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NO. COA01-1190

NORTH CAROLINA COURT OF APPEALS

Filed: 6 August 2002

DEBRA R. GREINER,
Plaintiff

v.

Brunswick County
No. 00 CVD 655

FREDRICK K. GREINER,
Defendant

Appeal by plaintiff from order entered 30 March 2001 by Judge Nancy Phillips in Brunswick County District Court. Heard in the Court of Appeals 23 May 2002.

John K. Burns for plaintiff-appellant.

Del Re' Law Firm, by Benedict J. Del Re', Jr., for defendant-appellee.

CAMPBELL, Judge.

Plaintiff appeals from an order denying an award of alimony based on the conclusion that she was not a dependent spouse pursuant to Section 50-16.1A of the General Statutes of North Carolina. We reverse and remand for additional evidence and findings.

Plaintiff and defendant were married on 19 June 1970. Throughout the marriage, defendant was the primary income producer for the family and was receiving a gross income of approximately \$46,000.00 at the commencement of this action. Plaintiff is a high

school graduate and a certified Activities Director, but has been unable to locate employment in such a capacity since 1994. During the marriage, plaintiff devoted herself to the rearing of the parties' two children and occasionally worked at various part-time jobs typically earning between \$6.00 and \$8.00 per hour. Prior to the filing of this action, plaintiff was last employed from January, 1997 to August, 2000 earning between \$7.00 and \$9.70 per hour. As of March, 2001, plaintiff was still unemployed and was receiving unemployment benefits.

The parties separated on 4 March 1995. Plaintiff filed a complaint dated 20 April 2000 seeking a legal separation, post-separation support, a divorce, child custody, child support, permanent alimony, equitable distribution of property, and attorney's fees. A divorce was granted on 14 August 2000, resolving all issues other than equitable distribution and alimony.

An equitable distribution proceeding between the parties was held on 23 January 2001 in Brunswick County District Court with Judge Nancy Phillips ("Judge Phillips") presiding. As a result of this proceeding, plaintiff was awarded one-half interest in the marital home less defendant's contributions. Plaintiff was also awarded a one-half interest in defendant's retirement fund.

The issue of alimony was addressed at a 13 March 2001 hearing (also before Judge Phillips). The trial court entered an order on 30 March 2001 denying plaintiff an award of alimony after concluding that she was not a dependent spouse. Plaintiff appeals from this order.

Plaintiff's sole issue on appeal is whether the trial court erroneously determined that she was not a dependent spouse under Section 50-16.1A and therefore not entitled to an alimony award.

In order to receive an award of alimony, the party seeking alimony must establish that: "(1) [the] party is a dependent spouse; (2) the other party is a supporting spouse; and (3) an award of alimony would be equitable under all the relevant factors." *Barrett v. Barrett*, 140 N.C. App. 369, 371, 536 S.E.2d 642, 644 (2000). A "dependent spouse" is one who is "actually substantially dependent upon the other spouse for his or her maintenance and support or is substantially in need of maintenance and support from the other spouse." N.C. Gen. Stat. § 50-16.1A(2) (2001). A trial court's determination of this spouse's dependency is reviewed *de novo*. *Barrett v. Barrett*, 140 N.C. App. 369, 536 S.E.2d 642 (2000). Under such a standard, it must be determined (1) whether the trial court's conclusions of law support its judgment or determination, (2) whether the trial court's conclusions of law are supported by its findings of fact, and (3) whether the findings of fact are supported by sufficient evidence. See *Turner v. Duke University*, 325 N.C. 152, 381 S.E.2d 706 (1989). "If the appellate court makes these three decisions in the affirmative, it must uphold the trial court's decision[.]" *Id.* at 165, 381 S.E.2d at 714.

Furthermore, pursuant to our statutory law, "[t]he court shall set forth the reasons for its award or denial of alimony[.]" § 50-16.3A(c). Those reasons must be based upon the facts that are in

existence at the time of the alimony trial. See *Williams v. Williams*, 299 N.C. 174, 261 S.E.2d 849 (1980). Also, with the exception of motions where the North Carolina Rules of Civil Procedure do not require specific findings, "the court shall make a specific finding of fact on each of the factors in [Section 50-16.3A(b)] if evidence is offered on that factor." § 50-16.3A(c). See also § 50-16.3A(b) (listing the relevant factors considered in "determining the amount, duration, and manner of payment of alimony"). "[T]he trial court's findings of fact [with respect to all of these factors] must be more than mere evidentiary facts; they must be the 'specific ultimate facts . . . sufficient for [an] appellate court to determine that the [alimony award] is adequately supported by competent evidence.'" *Williamson v. Williamson*, 140 N.C. App. 362, 363-64, 536 S.E.2d 337, 338 (2000) (citing *Montgomery v. Montgomery*, 32 N.C. App. 154, 156-57, 231 S.E.2d 26, 28 (1977)). See also § 1A-1, Rule 52(a).

In the case at bar, some evidence was offered regarding "the relative earnings and earning capacities of the spouses[,]" which is one of the factors considered by the courts when determining dependency. See §§ 50-16.3A(b)(2), (8). In the court's order, the findings of fact relevant to this factor stated "[t]hat the Plaintiff testified she has not been able to find another job that payed as much as she was earning at her previous job but would probably have to accept a job paying less when the unemployment compensation benefits stopped." However, this finding was merely a recitation of an evidentiary fact provided by plaintiff's

testimony. The finding was not a specific ultimate fact because the trial court simply reiterated plaintiff's testimony in its order, providing this Court with no indication that this finding was a final resulting effect reached through processes of legal or logical reasoning. See *Williamson*, 140 N.C. App. at 364, 536 S.E.2d at 339; *Appalachian Poster Advertising Co. v. Harrington*, 89 N.C. App. 476, 479, 366 S.E.2d. 705, 707 (1988). Thus, we cannot conclude that the court's assessment of plaintiff's earning capacity was adequately supported by sufficient evidence in light of the evidence offered relating to this factor.

Additionally, some evidence was offered regarding the relative needs of plaintiff, another factor considered by the courts when determining dependency. See § 50-16.3A(b) (8). The trial court's finding of fact relevant to this factor stated "[t]hat the needs of the Plaintiff are \$900.00 per month based upon the Affidavit entered in Court and based upon her testimony at the hearing of this matter." Yet, in her affidavit, plaintiff set forth her monthly expenses as totaling approximately \$2,900.00. Although she later reduced those expenses by approximately \$500.00 when questioned about them during the trial, her monthly expenses still totaled approximately \$2,400.00. Neither the trial transcript nor the trial court's order establishes how the court determined plaintiff's needs were only \$900.00 per month; therefore, there is insufficient evidence to support this finding of fact as well.

Finally, in determining whether or not to award alimony, a trial court shall consider other relevant factors such as "the

relative debt service requirements of the spouses" and "[a]ny other factor relating to the economic circumstances of the parties that the court finds to be just and proper[]" when evidence is offered on these factors. §§ 50-16.3A(b)(10), (15). One such "other factor" is the financial worth or estate of a spouse. See *Williams v. Williams*, 299 N.C. 174, 183, 261 S.E.2d 849, 856 (1980). Evidence presented at the alimony hearing in the case *sub judice* demonstrated that, in addition to previously being awarded a one-half interest in both the parties' marital residence and in defendant's retirement fund, plaintiff also holds title to a mobile home and two automobiles on which she has accrued debts. However, no findings of fact were set forth to fully address these assets owned and debts accrued by plaintiff. Rather, the trial court's order only contained a general statement acknowledging that the court "previously ordered Equitable Division of the marital property and provided for sale of the marital residence with one half of [the] proceeds to each party." Neither this finding nor any other finding considered the evidence presented at trial of other debts or assets owned by plaintiff or her ability to maintain the estate she was awarded in the equitable distribution hearing. The trial court's finding of fact as to the estate and financial worth of plaintiff is also unsupported by sufficient evidence.

Based on the foregoing reasons, we find that the trial court erred in denying plaintiff an award of alimony by concluding that she was not a dependent spouse pursuant to Section 50-16.1A. While none of the factors enumerated above are singularly determinative,

their collective inadequacy or absence is in violation of the requirement that the court find specific ultimate facts based on sufficient evidence and, therefore, cannot support a denial of alimony. Additional evidence and findings are necessary to properly determine whether plaintiff is a dependent spouse. Thus, we reverse the trial court's order and remand with instructions that the court make appropriate findings of fact and conclusions of law to support its order.

Reversed and remanded.

Judges MARTIN and TIMMONS-GOODSON concur.

Report per Rule 30(e).