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NO. COA05-995

NORTH CAROLINA COURT OF APPEALS

Filed: 18 April 2006

RONDY E. WALKER,  
Plaintiff,

v.

Iredell County  
No. 01 CVD 2612

KAREN DRAKE WALKER,  
Defendant.

Appeal by plaintiff from order entered 3 March 2005 by Judge Lynn Gullett in Iredell County District Court. Heard in the Court of Appeals 6 March 2006.

*Davies & Grist, LLP, by Kenneth T. Davies, for plaintiff-appellant.*

*Michelle D. Reingold for defendant-appellee.*

MARTIN, Chief Judge.

The parties married in 1972, separated in 1999, divorced in 2002, and their children were emancipated by age. An equitable distribution award was entered on 23 June 2004. The order from which appellant-husband ("Husband") appeals is a final order entered 3 March 2005 awarding appellee-wife ("Wife") alimony in the amount of \$900.00 per month for a period of ten years and attorneys' fees in the amount of \$3,052.00.

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Husband has assigned error to a number of the trial court's findings of fact on the grounds they are not supported by the evidence offered at trial. We dismiss each of those assignments of error for two reasons: first, Husband has not brought forward in his brief any argument in support of the assignments of error relating to the trial court's findings of fact, see N.C.R. App. P. 28(a), 28(b)(6); and second, he did not file, as a part of the record, either a narration of the evidence or a verbatim transcript as required by N.C.R. App. P. 9(a)(1)(e). In the absence of such narration or transcript, we must presume that each of the trial court's findings of fact is fully supported by competent evidence and such findings are conclusive on appeal. *In re Botsford*, 75 N.C. App. 72, 75, 330 S.E.2d 23, 25 (1985).

Husband's remaining assignments of error, which are brought forward in his brief, are directed to the trial court's conclusions of law and its award of alimony and attorneys' fees. Citing *Walker v. Walker*, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (COA04-1601 6 December 2005) and *Wetchin v. Ocean Side Corp.* 167 N.C. App. 756, 606 S.E.2d 407 (2005), Wife argues these assignments of error are "'generic' and lack any concise legal basis" and should likewise be dismissed as violative of N.C.R. App. P. 10(c)(1), which requires, in pertinent part, that

Each assignment of error shall, so far as is practicable, be confined to a single issue of law; and shall state plainly, concisely and without argumentation the legal basis upon which error is assigned. An assignment of error is sufficient if it directs the attention of the appellate court to the particular error about which the question is

made, with clear and specific record or transcript references.

N.C.R. App. P. 10(c)(1). Husband's remaining assignments of error are as follows:

1. The Court's entry of the March 3, 2005 Order on the ground that the Order is erroneous as a matter of law, and based upon insufficient Findings of Fact and Conclusions of Law.

R. p. \_\_\_\_.

. . .

14. The Court's Conclusion of Law No. 2, on the ground that there are insufficient Findings of Fact to support it.

R. p. \_\_\_\_.

15. The Court's Conclusion of Law No. 3, on the ground that there are insufficient Findings of Fact to support it.

R. p. \_\_\_\_.

16. The Court's Conclusion of Law No. 4, on the ground that there are insufficient Findings of Fact to support it.

R. p. \_\_\_\_.

17. The Court's award of alimony to the plaintiff [sic], on the grounds that there were insufficient Findings of Fact and Conclusions of Law to support it, and that such an award was excessive.

R. p. \_\_\_\_.

18. The Court's award of attorney's fees to the plaintiff [sic], on the ground that the Defendant did not establish entitlement to attorney's fees as a matter of law, and there are insufficient Findings of Fact to support it.

R. p. \_\_\_\_.

We agree with Wife that Assignment of Error No. 1 runs afoul of the requirement of the appellate rule because it is broadside and does no more than assert that "the trial court erred because its ruling was erroneous." Nor does it identify the precise legal basis upon which error is assigned. *Walker*, \_\_\_\_ N.C. App. at \_\_\_\_, \_\_\_\_ S.E.2d at \_\_\_\_ . Husband's Assignment of Error No. 1 is therefore dismissed.

Aside, however, from the obvious failing of Assignments of Error 14, 15, 16, 17, and 18 to make clear and specific references to the record or transcript, we believe those assignments of error are sufficient to preserve for review the sufficiency of the findings of fact to support the trial court's conclusions of law as to Wife's entitlement to alimony and attorneys' fees. While Husband's failure to reference the specific page numbers in the record to which the assignments of error refer is a clear violation of the appellate rule, those references are easily ascertainable and his violation is not so egregious as to place an additional burden upon this Court or invoke dismissal of the assignments of error. See *Symons Corp. v. Insurance Co. of North America*, 94 N.C. App. 541, 543, 380 S.E.2d 550, 552 (1989) (noting that "[a]lthough defendant in this case did not technically follow the rules by failing to list specific page numbers where exceptions could be found in the record and did not set out these exceptions in the brief" such omissions were not "so egregious as to invoke dismissal."). Thus, our review in this matter will be limited to

the issues raised in Husband's arguments in support of Assignments of Error 14 - 18, i.e., "whether the trial court's findings of fact support its conclusions of law and whether those conclusions of law represent a correct application of the law." *Wetchin*, 167 N.C. App. at 759, 606 S.E.2d at 409.

In making its award of alimony to Wife, the trial court found that Husband earned a net income of \$5052.00 per month, that Wife earned a net income of \$2500.00 per month, that Husband had engaged in marital misconduct during the marriage, and that Wife had "sacrificed her career to advance" Husband's. The trial court also made the following pertinent findings:

17. That during much of the time that the children were growing up, the Wife was a stay-at-home mom. . . . and was a homemaker. The Wife did so with the blessing of the Husband, however, when the children got older, the Wife did establish herself in a lucrative career.

18. That the parties enjoyed a comfortable standard of living during their marriage with a large, beautiful marital home and no lack of money. . . .

19. That both parties have normal needs for funds to pay these everyday expenses. Both parties have built new homes since the date of separation. Both parties are working at lucrative jobs, and [Husband] has the added income of \$1600.00 in retirement benefits his new wife adds to the family.

. . . .

22. That the Husband is the supporting spouse and has been for the entire marriage of the parties. The Wife is the dependent spouse, having been a stay at home mother for most of the marriage and always earning less than the Husband.

23. That the Wife is substantially in need of support from the Husband and the Husband is able to pay an amount of support on behalf of the Defendant.

24. That the Court has taken into consideration the provisions of the Equitable Distribution Order entered by the Honorable Judge Honeycutt on June 23, 2004.

25. That the sum of Nine Hundred Dollars (\$900.00) per month is a fair and equitable amount of alimony to award the Wife.

Based on its findings, the trial court made the following conclusions of law:

1. That the Court has jurisdiction n [sic] this matter, and all parties are properly before the Court.

2. That the Court has made findings of fact concerning each of the factures [sic] in NCGS 50-16.3(A) which are relevant to this case.

3. That based on an analysis of these factors, the Court finds that the Defendant is entitled to alimony.

4. That the Wife is also entitled to an award of Attorney's fees.

The Court ordered Husband to pay alimony in the amount of \$900.00 per month for ten years, with such payments made into the office of the Clerk of Superior Court and to pay attorneys' fees to Wife's attorney in the amount of \$3,052.00. After careful consideration, we conclude the facts found support neither the trial court's award of alimony nor attorneys' fees. Accordingly, we remand for further findings.

#### I. Alimony

"A trial court's decision on the amount of alimony to be awarded is reviewed for an abuse of discretion." *Fitzgerald v. Fitzgerald*, 161 N.C. App. 414, 420, 588 S.E.2d 517, 522 (2003). Findings of fact are sufficient to support an award of alimony if they address the ultimate facts at issue and show the trial court properly applied the law. *Id.* It is the appellant's burden to recreate the proceedings below to allow this Court meaningful review. *Sauls v. Sauls*, 288 N.C. 387, 391, 218 S.E.2d 338, 341 (1975); N.C.R. App. P. 9(a)(1)(e); 9(c). Where "[t]he record does not contain . . . oral testimony" we presume that the findings of fact are "supported by competent evidence." *Fellows v. Fellows*, 27 N.C. App. 407, 408, 219 S.E.2d 285, 286 (1975). However, these findings must be sufficiently detailed and specific to support the conclusions of law. *Rhew v. Rhew*, 138 N.C. App. 467, 472, 531 S.E.2d 471, 474 (2000). Moreover, "a trial court's failure to make any findings regarding the reasons for the amount, duration, and the manner of payment of alimony violates N.C. Gen. Stat. § 50-16.3(A)(c)." *Fitzgerald*, 161 N.C. App. at 421, 588 S.E.2d at 522-23.

In this case, the trial court failed to make specific findings as to 1) the accustomed standard of living of the parties prior to separation, 2) the reasonable living expenses after separation, or 3) its reasons for the amount, duration and manner of payment of alimony. Therefore, its findings support neither its conclusion of law that Wife is a dependent spouse entitled to alimony nor its award of the amount and manner in which such alimony is to be paid.

As we are unable to determine whether the trial court properly applied the law, we must vacate the alimony award and remand for further findings of fact and a proper determination of the amount of alimony in accordance with those findings of fact. *Rhew*, 138 N.C. App. at 472, 531 S.E.2d at 474 (insufficient findings of fact to support denial of alimony where order lacked findings about accustomed standard of living and respective living expenses).

## II. Attorneys' Fees

Section 50-16.4 provides for "an order for reasonable counsel fees for the benefit of" the dependent spouse who is entitled to alimony. N.C. Gen. Stat. § 50-16.4 (2005). Before granting such an award, however, "the trial court must determine, as a matter of law, that the spouse seeking the award is dependent, and that the spouse is without sufficient means to subsist during the prosecution of the suit and to defray the necessary expenses." *Owensby v. Owensby*, 312 N.C. 473, 475, 322 S.E.2d 772, 773-74 (1984).

Here, the trial court concluded that appellee is a dependent spouse, but it failed to make any findings regarding whether Wife was "without sufficient means to subsist during the prosecution of the suit and to defray the necessary expenses." *Id.* Moreover, even though the amount of attorneys' fees to be awarded is a matter entrusted to the discretion of the trial court, the court must, in making that decision, make findings to show its consideration of the nature and worth of the services rendered by counsel. *Id.* at 477, 322 S.E.2d at 775 (holding that the court was unable to review



for abuse of discretion because the trial court's findings lacked "a basis for determining the reasonableness of the counsel fees awarded."). Here, the trial court made no findings to show its consideration of Wife's ability to defray the costs of the suit, making it impossible for this Court to review the reasonableness of the award. Accordingly, on remand, the trial court must make findings of fact sufficient for a determination of whether Wife is entitled to an award of attorneys' fees and the reasonableness of the amount of any such award.

Vacated and remanded.

Judges WYNN and STEPHENS concur.

Report per Rule 30(e).