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NO. COA01-548

NORTH CAROLINA COURT OF APPEALS

Filed: 20 August 2002

DANA SEDBERRY QUICK,
Plaintiff

v.

Richmond County
No. 98 CVD 642

DONALD GLENN QUICK, JR.,
Defendant

Appeal by defendant from order entered 23 October 2000 by Judge Kevin M. Bridges in Richmond County District Court. Heard in the Court of Appeals 12 March 2002.

Sharpe & Buckner, PLLC, by Richard G. Buckner, for plaintiff-appellee.

Drake & Pleasant, by Henry T. Drake, for defendant-appellant.

CAMPBELL, Judge.

Defendant appeals from an order granting an unequal equitable distribution of the marital estate of the parties. We affirm.

Plaintiff and defendant were married on 12 April 1976. Two children were born of this marriage, both of whom have now reached the age of majority. During their marriage, the parties separated on three occasions: (1) November of 1986 until May of 1987; (2) September of 1994 until March of 1995; and (3) October of 1996 until March of 1997. The children remained with plaintiff during each of these separations, and defendant paid no child support.

The parties' final separation occurred on 4 January 1998. Plaintiff and defendant eventually divorced on 7 January 1999. Both parties properly raised issues regarding equitable distribution of the marital estate before their divorce was finalized.

Prior to the equitable distribution hearing, plaintiff and defendant executed two consent orders, one dated 6 August 1998 and one dated 4 November 1998. Also, an equitable distribution pre-trial order was filed on 7 January 1999. In that order, the parties stipulated that the marital property was to be evaluated as of 4 January 1998, the parties' last separation date. The pre-trial order also included separate schedules with stipulations regarding the parties' marital property, separate property, and debt (separate and marital).

The equitable distribution hearing took place in the Civil District Court of Richmond County before Judge Kevin M. Bridges. The matter came on for hearing on 15 November 1999 and was completed by further hearings on 2 March 2000. In the court's equitable distribution order, issued on 23 October 2000, plaintiff received assets totaling \$433.35 and was assigned \$26,427.15 in marital debt, while defendant received assets totaling \$39,965.69 and was assigned \$29,986.19 in marital debt. To equalize the distribution difference between the parties, the court also ordered defendant to pay plaintiff a distributive award of \$15,888.21 within ninety days of the order's entry. Defendant appeals.

Defendant brings forth seven assignments of error that raise issues relating to: (I) the parties' pre-trial order; (II) statutory factors relevant to equitable distribution; (III) the court's classification of certain debts and property; and (IV) the sufficiency of facts justifying an unequal equitable distribution. Additional facts necessary for further understanding of these issues will be presented within the text of this opinion.

I.

The first issue presented to this Court is whether the trial court erred in admitting testimony relating to the value of the parties' Ford Aspire ("car") that was contrary to the value recorded in the pre-trial order. Plaintiff and defendant had previously listed the car on "Schedule A" of the pre-trial order as marital property that would be distributed to plaintiff. In this schedule, the parties listed the car as having a net value of \$5,670.00. However, prior to the trial, plaintiff made a motion to amend the pre-trial order because the \$5,670.00 amount was actually the car's gross value instead of its net value. Although this motion was denied, defendant did not object when plaintiff testified about the mistake at trial. The court eventually found the car's gross value to be \$5,670.00.

In "Schedule J" of the pre-trial order, plaintiff listed the debt secured by the car as being \$5,665.44. However, during the trial, plaintiff testified that the debt secured by the car was actually \$8,338.65. Defendant timely objected, but the court

overruled the objection "for now." Shortly thereafter, plaintiff referred to documentation she had received from Ford Motor Credit and again testified that the debt secured by the car was \$8,338.65. At that time, defendant did not renew his objection. On the contrary, defendant's counsel actually stated to the court: "Judge, I'm not going to object. I'll leave it to cross-examination." Defendant later testified that he did not know the amount of debt owed on the car. Ultimately, the secured debt amount was found to be \$8,338.65, resulting in the court concluding that the car's correct net value was a negative \$2,668.65.

In part, our rules of appellate procedure provide:

In order to preserve a question for appellate review, a party must have presented to the trial court a timely request, objection or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context. . . . Any such question which was properly preserved for review by action of counsel taken during the course of proceedings in the trial tribunal by objection noted or which by rule or law was deemed preserved or taken without any such action, may be made the basis of an assignment of error in the record on appeal.

N.C. R. App. P. 10(b)(1). Here, defendant did not object at trial when plaintiff testified that the \$5,670.00 amount listed on "Schedule A" was mistakenly listed as the net value instead of the gross value. His inaction resulted in a failure to preserve this question for appellate review. Furthermore, defendant did not renew his objection to plaintiff testifying about the actual debt secured by the car. In fact, defendant decided to waive his right to object so that he could address the issue on cross-examination.

Thus, the trial court did not err in admitting plaintiff's testimony regarding the car's value.

II.

The second issue raised by defendant is whether the trial court erred in not considering all the statutory factors relevant to the parties' equitable distribution action. In particular, defendant argues the court did not consider the liquid or non-liquid character of all the marital property when it ordered him to make a lump sum distribution to plaintiff. See N.C. Gen. Stat. § 50-20(c)(9) (2001). We are not persuaded by defendant's argument.

"When a party introduces evidence of a distributional factor, the trial court must consider the factor and make a finding of fact with regard to it." *Freeman v. Freeman*, 107 N.C. App. 644, 656, 421 S.E.2d 623, 629 (1992) (citation omitted). In the case *sub judice*, however, the parties entered into a consent order prior to the trial in which they stipulated that "[i]ssues of debts, tax consequences, and credits are all to be resolved by the Court, but other than such factors, the marital property will be divided equally" "In equitable distribution actions, our courts favor *written stipulations* which are duly executed and acknowledged by the parties." *Fox v. Fox*, 114 N.C. App. 125, 132, 441 S.E.2d 613, 618 (1994) (emphasis in original). Although "[a] stipulation is not itself evidence, . . . it 'removes the admitted fact from the field of evidence by formally conceding its existence.'" *Id.*

at 133, 441 S.E.2d at 618 (quoting 2 Kenneth S. Broun, *Brandis & Broun on North Carolina Evidence* § 198 (4th ed. 1993)).

The parties in the present case stipulated in their consent order that certain factors, such as the liquid or non-liquid character of the marital property, would not be considered by the trial court in rendering its equitable distribution judgment. By making this stipulation, plaintiff and defendant effectively removed this factor from the "field of evidence." Moreover, the limited amount of evidence presented to the court which could arguably relate to this factor was considered in other factors that were addressed by the court. Thus, we find no abuse of discretion by the trial court with respect to this issue.

III.

The next issue raised by defendant relates to the court's classification of certain property and debts as marital property and debts. Essentially, defendant argues that the court erred when it found (1) a bedroom suite and a 30-30 Marlin Carbine gun were marital property and (2) certain debts that defendant claimed were incurred during the parties' various separation periods, specifically a \$10,057.02 medical bill of plaintiff's, were marital debts. We disagree.

In an action for equitable distribution, the court must first classify property as either marital or separate, with only marital property being subject to equitable distribution. See *Loeb v. Loeb*, 72 N.C. App. 205, 208-09, 324 S.E.2d 33, 37 (1985). When

classifying property as marital, "[i]t is well-settled law that the party claiming the property to be marital must meet the burden of showing by a preponderance of the evidence that the property was acquired by either spouse or both spouses during the marriage, before the date of separation, and is presently owned." *Godley v. Godley*, 110 N.C. App. 99, 108, 429 S.E.2d 382, 388 (1993) (citations omitted). Additionally, "[t]he Court has the discretion, when determining what constitutes an equitable distribution of the marital assets, to also apportion or distribute the marital debts in an equitable manner." *Geer v. Geer*, 84 N.C. App. 471, 475, 353 S.E.2d 427, 429-30 (1987). Once the trial court finds as fact that the property or debt is marital property or debt, that finding is conclusive if supported by any competent evidence. See *Lawing v. Lawing*, 81 N.C. App. 159, 162, 344 S.E.2d 100, 104 (1986). "The mere existence of conflicting evidence or discrepancies in evidence will not justify reversal." *Id.* at 163, 344 S.E.2d at 104.

In the instant case, the parties stipulated on "Schedule B" of the pre-trial order that the bedroom suite and gun were to be classified as marital property. At trial, defendant made no direct attempt to contradict this stipulation by asserting that these items were separate property. The argument was not raised by defendant until this appeal. Therefore, based on the parties' stipulation, as well as other competent evidence supporting the trial court's conclusions, the court's classification of these items as marital property was not erroneous as a matter of law.

Also, with respect to defendant's arguments regarding certain marital debts, the trial transcript indicates that plaintiff merely misspoke during her testimony as to the date of the medical bill. Plaintiff testified that the medical bill was incurred in April of 1998 when, in actuality, it was incurred in April of 1997 while the parties were still living together. Furthermore, the trial transcript and record indicate that the court closely scrutinized the other debts questioned by defendant before concluding that they were marital debts. After having reviewed these other debts, we find that there was competent evidence to support the court's conclusion that they were marital debts as well. We therefore affirm on this issue.

IV.

The final issue presented to this Court is whether the trial court failed to find sufficient facts to justify an unequal equitable distribution.

As stated previously, marital property is subject to equitable distribution. *Loeb v. Loeb*, 72 N.C.App. 205, 209, 324 S.E.2d 33, 37 (1985). Once property is classified as marital property, the trial court must then divide that property equally unless it determines that an equal division is inequitable. *White v. White*, 312 N.C. 770, 776, 324 S.E.2d 829, 832-33 (1985). This determination "is entirely within the trial court's discretion, and the trial court's decision in [that] regard can be disturbed only if a clear abuse of that discretion has occurred. . . . [A] finding

of a single distributional factor under N.C. Gen. Stat. § 50-20(c) may support an unequal division." *Jones v. Jones*, 121 N.C. App. 523, 525, 466 S.E.2d 342, 344 (1996) (citations omitted).

Based on the evidence presented by the parties, the court made several findings of fact regarding the statutory distributional factors. These findings included the court's consideration of: (1) the tax consequences associated with early withdrawal of defendant's retirement; (2) payments made by each party on the marital debts after the date of separation; (3) payments made by defendant to maintain, preserve, develop, or expand the marital property after the date of separation but before the date of distribution; (4) insurance and tax payments made by defendant after the date of separation but before the date of distribution, and (5) defendant's use of the marital residence, and the reasonable rental value thereof, during the period after the date of separation and up until the date of distribution. After considering these findings, the court concluded that an equal division of the marital assets was not equitable. In reaching this conclusion, the trial court was not "required to recite in detail the evidence considered in determining what division of the property would be considered equitable," it was only "required to make findings sufficient to address the statutory factors and support the division ordered." *Armstrong v. Armstrong*, 322 N.C. 396, 405, 368 S.E.2d 595, 600 (1988). Even though the findings of fact do not clearly indicate how the distributional factors mathematically assisted in that division, the court's findings do

adequately support that an unequal equitable distribution of the marital property is necessary. Moreover, this Court has never held that a monetary value must be placed on a particular distributional factor when awarding an unequal division of marital property. In fact, "[w]e have previously held that the trial court could choose to give no weight to a distributional factor." *Wall v. Wall*, 140 N.C. App. 303, 313, 536 S.E.2d 647, 653 (2000) (citation omitted). Thus, we conclude that the trial court sufficiently supported its unequal equitable distribution award.

Accordingly, we hold that the trial court did not err in ordering an unequal equitable distribution of the marital estate of the parties.

Affirmed.

Judges GREENE and McGEE concur.

Report per Rule 30(e).