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NO. COA00-930

NORTH CAROLINA COURT OF APPEALS

Filed: 17 September 2002

MARGARET S. GLASS,
Plaintiff

v.

Wake County
No. 95 CVD 6779

J. CARTER GLASS,
Defendant

Appeal by defendant from judgment entered 9 May 2000 by Judge Fred M. Morelock in Wake County District Court. Heard in the Court of Appeals 23 May 2001.

Sokol & LeFante, P.A., by Marc W. Sokol and Lisa LeFante, for plaintiff-appellee.

Schilawski & Ingram, P.L.L.C., by Michael F. Schilawski and Jennifer M. Bradley, for defendant-appellant.

CAMPBELL, Judge.

This appeal marks the second time these parties have been before this Court, the first being in *Glass v. Glass*, 131 N.C. App. 784, 509 S.E.2d 236 (1998) (hereinafter referred to as *Glass I*). Given that we have heard this case once before and the facts are fully set forth in that opinion, we will reiterate only those facts necessary for an understanding of this second appeal.

Plaintiff and defendant were divorced on 26 April 1996. In deciding plaintiff's claim for alimony, the trial court found plaintiff to be a dependent spouse, and awarded alimony in the

amount of \$3,500 a month for a period of ten years. Defendant appealed this ruling to the Court of Appeals in *Glass I*. A principal issue in this earlier appeal was the trial court's method of calculating the parties' respective incomes. Defendant argued in particular that the trial court erred in disregarding a \$125,000 lump sum payment which was part of a package of termination benefits given to plaintiff by her employer, CP&L. This Court found it to be unclear from the trial court's order whether the trial court classified the payment as "severance pay" which would be required to be included as income, or as a "'bargained-for payment for which Plaintiff gave up various rights and [which] should not be included as part of Plaintiff's income.'" *Glass I*, 131 N.C. App. at 789, 509 S.E.2d at 239 (quoting from the trial court's original order for alimony and child support). Thus, this court remanded the case to the trial court for proper findings of fact as to whether or not the \$125,000 was income; instructing the trial court to use the analytical approach adopted by our Supreme Court in *Johnson v. Johnson*, 317 N.C. 437, 346 S.E.2d 430 (1986), by asking "what the award was intended to replace" *Id.* (quoting *Johnson*, 317 N.C. at 446, 346 S.E.2d at 435).

After correcting other errors found by this Court in *Glass I*, regarding the calculation of the parties' respective incomes, the trial court again found that plaintiff was a dependent spouse. However, as to the \$125,000 lump sum payment, the trial court stated:

This Court finds that neither party was able to carry its burden to show what the character of the lump sum payment

was and further that its characterization is irrelevant to a determination of dependency because it was a one-time payment rather than ongoing income, it was reduced by nearly 50% by income taxes, and the funds were no longer available, having been spent on loan payments, attorney's fees, and other expenses shortly after it was received.

Therefore, a determination as to whether or not this money was income was never made. Defendant asserts that this was error, and that without this determination, the trial court was unable to definitively determine whether or not plaintiff was a dependent spouse. We agree.

In order for a party to be a dependent spouse, the trial court must find that the party is "actually substantially dependent upon the other spouse for his or her maintenance and support or is substantially in need of maintenance and support from the other spouse." N.C. Gen. Stat. § 50-16.1A(2) (2001). This necessarily entails looking at the party's finances, including the party's income and any benefits he or she might receive such as medical insurance or retirement benefits. See N.C. Gen. Stat. § 50-16.3A(a)-(b) (2001). As we held in *Glass I*, "severance pay is properly includable in a spouse's income." *Glass I*, 131 N.C. App. at 788, 509 S.E.2d at 239. Therefore, without a proper determination as to whether the \$125,000 constituted income, the trial court was unable to properly conclude that plaintiff was a dependent spouse.

It is the trial court's obligation to make the findings of fact for purposes of determining whether or not a spouse is a dependent spouse. N.C. Gen. Stat. § 50-16.3A(c) (2001). Despite

the remand of *Glass I* with a directive that the trial court use the method mandated by our Supreme Court in making a finding as to the nature of the \$125,000 lump sum payment, the trial court "finds that neither party was able to carry its burden to show what the character of the lump sum payment was" However, the record reflects that the severance agreement between CP&L and plaintiff, introduced into evidence as defendant's Exhibit 3, does define, at least for purposes of the relationship between CP&L and plaintiff, the nature of this \$125,000 lump sum payment. In pertinent part this agreement, entitled "GENERAL RELEASE AND SEVERANCE AGREEMENT" (the "Agreement"), reads :

1. TERMINATION. Effective January 1, 1997, [Margaret] Glass will be relieved of her duties as Vice President and Treasurer. From January 1, 1997 until February 1, 1997, [Margaret] Glass will be deemed eligible for, and will take, 1997 vacation. Effective February 1, 1997, [Margaret] Glass' regular full-time employment with CP&L will be terminated.

2. TERM EMPLOYEE SERVICES. For a period beginning February 1, 1997 and ending January 31, 2002, [Margaret] Glass will be reclassified from a regular full-time employee to a Term Employee. In this capacity, she will perform services which are mutually agreed upon by the parties and have the duties, responsibilities and authority as CP&L may assign her from time to time.

(a) Compensation. CP&L will pay [Margaret] Glass for these services as follows: (i) from February 1, 1997 through January 31, 1998, CP&L will pay [Margaret] Glass Eleven Thousand Two Hundred Fifty Dollars (\$11,250) (less applicable withholdings) per month; (ii) from February 1, 1998 through January 31, 1999, CP&L will pay [Margaret] Glass Twelve Thousand Five Hundred Dollars (\$12,500) (less applicable withholdings) per month; (iii) from February 1, 1999 through January 31, 2002, CP&L will pay [Margaret] Glass Five Thousand Four Hundred Seventeen Dollars (\$5,417) (less applicable withholdings) per month.

(b) Participation in Other Benefits. [This section set forth the various fringe benefits plaintiff would continue to receive as a Term Employee.]

3. TERMINATION OF EMPLOYMENT. [This section sets out the various events upon which plaintiff may be terminated during her service as a Term Employee.]

4. SEVERANCE PAY. CP&L will pay [Margaret] Glass severance pay in the amount of One Hundred Twenty-Five Thousand Dollars (\$125,000) (less applicable withholdings) payable in lump sum on February 1, 1997.

The severance benefits and term employment afforded under the GENERAL RELEASE AND SEVERANCE AGREEMENT are in lieu of any other severance benefits, except retirement benefits, to which [Margaret] Glass otherwise might be entitled and are not contingent upon [Margaret] Glass electing retirement. Nothing in this Agreement is intended to supplant or otherwise waive any benefits to which [Margaret] Glass might be entitled under the CP&L Supplemental Retirement Plan.

The Agreement, which is the only evidence in the record from which the character of the \$125,000 lump sum payment can be determined, reflects that this \$125,000 is of the same character as the other payments made to plaintiff by her employer at the conclusion of her regular full-time employment. The last paragraph of the Agreement as set forth above provides that "the severance benefits and term employment," i.e., both the \$125,000 lump sum payment and the continuing term employment income, "are in lieu of *any other severance benefits*, except retirement benefits, to which [plaintiff] otherwise might be entitled. . . ." (emphasis supplied). Since we find nothing in the record in *Glass II* which indicates that this \$125,000 lump sum payment was anything other than severance pay, the trial court is directed on remand to include this \$125,000 in plaintiff's income for purposes of

determining her status as a dependent spouse. The fact that this was a "one-time payment rather than ongoing income" does not remove it from consideration as part of plaintiff's income. We are not suggesting that the trial court should necessarily change its conclusion that plaintiff is a dependent spouse, but only that this item of income be taken into consideration, along with all other relevant factors, as set forth in N.C. Gen. Stat. § 50-16.3A(b), in determining whether plaintiff is a dependent spouse. The taking of further evidence is not necessary to make this determination.

As defendant's other assignments of error for the amount and duration of alimony, amount of child support, and the trial court's award of attorney's fees to plaintiff necessarily depend upon the determination of plaintiff's income and whether plaintiff is a dependent spouse, we do not address these issues and instead remand them as well to the trial court for re-determination once the matter of plaintiff's dependency has been settled.

Reversed and remanded.

Judges BIGGS and JOHN concur.

Report per Rule 30(e).