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NO. COA09-481

NORTH CAROLINA COURT OF APPEALS

Filed: 3 August 2010

STEPHANIE RENEE FENNELL,
Plaintiff,

v.

Pasquotank County
No. 05 CVD 235

RONALD D. FENNELL, SR.,
Defendant.

Appeal by defendant from order entered 26 November 2008 by Judge C. Christopher Bean in Pasquotank County District Court. Heard in the Court of Appeals 4 November 2009.

No brief filed on behalf of plaintiff-appellee.

Frank P. Hiner, IV for defendant-appellant.

GEER, Judge.

Defendant Ronald D. Fennell, Sr. appeals from the trial court's order awarding alimony and attorney's fees to plaintiff Stephanie Renee Fennell. Because the trial court failed to make sufficient findings of fact to support its conclusion that plaintiff is entitled to alimony and to explain the manner and duration of the ordered payments, we reverse and remand for further findings of fact.

Facts

The parties were married on 1 September 1988 and have three children, only one of whom is still a minor (he resides with

plaintiff). The trial court's unchallenged findings of fact establish that during the marriage, defendant engaged in "inappropriate behavior" with the woman to whom he is now married. Defendant denied having an inappropriate relationship with that woman during his marriage to plaintiff. During the last year or more of the marriage, however, defendant "remained away from the marital residence at least five nights a week and would not tell the Plaintiff of his location." The trial court also found that defendant was verbally abusive to plaintiff during their marriage.

The parties separated on 1 March 2004. On 4 April 2005, plaintiff filed a complaint requesting post-separation support, alimony, attorney's fees, child custody, equitable distribution, and an absolute divorce. On 27 October 2005, the trial court entered a judgment of absolute divorce. The parties subsequently entered into a consent judgment for child custody, and the trial court entered an order requiring defendant to pay child support. The trial court also entered an order providing for the payment of post-separation support to plaintiff by defendant in the amount of \$300.00 per month. The trial court found that at the time of the alimony hearing, defendant was in arrears as to both child support and post-separation support.

The parties resolved their equitable distribution claims pursuant to the entry of a consent judgment on 18 March 2008. Among other things, defendant agreed to purchase plaintiff's equitable interest in the former marital home for the lump sum amount of \$8,500.00, which was due and payable on or before 20 July

2008. The trial court found that at the time of the alimony hearing, defendant had made several small payments on the debt, but that he still owed plaintiff approximately \$8,000.00.

Defendant lives with his new wife and her child from a previous marriage in the parties' former marital residence. Defendant works as a day hauler truck driver delivering food supplies in northeast North Carolina and southeast Virginia. Defendant's financial affidavit indicates that he earns \$4,395.35 per month in gross income and \$2,038.85 in net income. Defendant has a 401(k) plan to which both he and his employer contribute.

Plaintiff has not remarried and lives with the minor child and her middle child in a small home. Plaintiff moved to that home because she could not afford to maintain the marital residence after the separation. Plaintiff is employed as a pharmacy assistant at Albemarle Hospital with 10 years of experience in the pharmacy profession. Plaintiff's financial affidavit indicates that plaintiff earns a gross income of \$1,595.20 and a net income of \$1,266.12 every two weeks. Although plaintiff does not have a 401(k) plan, she recently began receiving retirement benefits through her employment at Albemarle Hospital.

The trial court found that plaintiff was a dependent spouse and defendant was a supporting spouse during the marriage, at the time of separation, and at the time of the hearing. The court found that plaintiff's monthly net income was \$1,371.63 and defendant's monthly net income was \$2,906.80. The court found that "[w]hile the Defendant has maintained the same standard of living

while remarrying, the Plaintiff has existed on a lower standard of living in a home not as nice as the home where the parties lived together." It found that plaintiff's monthly living expenses were \$2,282.00 and that defendant's monthly living expenses were \$2,128.50.

The trial court determined that defendant did not have the present ability to pay alimony or attorney's fees, but that he would have the ability to pay after he paid off a portion of his debt load. Based on that finding, the trial court determined that plaintiff was entitled to receive alimony and attorney's fees.

The trial court ordered defendant to pay the sum of \$3,000.00 as alimony by 1 April 2009. The court said this lump sum payment would represent the amount of ongoing monthly alimony payments of \$500.00 from November 2008 through April 2009. The court also ordered defendant to pay plaintiff's attorney \$1,000.00. The trial court further ordered defendant to pay, on or before 1 October 2009, an additional \$3,000.00 as alimony representing the payments from 1 May 2009 through 1 October 2009. The court ordered an additional payment of \$1,000.00 to plaintiff's attorney on 1 April 2010. Finally, the trial court ordered that beginning 1 November 2009, defendant was required to make monthly alimony payments of \$500.00. Defendant timely appealed to this Court.

I

On appeal, defendant argues that the trial court erred in awarding alimony to plaintiff. N.C. Gen. Stat. § 50-16.3A(a) (2009) provides that "[t]he court shall award alimony to the

dependent spouse upon a finding that one spouse is a dependent spouse, that the other spouse is a supporting spouse, and that an award of alimony is equitable after considering all relevant factors" This Court has explained:

As our statutes outline, alimony is comprised of two separate inquiries. First is a determination of whether a spouse is *entitled* to alimony. N.C. Gen. Stat. § 50-16.3A(a) (1999). Entitlement to alimony requires that one spouse be a dependent spouse and the other be a supporting spouse. *Id.* If one is entitled to alimony, the second determination is the *amount* of alimony to be awarded. N.C. Gen. Stat. § 50-16.3(b). We review the first inquiry *de novo*, *Rickert v. Rickert*, 282 N.C. 373, 379, 193 S.E.2d 79, 82 (1972), and the second under an abuse of discretion standard, *Quick v. Quick*, 305 N.C. 446, 453, 290 S.E.2d 653, 658 (1982).

Barrett v. Barrett, 140 N.C. App. 369, 371, 536 S.E.2d 642, 644 (2000). With respect to the determination whether a spouse is "dependent" or "supporting," the trial court must make "sufficiently specific" underlying findings of fact to permit appellate review. *Talent v. Talent*, 76 N.C. App. 545, 548-49, 334 S.E.2d 256, 259 (1985), *superseded on other grounds by statute as recognized in Rhew v. Rhew*, 138 N.C. App. 467, 531 S.E.2d 471 (2000).

A. Sufficiency of Findings of Fact as to Defendant's Supporting Spouse Status

Defendant first contends the trial court erred in determining that he was a supporting spouse. A supporting spouse is "a spouse, whether husband or wife, upon whom the other spouse is actually substantially dependent for maintenance and support or from whom such spouse is substantially in need of maintenance and support."

N.C. Gen. Stat. § 50-16.1A(5) (2009). "In determining a supporting spouse's gross income, the critical issue is the supporting spouse's actual ability to make alimony payments." *Barham v. Barham*, 127 N.C. App. 20, 27, 487 S.E.2d 774, 779 (1997), *aff'd per curiam*, 347 N.C. 570, 494 S.E.2d 763 (1998).

Defendant contends the trial court's findings regarding his monthly expenses are insufficient to support its conclusion that he had the ability to pay alimony because the trial court failed to explain how it arrived at the specified amount. Defendant argues that since the trial court found that defendant's reasonable necessary monthly expenses were less than the amount set out in his affidavit, the trial court should have provided an explanation regarding how it came up with the figure used.

The trial court was not limited to the amounts set out in defendant's affidavit. In *Bookholt v. Bookholt*, 136 N.C. App. 247, 250, 523 S.E.2d 729, 731 (1999), *superseded on other grounds by statute as stated in Williamson v. Williamson*, 142 N.C. App. 702, 543 S.E.2d 897 (2001), the defendant similarly argued that the trial court erred in finding that his monthly expenses were lower than what the defendant listed on his financial affidavit. This Court disagreed, explaining:

"The determination of what constitutes the reasonable needs and expenses of a party in an alimony action is within the discretion of the trial judge, and he is not required to accept at face value the assertion of living expenses offered by the litigants themselves." *Whedon v. Whedon*, 58 N.C. App. 524, 529, 294 S.E.2d 29, 32, *disc. review denied*, 306 N.C. 752, 295 S.E.2d 764 (1982). Implicit in this is the idea that the trial judge may resort to his

own common sense and every-day experiences in calculating the reasonable needs and expenses of the parties. Here, the trial court apparently felt the \$2100 in projected housing costs was unreasonable and then reduced that figure to an amount it felt was more reasonable. By doing so, we find no abuse in the exercise of its discretion.

Id.

Based on *Bookholt*, therefore, the trial judge in this case had the discretion – after hearing the testimony and viewing the exhibits presented by the parties – to exercise his own common sense and experience to find that the living expenses set out in defendant's affidavit were not reasonable and to reduce those amounts. Nevertheless, when the trial court exercises this discretion, it must provide some explanation as to how it has calculated the parties' incomes and expenses. In the absence of any explanation, this Court cannot effectively review the decision.

As our Supreme Court has explained:

Effective appellate review of an order entered by a trial court sitting without a jury is largely dependent upon the specificity by which the order's rationale is articulated. Evidence must support findings; findings must support conclusions; conclusions must support the judgment. Each step of the progression must be taken by the trial judge, in logical sequence; each link in the chain of reasoning must appear in the order itself. Where there is a gap, it cannot be determined on appeal whether the trial court correctly exercised its function to find the facts and apply the law thereto.

Coble v. Coble, 300 N.C. 708, 714, 268 S.E.2d 185, 190 (1980). See also *Spicer v. Spicer*, 168 N.C. App. 283, 287, 607 S.E.2d 678, 682 (2005) (holding that, even under abuse of discretion standard,

"[t]he trial court must . . . make sufficient findings of fact and conclusions of law to allow the reviewing court to determine whether a judgment, and the legal conclusions that underlie it, represent a correct application of the law").

In *Bookholt*, this Court was able to determine from the findings of fact that the trial court had reduced the housing costs figure. 136 N.C. App. at 250, 523 S.E.2d at 731. Here, however, the order contains no indication of how the trial court derived the figure of \$2,128.50 when defendant's affidavit claimed expenses of \$3,428.50, thus precluding us from effectively reviewing this decision. We must, therefore, remand for further findings of fact on those issues. See *Vadala v. Vadala*, 145 N.C. App. 478, 480, 550 S.E.2d 536, 538 (2001) (remanding for further findings of fact when trial court made finding as to amount of plaintiff's income, but gave "no indication as to how [plaintiff's income] was calculated" and Court, therefore, could not "confirm or deny this finding").

B. Defendant's Ability to Pay Alimony

Defendant also argues that the trial court erroneously based its determination that he had the ability to pay alimony in the future on two pieces of evidence: (1) the possibility that defendant would receive an income tax refund and (2) the trial court's mistaken belief that defendant would pay off a particular debt within 12 months. On the ability to pay issue, the trial court initially found that "[t]he Defendant does not have the present ability to pay alimony or attorney's fees[,] " but the trial court based its award on its finding that "after the Defendant

satisfies a portion of his debt load, including monthly payments which will terminate in the next twelve months, he will have the ability to make payments to the Plaintiff for alimony and attorney's fees."

The trial court's finding of fact does not reference any tax refund. Defendant points, however, to the trial court's statement suggesting a reliance on the possibility of a tax refund:

There is one thing that was not offered into evidence in testimony by either party, but again, going back to that wonderful statement from the Court of Appeals in *Cunningham* that a Trial Judge may resort to his own common sense and everyday experiences, it is, from looking at the incomes and the deductions of the parties, it's clear to me that the parties would be entitled to income tax refunds. And so what I'm going to have to do is structure this alimony award based upon two things, the possibility of an income tax refund that Mr. Fennell might have, as well as payment of that marital debt, specifically that \$500 per month, freeing up that kind of income.

The trial court apparently was referring to *Cunningham v. Cunningham*, 171 N.C. App. 550, 564, 615 S.E.2d 675, 685 (2005), which was in turn quoting *Bookholt*'s holding, discussed above, that "the trial judge may resort to his own common sense and every-day experiences in calculating the reasonable needs and expenses of the parties." *Bookholt*, 136 N.C. App. at 250, 523 S.E.2d at 731.

We question whether *Bookholt* allows a trial court to assume that a party will receive a tax refund when no evidence has been presented on that point. The possibility of a tax refund is a much more complex issue than whether a party's claimed housing expenses are reasonable. Nevertheless, we are reviewing the trial court's

written order and not remarks made in the course of the hearing. Since the written order did not rely upon the potential tax refund, there was no error.

The trial court did, however, base its finding that defendant would have an ability to pay on its belief that defendant would satisfy a debt, presently requiring monthly payments, within 12 months. Although the trial court did not specifically say so, defendant asserts that this finding of fact refers to a debt owed to Interstate TD Investments, LLC. One of defendant's exhibits was a letter notifying both parties that they were in default on a loan owed to Interstate TD Investments that was secured by a deed of trust on their property. The letter, dated 27 July 2007, was captioned "Acceleration Warning" and stated: "You are in default because you have failed to pay the required monthly installments and late charges. As of the date hereof, a total of \$9,534.19 is due on the loan, which includes principal, interest, escrow, late charges, and any additional fees." The letter required the parties to cure the default within 30 days or the entire balance outstanding on the loan would become due and payable and, if unpaid, the lender would initiate foreclosure proceedings. Defendant contends that the \$9,534.19 figure only represented the amount due as of the date of the letter and was not the entire balance owed under the note.

Nonetheless, nothing in the finding of fact at issue or any other finding of fact identifies specifically what "monthly payments . . . will terminate in the next twelve months," and the

trial court did not make any finding as to the amount by which defendant's expenses would be reduced by the termination of the referenced payments. Further, it is unclear from this finding of fact whether the trial court was relying only upon the termination of these payments or on additional satisfaction of defendant's debt load. Given the generality of this finding, we cannot effectively perform our appellate review functions. On remand, therefore, the trial court must make additional findings regarding its determination that defendant would have the ability to pay at a later date.¹

C. Sufficiency of Findings of Fact Regarding Whether Alimony Equitable

Defendant next argues that the trial court's order cannot stand because the court never specifically found that alimony was equitable considering all the statutory factors. Under N.C. Gen. Stat. § 50-16.3A(a), the trial court "shall award alimony to the dependent spouse upon a finding that one spouse is a dependent spouse, that the other spouse is a supporting spouse, and *that an award of alimony is equitable after considering all relevant*

¹Although defendant argues that this finding of fact is, in any event, not supported by evidence, defendant failed to file the pertinent part of the transcript with this Court, although it appears that a transcript does exist. It is well established that when a party fails to include the transcript with the record on appeal, this omission precludes any challenge to sufficiency of the evidence to support specific factual findings of the trial court. *Hicks v. Alford*, 156 N.C. App. 384, 390, 576 S.E.2d 410, 414 (2003). See also N.C.R. App. P. 7(a)(1) ("If the appellant intends to urge on appeal that a finding or conclusion of the trial court is unsupported by the evidence or is contrary to the evidence, the appellant shall file with the record on appeal a transcript of all evidence relevant to such finding or conclusion.").

factors, including those set out in subsection (b) of this section." (Emphasis added.) The trial court, in this case, made findings indicating it had considered the statutory factors in subsection (b) and had determined that alimony was appropriate, but the trial court never expressly stated that alimony was "equitable."

N.C. Gen. Stat. § 50-16.3A(b) provides that "[i]n determining the amount, duration, and manner of payment of alimony, the court shall consider all relevant factors, including" a list of 15 specified factors and "[a]ny other factor relating to the economic circumstances of the parties that the court finds to be just and proper." N.C. Gen. Stat. § 50-16.3A(c) requires the trial court to "set forth the reasons for its award or denial of alimony and, if making an award, the reasons for its amount, duration, and manner of payment. Except where there is a motion before the court for summary judgment, judgment on the pleadings, or other motion for which the Rules of Civil Procedure do not require special findings of fact, the court shall make a specific finding of fact on each of the factors in subsection (b) of this section if evidence is offered on that factor." Nothing in the statute specifically requires that the trial court use the word "equitable." And, defendant has not cited any case requiring that the trial court use particular language in ordering an award of alimony.

In this case, the trial court's order contains specific findings on the marital misconduct of defendant, the earnings of the spouses, the physical conditions of the spouses, the amount and

source of income of the spouses, the duration of the marriage, the fact that plaintiff has a minor child living with her, the standard of living of the spouses during the marriage, the assets and liabilities of the spouses, and the needs of the spouses – all factors set out in N.C. Gen. Stat. § 50-16.3A(b). Defendant has not pointed to any factor set out in the statute on which the parties presented evidence, but the trial court did not make a finding of fact.

The trial court then specifically found that "[t]he Plaintiff is entitled to receive alimony from the Defendant based upon the findings of fact and conclusions of law herein" In other words, the trial court made findings on at least nine of the factors set out in the statute for the court to consider in awarding alimony and then found that plaintiff was entitled to receive alimony from defendant based on these findings. The trial court simply failed to include in its order the magic words that "an award of alimony would be equitable." We hold that the trial court's findings of fact were sufficient to meet the requirements of N.C. Gen. Stat. § 50-16.3A(c). The trial court's determination that alimony was equitable can be inferred from its findings.

D. Manner and Duration of Payments

Finally, defendant contends the trial court had no authority to order that defendant pay alimony in the form of both lump sum and periodic payments. The trial court ordered defendant to make (1) a lump sum payment on 1 April 2009, to reflect alimony payments of \$500.00 per month for the period running from November 2008

through April 2009; (2) a lump sum payment on 1 October 2009, to reflect alimony payments of \$500.00 per month from April to October 2009; and (3) monthly payments of \$500.00 beginning in November 2009.

N.C. Gen. Stat. § 50-16.1A(1) (emphasis added) defines alimony as "an order for payment for the support and maintenance of a spouse or former spouse, *periodically or in a lump sum*, for a specified or for an indefinite term, ordered in an action for divorce, whether absolute or from bed and board, or in an action for alimony without divorce." N.C. Gen. Stat. § 50-16.7(a) (2009) more specifically provides: "Alimony or postseparation support shall be paid by lump sum payment, periodic payments, income withholding, or by transfer of title or possession of personal property or any interest therein, or a security interest in or possession of real property, as the court may order." Under N.C. Gen. Stat. § 50-16.3A(c), the trial court must set forth the reasons for the manner of payment ordered.

While defendant acknowledges that the trial court could order either lump sum payments or periodic payments, he argues, citing *Williams v. Williams*, 299 N.C. 174, 261 S.E.2d 849 (1980), that the court could not order both methods of payment. In *Williams*, the trial court awarded the plaintiff alimony in the amount of \$1,000.00 per month. *Id.* at 177, 261 S.E.2d at 853. On appeal, the trial court upheld the award, but said:

We do, however, agree with defendant that the trial court improperly designated the award to plaintiff as "permanent lump-sum alimony." G.S. 50-16.7 provides in part that

alimony shall be paid by lump sum payment or periodic payments. Clearly, the trial court here has ordered periodic payments and that portion of the trial court order referring to a "lump sum" payment is vacated.

Id. at 189, 261 S.E.2d at 859.

Defendant contends *Williams* stands for the proposition that a trial court can award either a lump sum payment or periodic payments, but not both. We believe defendant has misconstrued the holding. The Court did not preclude an award of both types of payments, but rather simply noted that an award of "1,000.00 per month" was not a lump-sum payment and, therefore, the trial court erred in characterizing it as such. Other decisions have, in fact, upheld awards including both periodic and lump sum payments. See, e.g., *Stickel v. Stickel*, 58 N.C. App. 645, 647, 294 S.E.2d 321, 323 (1982) (upholding trial court's award of periodic payments of alimony together with lump sum payment of \$30,000.00); *Guy v. Guy*, 27 N.C. App. 343, 346, 219 S.E.2d 291, 293 (1975) ("The trial judge, reacting to each case flexibly and fairly, may award the financially strained spouse assistance through a lump sum payment, a monthly stipend, or some unique combination thereof, in his discretion.").

Even though the trial court had authority to order both lump sum and periodic payments, the order regarding the manner of alimony payments must be reversed and remanded for another reason. In *Hartsell v. Hartsell*, 189 N.C. App. 65, 75, 657 S.E.2d 724, 730 (2008), this Court explained that "[d]ecisions about the amount and duration of alimony are made in the trial court's discretion, and

the court is not required to make findings about the weight and credibility it assigned to evidence before it." It pointed out, however, that in *Williamson v. Williamson*, 140 N.C. App. 362, 536 S.E.2d 337 (2000), the Court remanded an alimony order for further findings because the order "'failed to provide any reasoning for the \$1,500.00 monthly amount, why the award was permanent, or why it would be paid directly to the Union County Clerk of Court.'" *Hartsell*, 189 N.C. App. at 76, 657 S.E.2d at 730 (quoting *Williamson*, 140 N.C. App. at 365, 536 S.E.2d at 339). The *Hartsell* Court held that because the trial court, in that case, had failed to explain why it was requiring the payment of alimony until the death or remarriage of the defendant, further findings were needed. *Id.*

Here, the trial court found that plaintiff's deficit between her income and expenses every month was \$502.00. This finding explains why the trial court set the alimony amount at \$500.00 per month. The trial court also had the authority to specify that this alimony be "on-going." See N.C. Gen. Stat. § 50-16.3A(b) (providing that duration of alimony can be for unspecified term). The trial court, however, did not explain why it ordered that alimony be ongoing. It also failed to explain why it decided to make the lump sum payments due on 1 April 2009 and 1 October 2009, with periodic payments beginning after 1 October 2009, or why it ordered defendant to make the payments directly to the clerk of superior court. Such findings were necessary to explain and support the trial court's order and we must, therefore, remand.

See *Crocker v. Crocker*, 190 N.C. App. 165, 172, 660 S.E.2d 212, 217 (2008) (remanding for further findings where trial court failed to state reason for duration and manner of payment of alimony).

II

Defendant also contends the trial court erred in awarding attorney's fees to plaintiff. "A spouse is entitled to attorney's fees if that spouse is (1) the dependent spouse, (2) entitled to the underlying relief demanded (e.g., alimony and/or child support), and (3) without sufficient means to defray the costs of litigation." *Barrett*, 140 N.C. App. at 374, 536 S.E.2d at 646. "Whether these requirements have been met is a question of law that is reviewable on appeal," but "the amount of the award rests within the sound discretion of the trial judge" *Clark v. Clark*, 301 N.C. 123, 136, 271 S.E.2d 58, 67 (1980).

While defendant does not challenge the trial court's determination that plaintiff is a dependent spouse, defendant does challenge the conclusion that plaintiff is without sufficient means to defray litigation costs. "A party has insufficient means to defray the expense of the suit when he or she is 'unable to employ adequate counsel in order to proceed as litigant to meet the other spouse as litigant in the suit.'" *Taylor v. Taylor*, 343 N.C. 50, 54, 468 S.E.2d 33, 35 (1996) (quoting *Hudson v. Hudson*, 299 N.C. 465, 474, 263 S.E.2d 719, 725 (1980)). Defendant contends the following finding in support of that conclusion is unsupported by the evidence:

The Plaintiff has incurred attorney's fees in the total amount of \$2,400.00 in the

prosecution of her claim for permanent alimony. The Plaintiff has previously paid sums of money she earned and borrowed from family members to pay her attorney for the prosecution of claims for child custody, child support, post-separation support, and equitable distribution. She has no additional funds with which to pay these on-going attorney's fees incurred in the prosecution of her claims for permanent alimony.

As mentioned above, however, defendant failed to include the transcript of the presentation of the evidence in the record on appeal. "'It is the appellant's duty and responsibility to see that the record is in proper form and complete.'" *McKyer v. McKyer*, 182 N.C. App. 456, 463, 642 S.E.2d 527, 532 (quoting *State v. Alston*, 307 N.C. 321, 341, 298 S.E.2d 631, 644-45 (1983)), *disc. review denied*, 361 N.C. 356, 646 S.E.2d 115 (2007). "'An appellate court is not required to, and should not, assume error by the trial judge when none appears on the record before the appellate court.'" *Id.* (quoting *State v. Williams*, 274 N.C. 328, 333, 163 S.E.2d 353, 357 (1968)). When the appellant fails to file the transcript with the record, "we presume the findings at bar are supported by competent evidence." *Davis v. Durham Mental Health/Dev. Disabilities/Substance Abuse Area Auth.*, 165 N.C. App. 100, 112, 598 S.E.2d 237, 245 (2004). Because of defendant's failure to provide a copy of the transcript to this Court, defendant has presented no basis for overturning this finding of fact.

Conclusion

We, therefore, reverse the award of alimony and remand for further findings of fact consistent with this opinion. Because the trial court may award plaintiff attorney's fees only if it has

concluded that plaintiff is entitled to alimony, we must also set aside the attorney's fees award. If the trial court determines on remand that plaintiff is entitled to alimony, then it may reinstate its award of attorney's fees.

Reversed and remanded.

Judges ROBERT C. HUNTER and CALABRIA concur.

Report per Rule 30(e).