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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-856

No. COA22-203

Filed 20 December 2022

Wake County, No. 19 CVD 9167

ALEXIS HORAN, Plaintiff,

v.

STEVEN HORAN; HORAN FUNDING, LLC; HORAN INVESTMENT COMPANY, LLC; HORAN PROPERTIES, LLC; PAROSH, LLC; STEVEN L. HORAN, TRUSTEE OF THE STEVEN L. HORAN REVOCABLE TRUST; KEVIN HORAN, TRUSTEE OF THE STEVEN L. HORAN 2016 IRREVOCABLE LIFE INSURANCE TRUST, Defendants.

Appeal by defendant from orders entered 3 and 6 August 2021 by Judge Brian Ratledge and orders entered 12 September 2019 by Judge Ashleigh Parker Dunston in Wake County District Court. Heard in the Court of Appeals 30 November 2022.

Tharrington Smith, LLP, by Steve Mansbery, for plaintiff-appellee.

Arnold & Smith, PLLC, by Matthew R. Arnold and Ashley A. Crowder, for defendant-appellant.

ARROWOOD, Judge.

¶ 1

Steven Horan (“defendant”) appeals from the trial courts’ orders of equitable distribution, alimony, and postseparation support. Defendant argues the trial court erred in classification of the marital assets, lacked competent evidence to support its

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findings, and committed an abuse of discretion in awarding equitable distribution and alimony in favor of Alexis Horan (“plaintiff”). Defendant also contends the trial court’s order for postseparation support lacked competent evidence. For the following reasons, we affirm the trial courts’ orders.

I. Background

¶ 2 Plaintiff and defendant (collectively, “the parties”) were married on 1 July 1989 and separated on 4 March 2019. The parties divorced in June 2020. Two children were born of the marriage, “both of whom have reached the age of majority.”

¶ 3 Litigation between the parties began when plaintiff filed a complaint for postseparation support, alimony, attorney’s fees, equitable distribution, and constructive trusts on 8 July 2019. The complaint also included a motion for preliminary injunction to prevent defendant from depleting marital assets and a motion for a temporary restraining order. Plaintiff filed a motion for interim distribution on 15 August 2019. The foregoing matters were heard before Judge Dunston on 27 August 2019 in Wake County District Court. On 12 September 2019, Judge Dunston entered an order *nunc pro tunc* for postseparation support, postseparation support arrears, attorney’s fees, and interim distribution in favor of plaintiff. Defendant was ordered to pay \$48,000.00 in postseparation support arrears and pay an additional \$8,000.00 per month in postseparation support which commenced on 1 September 2019.

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¶ 4 Plaintiff filed an additional motion for interim distribution on 9 March 2020 and a motion for contempt and order to show cause on 11 March 2020, due to defendant's failure to abide by the orders entered by Judge Dunston. Defendant filed a response to plaintiff's motion and a motion to modify postseparation support on 30 April 2020. On 15 June 2020, plaintiff filed an amended motion for contempt and order to show cause. The matters of plaintiff's motion for interim distribution, contempt, and defendant's motion for modification of postseparation support were heard 7 July 2020 in Wake County Family Court, Judge Ratledge presiding.

¶ 5 Judge Ratledge found defendant to be in civil contempt and denied his motion to modify postseparation support. Judge Ratledge entered orders for interim distribution in the amount of \$9,665.55 in attorney's fees and \$82,750.00 in postseparation support arrears in relation to the order for civil contempt.

¶ 6 Trial was held before Judge Ratledge on 31 March and 1 April 2021. Multiple matters were being heard and considered by the trial court, including the following motions filed by plaintiff: motion to appear and show cause filed 16 June 2020; motion for contempt filed 9 October 2020; motion for attorney's fees filed 22 October 2020; and an amended motion for contempt filed 11 March 2021; and the original motions for equitable distribution and alimony filed 8 July 2019.

¶ 7 Following trial, Judge Ratledge entered an equitable distribution judgment and order on 3 August 2021. The trial court concluded a 75% distribution of the

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marital property to plaintiff, and a 25% distribution to defendant, was equitable. Defendant was also ordered to pay plaintiff a distributive award of \$303,966.00 and ordered to transfer \$539,456.00 from the Horan Funding, LLC IRA to plaintiff's Wells Fargo Securities IRA.

¶ 8 On 6 August 2021, Judge Ratledge entered an order for alimony. Based upon the parties' reasonable monthly expenses and net income, defendant was ordered to pay \$6,000.00 per month for ten years, and \$4,000.00 per month for an additional eight years thereafter.

¶ 9 On 1 September 2021, defendant timely appealed Judge Ratledge's orders of equitable distribution and alimony, and Judge Dunston's orders of postseparation support, arrears, attorney's fees, and interim distribution.¹

II. Discussion

A. Equitable Distribution Judgment and Order

¶ 10 "Equitable distribution reflects the idea that marriage is a partnership enterprise to which both spouses make vital contributions and which entitles the homemaker spouse to a share of the property acquired during the relationship." *White v. White*, 312 N.C. 770, 775, 324 S.E.2d 829, 832 (1985) (citations omitted).

¹ Defendant appealed multiple orders by the lower courts, but failed to present those arguments and case law supporting his contentions in his briefs. Thus, those issues were abandoned and not considered by this Court pursuant to N.C.R. App. 28(a).

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Equitable distribution requires the trial court to “(1) classify property as being marital, divisible, or separate . . . ; (2) calculate the net value of the marital and divisible property; and (3) distribute equitably the marital and divisible property.” *Brackney v. Brackney*, 199 N.C. App. 375, 381, 682 S.E.2d 401, 405 (2009) (citation omitted). “[T]o enter a proper equitable distribution judgment, the trial court must specifically and particularly classify and value all assets and debts maintained by the parties at the date of separation.” *Dalgewicz v. Dalgewicz*, 167 N.C. App. 412, 423, 606 S.E.2d 164, 171 (2004).

¶ 11 Defendant contends the trial court initially erred by improperly classifying the property at 597 Chestertown Drive, as a marital asset in its entirety and that the trial court lacked sufficient findings of fact to support its conclusion that an unequal division of the marital property is equitable. We address each argument in turn.

1. Classification of 597 Chestertown Drive

¶ 12 The “‘classification of property in an equitable distribution proceeding requires the application of legal principles,’” therefore, we review *de novo* the trial court’s “classification of property as marital, divisible, or separate.” *Green v. Green*, 255 N.C. App. 719, 724, 806 S.E.2d 45, 50 (2017) (citation omitted), *disc. review denied*, 371 N.C. 485, 818 S.E.2d 273 (2018). As the trial judge in equitable distribution proceedings sits without a jury, a court’s characterization of property as “marital, divisible, or separate will not be disturbed on appeal if there is competent

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evidence to support the determination.” *Brackney*, 199 N.C. App. at 381, 682 S.E.2d at 405 (citation and internal quotation marks omitted). The trial court must support its “conclusion that property is either marital, separate, or non-marital . . . [with] written findings of fact.” *Hunt v. Hunt*, 112 N.C. App. 722, 729, 436 S.E.2d 856, 861 (1993) (citation omitted). “Appropriate findings of fact include, but are not limited to[:] (1) the date the property was acquired[:]; (2) who acquired the property[:]; (3) the date of the marriage[:]; (4) the date of separation[:]; [and] (5) how the property was acquired (i.e., by gift, bequest, or purchase).” *Id.* (citation omitted)

¶ 13 As set forth above, the equitable distribution process “requires the trial court to classify *all* of the marital and divisible property—collectively termed distributable property—in order that a reviewing court may reasonably determine whether the distribution ordered is equitable.” *Robinson v. Robinson*, 210 N.C. App. 319, 323, 707 S.E.2d 785, 789 (2010) (citation omitted) (emphasis in original). N.C. Gen. Stat. § 50-20(b)(1) (2021) defines marital property as “all real and personal property acquired by either spouse or both spouses during the course of the marriage and before the date of separation of the parties, and presently owned, except property determined to be separate or divisible property[.]” Separate property is defined as

all real and personal property acquired by a spouse before marriage or acquired by a spouse by devise, descent, or gift during the course of the marriage. However, property acquired by gift from the other spouse during the course of the marriage shall be considered separate property only if

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such an intention is stated in the conveyance. Property acquired in exchange for separate property shall remain separate property regardless of whether the title is in the name of the husband or wife or both and shall not be considered to be marital property unless a contrary intention is expressly stated in the conveyance. The increase in value of separate property and the income derived from separate property shall be considered separate property.

N.C. Gen. Stat. § 50-20(b)(2). Divisible property includes “[a]ll appreciation and diminution in value of marital property and divisible property of the parties occurring after the date of separation and prior to the date of distribution, [unless] that appreciation or diminution in value is the direct result of the postseparation actions or activities of one spouse[.]” N.C. Gen. Stat. § 50-20(b)(4). “All appreciation and diminution in value of marital and divisible property is presumed to be divisible property *unless* the trial court finds that the change in value is attributable to the postseparation actions of one spouse.” *Simon v. Simon*, 231 N.C. App. 76, 80, 753 S.E.2d 475, 478 (2013) (citation and brackets omitted) (emphasis in original).

¶ 14 The party seeking to classify property as separate bears the burden of proving, by a preponderance of the evidence, that the asset is separate property. *Atkins v. Atkins*, 102 N.C. App. 199, 206, 401 S.E.2d 784, 787 (1991) (citations omitted). This burden of proof may be established by showing that “the property was acquired . . . before marriage . . . or acquired by him after separation with his own separate funds.”

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N.C. Gen. Stat. § 50-20(b)(2); *Atkins*, at 207, 401 S.E.2d at 788 (citation and internal quotation marks omitted).

¶ 15 Here, defendant asserts the classification of 597 Chestertown Drive as a complete marital asset was erroneous as the property was owned in thirds by defendant, his brother Mark Horan, and Horan Properties, LLC. Mark did not testify. It appears the trial court was not convinced of defendant's classification, and neither are we.

¶ 16 With respect to the property, the trial court found the following:

44. 597 Chestertown Drive. This property was purchased by [the parties] during the marriage and prior to the date of separation for \$540,000.00. The property was encumbered by a mortgage solely in [defendant]'s name, and [the parties]' names were on and remain on the Deed of Trust securing a mortgage with an initial balance of (\$412,000). [The parties] frequented the property during the marriage, and [plaintiff] believed she and [defendant] owned the property together. The property was titled in [defendant]'s name for years following the purchase. [Defendant] convinced [plaintiff] to sign her name on a deed purporting to transfer [the parties]' interest to Horan Properties, LLC for no consideration. [Defendant]'s actions converted marital assets into assets held in his name with his family and, accordingly, [defendant] should be credited with the full fair market value of the property in equitable distribution.

[The parties] stipulated that the date of separation of fair market value of 597 Chestertown Drive was \$455,000 and stipulated the date of trial fair market value was \$575,000. The increase in value between

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the date of separation and the date of trial is \$120,000, which the [c]ourt classifies as divisible property. The property should be distributed to [defendant]. [Defendant] and Horan Properties, LLC, along with any other entity which holds an interest in 597 Chestertown Drive, shall immediately list this property for sale with a listing agent selected by [plaintiff] and it shall remain listed until sold. At closing, the net proceeds (after payment of the First Citizens mortgage #3933, commissions, and closing costs) shall be distributed to [plaintiff] at closing.

¶ 17 Here, there is no dispute that the property was acquired during the marriage, and that it was in existence at the time of separation. The record also establishes that the trial court considered the testimony of plaintiff, defendant, and the various documents defendant used in his attempt to persuade the court that the property interest was held in thirds. Thus, defendant has failed to prove by a preponderance of the evidence that the 597 Chestertown property was separately acquired by him, Mark Horan, or Horan Properties, LLC. “[A]n equitable distribution order will not be disturbed unless the appellate court, upon consideration of the cold record, can determine that the division ordered . . . has resulted in an obvious miscarriage of justice.” *Minter v. Minter*, 111 N.C. App. 321, 329, 432 S.E.2d 720, 725 (citations omitted), *disc. review denied*, 335 N.C. 176, 438 S.E.2d 201 (1993). Accordingly, we find no error in the trial court’s classification of 597 Chestertown Drive. Defendant’s argument is overruled.

2. Unequal Division and Distributive Award

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¶ 18 Defendant also contests the entirety of the equitable distribution judgment and order. Specifically, defendant argues the trial court committed an abuse of discretion by failing to consider plaintiff's separate property, by considering defendant's marital misconduct, and by ordering defendant to pay a distributive award. We disagree.

¶ 19 The equitable distribution of marital property is within the sole discretion of the trial court. *Beightol v. Beightol*, 90 N.C. App. 58, 60, 367 S.E.2d 347, 348 (citation omitted), *disc. review denied*, 323 N.C. 171, 373 S.E.2d 104 (1988). Thus, "[t]he trial court has broad discretion in evaluating and applying the statutory distributional factors[.]" *Jones v. Jones*, 121 N.C. App. 523, 525, 466 S.E.2d 342, 344 (citation omitted), *disc. review denied*, 343 N.C. 307, 471 S.E.2d 72 (1996). "Only when the evidence fails to show *any* rational basis for the distribution ordered by the court will its determination be upset on appeal." *Nix v. Nix*, 80 N.C. App. 110, 112, 341 S.E.2d 116, 118 (1986) (citation omitted) (emphasis in original).

¶ 20 N.C. Gen. Stat. § 50-20(c) provides:

There shall be an equal division by using net value of marital property and net value of divisible property unless the court determines that an equal division is not equitable. If the court determines that an equal division is not equitable, the court shall divide the marital property and divisible property equitably.

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N.C. Gen. Stat. § 50-20(c). The statute proceeds to list factors for the trial court to consider, each pertaining to the economy of the marriage. *See Smith v. Smith*, 314 N.C. 80, 86, 331 S.E.2d 682, 686 (1985).

¶ 21 “When evidence is presented from which the trial court could determine that an equal distribution of the marital property would be inequitable, the trial court must consider all of the distributional factors set out in N.C. Gen. Stat. § 50-20(c) and make sufficient findings as to each factor upon which evidence was offered.” *Davis v. Sineath (Davis)*, 129 N.C. App. 353, 360, 498 S.E.2d 629, 634 (1998). The trial court has discretion to determine the weight assigned to each factor and may make the decision to give no weight to a factor. *Smith v. Smith*, 111 N.C. App. 460, 501, 433 S.E.2d 196, 221 (1993) (citation omitted), *rev’d in part on other grounds*, 336 N.C. 575, 444 S.E.2d 420 (1994). A “finding of a single distributional factor under N.C. Gen. Stat. § 50-20(c) may support an unequal division.” *Edwards v. Edwards*, 152 N.C. App. 185, 187, 566 S.E.2d 847, 849 (citation omitted), *cert. denied*, 356 N.C. 611, 574 S.E.2d 679 (2002).

¶ 22 Preliminarily, we note that the trial court listed 83 findings of fact to support its conclusion that an unequal division in favor of plaintiff is equitable. The findings were thoroughly detailed and properly explained the trial court’s analysis. In pertinent part, the trial court listed and specifically addressed factors set out in N.C. Gen. Stat. § 50-20(c) (1), (3), (7), (9), and (12) in its order:

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77. The [c]ourt has considered the following factors, in accordance with and pursuant to N.C. Gen. Stat. § 50-20(c), in its determination whether an unequal distribution is equitable:
- A. N.C. Gen. Stat. § 50-20(c)(1).
 - i) [Plaintiff]’s gross monthly income is \$1,675.
 - ii) [Defendant]’s gross monthly income is \$12,500, plus his medical insurance is reimbursed to him by his employer.
 - iii) Due to the income disparity at the time the division of this property is to become effective, an unequal distribution of marital and divisible property to [plaintiff] is equitable.
 - B. N.C. Gen. Stat. § 50-20(c)(3).
 - i) The duration of the marriage was almost thirty (30) years.
 - ii) [Plaintiff] is 57 years old.
 - iii) [Plaintiff] says her health is “good” but she takes numerous prescriptions. She is also attending regular mental health therapy sessions and physical therapy.
 - iv) [Defendant] is 59 years old and in relatively good health.
 - v) Due to [plaintiff]’s age and the duration of the marriage, an unequal division of marital and divisible retirement assets is equitable.
 - C. N.C. Gen. Stat. § 50-20(c)(7). [Plaintiff] contributed to developing [defendant]’s career potential during the marriage by her willingness to relocate for positions and serving as a homemaker and primary caretaker for the children while [defendant] pursued his career as an executive.
 - D. N.C. Gen. Stat. § 50-20(c)(9). Much of [the parties]’ net marital estate consists of illiquid real estate

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and related debt.

- E. N.C. Gen. Stat. § 50-20(c)(12).
- i) [Defendant] wasted marital funds on phone sex charges during the marriage without [plaintiff]’s knowledge or consent, and he did so “for 1-1 ½ years before” separation. He also opened up secret credit cards for the purpose of paying for phone sex unbeknownst to [plaintiff].
 - ii) [Defendant] converted marital assets (597 Chestertown Drive) into the name of an LLC held in his name and his family.
 - iii) [Defendant] attempted to convince the [c]ourt he had transferred (70%) of his ownership interest in Parosh, LLC to his children during the marriage and without consideration.

78. Given the factors found above, an equal division of the parties’ net marital and divisible estate is not equitable. Moreover, an unequal division of the parties’ net marital and divisible estate in [plaintiffs]’ favor is equitable.

79. The N.C. Gen. Stat. § 50-20(d) presumption, that an in-kind distribution of marital or divisible property is equitable, has been rebutted by the greater weight of the evidence, as an unequal division of the parties’ net marital and divisible estate is equitable, and an in-kind distribution of the parties’ assets and debts will not yield an equitable division of the parties’ net marital and divisible estate.

Contrary to plaintiff’s position, the trial court also considered plaintiff’s separate property:

75. Wells Fargo Brokerage #2227. This account is [plaintiff]’s separate property, as part of an inheritance.

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76. Duke Energy Shares. These shares are [plaintiff]'s separate property, as part of an inheritance.

It was also within the trial court's discretion to consider defendant's marital misconduct as it involved the dissipation of marital assets. *See Smith v. Smith*, 314 N.C. at 81, 331 S.E.2d at 683 (“[W]e hold that because it is consonant with the essential philosophy of equitable distribution, misconduct during the marriage which dissipates or reduces the value of marital assets for nonmarital purposes may properly be considered under N.C.[Gen. Stat. §] 50-20(c)(12).”) As the trial court rationally analyzed the factors enumerated in N.C. Gen. Stat. § 50-20(c) which it deemed appropriate, the trial court did not commit an abuse of discretion. Defendant's argument is rejected.

¶ 23 Defendant's argument that the trial court did not abide by N.C. Gen. Stat. § 50-20(i1) is likewise without merit. With respect to the interim distribution, the trial court added the \$60,000.00 plaintiff received to plaintiff's portion of the equitable distribution order, illustrating it was included in the court's calculation of the distributive award. Defendant's argument with respect to the interim distribution is overruled.

¶ 24 Lastly, defendant contends the trial court erred in ordering him to pay a distributive award of \$303,966.00 without considering whether or not he had the ability to pay the award and by failing to consider the tax consequences of an IRA

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transfer. This is an inaccurate depiction of the trial court’s factual findings. As for defendant’s ability to pay the distributive award, the trial court found the following:

6. [Defendant] is an executive and a Certified Public Accountant and has garnered various accolades in his career. [Defendant] has also occupied many board of director seats, including seats with Modus Corporation, Horizon Performance, ici Digital, and others.
7. [Defendant] currently serves as the Executive Chairman and CEO of Modus eDiscovery and has been in that role since approximately January 2016.

...

Upon closing on the sale of 597 Chestertown Drive, one hundred percent (100%) of the net (sic) proceeds shall be applied to this distributive award and paid directly to [plaintiff] at closing. The payment of net proceeds shall be applied to the last installments due[.]

The trial court has also granted defendant the ability to pay the distributive award in installments over a period of time. “[I]f a party’s ability to pay an award with liquid assets can be ascertained from the record, then the distributive award must be affirmed.” *Pellom v. Pellom*, 194 N.C. App. 57, 69, 669 S.E.2d 323, 329-30 (2008), *disc. review denied*, 363 N.C. 375, 678 S.E.2d 667 (2009) (citation omitted).

¶ 25 With respect to the tax consequences of the IRA transfer, the trial court acknowledged that “the distribution by trustee-to-trustee transfer from [defendant]’s IRA to [plaintiff]’s IRA is a nontaxable event.” As both findings in regard to the distributive award and IRA transfer is supported by competent evidence, defendant’s

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arguments are overruled.

C. Alimony

¶ 26 Defendant also challenges the trial court’s award of alimony arguing the duration and amount of alimony awarded to plaintiff is not supported by sufficient findings of fact and competent evidence. We disagree.

¶ 27 “When the trial court sits without a jury, the standard of review on appeal is whether there was competent evidence to support the trial court’s findings of fact and whether its conclusions of law are proper in light of such facts.” *Shirey v. Shirey*, 267 N.C. App. 554, 559-60, 833 S.E.2d 820, 824-25 (2019) (citation omitted), *disc. review denied*, 376 N.C. 675, 853 S.E.2d 159 (2021). The amount of alimony awarded is reviewed for an abuse of discretion. *Barrett v. Barrett*, 140 N.C. App. 369, 371, 536 S.E.2d 642, 644 (2000) (citations omitted).

¶ 28 Pursuant to N.C. Gen. Stat. § 50-16.3A(a) (2021), “[t]he court shall award alimony to the dependent spouse upon a finding that one spouse is a dependent spouse, that the other spouse is a supporting spouse, and that an award of alimony is equitable after considering all relevant factors, including those set out in subsection (b)[.]” A dependent spouse is defined as “a spouse, whether husband or wife, 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. § 16.1A(2) (2021). Defendant does not challenge the trial

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court's conclusion that plaintiff is a substantially dependent spouse.

¶ 29 In determining the amount of an alimony award, the trial court must (1) “determine the needs of the dependent spouse and the ability of the spouses to address those needs[;]” (2) “compare income and expenses of both spouses[;]” and (3) “consider all relevant factors . . . enumerated in N.C. Gen. Stat. § 50-16.3A(b).” *Bryant v. Bryant*, 139 N.C. App. 615, 617, 534 S.E.2d 230, 231-32, *disc. review denied*, 353 N.C. 261, 546 S.E.2d 91 (2000). The trial judge has discretion to “determin[e] . . . what constitutes the reasonable needs and expenses of a party in an alimony action . . . and he is not required to accept at face value the assertion of living expenses offered by the litigants themselves.” *Id.*, 139 N.C. App. at 618, 546 S.E.2d at 232 (citation omitted).

¶ 30 It is clear the trial court considered numerous factors when considering the appropriate amount of alimony. The trial court listed 39 factual findings, specifically addressed in N.C. Gen. Stat. §§ 50-16.3A(b)(1)-(6), (8), (9), (12), (13) and made detailed findings regarding the evidence it considered. In sum, the trial court considered: defendant's marital misconduct; earning capacities of the parties; physical and mental condition of the parties; the parties' potential sources of income; duration of the marriage; plaintiff's employment; standard of living of the parties during the marriage; plaintiff's contribution to the marriage as a homemaker; and the relative needs of the parties. Accordingly, the trial court properly considered the required

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statutory factors and set the duration of alimony it deemed appropriate. *See Rea v. Rea*, 262 N.C. App. 421, 431, 822 S.E.2d 426, 433-34 (2018) (finding a 10.5 year grant of alimony permissible where the trial court made detailed findings in regard to the factors enumerated in N.C. Gen. Stat. § 50-16.3A(b)). We find the trial court did not abuse its discretion in ordering defendant to pay \$6,000.00 per month for ten years, and an additional \$4,000.00 per month for eight years of alimony to plaintiff. Defendant's argument is overruled.

D. Postseparation Support Order

¶ 31 Finally, defendant argues the trial court's orders of postseparation support, arrears, and interim distribution lack sufficient competent evidence. We disagree.

¶ 32 A postseparation support order is reviewable once an order awarding or denying alimony has been entered. *Thompson v. Thompson*, 223 N.C. App. 515, 517, 735 S.E.2d 214, 216 (2012) (citation omitted). This Court reviews a postseparation support order to determine “ ‘whether there was competent evidence to support the trial court's findings of fact and whether its conclusions of law were proper in light of such facts.’ ” *Sorey v. Sorey*, 233 N.C. App. 682, 684, 757 S.E.2d 518, 519-20 (2014) (citation omitted). “ ‘The trial court's findings need only be supported by substantial evidence to be binding on appeal. We have defined substantial evidence as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’ ” *Id.* at 684, 757 S.E.2d at 520 (citation omitted).

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¶ 33 Postseparation support is governed by N.C. Gen. Stat. § 50-16.2A (2021). In pertinent part, the statute states:

(b) [i]n ordering postseparation support, the court shall base its award on the financial needs of the parties, considering the parties' accustomed standard of living, the present employment income and other recurring earnings of each party from *any source*, their income-earning abilities, the separate and marital debt service obligations, those expenses reasonably necessary to support each of the parties, and each party's respective obligations to support any other persons.

(c) . . . a dependent spouse is entitled to an award of postseparation support if, based on consideration of the factors specified in subsection (b) of this section, the court finds that the resources of the dependent spouse are not adequate to meet his or her reasonable needs and the supporting spouse has the ability to pay.

N.C. Gen. Stat. § 50-16.2A(b)-(c) (emphasis added). The judge shall also consider any marital misconduct by the parties, occurring prior to or on the date of separation.

N.C. Gen. Stat. § 50-16.2A(d).

¶ 34 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). “‘Actually substantially dependent [implies] that the party seeking [support] would be actually unable to maintain the accustomed standard of living [established before separation] from his or her own means.’” *Collins v. Collins*, 243 N.C. App. 696, 701,

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778 S.E.2d 854, 857 (2015) (citation omitted). A spouse is “ ‘substantially in need of maintenance’ if the dependent spouse will be unable to meet future needs even if current needs are met.” *Id.* (citation omitted). “An objective determination of the parties’ ‘accustomed standard of living’ ” must also be central to the trial court’s consideration of postseparation support. *Id.*

¶ 35 With respect to the parties’ earning capabilities, financial needs, and accustomed standard of living, the trial court made the following findings:

10. Defendant Horan is a CPA and is self-employed. He is the principal of or has an interest in a number of LLCs, including some of the corporate [d]efendants. His primary source of income for the family is Parosh, LLC. Throughout the parties’ marriage, and due to [d]efendant earning a substantial income, the parties agreed that [p]laintiff would be a homemaker until the children were grown.
 11. Plaintiff has a Masters in Education of Academically Gifted Students and has a teaching certificate. She has made substantial efforts to obtain full-time employment as a teacher, however, she has only been able to work part-time as a substitute teacher.
 12. Aside from her substitute teaching income, [p]laintiff’s main source of income is the minimal interest and dividends from an inheritance she received from her mother. Her income from wages and dividends in 2018 totaled \$19,877.00.
-
14. The parties lived a lavish lifestyle during the marriage, including but not limited to having

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regularly dined out at restaurants like Ruth's Chris Steakhouse, Lucky 32, and Maggiano's, and routinely took extravagant vacations at five-star hotels all over the United States. Defendant travels quite frequently for work and is reimbursed for all of his travel and expenses.

15. Defendant Horan is a supporting spouse and [p]laintiff is a dependent spouse within the meaning of N.C. [Gen. Stat.] § 50-16.1A.
16. Defendant Horan consistently reported that he earns a gross annual income between \$552,000 and \$610,000 on loan applications and personal financial statements submitted to creditors between 2015 through 2018. More specifically, he reported that he earned \$48,000 per month on a business credit application dated August 23, 2018 and \$46,000 per month on a credit application dated November 17, 2015.
17. Defendant Horan presented spreadsheets in order to demonstrate his purported monthly ordinary business expenses for Parosh, LLC to demonstrate that his monthly gross income totals \$38,613.00, estimated monthly taxes are \$6,454.0[0], and his monthly business expenses total \$26,1999.00, leaving him a net monthly income of \$5,960.00. Defendant did not account for the reimbursements or the expenses that the business continues to pay for. The [c]ourt did not find [d]efendant's testimony regarding his monthly income to be credible.
18. It is difficult to determine [d]efendant Horan's income because he pays personal and business expenses with multiple credit cards and obtains reimbursements and distributions "as needed[.]" This [c]ourt strongly believes that [d]efendant earns substantially more than he reported on his 2018 personal tax returns.

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19. The [c]ourt finds [d]efendant Horan's gross income from all sources is at least ~\$576,000 (sic) per year.
20. Plaintiff's gross income is in the amount of ~\$9,840 (sic) to \$23,363.10 per year dependent upon whether she is requested to substitute teach.
21. Plaintiff's total reasonable monthly expenses, including fixed and individual expenses are in the amount of \$18,893.
22. Defendant's Financial Affidavit reflects total reasonable monthly expenses of \$12,407. This represents \$10,624 for fixed expense, plus reasonable monthly expenses of \$1,783 for himself. . . .
23. Defendant Horan has the ability to pay the parties' reasonable monthly expense in addition to substantial expenses for himself which are not reasonable.
24. Defendant Horan engaged in online phone sex and paid for Las Vegas "spas" during the period of August of 2018 through February 2019 and spent in excess of \$2,000.00 per month on these services during the marriage. Defendant put the online phone sex charges on a secret credit card under the businesses' name. These expenditures are outrageous and unreasonable.
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30. In the Fall of 2018, [d]efendant began to substantially limit [p]laintiff's access to marital funds and she incurred debt to pay her expenses. In fact, [d]efendant completely cut off [p]laintiff from discretionary funds after he learned that she had taken out a \$25,000 equity loan to assist with her expenses.

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32. Defendant Horan has had the ability to pay adequate support and failed to do so during the period from March 4, 2019 through the date of this hearing.
33. As a result of [d]efendant's refusal to support [p]laintiff, she has borrowed funds and incurred substantial credit card debt.
34. Defendant Horan's postseparation support obligation began on March 4, 2019 when the parties separated.

¶ 36 Moreover, the court made additional findings not listed herein. Defendant argues the trial court incorrectly calculated his present income contending it was error for the court to consider past loan applications. On the contrary, “[w]hen an application is made for postseparation support, the court may base its award on a verified pleading, affidavit, or other competent evidence.” N.C. Gen. Stat. § 50-16.8 (2021); “The trial court is in the best position to weigh the evidence, determine the credibility of witnesses and the weight to be given their testimony.’” *Sorey*, at 686, 757 S.E.2d at 521 (2014) (citation omitted). Thus, it is completely within the trial judge’s discretion to choose which evidence to consider. “It is elementary that the fact finder may believe all, none, or only part of a witness’ testimony.’” *Id.* (citation omitted).

¶ 37 We find that the trial court conducted a thorough review of the evidence presented in ordering defendant to pay postseparation support, arrears, and interim

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distribution. As illustrated above, the trial court had a myriad of substantial evidence included in its order. Defendant's argument is overruled.

III. Conclusion

¶ 38 The trial courts properly considered the evidence presented by the parties. There was no abuse of discretion as each order included thorough findings and was supported by substantial competent evidence. Each order is affirmed.

AFFIRMED.

Judges COLLINS and JACKSON concur.

Report per Rule 30(e).