.

Tyler Warber ("Defendant") appeals from the trial court's order granting relief under Rules of Civil Procedure 52, 59, and 60 in favor of Alexandra Warber ("Plaintiff"). We affirm in part, vacate the award of attorney's and forensic accountant's fees, and remand.

I. Background

Plaintiff and Defendant were married on 5 June 2016. The parties are parents of two children. Plaintiff and Defendant separated on 9 July 2022. The parties were awarded joint physical and legal custody of the children by order entered 20 March 2024. Child support and attorney's fees for the custody action were also decided by this order. The trial court held a trial on equitable distribution on 11 July 2024.

Both parties submitted competing orders to the trial court. The trial court entered Defendant's proposed order on equitable distribution on 23 August 2024. Plaintiff moved for relief pursuant to Rules 52, 59, and 60. *See* N.C. Gen. Stat. § 1A-1, Rules 52, 59, 60 (2025).

The trial court heard Plaintiff's motion on 2 December 2024 and vacated the 23 August 2024 entered order on 27 December 2024. The trial court entered Plaintiff's purposed order on 25 January 2025. Defendant appeals.

II. Jurisdiction

This Court possesses jurisdiction pursuant to N.C. Gen. Stat. § 7A-27(b) (2025).

III. Issues

Defendant argues the trial court erred in: (1) granting Plaintiff's Rules 52, 59, and 60 motions; (2) valuing Defendant's cryptocurrency; (3) valuing Plaintiff Teachers Insurance and Annuity Association of America-College Retirement Equities Fund ("TIAA") retirement account; (4) made findings of fact, which are not supported by competent evidence; (5) awarding Plaintiff an unequal share of the marital estate in the equitable distribution order; (6) not resolving factual disputes in the evidence;

(7) ordering him to pay $15,261.40 in attorney's fees as a sanction; and, (8) ordering him to pay the entire costs and fees for the forensic accountant.

IV. Defendant's Challenged Findings of Fact

A. Standard of Review

"Findings of fact made by the trial judge are conclusive on appeal if supported by competent evidence, even if there is evidence to the contrary." *Sisk v. Transylvania Cmty. Hosp., Inc.*, 364 N.C. 172, 179, 695 S.E.2d 429, 434 (2010) (citations and alterations omitted).

B. Analysis

Defendant challenges numerous findings of fact. Defendant challenges the following findings of fact involving discovery:

> 15. This Court has repeatedly found [Defendant's] testimony to lack credibility.
>
> 16(b) After the deadline for production of discovery for [Defendant], [Plaintiff] send (sic) numerous letters to [Defendant's] counsel asking for additional documents and supplemental discovery. [Defendant] did not respond to these requests.
>
> 16(g) [Defendant] filed an unsigned Equitable Distribution Affidavit on 17 November 2022 ([Defendant]'s First Affidavit).
>
> 16(h) [Defendant] did not file an Equitable Distribution Affidavit prior to the trial as required by Local Rule 13.2 or N.C.G.S. § 50-21. [Defendant]'s attorney asserted there was a mistake caused by electronic filing. [Defendant]'s counsel did send an excel spreadsheet to [Plaintiff]s attorney in the week before trial. [Defendant] testified to the contents of this spreadsheet during the trial. The

> spreadsheet was not an affidavit – at no point was it signed or notarized.
>
> 16(n) [Defendant] failed to produce a Final Pretrial Order or participate in a discovery plan.
>
> 16(o) [Defendant] did not cooperate with [Plaintiff] in preparing a Final Pretrial Order.

Defendant's arguments are misplaced. The above findings are supported by competent evidence. Defendant's equitable distribution affidavit, admitted at trial, was notarized, but was unsigned. Plaintiff's motion *in limine* raised the absence of Defendant's equitable distribution affidavit, and Defendant's failure to provide required disclosures and documentation.

Defendant further argues the trial court's findings of fact concerning the martial asset of the Pokemon trading cards collection are not supported by competent evidence:

> 29(l)(i) The uncontested evidence is that [Defendant] had large numbers of Pokemon cards at the date of separation.
>
> 29(l)(ii) The uncontested evidence is that [Defendant] removed the most valuable cards and the vast majority of these cards.
>
> 29(l)(iii) [Plaintiff] believes the cards left behind in her possession were worth, conservatively, $300.00, based on her research into the market on Pokemon cards.
>
> 29(l)(iv) [Plaintiff] believes the Pokemon cards [Defendant] took is between $1,000.00 and $3,000.00. (sic)
>
> 29(l)(v) [Defendant] did not contest [Plaintiff's] evidence regarding the Pokemon cards.

> 29(l)(vi) The value of the Pokemon cards is $1,800.00 ($1,500.00 for those in [Defendant's] possession and $300.00 for those in [Plaintiff's] possession).

Defendant's argument is again misplaced. Defendant did not put forth any evidence before the trial court regarding any value of the Pokemon cards. Defendant now asserts Plaintiff's testimony regarding the value of the Pokemon cards he took from the marital home was incompetent because it was a "guess."

Plaintiff testified Defendant had taken the more valuable Pokemon cards from the collection, and she estimated their value to be between $1,000 to $3,000. These findings are supported by competent evidence. *See Goodson v. Goodson*, 145 N.C. App. 356, 361, 551 S.E.2d 200, 204-05 (2001) (holding the co-owner of property is competent to testify to its value, even though she did not know the value of surrounding property).

Defendant further challenges the findings of facts concerning the 2019 Jeep Compass sport utility vehicle:

> 29(q)(i) [Defendant] testified that there was $32,485.00 of debt owed on the 2019 Jeep Compass as of the date of separation. [Defendant] produced no credible evidence in support of his testimony.
>
> 29(q)(ii) [Defendant] offered no information regarding the holder of the debt, the payments owed on the debt, the interest rate of the debt, or any other details that would lend credibility to [Defendant]'s assertion that a debt was outstanding on the 2019 Jeep Compass.
>
> . . . .

> 29(q)(iv) [Defendant] testified that he "believed" he currently owes "approximately" $20,000.00 on the Jeep Compass.
>
> 29(q)(v) The Court does not find it credible that the debt on the 2019 Jeep Compass increased by $70.00 between the date the debt was incurred to the date of separation.

Defendant asserts the above findings of fact are unsupported by competent evidence. Defendant argues these findings merely recite his testimony and do not resolve conflicts in the evidence. Defendant did not produce supporting evidence establishing the amount of debt owed on the vehicle. He testified he owed "approximately $32,000" on the vehicle on the date of separation. Defendant also did not prove the alleged debt was incurred for the joint benefit of Plaintiff and Defendant. *See Becker v. Becker*, 112 N.C. App. 409, 414, 489 S.E.2d 909, 913 (1997) (citations omitted).

Defendant further challenges the following findings of fact:

> 29(q)(vi) [Defendant] has made the claim that the debt on the 2019 Jeep Compass is marital. As such, [Defendant] has the burden of providing the value of the debt on the date of separation per *Pott v. Pott*, 126 N.C. App. 285, 284 S.E.2d 822 (1997).
>
> 29(q)(vii) [Defendant] failed to meet his burden of proof on the value of the debt, so it is not subject to equitable distribution per *Ikechuku v. Ikechukeu*, 200 N.C. App. 617, 687 S.E.2d 710 (2009).
>
> 29(q)(viii) Even if [Defendant] had met his burden of proof for valuing the debt for the 2019 Jeep Compass, [Defendant] offered no evidence that the debt was incurred for the joint benefit of the [Defendant] and [Plaintiff] per *Riggs v. Riggs*, 124 N.C. App. 647, 478 S.E.2d 211 (1996).

> 29(q)(ix) The evidence was insufficient for the Court to classify and value this asset. It shall pass outside of equitable distribution.

Defendant asserts these "are conclusions of law and not findings of fact and should be stricken." "The labels 'findings of fact' and 'conclusions of law' employed by the trial court in a written order do not determine the nature of our standard of review." *In re Estate of Sharpe*, 258 N.C. App. 601, 605, 814 S.E.2d 595, 598 (2018). "If the lower tribunal labels as a finding of fact what is in substance a conclusion of law we review that 'finding' as a conclusion [of law] *de novo*." *Id.*

[A]ny determination requiring the exercise of judgment, or the application of legal principles, is more properly classified a conclusion of law." *In re Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675 (1997) (citations omitted).

Defendant correctly argues these "findings" are conclusions of law. However, the remedy is for this Court to review the conclusions of law. Defendant does not assert any legal error or citations, other than to state they should be "stricken." Defendant has waived appellate review and his argument is dismissed. *See* N.C. R. App. P. 28(a) ("Issues not presented and discussed in a party's brief are deemed abandoned.").

V. Plaintiff's Rule 52, 59, and 60 Motion

Defendant argues the trial court erred in granting Plaintiff's Rule 52, 59, and 60 Motions. N.C. Gen. Stat. § 1A-1, Rules 52, 59, 60 (2025). Defendant asserts the trial court erred in granting them, and Plaintiff should have appealed to this Court.

A. Standard of Review

"[A] motion for relief under Rule 60(b) is addressed to the sound discretion of the trial court and appellate review is limited to determining whether the court abused its discretion." *Sink v. Easter*, 288 N.C. 183, 198, 217 S.E.2d 532, 541 (1975). "A judge is subject to reversal for abuse of discretion only upon a showing by a litigant that the challenged actions are manifestly unsupported by reason." *Clark v. Clark*, 301 N.C. 123, 129, 271 S.E.2d 58, 63 (1980) (citation omitted).

B. Rule 60

Our Court has long held: "It is settled law that erroneous judgments may be corrected only by appeal, and that a motion under G.S. 1A-1, Rule 60(b) of the Rules of Civil Procedure cannot be used as a substitute for appellate review." *Town of Sylva v. Gibson*, 51 N.C. App. 545, 548, 277 S.E.2d 115, 117 (1981) (citations omitted). "The test for whether a judgment, order or proceeding should be modified or set aside under Rule 60(b)(6) is two pronged: (1) extraordinary circumstances must exist and (2) there must be a showing that justice demands that relief be granted." *Howell v. Howell*, 321 N.C. 87, 91, 361 S.E.2d 585, 588 (1987).

"The main objective of Rule 60(b) is to 'strike a proper balance between the conflicting principles of finality and relief from unjust judgments.'" *Young Real Est. Invs., LLC v. Affordable Mini Storage of Newton, LLC*, 300 N.C. App. 114, 118, 920 S.E.2d 231, 235 (2025) (quoting *Carter v. Clowers*, 102 N.C. App. 247, 254, 401 S.E.2d 662, 666 (1991)). "While technically a catch-all provision, Rule 60(b)(6) provides trial

courts with vast reservoir of equitable power," however, "[e]xercise of the power is within the full discretion of the trial judge." *N.C. Dep't of Transp. V. Laxmi Hotels of Spring Lake, Inc.*, 259 N.C. App. 610, 621, 817 S.E.2d 62, 71 (2018).

The trial court "may relieve a party of his legal responsibility from a final judgment, order, or proceeding for the following reasons (1) [m]istake, inadvertence, surprise, or excusable neglect; . . . (4) [t]he judgment is void; . . . [or] (6) [a]ny other reason justifying relief from the operation of the judgment." N.C. Gen. Stat. § 1A-1, Rule 60(b) (2025). In order to obtain relief from judgment, "[t]he motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order, or proceeding was entered or taken." *Id.*

The trial court told the parties at the 2 December 2024 hearing, it did not prepare the order entered. The trial court stated "something's wrong," and that it "must have signed or did something that's wrong." The trial court further stated it believed it may have "clicked on" and mistakenly signed Defendant's proposed order.

Contrary to Defendant's arguments, extraordinary circumstances exist on the record, and Plaintiff informed the trial court judge and showed relief should be granted to correct its error by signing the wrong order. Defendant's argument is overruled. In light of our decision, we need not reach Defendant's Rule 59 and 52 arguments.

VI. Cryptocurrency Assets

Defendant argues the trial court abused its discretion when it valued the

cryptocurrency assets. Defendant asserts the following findings of fact are unsupported:

> 29(o)(iii)(2). As of the date of separation, these Bitcoin were worth $60,000.00 ($20,000.00 each).
>
> 29(o)(iii)(3). These Bitcoin are currently worth $180,000.00 ($60,000.00 each).
>
> 29(o)(iv)(8). From the digital assets [the forensic accountant] was able to trace, [Defendant] had $26,076.86 as of the date of separation.
>
> $6.00 in Coinbase Account ending in 8717;
>
> $800.95 in Binance
>
> $3,147.10 in Moonpay; and
>
> $22,122.81 in 15 wallets.
>
> 29(o)(v). As of the date of separation, the parties had $26,076.86 in various digital currency and $60,000.00 in bitcoin.
>
> 29(o)(viii). The value of the cryptocurrency to be distributed is $206,195.89 consisting of $180,000.00 for three bitcoin, $26,076.86 from various digital currency, $5.00 from Robinhood and $24.03 from the Fidelity Account.

Defendant did not object to the forensic accountant's qualifications, the trial court's admission to the forensic accountant's report, or the trial court's consideration of the materials. "Absent a clear showing of legal error in utilizing [an] approach, this Court is not inclined to second guess the expert and the trial court, which accepted and approved this determination." *Sharp v. Sharp*, 116 N.C. App. 513, 529,

449 S.E.2d 39, 47 (1994).

Defendant has not provided evidence, nor pointed to anything in the record on appeal, rising to the level of a "clear showing of legal error", which would cast doubt upon the trial court's determinations of credibility and weight assigned. Defendant did not present his own expert nor proffer his own competing valuation of the assets. Defendant's argument is overruled.

VII. Plaintiff's Retirement Account

Defendant argues the trial court abused its discretion in valuing Plaintiff's TIAA account with a marital value of $47,748.22. Defendant challenges the following findings of fact:

> 29(j)(iii) The TIAA Retirement Account was opened prior to the date of marriage and contained funds as of the date of marriage.
>
> 29(j)(iv) [Plaintiff] testified that she had regularly contributed 7% of her gross income to this account and that was matched by her employer's contributions.
>
> 29(j)(ix) [Defendant's] valuation of $47,748.22 as to account for the premarital contributions of [Plaintiff] to the TIAA Retirement Account.
>
> 29(j)(x) [Plaintiff] agreed that $47,748.22 is the value of the marital portion of the TIAA Retirement Account.
>
> 29(j)(xi) The value of the marital portion of the TIAA Retirement Account is $47,748.22.

Defendant testified the marital value of the TIAA Retirement Account was $47,748.22. Defendant cannot now argue the trial court erred by accepting his

testimony of and the consented-to value. "The law does not permit parties to swap horses between courts in order to get a better mount in the appellate courts." *Weil v. Herring*, 207 N.C. 6, 10, 175 S.E.2d 836, 838 (1934). Defendant's argument is overruled.

VIII. Unequal Equitable Distribution

Defendant argues the trial court erred in awarding Plaintiff an unequal distribution.

A. Standard of Review

In an equitable distribution order, the findings of fact "must support the determination that the marital property has been equitably divided." *McIver v. McIver*, 92 N.C. App. 116, 127, 374 S.E.2d 144, 151 (1988) (citations and quotation marks omitted). "Equitable distribution is vested in the discretion of the trial court and will not be disturbed absent a clear abuse of that discretion." *Wiencek-Adams v. Adams*, 331 N.C. 688, 691, 417 S.E.2d 449, 451 (1992).

B. Analysis

Our General Statutes mandate an "equal distribution" of marital property in an equitable distribution proceeding, "unless the court determines that an equal division is not equitable." N.C. Gen. Stat. § 50-20(c) (2025); *see White v. White*, 312 N.C. 770, 775-76, 324 S.E.2d 829, 832 (1985). "[T]he statute is a legislative enactment of public policy so strongly favoring the equal division of marital property that an equal division is made *mandatory* 'unless the court determines that an equal division

is not equitable.'" *White*, 312 N.C. at 776, 324 S.E.2d 832 (citation omitted).

Twelve statutory factors must be considered by a trial court when determining whether an unequal distribution of marital property and divisible property is equitable. N.C. Gen. Stat. § 50-20(c)(1)-(12)(2025). "[I]f evidence is presented as to several statutory factors, the trial court must make findings as to each factor for which evidence was presented." *Rosario v. Rosario*, 139 N.C. App. 258, 261, 533 S.E.2d 274, 276 (2000) (citations omitted).

If the trial court decides "to divide a marital estate other than equally, the trial court must first find that an equal division is not equitable and explain why." *Lucas v. Lucas*, 209 N.C. App. 492, 504, 706 S.E.2d 270, 278 (2011). "[T]here is no case law requiring a trial court to use 'magic words' indicating that an equal distribution is not equitable[.]" *Carpenter v. Carpenter*, 245 N.C. App. 1, 14, 781 S.E.2d 828, 838-39 (2016).

"The weight given each factor, however, is within the discretion of the trial court, and the trial court is not required to specifically state the weight given each factor to 'support the determination' an equitable distribution has been made." *Friend-Novorska v. Novorska*, 143 N.C. App. 387, 395, 545 S.E.2d 788, 794 (2001) (quoting *White*, 312 N.C. at 777-78, 324 S.E.2d at 833). "Additionally, the weight given each factor by the trial court must be upheld on appeal absent a showing of abuse of discretion." *Id.* (citation omitted).

Defendant asserts the trial court awarded Plaintiff the marital residence

without any reasoning or determination of the percentage of the marital estate Plaintiff would receive. The trial court identified each of the twelve factors and determined seven of the twelve factors supported an unequal distribution in Plaintiff's favor. The trial court assigned values to the distributed assets and ordered a distribution from which Plaintiff received an unequal distribution. Defendant's argument is overruled.

IX. Recitations of Testimony

Defendant asserts there are at least eighty findings of fact which are mere recitations of evidence because they begin with "[Defendant] testified," "[Plaintiff] testified," or "[Plaintiff] believes." Upon review, the trial court made supported evidentiary findings, which explains the basis for its ultimate determinations. *See Comstock v. Comstock*, 240 N.C. App. 304, 311, 771 S.E.2d 602, 608 (2015). Defendant's arguments are overruled.

X. Attorney's Fees

Defendant argues the trial court erred in awarding Plaintiff's attorney fees as a sanction.

A. Standard of Review

The imposition of sanctions for a party failing to comply with discovery requests "is a matter within the sound discretion of the trial court and cannot be overturned on appeal absent a showing of abuse of discretion." *Burns v. Kingdom Impact Glob. Ministries, Inc.*, 251 N.C. App. 724, 729, 797 S.E.2d 21, 25 (2017) (citing

Bumgarner v. Reneau, 332 N.C. 624, 631, 422 S.E.2d 686, 690 (1992).

"An abuse of discretion may arise if there is no record evidence which indicates that [a] defendant acted improperly, or if the law will not support the conclusion that a discovery violation has occurred." *Butler v. Speedway Motorsports, Inc.*, 173 N.C. App. 254, 264, 618 S.E.2d 796, 803 (2005) (citations omitted).

B. Analysis

North Carolina follows the "American Rule" with regards to awards of attorney's fees against an opposing party. *Ehrenhaus v. Baker*, 243 N.C. App. 17, 23-25, 776 S.E.2d 699, 704-05 (2015). Applying the "American Rule", our Supreme Court held each litigant is required to pay its own attorney's fees, unless a statute or agreement between the parties provides otherwise. *In re King*, 281 N.C. 533, 540, 189 S.E.2d 158, 162 (1972).

Our Court has held: "in order for the appellate court to determine if the statutory award of attorneys' fees is reasonable the record must contain findings of fact as to the time and labor expended, the skill required, the customary fee for like work, and the experience or ability of the attorney." *Cotton v. Stanley*, 94 N.C. App. 367, 369, 380 S.E.2d 419, 421 (1989).

Plaintiff filed an attorney's fee affidavit. The equitable distribution order does not address any of the above mandatory findings required to determine reasonableness of the fees. The award of attorney's fees is vacated. "On remand, the trial court shall rely upon the existing record, but may in its sole discretion receive

such further evidence and further argument from the parties as it deems necessary and appropriate to comply with the instant opinion." *Heath v. Heath*, 132 N.C. App. 36, 38, 509 S.E.2d 804, 805 (1999).

XI. Forensic Accountant

In light of our decision to vacate the amount awarded for attorney fees and to remand for further proceedings and findings, the trial court's order ordering Defendant to pay the entire bill for the forensic accountant pursuant to N.C. Gen. Stat. § 50-21(e) (2025) is also vacated and remanded.

XII. Conclusion

The trial court did not err in granting Plaintiff's Rule 60 motion. The trial court did not abuse its discretion in valuing marital cryptocurrency assets, Plaintiff's retirement account, and in awarding an unequal distribution.

We vacate the award of attorney's fees and the appropriation of the forensic accountant's bill.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.

Judges HAMPSON and STADING concur.

Report per Rule 30(e).