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NO. COA01-440

NORTH CAROLINA COURT OF APPEALS

Filed: 21 May 2002

KIMBERLY SOLZSMON

v.

Guilford County  
No. 99 CVD 6743

TIMOTHY SOLZSMON

Appeal by defendant from judgment entered 12 October 2000 by Judge Patrice Hinnant in Guilford County District Court. Heard in the Court of Appeals 12 February 2002.

*Tracey G. Tankersley for plaintiff-appellee.*

*John W. Lunsford for defendant-appellant.*

THOMAS, Judge.

Defendant, Timothy Solzsmon, appeals an order requiring him to pay \$1000.00 per month in permanent alimony and \$200.00 per month for five years in retroactive alimony.

Defendant contends the trial court failed to make adequate findings of fact in concluding that plaintiff, Kimberly Solzsmon, is a dependent spouse and he is a supporting spouse, and further erred by failing to consider the requisite statutory factors in determining that an award of alimony is equitable. For the reasons discussed herein, we reverse and remand for further findings consistent with this opinion.

Plaintiff and defendant were married on 14 November 1992. On

25 May 1999, plaintiff filed a complaint seeking postseparation support and permanent alimony. She alleges three grounds of marital misconduct: abandonment, adultery, and the squandering of marital funds.

The trial court heard evidence that defendant works as an operations manager at Carolina Builders and earns approximately \$38,000.00 per year plus an annual bonus averaging \$3,000.00. Plaintiff is employed as a billing specialist for a law firm and earns approximately \$2,000.00 per month, or \$24,000.00 annually, in gross income.

At the start of the marriage, defendant began depositing \$1,200.00 per month into a joint bank account for the parties' living expenses. As he received raises, the amount increased. By the end of the marriage, defendant was depositing \$1,800.00 per month into the account. Meanwhile, plaintiff's entire monthly paycheck was directly deposited into the account.

Immediately prior to their separation, plaintiff confronted defendant about his relationship with her stepsister. When defendant left the marital residence, he and plaintiff's stepsister began living together and subsequently became engaged.

Defendant paid plaintiff \$200.00 per month in postseparation support but did not otherwise pay on any marital debts after the date of separation. Plaintiff testified that she enjoyed a higher standard of living during the marriage than at the time of the hearing. She said she was forced to deplete her savings accounts and borrow money from her mother.

The trial court entered an order requiring defendant to pay plaintiff \$200.00 per month in back alimony until the sum of \$12,000.00 is paid in full plus \$1,000.00 per month in permanent alimony. Defendant was also ordered to pay \$528.00 per month in child support for the parties' minor son.

By his first assignment of error, defendant contends the trial court erred in failing to find sufficient facts to support its conclusion that plaintiff is a dependent spouse and defendant is a supporting spouse. We agree.

To be entitled to alimony, the party seeking it must show: "(1) that 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). "Supporting spouse" is a spouse "upon whom the other spouse is actually substantially dependent for maintenance and support or from whom such spouse is substantially in need of maintenance and support." N.C. Gen. Stat. § 50-16.1A(5) (1999). "Dependent spouse" is defined as a spouse "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) (1999).

Here, the trial court found that plaintiff is both "actually substantially dependent" on defendant and "substantially in need of maintenance and support from defendant."

To find a spouse to be "actually substantially dependent" on

the other spouse, he or she must have "actual dependence on the other in order to maintain the standard of living in the manner to which that spouse became accustomed during the last several years prior to separation." *Williams v. Williams*, 299 N.C. 174, 180, 261 S.E.2d 849, 854 (1980) (emphasis omitted). In other words, the spouse seeking alimony would be unable to maintain the accustomed standard of living from his or her own means. *Id.* at 181, 261 S.E.2d at 855. The trial court must analyze the parties' "incomes and expenses measured by the standard of living of the family as a unit. If this comparison reveals that one spouse is without means to maintain his or her accustomed standard of living, then [that spouse] would qualify . . . as 'actually substantially dependent.'" *Id.* at 183, 261 S.E.2d at 854. The trial court made no such comparison. It merely incorporated by reference an affidavit of plaintiff's current income and expenses and set forth defendant's income and expenses according to his testimony.

If a spouse is not found to be actually substantially dependent on the other spouse, the trial court must then determine whether that spouse is "substantially in need of maintenance and support" from the other, i.e., whether one spouse would be unable to maintain his or her accustomed standard of living, established prior to separation, *without financial contribution from the other.* *Id.* at 181-82, 261 S.E.2d at 855 (emphasis added). "'Substantially in need'" obviously refers to something less than being 'actually substantially dependent . . . .'" *Id.* at 180, 261 S.E.2d at 845. The trial court must evaluate the following in making this finding:

(1) the standard of living, socially and economically, to which the parties as a family unit became accustomed during the several years prior to their separation; (2) the present earnings, prospective earning capacity, and any other condition, such as health, of each spouse at the time of the hearing; (3) whether the spouse seeking alimony has a demonstrated need for financial contribution from the other spouse in order to maintain the parties' accustomed standard of living, taking into consideration the spouse's reasonable expenses in light of that standard of living; and (4) the financial worth or "estate" of both spouses. *Id.* The court must also consider fault and other facts of the particular case such as the length of the marriage and the contribution made by each spouse to the financial status of the family over the years. *Id.*

*Talent v. Talent*, 76 N.C. App. 545, 548, 334 S.E.2d 256, 259 (1985) (citing *Williams*, 299 N.C. at 183, 261 S.E.2d at 856)). Here, the trial court found only that defendant engaged in marital misconduct on the three grounds alleged by plaintiff, and then listed the parties' current incomes and expenses. Otherwise, the order gives no indication the factors were considered. The trial court therefore erred by concluding that plaintiff is a dependent spouse and defendant a supporting spouse based on these insufficient findings.

By defendant's second assignment of error, he contends the trial court further erred by failing to consider all relevant factors, including those enumerated in N.C. Gen. Stat. § 50-16.3A (b) (1999), in determining that an award of alimony would be equitable. We also find this argument meritorious.

If evidence is offered on a factor listed in section 50-16.3A(b), an award of alimony must include findings sufficiently

specific to indicate that the trial judge properly considered the factor. *Vadala v. Vadala*, 145 N.C. App. 478, 479, 550 S.E.2d 536, 537 (2001); see also N.C. Gen. Stat. § 50-16.3A(c) (1999) (“[T]he court shall make a specific finding of fact on each of the factors in subsection (b) of this section if evidence is offered on that factor.”). In the absence of such findings, it is not possible for this Court to properly determine whether the order is adequately supported by competent evidence. *Vadala*, 145 N.C. App. at 479-80, 550 S.E.2d at 537-38. Therefore, such an order must be vacated and the case remanded for necessary findings. *Id.*

Here, the trial court made findings regarding: (1) the amount of current earnings and expenses of the spouses; (2) marital misconduct; and (3) the duration of the marriage. Although evidence was offered, the trial court made inadequate or no findings of fact regarding: (i) the standard of living to which the parties became accustomed during the marriage prior to their separation; (ii) the total value of the estate of either spouse; (iii) the relative assets and liabilities of the spouses and the relative debt service requirements of the spouses, including legal obligations of support; and (iv) the relative needs of the spouses. See N.C. Gen. Stat. § 50-16.3A(b). The trial court also did not consider other factors listed in section 50-16.3A(b).

Further, many of the findings of fact the trial court did make are inadequate because they are not the ultimate facts but rather are “mere recitations of the evidence and do not reflect the ‘processes of logical reasoning.’” *Williamson v. Williamson*, 140

N.C. App. 362, 364, 536 S.E.2d 337, 339 (2000) (quoting *Appalachian Poster Advertising Co. v. Harrington*, 89 N.C. App. 476, 479, 366 S.E.2d 705, 707 (1988)). This is indicated by the language stating that plaintiff or defendant "testified" to certain facts:

9. Plaintiff presented to the Court, and testified to, an Affidavit of Income and Expenses attached hereto and incorporated herein by reference.

10. [T]he parties both testified that during the marriage the Defendant deposited his entire take home [pay] into a joint bank account except for Four Hundred and 00/100 Dollars (\$400.00) that he withheld for his car payment.

11. Defendant testified that his net pay each month was One Thousand Six Hundred and 00/100 Dollars (\$1,600.00). There is a prior Order of this Court . . . which has a finding of fact that the Defendant's gross income is Three Thousand Three Hundred Ninety-two and 00/100 Dollars (\$3,392.00) per month.

12. Defendant testified that his monthly expenses were as follows: . . . . That the total of these expenses [is] \$2,819.00.

(Emphasis added). We are therefore unable to appropriately review the award because many of these findings of fact merely state what a witness said rather than the ultimate facts on which a trial court could base its decision.

Having determined the trial court's findings will not support its decision, it is unnecessary for us to discuss the remaining assignments of error.

We reverse the trial court's order and remand with instructions that the trial court make, based on the evidence which was presented at trial, appropriate findings of fact and

conclusions of law to support its awards, if any.

REVERSED AND REMANDED.

Judges GREENE and MCGEE concur.

Report per Rule 30(e).