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NO. COA14-1039
NORTH CAROLINA COURT OF APPEALS

Filed: 3 March 2015

JUDY W. HALFORD,
Plaintiff,

v.

Henderson County
No. 11 CVD 145

WAYNE HALFORD,
Defendant.

Appeal by plaintiff from judgment entered 21 November 2013 and order entered 30 January 2014 by Judge Emily Cowan in Henderson County District Court. Heard in the Court of Appeals 4 February 2015.

Adrienne I. Roberson for plaintiff.

Prince, Youngblood & Massagee, PLLC, by B. B. Massagee, III and Sharon B. Alexander, for defendant.

INMAN, Judge.

Plaintiff Judy Halford appeals the equitable distribution judgment entered 21 November 2013 and the order entered 30 January 2014 granting defendant Wayne Halford's Rule 59(e) motion to amend the equitable distribution judgment. On appeal, plaintiff contends that the trial court erred by: (1) valuing real property

based on real estate appraisals instead of the tax values; (2) assigning a 1965 Ford Mustang a value of \$30,000; and (3) redistributing 4.86 acres in Polk County to defendant in the Rule 59(e) order. Plaintiff also argues that she has been denied a meaningful review on appeal due to the incomplete nature of the transcripts and that she was prejudiced by the eight-month delay in the trial court's entry of the equitable distribution judgment.

After careful review, we affirm.

Background

Plaintiff and defendant were married on 27 October 1990, separated on 1 September 2009, and divorced on 25 May 2011. During the marriage, they acquired three pieces of real property in Polk County at issue on appeal: (1) a 9.7 acre lot that included a farmhouse-style home; (2) a 4.86 acre lot that included four mobile homes; and (3) a 9 acre lot with a double-wide mobile home. Other assets at issue on appeal were a 1965 Ford Mustang the parties purchased during the marriage and a 401k account with ING that was started during the marriage in plaintiff's name (the "ING 401k").

A trial on the issue of equitable distribution was held on 26 March, 27 March, 28 March, and 29 April 2013. Frederick Placak ("Mr. Placak"), a real estate appraiser with 41 years of experience, testified for defendant regarding the value of the

real property. Mr. Placak testified that he valued the 9.7 acre property with the farmhouse-style house (the "first property") at \$211,500 on the date of separation and \$183,000 on the date of trial. Although he did not actually see the interior of the house, Mr. Placak testified that it was not unusual to appraise property solely by its exterior and that at least one-third of all appraisals are done as "drive by appraisal[s]." According to Mr. Placak, the actual condition of the interior of the house would only "[m]arginally" affect its value. With regard to the 4.86 acre property that included four mobile homes (the "second property"), Mr. Placak valued the real property at \$48,750 on the date of separation and \$45,250 on the date of trial and assigned a value of \$2,000 to \$3,000 for each mobile home. Mr. Placak testified that he examined the exterior of the mobile homes, inspected the property, and used comparable properties to come up with these valuations. Finally, Mr. Placak valued the 9 acre property with a double-wide mobile home on it (the "third property") at \$97,550 on the date of separation and \$105,500 on the date of trial. Again, Mr. Placak relied on his inspection of the property and sales of comparable properties to come up with these values. Plaintiff introduced the 2012 and 2013 tax values of the properties for valuation purposes at trial.

At trial, plaintiff testified that the 1965 Ford Mustang was a collector's item that she and defendant purchased during their marriage. In her equitable distribution affidavit, plaintiff valued it at \$30,000 to \$40,000. However, at trial, she testified that this value was based on her belief that the car had a motor in it. Plaintiff alleged that defendant had removed the motor after they separated, which had drastically reduced its value. She did not provide any evidence of the value of the car at trial. Defendant testified that he had upgraded many of the systems on the car and that it had a market value range of \$20,000 to \$90,000.

On 21 November 2013, the trial court issued its equitable distribution judgment which, among other things: (1) valued all three properties in Polk County using Mr. Placak's testimony; (2) distributed the first and second properties to plaintiff; (3) distributed the third property to defendant; (4) valued the 1965 Ford Mustang at \$30,000 and distributed it to plaintiff; and (5) valued the ING 401k at \$48,581.99 on the date of separation, classified the \$3,418.01 increase in value of the asset as divisible property, and distributed it to defendant.

On 2 December 2013, defendant filed a Rule 59(e) motion to amend the judgment alleging that after the trial, plaintiff cashed out the ING 401k and used the money to pay down the debt on the

first property, a property which was distributed to her. The matter came on for hearing on 10 January 2014, and the trial court issued its order on 30 January 2014 (the "Rule 59(e) order"). The trial court found that plaintiff had used the money from the ING 401k to reduce her debt load because she did not want to continue working third shift. Consequently, the trial court ordered that the second property, which was originally distributed to plaintiff with a value of \$48,750 on the date of separation and \$45,250 on the date of distribution, be distributed to defendant. Plaintiff timely appealed.

Standard of Review

"When the trial court sits without a jury, the standard of review on appeal is whether there was competent evidence to support the trial court's findings of fact and whether its conclusions of law were proper in light of such facts." *Finney v. Finney*, ___ N.C. App. ___, ___, 736 S.E.2d 639, 641 (2013). "In conformity with the standard of review, this Court will not second-guess values of marital property where there is evidence to support the trial court's figures." *Pellom v. Pellom*, 194 N.C. App. 57, 62, 669 S.E.2d 323, 325 (2008) (internal quotation marks omitted).

"Our review of a Rule 59 motion is guided by the general principle that the determination of whether to grant or deny a

motion pursuant to either Rule 59(a) or Rule 59(e) is addressed to the sound discretion of the trial court." *N.C. Alliance for Transp. Reform, Inc. v. N.C. Dep't of Transp.*, 183 N.C. App. 466, 469, 645 S.E.2d 105, 107 (2007).¹

Analysis

Plaintiff first contends that the trial court's valuations of the properties in Polk County were not supported by competent evidence. "It is well established that lay opinions as to the value of the property are admissible if the witness can show that he has knowledge of the property and some basis for his opinion." *Finney*, ___ N.C. App. at ___, 736 S.E.2d at 642. Here, Mr. Placak's testimony satisfied the requirements that he had knowledge of the properties and some basis for his opinions. *See id.* With regard to the basis of his opinions, Mr. Placak testified that he had a North Carolina real estate and appraisal license and had been appraising real estate for 41 years. He testified that he had based his valuations of the properties at issue in this case on visible inspections of the real property, exterior inspections,

¹ We note that when a Rule 59 motion involves a question of law, our standard of review is *de novo*. *Kinsey v. Spann*, 139 N.C. App. 370, 372, 533 S.E.2d 487, 490 (2000). However, since defendant's Rule 59(e) motion did not challenge any of the trial court's legal conclusions but is, instead, asking the trial court to redistribute property based on plaintiff's post-judgment conduct, our standard of review is abuse of discretion.

information given to him by defendant on improvements, and the sales of comparable properties in the area. Accordingly, his testimony provided competent evidence of the trial court's valuations of the three properties in Polk County, and the trial court did not err in refusing to accept the tax assessed values of the properties provided by plaintiff. *See Urciolo v. Urciolo*, 166 N.C. App. 504, 505, 601 S.E.2d 905, 907 (2004) ("In appellate review of a bench equitable distribution trial, the findings of fact regarding value are conclusive if there is evidence to support them, even if there is also evidence supporting a finding otherwise.").

Next, plaintiff contends that the trial court erred in valuing the 1965 Ford Mustang at \$30,000. Here, plaintiff's own equitable distribution affidavit valued the Mustang at \$30,000 to \$40,000. Furthermore, defendant testified at trial that he believed that the Mustang could be worth between \$20,000 and \$90,000. There was no other evidence presented as to its value at trial nor has plaintiff offered any other evidence of its value on appeal. Therefore, we conclude that the trial court's valuation of the Ford Mustang was supported by competent evidence.

Plaintiff next contends that the trial court erred in redistributing the second property to defendant in the Rule 59(e)

order because she relied on the initial equitable distribution judgment and was prejudiced by the trial court's redistribution, which we review for an abuse of discretion. See *N.C. Alliance*, 183 N.C. App. at 469, 645 S.E.2d at 107. We conclude that the trial court did not abuse its discretion in amending the equitable distribution judgment because it is undisputed that plaintiff cashed out the ING 401k which had a value of approximately \$52,000 on the date of distribution and had been distributed to defendant. Thus, the trial court's decision to distribute the second property to defendant, which had a comparable value to the ING 401k, was entirely supported by reason, and plaintiff's argument is without merit.

Next, plaintiff, citing *State v. Saunders*, 312 N.C. 318, 321 S.E.2d 836 (1984), claims that she has been denied a meaningful review on appeal due to the incomplete nature of the trial transcripts. While it is true that the transcripts have a number of inaudible responses throughout them, our review of plaintiff's appeal has not been hampered by these omissions. Plaintiff's reliance on a criminal case in which the defendant was sentenced to death is misguided.

Finally, citing *Wall v. Wall*, 140 N.C. App. 303, 536 S.E.2d 647 (2000), plaintiff argues that the trial court's seven-month

delay in entering the equitable distribution judgment was prejudicial and requires that this Court remand the matter for additional hearings. In *Wall*, 140 N.C. App. at 314, 536 S.E.2d at 654, this Court concluded that the trial court's nineteen-month delay from the date of trial to entry of judgment was "more than a *de minimis* delay . . . that require[d] that the trial court enter a new distribution order on remand." However, "*Wall* establishes a case-by-case inquiry as opposed to a bright line rule for determining whether the length of a delay is prejudicial," *Britt v. Britt*, 168 N.C. App. 198, 202, 606 S.E.2d 910, 912 (2005), and we do not believe that the trial court's seven-month delay in the present case was prejudicial. See generally *White v. Davis*, 163 N.C. App. 21, 26, 592 S.E.2d 265, 269 (2004) (holding that an approximate seven-month delay between the last trial date and formal entry of the judgment was not unreasonable nor prejudicial). Plaintiff has failed to allege sufficient circumstances showing prejudicial consequences from the delay besides her own act of liquidating the ING 401k. Therefore, plaintiff's argument is without merit.

Conclusion

Based on the foregoing reasons, we affirm the trial court's judgment and Rule 59(e) order.

AFFIRMED.

Judges STEELMAN and DIETZ concur.

Report per Rule 30(e).