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NO. COA02-1457

NORTH CAROLINA COURT OF APPEALS

Filed: 6 January 2004

CHARLES A. BUZZANELL,  
Plaintiff

v.

Buncombe County  
No. 00 CvD 2106

CORINA MILLER (BUZZANELL),  
Defendant

Appeal by plaintiff from judgment entered 31 July 2002 by Judge Earl J. Fowler, Jr. in Buncombe County District Court. Heard in the Court of Appeals 27 October 2003.

*Robert E. Riddle for plaintiff-appellant.*

*No brief for defendant-appellee.*

HUNTER, Judge.

Charles A. Buzzanell ("plaintiff") appeals from a Judgment of Equitable Distribution, concluding that an equal division of the parties' marital property was equitable. For the reasons stated herein, we affirm.

Plaintiff and Corina Miller ("defendant") were married on 30 November 1998. At the time of the marriage, plaintiff was employed as a palliative care physician by an anesthesia practice. Plaintiff subsequently terminated his employment on or about 1 December 1998 and opened his own palliative care practice, Blue Ridge Pain Management and Palliative Care, P.A. ("the PA"), in

Hendersonville, North Carolina. Defendant worked full-time to assist plaintiff in the administration of his medical practice.

Approximately thirteen months after their marriage, the parties separated on 22 January 2000. Plaintiff filed a complaint on 20 April 2000 seeking divorce from bed and board and equitable distribution. Defendant replied and counterclaimed for equitable distribution and alimony.

The action was heard on 27 November 2001, during which the parties' assets were identified, valued, and distributed. The court considered evidence provided by each party's expert in valuation of medical practices and valued the PA at \$155,048.00 after making adjustments to the methodology offered by defendant's expert. Further, the court found a marital interest in a home plaintiff purchased prior to the marriage due to certain improvements and mortgage payments that were made on the home during the marriage with marital funds. Ultimately, the trial court determined an equal division to be equitable. Plaintiff was awarded the PA, certain personal property, the marital interest in the home, and a debt. Defendant was awarded the commercial property in Hendersonville, certain personal property, and a distributive award of \$81,058.00. Plaintiff appeals.

In order for this Court to conduct proper appellate review of an equitable distribution order, the trial court's findings of fact must be specific enough that the appellate court can determine from reviewing the record whether the judgment represents a correct application of the law. See *Coble v. Coble*, 300 N.C. 708, 714, 268

S.E.2d 185, 190 (1980). "Although the trial court [is] not required to recite in detail the evidence considered in determining what division of the property would be equitable, it [is] required to make findings sufficient to address the statutory factors and support the division ordered." *Armstrong v. Armstrong*, 322 N.C. 396, 405, 368 S.E.2d 595, 600 (1988). The equitable distribution of the property is ultimately vested within the wide discretion of the trial court and "will be upset only upon a showing that it was so arbitrary that it could not have been the result of a reasoned decision.'" *Wall v. Wall*, 140 N.C. App. 303, 307, 536 S.E.2d 647, 650 (2000) (citation omitted). On appeal, plaintiff brings forth nine assignments of error regarding the Judgment of Equitable Distribution that essentially question whether the trial court: (I) properly determined the value of the PA; (II) erred in determining there was a marital interest in the home plaintiff purchased prior to the marriage; (III) properly considered tax consequences as a distributional factor; (IV) erred in limiting plaintiff's cross-examination of defendant's expert witness on valuation of the PA; and (V) erred in charging defendant twice for the value of a computer.

I.

Plaintiff argues the trial court erred in valuating the PA. Specifically, plaintiff contends (1) defendant's expert, Foster Shriner ("Shriner"), lacked sufficient knowledge about the PA to accurately determine its value, (2) the court incorrectly adjusted the valuation methodology used by Shriner to arrive at the PA's

value, and (3) the court failed to properly value the receivables of the PA when it determined the PA's value. We disagree.

The applicable law as to the valuation of a marital interest in a professional practice is as follows:

[T]he task of the trial court is to arrive at a date of separation value which "reasonably approximates" the net value of the business interest.

"[A] court should make specific findings regarding the value of a spouse's professional practice and the existence and value of its goodwill, and should clearly indicate the evidence on which its valuations are based, preferably noting the valuation method or methods on which it relied. On appeal, if it appears that the trial court reasonably approximated the net value of the practice and its goodwill, if any, based on competent evidence and on a sound valuation method or methods, the valuation will not be disturbed."

*Offerman v. Offerman*, 137 N.C. App. 289, 292-93, 527 S.E.2d 684, 686 (2000) (citations omitted). Further, this Court recognizes that "[w]hen . . . a professional practice has not been established for a sufficient period to determine goodwill based upon comparable past earnings, the capitalization of excess earnings method of valuing goodwill should be used." *Conway v. Conway*, 131 N.C. App. 609, 618, 508 S.E.2d 812, 819 (1998).

In the instant case, the following findings of fact made by the trial court are pertinent to defendant's first argument:

6. Plaintiff presented a valuation of the PA by Mr. David Keller, an expert in the valuation of medical practices, who concluded that the after tax value of the

practice was approximately \$31,000. . . . It was his opinion that the practice had no goodwill, goodwill being "evident if he had earnings in excess of average earnings and he was able to transfer those earnings to a buyer. As of January 31, 2000, the market for his practice would be almost non-existent". The court finds that [Keller's] consideration of tax consequences is speculative, and an improper consideration in valuation of the practice. The court finds further that the write-off ratios and the deductions for collection, used by Mr. Keller were excessive.

7. Defendant presented a valuation of the PA prepared by Mr. Foster Shriner, an expert in valuation of medical practices. He valued the PA at \$180,165, by using the capitalization of excess earnings method. . . .
8. Mr. Shriner checked his valuation against comparable market data, and used the Justification of Purchase test, both of which supported his conclusions as to the value of the PA.
9. At trial, Mr. Shriner testified that the data he used, had been identified as representing eleven months. At trial, Mr. Keller testified that it was really data representing twelve months. The court finds that an adjustment to the valuation is necessary, and should be 11/12ths of the amount calculated by Foster Shriner. Mr. Shriner also testified that he had not considered a \$10,103 loss, and it appeared that the loss should have been considered. The court finds that after considering the \$10,103 loss, and considering the additional month of time (above), the value of the business is \$155,048. The court has considered that the business is a relatively new one, but finds the valuation prepared by Mr. Shriner, as corrected, represents the true net value of the practice.

We conclude that these findings sufficiently set forth the court's careful consideration of the valuations presented by both parties' experts. The trial court found that Shriner's valuation, based on the capitalization of excess earnings method, would correctly represent the PA's true net value if two adjustments were made. The trial court's adoption of Shriner's method of valuing the PA was supported by the evidence. We agree, however, that the trial court erred in finding of fact 9 in adjusting Shriner's valuation of simply multiplying that figure by 11/12 and then deducting \$10,103.00. Nevertheless, if the errors identified by the trial court are corrected mathematically using Shriner's formula, the value of the PA exceeds the value set by the trial court. Any error in the trial court's adjustments was, therefore, harmless to plaintiff.

## II.

Next, plaintiff argues the trial court erred in determining there was a marital interest in the home he purchased prior to the marriage. We disagree.

In equitable distribution cases, the trial court is required to identify and classify all property as marital or separate. *McIver v. McIver*, 92 N.C. App. 116, 123-24, 374 S.E.2d 144, 149 (1988). "In some instances, however, the property may have a dual character of both marital and separate, and in that event, the trial court's classification" of the property must be determined using the source of funds analysis. *Ciobanu v. Ciobanu*, 104 N.C. App. 461, 464, 409 S.E.2d 749, 751 (1991). This analysis

essentially provides that "the acquisition of property is an on-going process which 'does not depend upon inception of title but upon monetary or other contributions made by one or both of the parties.'" *Id.* (citation omitted). Thus, with respect to a spouse's separate property, "the marital estate shares in the increase in value of separate property 'it has proportionately "acquired" in its own right' through financial, managerial, and other contributions, but does not share in the increase in value of separate property acquired through passive appreciation, such as inflation." *Id.* at 465, 409 S.E.2d at 752 (citation omitted).

Based on the evidence presented in the case *sub judice*, the trial court found that marital funds had been used to reduce the mortgage on plaintiff's separate property, i.e. the home, by \$10,730.00 and that improvements made to that home during the marriage were primarily responsible for its increase in value by \$11,000.00. The court further found that both financial contributions established a marital interest in the home of approximately \$21,794.00. Because these findings are supported by competent evidence, we cannot conclude the court abused its discretion in determining that there was a marital interest in this home.

### III.

Plaintiff also argues the trial court failed to properly consider and make findings regarding tax consequences as a distributional factor when it determined equal division was equitable. We disagree.

In North Carolina, a trial court shall consider all of the distributional factors listed in N.C. Gen. Stat. § 50-20(c) (2001) when determining whether an equal division is equitable. One such factor to be considered is the "tax consequences to each party." N.C. Gen. Stat. § 50-20(c)(11). A trial court abuses its discretion when it fails to consider any of the distributional factors for which the parties offered evidence and make findings of fact regarding them. *See Armstrong*, 322 N.C. at 405, 368 S.E.2d at 600.

Here, plaintiff's expert offered evidence relating to "the after tax value of the practice [being] approximately \$31,000." After considering the evidence, the trial court found that value to be "speculative, and an improper consideration in the valuation of the [PA]." Further consideration of tax consequences by the trial court was unnecessary because (1) no evidence was offered as to any anticipated sale of the PA (or the commercial property in Hendersonville), and (2) the court did not order the liquidation of property as part of the distribution. Thus, there was no abuse of discretion by the trial court.

#### IV.

Plaintiff argues the trial court erred in failing to allow him to cross-examine Shriner as to whether the valuation methodology Shriner used in other cases was consistent with his testimony in the present case. We disagree.

Our Supreme Court has specifically declined to set precise limits for the scope of cross-examination for impeachment,



requiring only that "(1) the scope thereof is subject to the discretion of the trial judge, and (2) the questions must be asked in good faith." *State v. Harrington*, 78 N.C. App. 39, 43, 336 S.E.2d 852, 854 (1985) (citation omitted). Nevertheless, with respect to the value of property, the Court has held that "[t]he impeachment purpose of the cross-examination is satisfied when the witness responds to a question probing the scope of his knowledge. Any further inquiry which states or seeks to elicit the specific values of property dissimilar to the [property] subject to the suit is at best mere surplusage." *Power Co. v. Winebarger*, 300 N.C. 57, 64, 265 S.E.2d 227, 232 (1980). The questions asked by plaintiff on cross-examination of Shriner regarding the valuation methodology he used in other cases and the values he came up with in those cases were "mere surplusage" and not relevant to the case *sub judice*. Thus, the trial court did not abuse its discretion in limiting the scope of plaintiff's cross-examination.

V.

Finally, plaintiff argues the trial court erred in charging him twice for the value of a \$2,500.00 computer when making its equitable distribution award. However, as plaintiff recognizes in his brief to this Court, there were actually two computers at issue -- one computer valued at \$2,500.00 that defendant bought prior to the marriage and another computer that defendant bought using a check from the PA in the amount of \$3,200.00. The trial court identified defendant's computer as a marital asset and assigned it to plaintiff. The other computer was identified as a tangible

asset of the PA. The court's consideration of two separate computers does not support plaintiff's argument that he was charged twice for the same computer; thus, his argument is without merit.

In conclusion, the trial court did not abuse its discretion in determining the parties were entitled to an equal distribution of their assets.

Affirmed.

Chief Judge EAGLES and Judge GEER concur.

Report per Rule 30(e).