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NO. COA06-147

NORTH CAROLINA COURT OF APPEALS

Filed: 6 February 2007

ALMA LOIS MITCHELL,  
Plaintiff,

v.

Wilkes County  
No. 02 CVD 16

JOHN MITCHELL,  
Defendant.

Appeal by plaintiff from judgment entered 2 June 2005 by Judge Jeanie R. Houston in Wilkes County District Court. Heard in the Court of Appeals 11 October 2006.

*Paul W. Freeman, Jr. for plaintiff-appellant.*

*E. James Moore, for defendant-appellee.*

LEVINSON, Judge.

Alma Lois Mitchell (wife) appeals from an equitable distribution judgment. We reverse and remand.

John Mitchell (husband) and his wife were married on 7 April 1971. The parties separated on 10 January 2001 and were divorced 18 February 2003. Two children were born of the marriage.

After numerous days of trial, spanning nine (9) months, the trial court made the following findings of fact:

3. The plaintiff is a 52 year old female who has some college level education. She was employed for over 20 years with the federal government in a position with the USDA. She

is now in poor health and receiving disability.

4. The defendant is a 59 year old male who has a high school education. He is in fairly good health and is self employed as a cabinet maker.

5. The parties were married on April 7, 1991; separated on January 10, 2001; and divorced on February 18, 2003.

6. The parties are parents of Lisa Michelle Mitchell and John Michael Mitchell, both who are over the age of 18.

7. Both parties were employed throughout the course of the marriage.

8. Since the date of separation the defendant has paid a mortgage debt of \$33,445.58 down to around \$8,000.

9. Since the date of separation the defendant has paid a home equity loan of \$6107.70 completely off.

10. Since the date of separation, the defendant has incurred debt and negative credit issues due to the plaintiff taking out credit cards in the name of the defendant.

11. The items [on attached exhibit] are marital property and have the values assigned as of the date of separation.

Upon these findings, the trial court concluded that the items enumerated on an exhibit were marital property; that "after careful consideration of all the factors in North Carolina General Statute 50-20 . . . an unequal division of the marital property" would be "an equitable division"; and that, to "achieve equity," a distributive award of \$26,685.85 to wife "was necessary in order to . . . supplement the court's distribution of the marital property."

In wife's first argument on appeal, she contends that certain findings of fact are not supported by competent evidence in the record. With respect to finding of fact number 9, she contends the evidence showed the home equity loan husband paid was \$6,051.55, not \$6,107.70; and with respect to finding of fact number 8, she contends the mortgage debt was \$32,898.05, not \$33,445.58. We do not address whether wife's contentions regarding these figures are correct. We do, however, address wife's challenges to findings of fact 7 and 10.<sup>1</sup>

"Appellate review of findings of fact 'made by a trial judge, without a jury, is limited to . . . whether there is competent evidence to support the findings of fact.'" *Kroh v. Kroh*, 152 N.C. App. 347, 355, 567 S.E.2d 760, 765 (2002) (quoting *Lee Cycle Center, Inc. v. Wilson Cycle Center, Inc.*, 143 N.C. App. 1, 9, 545 S.E.2d 745, 750 (2001)).

Finding of fact number 7 provides that "[b]oth parties were employed throughout the course of the marriage." On the contrary, the evidence indicates that wife has been in declining health since 1994 and unemployed since 1996. Specifically, the transcript reveals the following pertinent testimony by wife:

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<sup>1</sup> As counsel for husband observes, the record in this case covers a variety of hearings "wherein virtually all of the facts at issue were debated." Rather than point this Court to places in the record where evidence might support the challenged findings of fact, counsel makes a short, conclusory argument that this Court should not upset findings of fact absent an "abuse of discretion." We are therefore left with the arguments of wife in her brief and our own "voyage of discovery" through this record.

Q. Okay. Now again, with regard to your physical condition, you've not been able to work anywhere since 1996?

A. No, sir.

Consequently, the record fails to reveal competent evidence to support all of finding of fact number 7.

Wife also challenges finding of fact number 10, which provides that "[s]ince the date of separation the defendant has incurred debt and negative credit issues due to plaintiff taking out credit cards in the name of the defendant." Our review of the record suggests that the portion of this finding that concerns wife "taking out credit cards in the name of defendant" is not supported. While husband testified that "[t]here's \$32,000 in credit cards against my credit with the Credit Bureau[,] and asserted that he has received bills from companies on cards taken out after the separation, there is no competent record evidence tending to show that wife took out cards in defendant's name.

In wife's next argument on appeal, she contends that the trial court committed reversible error by failing to consider all of the statutory factors mandated by N.C. Gen. Stat. § 50-20(c) (2005). This argument has merit.

Under G.S. § 50-20(c), there is a presumption that "[t]he marital property is to be distributed equally, unless the court determines equal is not equitable." *Crowder v. Crowder*, 147 N.C. App. 677, 681, 556 S.E.2d 639, 642 (2001). "If the trial court divides property unequally, it must make findings of fact based on the evidence in support of its conclusion that an equal division

would not be equitable." *Khajanchi v. Khajanchi*, 140 N.C. App. 552, 558, 537 S.E.2d 845, 849 (2000). The statute sets forth twelve distributional factors for the court to consider in making its determination. See G.S. § 50-20(c).

If evidence is presented only as to one of the section 50-20 statutory factors and that evidence weighs toward an unequal distribution, a finding as to that single factor will support the trial court's conclusion of unequal distribution. However, if evidence is presented as to several statutory factors, the trial court must make findings as to each factor for which evidence was presented. Finally, a finding stating that the trial court has merely given due regard to the section 50-20 factors is insufficient as a matter of law.

*Rosario v. Rosario*, 139 N.C. App. 258, 261-62, 533 S.E.2d 274, 276 (2000) (internal citations omitted). Here, the trial court ordered an unequal distribution of the marital estate. The trial court did so without making sufficient findings as to the G.S. § 50-20 factors, and by stating in conclusory fashion that it had "considered" all of the factors. This cannot withstand appellate review where, as here, the trial court failed to make findings as to certain distributional factors enumerated in G.S. § 50-20(c) for which evidence was presented. See *id.* For example, evidence was presented as to "[t]he income, property and liabilities of each party at the time the division of property [was] to become effective." N.C. Gen. Stat. § 50-20(c)(1) (2005). However, little or no detail is set forth in the findings concerning this factor. Furthermore, without making any comment on what the trial court should find, we suggest the trial court consider, as argued by

wife, whether husband converted marital property after the date of separation and before the time of distribution. See N.C. Gen. Stat. § 50-20(c)(11a) (2005). In this regard, wife contends that the order must address, *e.g.*, monies husband allegedly obtained when he closed a joint checking account; receipts from the auction of farm equipment; and rental income from the parties' real property.

As a final matter, and as argued by wife on appeal, the findings of fact and conclusions of law simply do not assist this Court in understanding how the trial court evaluated the evidence and classified, valued and distributed the property. For example, we are uncertain how husband's payment of debts specified in findings of fact 8 and 9 impacted the equitable distribution; as suggested by wife on appeal, the source of funds used to pay these debts could impact the outcome. Moreover, as argued by wife, there is nothing in the court order to account for alleged monies from a joint checking account. And while an attachment to the court order references "household items," and places a total value of \$5,500.00 on them, we cannot be certain on this record that the court has actually valued and distributed all items.

In short, the order on equitable distribution is incomplete. We recognize that the demands on our district court judges are great, and that they are responsible for the entry of virtually hundreds of court orders on a continuing basis. Nonetheless, we cannot sustain the order on appeal. The trial court must identify, value and classify all property involved as separate, marital or

divisible; determine the net market value of the marital and divisible property as of the date of separation; determine what division of the marital and divisible property is equitable; and distribute the property accordingly. Suzanne Reynolds, *Lee's North Carolina Family Law*, § 12.142 (5th ed. revised, 2002). Additionally, in performing these tasks, the trial court must be specific and detailed enough to enable a reviewing court to determine what was done and to evaluate its correctness. *Wade v. Wade*, 72 N.C. App. 372, 376, 325 S.E.2d 260, 266 (1985).

Reversed and remanded.

Judges TYSON and BRYANT concur.

Report per Rule 30(e).