

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e) (3) of the North Carolina Rules of Appellate Procedure.

NO. COA01-1609

NORTH CAROLINA COURT OF APPEALS

Filed: 5 November 2002

MARY H. MIZE,  
Plaintiff,

v.

Catawba County  
No. 98 CVD 1056

DAVID B. MIZE,  
Defendant.

Appeal by plaintiff from judgment entered 30 August 2001 by Judge Jonathan L. Jones in Catawba County District Court. Heard in the Court of Appeals 28 October 2002.

*Crowe & Davis, P.A., by H. Kent Crowe, for plaintiff-appellant.*

*No brief filed for defendant-appellee.*

EAGLES, Chief Judge.

Mary H. Mize ("plaintiff") appeals from an equitable distribution judgment requiring David B. Mize ("defendant") to pay plaintiff a distributive award. Plaintiff has one assignment of error on appeal: that the trial court erred in its valuation of the marital residence which resulted in an inappropriate division of marital property. After careful review, we disagree.

The evidence tends to show the following. Plaintiff and defendant were married on 1 January 1990. On 31 March 1998,

plaintiff filed a complaint seeking a divorce from bed and board from the defendant. On 2 June 1998, defendant answered the complaint and filed a counterclaim seeking equitable distribution. A hearing was held on the matter on 5 and 6 April 2001.

On 30 August 2001, the trial court entered a judgment of equitable distribution. In the judgment, the trial court determined that the fair market value of the parties' marital home was "\$90,000 at date of separation." Based on its findings, the court determined that plaintiff owed defendant \$6,000 as a distributive award. Plaintiff appeals.

Plaintiff's sole argument on appeal is that the trial court improperly determined the value of the marital residence. Plaintiff's expert witness Lori Barber testified regarding the value of the marital home. As an expert in the field of residential appraisal, Barber testified that the estimated market value of the home at separation was \$75,000. Defendant argued that the value of the home was \$90,000, based on a tax valuation which placed the home's value at approximately \$92,100. Before trial, defendant had submitted an affidavit in which he stated that the fair market value of the home was \$90,000. Plaintiff argues that the court disregarded Barber's testimony, which plaintiff contends was the only competent evidence of fair market value of the marital home. Plaintiff argues that defendant's testimony regarding the home's value was not competent evidence. Plaintiff contends that if defendant's improper testimony is disregarded, there is insufficient evidence to support the trial court's valuation, and

the trial court overstated the value of the marital residence by \$15,000. We disagree.

G.S. § 50-20 provides for the equitable distribution of property upon divorce. "In making an equitable distribution, the trial court must conduct a three-step analysis: (1) determining which property is marital property; (2) calculating the net value of the marital property -- which is the fair market value less any encumbrance on the property; and, (3) distributing the property in an equitable manner." *Hamby v. Hamby*, 143 N.C. App. 635, 638, 547 S.E.2d 110, 112, *disc. rev. denied*, 354 N.C. 69, 553 S.E.2d 39 (2001) (citing *Beightol v. Beightol*, 90 N.C. App. 58, 63, 367 S.E.2d 347, 350, *disc. rev. denied*, 323 N.C. 171, 373 S.E.2d 104 (1988)).

Plaintiff contends that defendant's testimony about the marital home's value was not competent evidence because it was solely based on the tax valuation. However, defendant's affidavit was also available for consideration by the trial court. Under the "any competent evidence" standard, defendant's affidavit was sufficient evidence to support the trial court's finding as to the value of the marital home. *Lawing v. Lawing*, 81 N.C. App. 159, 164, 344 S.E.2d 100, 104 (1986) (citing *Humphries v. City of Jacksonville*, 300 N.C. 186, 265 S.E.2d 189 (1980)). Accordingly, we affirm.

Affirmed.

Judges McCULLOUGH and HUDSON concur.

Report per Rule 30(e).