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NO. COA14-764
NORTH CAROLINA COURT OF APPEALS

Filed: 3 March 2015

DOROTHY HAGOOD CORNING,
Plaintiff,

v.

Craven County
No. 08 CVD 1538

LOUIS AVERY CORNING, IV,
Defendant.

Appeal by Plaintiff from order entered 26 November 2013 by Judge Peter Mack in Craven County District Court. Heard in the Court of Appeals 3 December 2014.

Wyrick, Robbins, Yates & Ponton, LLP, by Michelle D. Connell, for Plaintiff-appellant.

Chesnutt, Clemmons & Peacock, P.A., by Carolyn T. Peacock, for Defendant-appellee.

DILLON, Judge.

Dorothy Hagood Corning ("Plaintiff") appeals from a trial court's order for equitable distribution and alimony. For the forgoing reasons, we affirm the trial court's order.

I. Background

In 2008, Plaintiff filed a complaint against Louis Avery Corning, IV ("Defendant") alleging claims for, *inter alia*,

equitable distribution and alimony. In 2013, following a bench trial, the trial court entered its equitable distribution and alimony order. Plaintiff filed timely notice of appeal from this order.

II. Standard of Review

On appeal, Plaintiff argues that the trial court erred in its valuation and distribution of certain assets and in its award of alimony to Plaintiff. Our standard of review as to these issues is well-settled: “[W]hen 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.” *Lee v. Lee*, 167 N.C. App. 250, 253, 605 S.E.2d 222, 224 (2004) (internal marks omitted). “[W]hen reviewing an equitable distribution order, the standard of review is limited to a determination of whether there was a clear abuse of discretion. A trial court may be reversed for abuse of discretion only upon a showing that its actions are manifestly unsupported by reason.” *Peltzer v. Peltzer*, ___ N.C. App. ___, ___, 732 S.E.2d 357, 359-60 (internal marks omitted). Likewise, “[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).

III. Analysis

A. Fair Market Value of Buttercup Holding, LLC

Plaintiff argues that the trial court erred in valuing Buttercup Holding, LLC (“Buttercup”), a real estate holding company acquired by Defendant during the marriage. In its order, the trial court distributed Buttercup (and its real estate) to Defendant and determined that Buttercup had a net value of \$56,716.91. The trial court arrived at this net value by subtracting the *date of separation* debt on the real estate of \$1,633,283.09 from the *date of distribution* gross fair market value of the real estate of \$1,690,000.00. Plaintiff argues that the net value should have been calculated by using the amount of debt as of the *date of distribution* (which was only \$1,156,399.27) in its calculation, which would have resulted in a much higher net value of \$533,600.73. We disagree.

“The trial court must classify, value, and distribute marital property and divisible property in equitable distribution actions.” *Ubertainaccio v. Ubertainaccio*, 161 N.C. App. 352, 353-54, 588 S.E.2d 905, 907 (2003). “Marital Property” includes “all real and personal property acquired by either spouse or both spouses

during the course of the marriage and before the date of the separation of the parties, and presently owned, except property determined to be separate property or divisible property." N.C. Gen. Stat. § 50-20(b)(1) (2009). "Divisible property" includes "all real and personal property as set forth below:"

a. All appreciation and diminution in value of marital property and divisible property of the parties occurring after the date of separation and prior to the date of distribution, *except that appreciation or diminution in value which is the result of postseparation actions or activities of a spouse shall not be treated as divisible property.*

. . . .

d. Increases and decreases in marital debt and financing charges and interest related to marital debt.

N.C. Gen. Stat. § 50-20(b)(4) (emphasis added). Subsection (a) of this statute creates a rebuttable presumption that "all appreciation and diminution in value of marital and divisible property is . . . divisible property unless the trial court finds that the change in value is attributable to the postseparation actions of one spouse." *Wirth v. Wirth*, 193 N.C. App. 657, 661, 668 S.E.2d 603, 607 (2008) (emphasis in original).

We have stated that "[t]he General Assembly has given divisible property status only to passive increases in value of marital and divisible property." *Brackney v. Brackney*, 199 N.C.

App. 375, 385, 682 S.E.2d 401, 408 (2009). Therefore, the limitation in subsection (a) applies to all divisible property, and G.S. 50-20(b)(4)(d) can only mean *passive* “[i]ncreases and decreases in marital debt[.]”¹

While “‘passive appreciation’ refers to enhancement of the value of property due solely to inflation, changing economic conditions, or market forces, or other such circumstances beyond the control of either spouse,” actions or activities refer to “financial or managerial contributions of one of the spouses.” *Brackney*, 199 N.C. App at 385-86, 682 S.E.2d at 408 (internal marks omitted).

For purposes of equitable distribution, marital property “shall be valued as of the date of the separation of the parties,” and divisible property and divisible debt “shall be valued as of the date of distribution.” N.C. Gen. Stat. § 50-21(b)(2009). “Prior to ordering an equitable distribution of marital property, the trial judge is required to calculate the net fair market value

¹ We note that in 2013 our General Assembly changed the definition of “divisible property” in G.S. 50-20(b)(4)(d) to include “[p]assive increases and passive decreases in marital debt and financing charges and interest related to marital debt[.]” effective 1 October 2013. 2013 N.C. Sess. Laws 103, Sect. 1. As Plaintiff filed her complaint in 18 August 2008, this change is not applicable, but this change reflects this Court’s application of subsection (a)’s exception, as stated in *Brackney*, *supra*.

of the property." *Carlson v. Carlson*, 127 N.C. App. 87, 91, 487 S.E.2d 784, 786 (1997). "Fair market value is defined as the price which a willing buyer would pay to purchase the asset on the open market from a willing seller, with neither party being under any compulsion to complete the transaction." *Id.* (emphasis in original). "The trial court calculates the net fair market value, by reducing the fair market value of the property by the value of any debts that are attached to the asset." *Id.* (emphasis in original).

Here, the trial court found that Buttercup had a *date of separation value* of \$1,550,000.00 and a *date of distribution value* of \$1,690,000.00; and the parties stipulated that this increase was passive in nature and therefore divisible property. The trial court further found that Buttercup's total *date of separation debt* to be \$1,633,283.09. As Plaintiff argues, the trial court made no finding regarding the total *date of distribution debt* for Buttercup. However, the trial court did find that the decrease in debt owed on Buttercup from the date of separation to the date of distribution "was the result of the active efforts of the Defendant," making specific findings to that effect; and therefore, Defendant had rebutted the divisible property presumption. See *Wirth*, 193 N.C. App. at 661, 668 S.E.2d at 607.

Plaintiff raises no argument that these findings are not supported by evidence in the record. Therefore, they are binding. Accordingly, if the trial court could not consider the date of distribution debt because it was not divisible property, it had to still subtract the debt from the market value to arrive at the net fair market value, see *Carlson*, 127 N.C. App. at 91, 487 S.E.2d at 786, and properly subtracted the *date of separation debt* from the *date of distribution value* to arrive at the net fair market value for Buttercup. "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." *Plummer v. Plummer*, 198 N.C. App. 538, 540, 680 S.E.2d 746, 748 (2009) (internal marks omitted). Plaintiff's argument is overruled.

B. Valuation of TransEast, Inc.

Plaintiff next argues that the trial court erred in valuing the marital asset TransEast, Inc. ("TransEast"), a business acquired by Defendant during the marriage, at \$5,800,000.00. Plaintiff contends that its expert offered the only credible date of separation valuation for TransEast of \$9,700,000.00 and Defendant did not offer any valuation but his expert merely reviewed her expert's valuation. However, the trial court distributed TransEast to Defendant based on the *date of*

distribution value of \$4,521,000.00, not the date of separation valuation. Plaintiff does not challenge the date of distribution valuation. Therefore, the issue of the date of the separation value of TransEast is moot because remanding to the trial court to change the separation value would not change the distribution value of TransEast.²

Further, Plaintiff failed to object to either the acceptance of Defendant's witness as an expert in valuation, his appraisal review, his valuation methods, or their application to the facts of this case. Accordingly, Plaintiff failed to preserve this issue for appellate review by not objecting to the admission of Defendant's expert valuation or methodology at trial. *See Walter v. Walter*, 149 N.C. App. 723, 733, 561 S.E.2d 571, 578 (2002); *see also* N.C. R. App. P. 10(a)(1). Accordingly, Plaintiff's arguments are dismissed.

C. Contradictory findings

² We note that the trial court also found that the \$1,319,000.00 decrease in value of TransEast (\$5,800,000.00 - \$4,521,000.00) from the date of separation until the date of distribution was passive, and therefore, divisible property. This amount was based on Defendant's expert's valuations. Plaintiff's argument, however, is limited to challenging Defendant's expert's valuation and methodology and she raises no argument regarding the amount of decrease in value of TransEast or its classification as divisible property.

Next, Plaintiff argues that the trial court erred in making inconsistent findings that Defendant's active management of TransEast resulted in passive depreciation in the business to support its conclusion that this depreciation was divisible property and then on the other hand to find that Defendant's active management in TransEast resulted in debt reduction in Buttercup and concluded that this reduction was his separate property. Defendant argues that these findings are not inconsistent but support the trial court's conclusions regarding these two individual companies.

We first note that Plaintiff does not argue that these findings are not supported by evidence in the record but that they are inconsistent and cannot support the trial court's conclusions. As argued by Defendant, the trial court found that these were two distinct companies, Buttercup being a holding company for real estate which it leased to TransEast and TransEast being an active business that provided products and services.

As to TransEast, it found that Defendant had been "in charge of the day-to-day management and operation of TransEast since its purchase." It further found that all valuation experts testified to a decline in the economy between the date of separation and date of distribution; that all three valuation experts testified

that no evidence supported the claims that Defendant had altered his management style since the date of separation; or that Defendant had taken any affirmative steps to cause a decline in the value of TransEast. Based on these findings the trial court found that the decrease in value of TransEast was passive and properly concluded that it was divisible property. See N.C. Gen. Stat. § 50-20(b)(4)(a); *Brackney*, 199 N.C. App. at 385, 682 S.E.2d at 408.

As to Buttercup, the trial court found that Defendant made post separation payments to reduce the debt on Buttercup using income from his active work running the day-to-day operations of TransEast and this debt reduction was, therefore, Defendant's separate property. As determined above, this classification was correct, based on the trial court's findings. See *id.*

We do not find it inconsistent that Defendant could be paid compensation for his efforts in managing one company, even while it suffered from passive decrease in value due to market conditions. We also do not find it inconsistent that Defendant could use his own income to pay down the debt on another company. Accordingly, we hold that the trial court's findings are not inconsistent and Plaintiff's argument is overruled.

D. Double Credit

Plaintiff argues that the trial court erred by determining the net value of Buttercup and TransEast, which included State and Federal Income taxes owed and paid by these companies, and also crediting Defendant for reducing the tax liabilities associated with these entities. Plaintiff argues that both Buttercup and Defendant were credited with payment of taxes. Defendant counters that no "double credit" took place as the trial court properly made findings under G.S. 50-20(c)(1)-(12) but ultimately determined that an equal division was equitable; he did not receive any "credit" for tax payments for either company; and the trial just distributed the companies to him in its order.

G.S. 50-20(c) states that

There shall be an equal division by using net value of marital property and net value of divisible property unless the court determines that an equal division is not equitable. If the court determines that an equal division is not equitable, the court shall divide the marital property and divisible property equitably. The court shall consider all of the following factors under this subsection:

. . . .

(11a) Acts of either party to maintain, preserve, develop, or expand; or to waste, neglect, devalue or convert the marital property or divisible property, or both, during the period after separation of the parties and before the time of distribution.

N.C. Gen. Stat. § 50-20(c) (2009). In its order the trial court must make findings under the section 50-20(c) factors for which evidence is introduced, and this requirement exists regardless of whether the trial court decided to divide property equally or unequally. *Hinkle v. Hinkle*, ___ N.C. App. ___, ___, 742 S.E.2d 325, 327 (2013).

Both Buttercup and TransEast were found to be marital property. The trial court considered all of the factors in G.S. 50-20(c); concluded that an equal division was equitable; and considered as a distributional factor (11a), namely Defendant's payment of TransEast's and Buttercup's income taxes from 2008 until 2012. The trial court gave Defendant no "credits" for these tax payments. Instead, it appears that the trial court chose to treat these tax payments as distributional factors and to distribute these two companies, with their debt totals, to Defendant as part of its equal distribution award. "Post-separation payments may be treated as a distributional factor or as a dollar-for-dollar credit in the division of the property." *Peltzer*, ___ N.C. App. at ___, 732 S.E.2d at 362 (citing *Squires v. Squires*, 178 N.C. App. 251, 261, 631 S.E.2d 156, 162 (2006)). Accordingly, we find no "double credit" as Plaintiff contends.

E. Alimony

Plaintiff concludes that the trial court abused its discretion in awarding only \$2,000 per month in alimony and the order should be remanded for entry of a new alimony award. We disagree.

For an award of alimony, the trial court "shall 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." N.C. Gen. Stat. § 50-16.3A(c) (2009). It appears that Plaintiff is only challenging the trial court's determination as to the *amount* of the award of alimony, which is reviewed for an abuse of discretion. *Romulus v. Romulus*, 215 N.C. App. 495, 520-21, 715 S.E.2d 308, 324-25 (2011). Subsection (b) of G.S. 50-16.3A enumerates sixteen different factors for the trial court to consider "[i]n determining the amount . . . of payment of alimony," including

(8) The standard of living of the spouses established during the marriage;

(9) The relative education of the spouses and the time necessary to acquire sufficient education or training to enable the spouse seeking alimony to find employment to meet his or her reasonable economic needs;

(10) The relative assets and liabilities of the spouses and the relative debt service requirements of the spouses, including legal obligations of support;

. . . .

(13) The relative needs of the spouse[.]

N.C. Gen. Stat. § 50-16.3A(b). The amount of alimony to be awarded is a "question of fairness and justice to all parties" and, so long as the trial court has properly considered the enumerated factors in its order, the award will not be disturbed absent an abuse of discretion. *Quick v. Quick*, 305 N.C. 446, 453, 290 S.E.2d 653, 658 (1982).

Here, the trial court found Plaintiff to be a dependent spouse and awarded her \$2,000 per month in alimony for a period of two years. Even though the trial court did not expressly give a number at which Plaintiff's standard of living would be, it made numerous findings regarding the income and expenses of both parties, and a standard of living can be calculated.

The trial court found that Defendant had made cash payments of \$640,269.13 in voluntary support payments from March 2008, the date of separation, until March 2013, before the date of trial, amounting to roughly \$10,000.00 per month for Plaintiff. This amount included \$4,500 per month for their two children's living expenses, amounting to approximately \$5,500 to cover Plaintiff's living expenses. Accordingly, the award of \$2,000 per month in

alimony would leave approximately \$3,500 per month shortfall for Plaintiff's expenses.

The trial court, however, also made several findings regarding Plaintiff's education and her ability to enter the workforce; the fact that she had not obtained and had not been searching for full-time employment "by her own choosing[;]" and the fact that the "additional two years of Alimony payments will afford the Plaintiff time to secure full-time employment if she chooses" or "the opportunity to prepare herself to reenter the workforce." We can infer from the trial court's findings that based on Plaintiff's education and ability, she could enter the workforce and supplement her income to make up for any shortfall. These finding show that the trial court considered evidence of Plaintiff's standard of living and her own earning capacity to meet her "reasonable needs" in making its award of alimony.

As to Plaintiff's argument that the award of the marital residence is a burden to her and could cause her to deplete her estate, we note that the trial court did not make a calculation of expenses for the house. Plaintiff, though, calculates the monthly expenses for the house at \$5,072. Even so, this amount along with Plaintiff's \$5,500 in living expenses could be paid from her substantial monthly distributive award (\$19,000/month, as she

argues) from equitable distribution, without depleting her estate within 24 months, and this would leave her with nearly a \$10,000 monthly surplus, excluding any supplemental income from future employment. Additionally, the trial court concluded that she had "the exclusive power to sell this residence if she so desires." In addition to the factors discussed above, the trial court also made considerable findings regarding the other factors in N.C. Gen. Stat. § 50-16.3A(b) including Defendant's earning capacity and income, his tax rate and after tax income, child support payments, and his distributive payments to Defendant. Therefore, we hold that the trial court did not abuse its discretion and properly considered the relevant factors in making its alimony award.

For the foregoing reasons, we affirm the trial court's order.

AFFIRMED.

Judges BRYANT and DIETZ concur.

Report per Rule 30(e).