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NO. COA01-285

NORTH CAROLINA COURT OF APPEALS

Filed: 7 May 2002

ESTHER LORENE SINK WALSER,

Plaintiff-Appellee,

v.

Davidson County
No. 99 CVD 1222

RAY EUGENE WALSER,

Defendant-Appellant.

Appeal by defendant from judgment entered 9 October 2000 by Judge Jack Klass in Davidson County Superior Court. Heard in the Court of Appeals 5 December 2001.

Michelle D. Reingold for plaintiff-appellee.

Randolph and Fischer, by J. Clark Fischer, for defendant-appellant.

TIMMONS-GOODSON, Judge.

Ray Eugene Walser ("defendant") appeals the judgment of the trial court distributing marital property, contending that the trial court failed to make sufficient findings of fact to support the equal division of property.

The undisputed pertinent facts and procedural history is as follows: Esther Lorene Sink Walser ("plaintiff") and defendant were married on 12 July 1970, separated on 28 April 1999 and divorced on 24 July 2000. An equitable distribution judgment was

subsequently entered on 9 October 2000 whereby the trial court held that an equal division of the marital property was equitable and therefore, distributed the property accordingly. From this equitable distribution judgment, defendant appeals.

In his first assignment of error, defendant argues that the trial court erred in Finding of Fact #5 by failing to make specific findings of ultimate facts that were in dispute. Defendant contends that the trial court merely recited portions of testimony without resolving the factual contentions of the parties. This argument is without merit.

Our courts have established several basic principles pertaining to equitable distribution. N.C. Gen. Stat. § 1A-1, Rule 50-20(j) (1999), governing actions for equitable distribution provides: "[i]n any order for the distribution of property made pursuant to this section, the court shall make written findings of fact that support the determination that the marital property and divisible property has been equitably divided." In accordance with N.C. Gen. Stat. § 1A-1, Rule 52(a), "the trial court's findings of fact must be more than mere evidentiary facts; they must be the 'specific ultimate facts . . . sufficient for [an] appellate court to determine that the judgment is adequately supported by competent evidence.'" *Williamson v. Williamson*, 140 N.C. App. 362, 363-64, 536 S.E.2d 337, 338 (2000) (alteration in original) (quoting *Montgomery v. Montgomery*, 32 N.C. App. 154, 156-57, 231 S.E.2d 26, 28 (1977)). Therefore,

"while Rule 52(a) does not require a recitation of the evidentiary and subsidiary facts required to prove the ultimate facts, it does require specific findings of the ultimate facts established by the evidence, admissions, and stipulations which are determinative of the questions involved in the action and essential to support the conclusions of law reached."

Id. at 364, 536 S.E.2d at 338 (quoting *Quick v. Quick*, 305 N.C. 446, 452, 290 S.E.2d 653, 658 (1982)). "The applicable standard of review on appeal where, as here, the trial court sits without a jury, is whether competent evidence exists to support its findings of fact and whether the conclusions reached were proper in light of the findings." *In re Foreclosure of C and M Investments*, 123 N.C. App. 52, 54, 472 S.E.2d 341, 342 (1996), *affirmed in part, reversed in part*, 346 N.C. 127, 484 S.E.2d 546 (1997).

In the instant case, defendant challenges the following finding of fact determined by the trial court:

5. That the parties were married to one another for twenty-nine years and worked together during that time to accrue all of the assets that they have and that an equal distribution is appropriate in this matter. Both parties worked to maintain and operate the mobile home parks, lots, and subdivision subsequent to the date of separation as had been the custom prior to the separation. (emphasis added). Evidence was presented that after the separation the Defendant attempted to bar the Plaintiff from participating in the maintenance and operation of the lots, parks, and subdivision by limiting her access to the equipment necessary for maintenance and by keeping such equipment locked and refusing to make a key or the equipment available to the Plaintiff. Judicial intervention was necessary to obtain the equipment for the Plaintiff's use. Evidence was presented that the Defendant changed all rental accounts into

his individual name and prevented the Plaintiff from managing any such accounts even though she had done so prior to the separation. The Defendant took control of all business ledgers and the Plaintiff has not been allowed to do any of the bookkeeping or clerical work. Further evidence was presented that during the hours the Plaintiff was working that the Defendant would video tape the Plaintiff's every movement and the Defendant testified that he had hours of video of the Plaintiff while she was present on the property attempting to work. The Court entered an Order allotting the Plaintiff hours to be present and to work at the property and the Defendant videotaped the Plaintiff during this time. The Defendant refused the Plaintiff access to the bathroom facilities during the time she was present on the property and attempting to work. Testimony was presented that the Plaintiff had to borrow equipment from third parties with which to work because the equipment was kept locked away from the Plaintiff. **At all times the Plaintiff was willing and available to work, but the Defendant prevented the Plaintiff from doing some work by refusing Plaintiff access to equipment, access to the books, and taking various legal actions to prevent the Plaintiff from being on the property in question (i.e criminal charges) and the Plaintiff sought judicial assistance to secure time to work.** (emphasis added).

Contrary to defendant's assertions, our review of the record in the instant case, reveals that Finding of Fact #5 definitively resolved the factual contentions of the parties. Finding of fact #5 began with an ultimate finding of fact reflecting the trial court's conscious choice between the conflicting versions of evidence presented. While the balance of the fifth finding appears to be a recitation of the evidence presented, the trial court made sufficient findings of the ultimate facts in dispute that: (1) the parties were married; (2) the parties worked together for twenty-

nine years in maintaining and operating mobile home parks, lots, and subdivisions; (3) that an equal division of the marital property is proper; and (4) both parties worked to maintain the parks subsequent to the date of separation. We hold that this finding adequately apprises us of the ultimate evidence determined by the trial court. This assignment of error is therefore overruled.

In his next assignment of error, defendant contends that the trial court erred in failing to consider defendant's contentions in support of an unequal distribution of the marital assets. We disagree.

"[A]n equal division of marital property is mandatory unless the trial court determines that an equal division would be inequitable." *Armstrong v. Armstrong*, 322 N.C. 396, 404, 368 S.E.2d 595, 599 (1988). In determining whether an equal division of marital property is equitable to the parties, the trial court must consider the twelve factors set forth in N.C. Gen. Stat. § 50-20(c). *Daetwyler v. Daetwyler*, 130 N.C. App. 246, 249, 502 S.E.2d 662, 502 S.E.2d 662, 665 (1998), *disc. review denied*, 349 N.C. 528, 526 S.E.2d 174 (1998). Upon consideration of the statutory factors, "the trial court must make findings of fact showing its due consideration of the evidence presented by the parties[.]" *Id.* The party desiring an unequal division of property bears the burden of producing evidence concerning the relevant statutory factors, and also has the "burden of proving by a preponderance of the evidence that an equal division would not be equitable." *White v. White*,

312 N.C. 770, 776, 324 S.E.2d 829, 832 (1985). "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).

"Although the trial court [is] not required to recite in detail the evidence considered in determining what division of the property would be equitable,' ultimately, it is required to make findings sufficient to address the statutory factors and to support the division ordered." *Atkinson v. Chandler*, 130 N.C. App. 561, 566, 504 S.E.2d 94, 97 (1998) (alteration in original) (quoting *Armstrong*, 322 N.C. at 405, 368 S.E.2d at 600 (1988)). Where a trial court has considered and made findings as to each of the specified factors set forth in N.C. Gen. Stat. § 50-20(c), the "weight given [to] each factor by the trial court must be upheld absent a showing of an abuse of discretion." *Friend-Novorska v. Novorska*, 143 N.C. App. 387, 395, 545 S.E.2d 788, 794, affirmed by, 354 N.C. 564, 556 S.E.2d 294 (2001).

In the instant case, defendant alleges that the trial court did not properly consider the factors of post-separation contributions and his health in its equitable distribution judgment.

As to defendant's contention concerning post-separation contributions and defendant's health, the trial court made the following pertinent findings of fact:

2. That both parties . . . have participated in the purchase and development of property into mobile home parks and a mobile home subdivision and lots [B]oth parties

participated in the development of these properties and both parties expended time and effort in maintaining and operating these parks, lots, and subdivision.

. . . .

5. . . . Both parties worked to maintain and operate the mobile home parks, lots and subdivision subsequent to the date of separation as had been the custom prior to the separation . . .

6. The Defendant testified that he did the majority of the work prior to the separation and after the separation and should be given credit by receiving an unequal distribution of property and that it was his opinion that the split should be 60% to him and 40% to the Plaintiff but that the Defendant wanted the Court to order the sale of all property. The Defendant introduced into evidence logs of the purported hours he alleges to have worked in the business subsequent to the date of separation. Said logs were kept solely by the Defendant and there was no other evidence presented concerning the amount of time worked by the Defendant.

7. That the Court finds that each and every one of the parties' contentions as to an unequal distribution and credits and set offs have been reviewed and considered by the Court and there is no credible evidence to support the same and therefore any prayer for unequal distribution, or for credits or set offs is denied. (emphasis added).

In examining the findings made by the trial court, we discern no abuse of discretion in dividing the property equally. The evidence shows that the purchase and development of the mobile homes, parks and lots occurred during the marriage and both parties contributed in maintaining and operating the property "subsequent to the date of separation as had been the custom prior to the date of separation." Accordingly, we hold that these challenged findings

are supported by competent evidence in the record and that the trial court properly considered and made sufficient findings regarding post-separation contributions pursuant to the distributional factors set forth in N.C. Gen. Stat. § 50-20(c).

Defendant argues that the trial court did not make a specific finding as to his physical health. Defendant is correct that the trial court should have made a written finding of fact relative to the state of defendant's health. See *Wall v. Wall*, 140 N.C. App. 303, 312, 536 S.E.2d 647, 653 (2000) (holding that on remand, the trial court must make written findings of fact based on credible evidence of defendant's health). However, it is clear from the trial court's judgment that the court considered all statutory factors, including defendant's health, in determining that an equal division was equitable. Furthermore, defendant has failed to demonstrate how he was prejudiced by the trial court's failure to make a specific finding regarding his health. See *Crutchfield v. Crutchfield*, 132 N.C. App. 193, 196, 511 S.E.2d 31, 34 (1999) (holding that the defendant failed to demonstrate any prejudice from the trial court's failure to make specific findings of fact as to each distributional factor). We therefore overrule this assignment of error.

Lastly, defendant argues that the trial court erred in failing to consider the tax consequences of its equitable distribution order. We disagree.

Pursuant to N.C. Gen. Stat. § 50-20(11) (1999), when considering an unequal distribution, the trial court shall consider the tax

consequences to each party in its equitable distribution judgment. As the party seeking an unequal division of property, "defendant has the burden of showing that the tax consequences of the distribution were not properly considered." *Wall*, 140 N.C. App. at 312, 536 S.E.2d at 653. "The trial court is not required to consider tax consequences unless the parties offer evidence about them." *Id.*

Our review of the record reveals that the trial court properly considered the tax consequences of its equitable distribution order. The record reflects that the trial court made a specific finding as to the evidence presented by each of the parties' individual accountants, before making its allocations. In Finding of Fact #13, the trial court found: "That both the Plaintiff and the Defendant called as witnesses their individual accountant[s] who testified as to the tax consequences which would effect [sic] the parties and the Court considered the evidence presented by each of the accountants before making the allocations herein contained." Defendant does not direct us to any testimony of tax consequences that the trial court did not consider. Interestingly, we note that defendant argued for sale of the marital assets, yet his expert witness testified that the tax consequences resulting from this sale would be substantial. Clearly, the record reveals that the trial court properly considered the tax issues and consequences raised by both parties before distributing the property.

Defendant argues that the trial court failed to indicate the weight given to the testimony offered by the parties' respective accountants. However, a trial court is "not required to make

findings revealing the exact weight assigned to any given factor.”
Daetwyler, 130 N.C. App. at 250, 502 S.E.2d at 665. We therefore hold that the trial court did not abuse its discretion and properly considered the tax consequences to each party. This assignment of error is overruled.

Based on the foregoing analysis, we affirm the judgment of the trial court.

Affirmed.

Judges HUDSON and TYSON concur.

Report per Rule 30(e).