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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-421

Filed: 19 December 2017

Dare County, No. 13 CVD 648

JOHNNIE M. WARNER, JR., Plaintiff,

v.

JOYCE ANN WARNER, Defendant.

Appeal by Plaintiff from order entered 19 September 2015 by Judge Eula E. Reid in Dare County District Court. Heard in the Court of Appeals 16 November 2017.

*Law Offices of Mark L. Hayes, by Mark Hayes, for Plaintiff-Appellant.*

*Ward and Smith, P.A., by Alexander C. Dale and Lauren Taylor Arnette, for Defendant-Appellee.*

HUNTER, JR., Robert N., Judge.

Plaintiff-Husband Johnnie M. Warner, Jr. (“Plaintiff-Husband”) appeals an alimony order, contempt order, and an order awarding attorneys’ fees. Plaintiff-Husband argues (1) the trial court erred in finding Joyce Ann Warner (“Defendant-Wife”) was a dependent spouse; (2) the trial court erred in finding Plaintiff-Husband was the supporting spouse; (3) the trial court erred in using an alimony order to “fix”

a problem with the consent equitable distribution order; (4) the trial court failed to make findings to support the alimony award; and (5) the trial court erred in awarding attorneys' fees to Defendant-Wife. We conclude the trial court's findings of fact are supported by competent evidence, and the trial court did not abuse its discretion in its alimony award.

### **I. Factual and Procedural Background**

Plaintiff-Husband and Defendant-Wife<sup>1</sup> married on 6 June 2003, and no children were born of the marriage. The parties separated on 26 November 2013. Prior to the marriage, both parties lived in Virginia, and were employed and earning retirement income. Also prior to the marriage, Plaintiff-Husband took a new job with the Coral Springs Fire Department in Florida. Plaintiff-Husband asked Defendant-Wife to move with him to Florida. Defendant-Wife left her job in Virginia, and moved to Florida to be with Plaintiff-Husband. Defendant-Wife acquired a new job in Florida, although it did not have a retirement plan. Plaintiff-Husband assured Defendant-Wife he would take care of her financially, and they would retire together.

During the marriage, the couple owned three properties. These properties were titled in both parties' names as tenants by the entirety. Defendant-Wife invested a significant portion of her separate money into these properties. The money came from the sale of a separate home she owned in Virginia and through a monetary

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<sup>1</sup>At the time of the alimony hearing, Defendant-Wife was 71 years old, and Plaintiff-Husband was 67.

inheritance she received. Plaintiff-Husband separately owned a home in Norfolk, Virginia, which he rented to his son. In 2007, the parties retired and moved from Florida to Kitty Hawk, North Carolina. The parties' Kitty Hawk home was about 2,300 square feet, and located on the water.

After their separation, Plaintiff-Husband filed an action for equitable distribution on 4 December 2013. On 8 January 2014, Defendant-Wife filed an answer and counterclaim for equitable distribution, post-separation support, alimony and attorneys' fees. In his reply, Plaintiff-Husband asked the trial court to deny Defendant-Wife's request for post-separation support, alimony and attorneys' fees.

On 1 March 2016, Defendant-Wife filed a motion for contempt. In that motion, Defendant-Wife alleged:

1. A Post-Separation Support Order<sup>2</sup> was entered on April 22, 2014 by the Honorable Eula E. Reid.
2. Said Order required Plaintiff to pay to Defendant as post-separation support the sum of \$1,320.27 per month.
3. The Plaintiff has failed to pay post-separation support to the Defendant for the months of December 2015, January 2016 and February 2016. Plaintiff thus far failed to pay to date \$3,960.81.
4. Plaintiff was ordered to pay Defendant's medical and dental insurance and was given a credit in the post-separation support calculation for paying \$310 per month for Defendant's insurance which included Defendant's prescription plan as it was part of the medical insurance.

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<sup>22</sup> The Post-Separation Support Order is not included in the record.

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5. In April 2014, Defendant was removed from Plaintiff's insurance and obtained insurance on her own policy.

6. Plaintiff failed to contribute to the cost of Defendant's insurance for the month of April, May and June of 2014 although court ordered to do so. Beginning in July of 2014, Plaintiff began contributing to the cost of Defendant's insurance by paying her \$169.09 in addition to the post-separation support award to be paid.

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9. Beginning in July of 2014 and continuing through January of 2015 there was a monthly deficiency in the amount of \$64.70 between the amount Defendant was required to pay for insurance and the amount Plaintiff reimbursed her.

10. Beginning February of 2015 and continuing through November 2015 there was a monthly deficiency in the amount of \$97.44 between the amount Defendant was required to pay for insurance and the amount Plaintiff reimbursed her.

11. Plaintiff has failed to pay any insurance costs for Defendant beginning with the December 2015 payment due.

Defendant-Wife requested the trial court to "find Plaintiff in willful contempt of this Court for failure to abide by the Order of this Court." Defendant-Wife also requested attorneys' fees.

On 21 April 2016, the trial court filed a consent equitable distribution order. In this order, the trial court found:

6. Plaintiff accrued a pension with the Coral Springs

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Firefighters partially during the marriage of the parties. Plaintiff began accruing the plan in November 2, 2000 and continued to accrue benefits through July 1, 2007. In addition, during the marriage the parties purchased with marital funds an additional two years and nine months of Plaintiff's military service to add to his time accruing the pension. The total of the months Plaintiff accrued pension including the purchased military service is nine years and five months. Of the total months of accrued pension, six years and ten months are marital. The marital portion of Plaintiff's monthly benefit with the Coral Springs Firefighter Pension is 72.57%. The same percentage of all cost of living adjustments is marital property.

7. At the time of retirement Plaintiff elected a 75% Joint and Contingent Benefit with the Coral Springs Firefighter Pension and selected Defendant as his survivor beneficiary.

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9. The parties had marital debt on the date of separation.

a. Plaintiff had the following debt in his name: Chase (3222), Chase (6597), Brandsmart, Wells Fargo (8793), Lowes, Sam's Club, HHGregg

b. Defendant had the following debt in her name: Belk, Southwest Visa, Shell Gas, Sears (2864), Sears Mastercard (6803), Home Depot (1593)

10. During the marriage, the parties owned a home located at 3914 Ivy Lane, Kitty Hawk, North Carolina. Said home was sold after the date of separation and the proceeds from said sale in the amount of \$258,357.24 are being held in escrow by Charles Coppage, Attorney at Law.

11. After the sale of the home, the parties also received an insurance refund in the amount of \$3,021.00 which is also being held by Charles Coppage, Attorney at Law.

12. The parties stipulate that the division of marital and divisible property and debt set forth herein is fair and equitable and that the parties have the ability to comply herewith.

Based on these findings, the trial court ordered:

1. The parties stipulate that each party shall be distributed the personal property now in his or her possession except as listed herein. Plaintiff is specifically distributed the 2012 Ford F150.

2. The proceeds from the sale of the former marital residence located at 3914 Ivy Lane, Kitty Hawk, North Carolina shall be immediately distributed to the parties by Charles Coppage with the Plaintiff to receive 40% of said proceeds<sup>3</sup> and the Defendant to receive 60% of said proceeds.<sup>4</sup>

3. The insurance refund also being held by Charles Coppage, Attorney at Law, shall be distributed to the parties with Plaintiff to receive one-half and Defendant to receive one-half of said amount.

4. Plaintiff is distributed all bank accounts in his name. Defendant is distributed all bank, retirement and other accounts in her name.

5. The Plaintiff shall be responsible for all debt in his name existing on the date of separation not otherwise noted herein. Plaintiff shall release Defendant and hold her harmless from said debt. The Defendant shall be responsible for all debt in her name existing on the date of separation not otherwise noted herein. Defendant shall release Plaintiff and hold him harmless from said debt.

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<sup>3</sup> \$103,342.89

<sup>4</sup> \$155,014.34

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6. Defendant is distributed 36.28% (one-half the marital portion) of Plaintiff's Coral Springs Firefighters Pension Plan. Defendant is entitled to the same distribution of all cost of living adjustments. Defendant shall receive her marital portion on a monthly basis at the same time as Plaintiff directly from the plan. Each party shall be responsible for the taxes on that party's portion of the monthly pension benefit. The parties shall cooperate in having a Qualified Domestic Relations Order (QDRO) prepared as necessary to accomplish the tax and penalty free distribution as set forth herein.

7. Defendant shall remain the survivor beneficiary of the Coral Springs Firefighters Pension Plan.

The unequal distribution of the Ivy Lane property was intended to compensate Defendant-Wife for the separate funds she had invested into the parties' jointly owned properties.<sup>5</sup> The consent agreement distributed half of the marital share of Plaintiff-Husband's Coral Springs Firefighters Pension Plan (36.26%) to Defendant-Wife, and provided Defendant-Wife would receive her share on a monthly basis directly from the Plan, pursuant to a Qualified Domestic Relations Order ("QDRO").

After the trial court entered the equitable distribution order pursuant to the consent agreement, the parties learned the Coral Springs Firefighters Pension Plan would not comply with QDRO, which required payment of a portion of the benefits to Defendant-Wife. Therefore, Plaintiff-Husband has continually received 100% distribution from the plan.

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<sup>5</sup> At the time of separation, Plaintiff-Husband and Defendant-Wife had already sold the other properties they jointly held.

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On 5 July 2016, Defendant-Wife filed a Rule 59 & 60 Motion as to the Equitable Distribution Order. Defendant-Wife moved the trial court to “reconsider the issue of the division of the Plaintiff’s Coral Springs Fire Department Pension. Said Motion is based upon a newly discovered issue with the division of said pension.” Defendant-Wife’s reason for this motion is the Coral Springs Firefighters Pension Plan is not subject to ERISA and as such is not obligated to comply with a QDRO. However:

The Plan will comply with an Order for direct pay to a former spouse for the purpose of alimony or child support. The Plan will comply with a directive from the member Plaintiff requiring a certain portion of the monthly pension benefit to be direct deposited into a separate account in the name of the Member and another person[.]

Therefore, Defendant-Wife asked the trial court to modify the consent equitable distribution order in order that Defendant-Wife could receive her share of the Coral Springs Pension.

The case came on for trial on 1 August 2016. Plaintiff-Husband and his attorney were present, as well as Defendant-Wife and her attorney. The trial consisted of an alimony hearing. The trial court declined to rule on Defendant-Wife’s Rule 59 and 60 motion since that motion requested the trial court to modify the consent equitable distribution order which was entered by a different trial judge.

At trial, Defendant-Wife introduced her financial affidavit showing she has a monthly income of \$957.00 from Social Security. When Defendant-Wife filed her alimony petition with her financial affidavit, Defendant-Wife worked as a babysitter.

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She earned \$240 per month. After the parties sold the Ivy Lane marital home, Defendant-Wife babysat in exchange for room and board. At trial, Defendant-Wife explained the youngest child she babysat would soon be in school full time. She therefore did not expect the family employing her to need her much longer. Defendant-Wife also testified she was willing to continue working, but felt it would be difficult to find employment at her current age of 71. Defendant-Wife felt she earned retirement since she had worked her entire life.

At the time of trial, Defendant-Wife used some of her Ivy Lane marital home proceeds to pay her debts and meet her living expenses. Of the \$155,014.34 in proceeds from the sale of the Ivy Lane residence, she currently has about \$100,00.00 left. Defendant-Wife also has about \$22,000.00 remaining in her pre-marital IRA. Defendant-Wife has used her IRA funds over the years as an emergency fund. She has also used the IRA account to support herself after her separation from Plaintiff-Husband while her alimony petition was pending.

Plaintiff-Husband's trial testimony tended to show his gross monthly income included \$1,080.10 from Social Security, \$2,124.99 from his Norfolk pension, \$1,552.45 from his Coral Springs pension. His affidavit also listed \$800.00 income from rent from a house he owned in Norfolk, Virginia. Plaintiff-Husband's affidavit also listed \$5,998.00 in total monthly expenses, which included a \$1,100.00 monthly payment for a 2016 pickup truck purchased after separation. His affidavit also

showed \$1,200.00 rent payment for a log cabin he rented on his former girlfriend's horse farm, even though Plaintiff-Husband mainly resided in his mother's house. Plaintiff-Husband's affidavit also listed monthly expenses of \$242.00 for electricity, \$50.00 for telephone, and \$139.00 for cable and internet, which Plaintiff-Husband testified he paid on his mother's behalf. Plaintiff-Husband also clarified during trial even though his affidavit listed a \$169.00 expense for Defendant-Wife's insurance, he was no longer paying that amount.

At trial, Plaintiff-Husband also testified he received \$103,342.89 from the equitable distribution of the proceeds from the sale of the Ivy Lane marital home. He used part of this money to purchase a three-wheel motorcycle and trailer which cost \$35,000.00. He used some of the remainder to pay off his highest-interest debts. Plaintiff-Husband used his credit cards to pay some of his expenses since the separation, and his financial affidavit showed a credit card debt of \$27,942.90.

## **II. Standard of Review**

When the trial court sits without a jury, our review is "strictly limited to determining whether the record contains competent evidence to support the trial court's findings of fact and whether those findings, in turn, support the trial court's conclusions of law." *Smallwood v. Smallwood*, 227 N.C. App. 319, 327, 742 S.E.2d 814, 820 (2013) (citation and internal quotation marks omitted). Our State Supreme Court has stated:

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It is not enough that there may be evidence in the record sufficient to support findings which *could have been made*. The trial court must itself determine what pertinent facts are actually established by the evidence before it, and it is not for an appellate court to determine *de novo* the weight and credibility to be given to evidence disclosed by the record on appeal.

*Coble v. Coble*, 300 N.C. 708, 712-13, 268 S.E.2d 185, 189 (1980). “If the court’s findings of fact are supported by competent evidence, they are conclusive on appeal, even if there is contrary evidence.” *Collins v. Collins*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 778 S.E.2d 854, 856 (2015).

A trial court’s determination of whether a party is entitled to alimony is a question of law. *Id.* at \_\_\_, 778 S.E.2d at 856. Questions of law are reviewable *de novo* on appeal. *Id.* at \_\_\_, 778 S.E.2d at 856.

This Court reviews the trial court’s determination of the amount of alimony awarded for an abuse of discretion. *Sayland v. Sayland*, 267 N.C. 378, 382, 148 S.E.2d 218, 221 (1966). A ruling made in the trial court’s discretion is accorded significant deference. *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985). A trial court’s decision constitutes an abuse of discretion where it “is manifestly unsupported by reason, or so arbitrary that it could not have been the result of a reasoned decision.” *Frost v. Mazda Motors of Am., Inc.*, 353 N.C. 188, 199, 540 S.E.2d 324, 331 (2000) (citations and internal quotation marks omitted).

Whether a party meets the statutory eligibility requirements for attorneys' fees is a question of law subject to *de novo* review. *Clark v. Clark*, 301 N.C. 123, 136, 271 S.E.2d 58, 67 (1980). However, the decision to award attorneys' fees to an eligible party is a matter within the trial court's discretion. *Ellis v. Ellis*, 238 N.C. App. 239, 243, 767 S.E.2d 413, 416 (2014). The amount of attorneys' fees awarded is also within the trial court's discretion. *Friend-Novorska v. Novorska*, 143 N.C. App. 387, 397, 545 S.E.2d 788, 795 (2001).

### III. Analysis

Plaintiff-Husband first contends the trial court erred in finding Defendant-Wife was a dependent spouse. N.C. Gen. Stat. § 50-16.3A(a) governs whether a party is entitled to alimony. "A party is entitled to alimony, *inter alia*, if (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 relevant factors." *Carpenter v. Carpenter*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 781 S.E.2d 828, 821 (2016) (quoting N.C. Gen. Stat. § 50-16.3A(a) (2017)). This Court has held a dependent spouse "must be either actually substantially dependent upon the other spouse or substantially in need of maintenance and support from the other spouse." *Id.* at \_\_\_, 781 S.E.2d at 832. If a party is unable to meet her own maintenance and support, that party is "actually substantially dependent" upon her spouse. *Barrett v. Barrett*, 140 N.C. App. 369, 371, 536 S.E.2d 642, 644 (2000). If a party is unable to meet her needs in the future, even

if she is currently meeting those needs, that party is “substantially in need of maintenance” and support. *Id.* at 371, 536 S.E.2d at 644-45. “If the trial court determines that a party’s reasonable monthly expenses exceed her monthly income, and that she has no other means with which to meet those expenses, it may properly conclude the party is dependent.” *Carpenter* at \_\_\_, 781 S.E.2d at 833.

In determining whether “a party is substantially in need of maintenance and support, and therefore a dependent spouse, ‘the court must determine whether [that] 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 \_\_\_, 781 S.E.2d at 833 (quoting *Vadala v. Vadala*, 145 N.C. App. 478, 481, 550 S.E.2d 536, 538 (2001)). “The reasonableness of a spouse’s expenses, including maintenance and support, must be viewed according to the parties’ accustomed standard of living during the marriage.” *Id.* at \_\_\_, 781 S.E.2d at 833.

In the instant case, the trial court found during the marriage, the parties “resided in a fairly large home on the water in a nice community in Kitty Hawk, North Carolina.” The trial court also found the parties travelled several times a year. Additionally, the trial court found during the marriage, the parties planned for their retirement, which included living off Plaintiff-Husband’s retirement income as well as the proceeds from the sale of the investment property purchased during the marriage.

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Plaintiff-Husband listed “the parties’ joint needs and expenses during the marriage at \$5,286.88 per month.” Defendant-Wife’s financial affidavit stated her living expenses would total \$3,298.30 per month. This sum included a rent/mortgage payment of \$1,200.00 per month and \$25.00 per month for travel or vacations. However, Defendant-Wife’s monthly income from Social Security totaled \$957.90. The trial court found Defendant-Wife therefore had a monthly deficiency of \$2,340.40 in meeting her expenses.

Plaintiff-Husband contends the trial court erroneously failed to consider Defendant-Wife’s IRA income in concluding Defendant-Wife was a dependent spouse. However, the trial court found, “[Defendant-Wife] previously had an IRA from which she drew funds, but that account has been reduced to \$22,000.00 since the date of separation of the parties.” At trial, Defendant-Wife testified her IRA would not be enough to defray her monthly expenses for the remainder of her life. We conclude the trial court was not required to order Defendant-Wife to deplete this fund before awarding her alimony. This Court has stated “[o]rdinarily, the parties will not be required to deplete their estates to pay alimony or to meet personal expenses.” *Beaman v. Beaman*, 77 N.C. App. 717, 722, 336 S.E.2d 129, 132 (1985). Additionally, “[i]f the spouse seeking alimony is denied alimony because he or she has an estate which can be spent away to maintain his or her standard of living, that spouse may soon have no earnings or earning capacity and therefore no way to maintain *any*

standard of living.” *Williams v. Williams*, 299 N.C. 174, 184, 261 S.E.2d 849, 856 (1980).

We also conclude Plaintiff-Husband’s contention Defendant-Wife’s IRA constitutes income is without merit. The evidence at trial shows Defendant-Wife did not receive distributions from this account on a regular basis. Rather, Defendant-Wife used this account as an “emergency fund” over the years to pay for her expenses while her petition for alimony was pending. It also appears from the record the trial court contemplated Defendant-Wife will continue to use her IRA account and other savings to continue to meet her monthly expenses. The trial court awarded Defendant-Wife alimony in the amount of \$1,500.00 per month. Even with this award, Defendant-Wife will still have a shortfall of \$840.40 per month in meeting her reasonable monthly expenses.

Based on the above, we conclude the trial court correctly found Defendant-Wife had a monthly deficiency in meeting her reasonable expenses. Therefore, the trial court did not err in finding Defendant-Wife was a dependent spouse.

Plaintiff-Husband next contends the trial court erred in finding Plaintiff-Husband was the supporting spouse. “Entitlement to alimony requires that one spouse be a dependent spouse and the other be a supporting spouse.” *Barrett* at 371, 536 S.E.2d at 644. “Just because one spouse is a dependent spouse does not automatically mean the other spouse is a supporting spouse.” *Id.* at 373, 536 S.E.2d

at 645. Under N.C. Gen. Stat. §50-16.1A(5) (2017), a party qualifies as a supporting spouse if he or she is the spouse upon whom the other spouse is either “actually substantially dependent for maintenance and support or from whom such spouse is substantially in need of maintenance and support.” This Court has held “[a] surplus of income over expenses is sufficient in and of itself to warrant a supporting spouse classification.” *Barrett* at 373, 536 S.E.2d at 645.

Here, the trial court correctly found Plaintiff-Husband was a supporting spouse since the trial court determined his monthly income exceeded his expenses. Plaintiff-Husband’s financial affidavit listed his total monthly expenses at \$5,998.00, and the trial court found Plaintiff-Husband did not show many of his expenses were reasonable. The trial court found:

It is not reasonable for Plaintiff to pay a monthly rent for one dwelling, but to live in a different location. It was not reasonable to purchase a truck with an \$1,100.00 a month payment, nor to increase the service needs of a vehicle between the date of the post separation support hearing and the alimony hearing. It is not reasonable to buy a three wheel motorcycle and trailer with the proceeds from the sale of marital residence, while increasing the credit card debt claimed between the two hearings on support. Plaintiff’s increased expense of \$160 a month for meals out is four times what was claimed as a customary expense during the marriage. Plaintiff’s gasoline expense is twice what would be reasonable considering he is not employed. Plaintiff testified that his electricity expense is paid on behalf of his mother, as is his telephone expense and his cable and internet expenses. Plaintiff was unable to support his \$55.00 per month personal care expense. Plaintiff was also unable to support his \$200.00 per month

“other needs” expense.

The trial court found Plaintiff-Husband’s total gross monthly income amounted to \$5,541.44. The trial court determined this amount included “Social Security, Norfolk Fire Department Retirement, Coral Springs Retirement and rent received.” The trial court then deducted Plaintiff-Husband’s expenses it found were unreasonable from Plaintiff-Husband’s asserted total of \$5,998.00 in expenses, to find Plaintiff-Husband had \$1,853.32 “available to assist Defendant in meeting her reasonable needs.”

The trial court made sufficient detailed factual findings as to which of Plaintiff-Husband’s expenses it found unreasonable or unjustified. The trial court then calculated Plaintiff-Husband’s reasonable expenses based on those findings. Plaintiff-Husband asks this Court to vacate the trial court’s order because it did not include an itemized calculation explaining its total. However, we conclude the trial court’s order contains sufficient detail as to its reasoning and its conclusions are supported by the record.

Plaintiff-Husband also contends the trial court erred in not specifying how much he should reasonably spend on car payments. Plaintiff-Husband testified he paid off the loan on his 2012 truck with monies he received pursuant to the equitable distribution consent order. Instead of keeping the paid-for truck, Plaintiff-Husband elected to purchase a new vehicle. The trial court correctly found this unreasonable under the circumstances. In this case, the trial court did not need to make a finding

as to what constitutes a “reasonable” car payment for Plaintiff-Husband.

Plaintiff-Husband next contends the trial court erred in using an alimony order to “fix” the problem with the consent equitable distribution order. We disagree.

In determining Defendant-Wife’s monthly deficiency and Plaintiff-Husband’s monthly surplus, the trial court correctly relied on the parties’ financial affidavits. Both affidavits indicated Plaintiff-Husband was receiving the entirety of the monthly distribution from his Coral Springs pension plan, and Defendant-Wife was not receiving any of it. At trial, the parties’ counsels informed the trial court another judge entered the consent equitable distribution order, and it was not until after this order was entered did the parties learn the Coral Springs Pension Plan would not comply with a QDRO ordering for an equitable division of Plaintiff-Husband’s monthly pension payments. The parties do not dispute Defendant-Wife was entitled to 36.28% of the Plaintiff-Husband’s monthly pension plan, and they do not dispute Defendant-Wife was not receiving that money. We conclude the trial court properly took these facts into account in determining Defendant-Wife’s monthly deficiency and Plaintiff-Husband’s monthly surplus.

Plaintiff-Husband contends the trial court in this case attempted to modify the parties’ equitable distribution order.<sup>6</sup> However, it is clear the trial court based its

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<sup>6</sup> We note and are unpersuaded by Plaintiff-Husband’s argument the court is “fixing” the equitable distribution problem through the alimony award. In addition to the remedy of reconsidering the alimony award if a subsequent trial court modified the equitable distribution order, the Plaintiff-

decision on the parties' present and actual incomes. The trial court properly did not rule on the Motion to Reconsider, and the trial court correctly did not modify the equitable distribution order. If a trial court later considers a motion to modify the equitable distribution award and alters the monthly incomes of the parties based on the Coral Springs Pension, then Plaintiff-Husband can move to modify the alimony award.

Plaintiff-Husband next contends the trial court's findings do not support the amount and duration of the trial court's alimony award. Here, Plaintiff-Husband reiterates his earlier arguments the trial court failed to consider Defendant-Wife's IRA, the remainder of the sale proceeds from the marital home, and her money earned from her babysitting services. As discussed *supra*, the trial court properly considered these factors and correctly determined an alimony award for Defendant-Wife was equitable and necessary to allow Defendant-Wife to maintain a standard of living comparable to what she enjoyed during marriage.

The North Carolina General Statutes provides the trial court with the discretion to make an alimony award "for a specified or for an indefinite term." N.C. Gen. Stat. § 50-16.3A(b) (2017). In determining the duration of the award, the statute directs the court to consider all relevant factors, including the sixteen factors set forth in § 50-16.3A(b)(1)-(16), and to make specific findings on each of the factors upon

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Husband has ability to avoid the potential unfairness he discusses by directly ordering the Coral Springs Pension Plan to give the Defendant-Wife the share of money both parties agreed upon.

which evidence is offered. *Friend-Novorska* at 394, 545 S.E.2d at 793. This Court stated:

[T]he findings of fact required to support the amount, duration, and manner of payment of an alimony award are sufficient if findings of fact have been made on the ultimate facts at issue in the case and the findings of fact show the trial court properly applied the law in the case. The findings of fact need not set forth the weight given to the factors in section 50-16.3A(b) by the trial court when determining the appropriate amount, duration, and manner of payment, as the weight given the factors is within the sound discretion of the trial court.

*Id.* at 395-96, 545 S.E.2d at 794 (footnote omitted).

Here, Finding Number 7 of the trial court's order stated:

An award of permanent alimony is equitable after considering the following factors as set forth herein:

- a. The relative earnings and earning capacities of the spouses.
- b. The duration of the marriage.
- c. The standard of living of the spouses established during the marriage.
- d. The relative needs of the spouses.

The trial court then proceeded to make specific factual findings with regard to each of those factors.

As discussed *supra*, the trial court found Defendant-Wife had a monthly income of \$957.90 from Social Security, and Plaintiff-Husband had a gross monthly

income of \$5,541.44 from Social Security, his two pension plans, and the rent he received from his house in Norfolk. With regard to the marriage's duration, the trial court found the parties were married on 6 June 2003 and separated on 26 November 2013.

The trial court made sufficient detailed factual findings as to the parties' standard of living during the marriage. The trial court found the parties were married in Florida, and because Defendant-Wife moved to Florida to be with Plaintiff-Husband, Defendant-Wife stopped earning retirement income. However, the trial court found Plaintiff-Husband continued to earn retirement income from the Coral Springs pension plan. The trial court also found the parties owned three properties together during the marriage, and Defendant-Wife invested separate funds into those properties. The trial court additionally found the parties sold those three properties after separation and accounted for the division of those proceeds. In its order, the trial court also found the parties contemplated living off the income from their real estate and Plaintiff-Husband's retirement income, and Defendant-Wife relied on this plan when she terminated her job in Virginia to live with Plaintiff-Husband in Florida. Finally, the trial court found during the last years of the marriage the parties lived in a fairly large home on the water in Kitty Hawk, North Carolina.

As to the parties' relative needs, the trial court found they had similar reasonable monthly expenses. After discounting Plaintiff-Husband's unsupported

and unreasonable post-separation expenses, the trial court found Plaintiff-Husband had a reasonable monthly expense of \$3,688.12. The trial court found Defendant-Wife had a reasonable monthly expense of \$3,298.30. The trial court also found Defendant-Wife's post-separation expenses were significantly less than the couple's monthly expenditures during the marriage.

The trial court also considered other statutory factors not listed in Paragraph 7 of the Order, including Plaintiff-Husband's age of 67 and Defendant-Wife's age of 71. Also, the trial court considered the parties' assets, including the funds each had received in distribution of the marital home proceeds, Plaintiff-Husband's Norfolk, Virginia property, and Defendant-Wife's \$22,000.00 IRA account.

We conclude these factors support the trial court's decision to award permanent alimony to Defendant-Wife. The trial court correctly determined Defendant-Wife would need Plaintiff-Husband's assistance in meeting her reasonable monthly expenses on a permanent basis to maintain a standard of living comparable to that during marriage. Plaintiff-Husband has failed to show the trial court's determinations in this case are so arbitrary they could not have been the product of a reasoned decision, and therefore constitute an abuse of discretion.

Plaintiff-Husband lastly contends the trial court's findings do not support the \$2,000.00 award of attorneys' fees to Defendant-Wife. We disagree.

N.C. Gen. Stat. § 50-16.4 (2017) provides:

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At any time that a dependent spouse would be entitled to alimony pursuant to G.S. 50-16.3A, . . . the court may, upon application of such spouse, enter an order for reasonable counsel fees, to be paid and secured by the supporting spouse in the same manner as alimony.

Additionally, this Court held before awarding attorneys' fees, the trial court must find the dependent spouse "is without sufficient means whereon to subsist during the prosecution and defray the necessary expenses thereof." *Parsons v. Parsons*, 231 N.C. App. 397, 404, 752 S.E.2d 530, 536 (2013) (quoting *Martin v. Martin*, 207 N.C. App. 121, 127, 698 S.E.2d 491, 496 (2010)). "The purpose of the [attorneys' fees] statute . . . is to prevent requiring a dependent spouse to meet the expenses of litigation through the *unreasonable* depletion of her separate estate where her separate estate is considerably smaller than that of the supporting spouse[.]" *Id.* at 405, 752 S.E.2d 536.

We first conclude the trial court did not err in determining Defendant-Wife was eligible for attorneys' fees under N.C. Gen. Stat. § 50-16.4 since it correctly found Defendant-Wife is a dependent spouse and Plaintiff-Husband is a supporting spouse. The trial court entered a specific finding Defendant-Wife did not have adequate funds for her attorneys' fees. The trial court's factual findings previously set forth in its order, and summarized *supra*, support this finding.

Again, Plaintiff-Husband contends the trial court ignored the remaining money in Defendant-Wife's IRA account and her proceeds from the sale of the marital

home in finding Defendant-Wife unable to pay her attorneys' fees. We disagree. For the reasons discussed *supra*, we conclude the trial court adequately considered this income in its alimony order.

We conclude since the trial court found Defendant-Wife a dependent spouse, and Plaintiff-Husband a supporting spouse, and since the trial court found Defendant-Wife had a monthly deficiency in paying her reasonable expenses, the trial court did not err in finding Defendant-Wife had insufficient funds to pay her legal fees in this matter. Plaintiff-Husband fails to show how the trial court abused its discretion in awarding Defendant-Wife \$2,000.00 in attorneys' fees.

AFFIRMED.

Judges INMAN and BERGER concur.

Report per Rule 30(e).