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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-1249

Filed: 6 September 2016

Lee County, No. 09 CVD 933

DOLORES MARIE SHOPE, Plaintiff,

v.

RICHARD WAYNE PENNINGTON, Defendant.

Appeal by Plaintiff from a judgment entered 17 June 2015 by Judge Jacquelyn L. Lee in Lee County District Court. Heard in the Court of Appeals 11 May 2016.

*Wyrick Robbins Yates & Ponton, LLP, by K. Edward Greene and Tobias S. Hampson, for Plaintiff-Appellant.*

*Doster, Post, Foushee, Post & Patton, P.A. by Kevin C. Foushee, for Defendant-Appellee.*

HUNTER, JR., Robert N., Judge.

Dolores Marie Shope (“Plaintiff”) appeals following an equitable distribution judgment entered on remand from this Court. On appeal, Plaintiff contends the trial court’s findings of fact and conclusions of law in awarding an unequal distribution of 99% in Richard Wayne Pennington’s (“Defendant”) favor are nonsensical and do not comport with the remedial ends of the equitable distribution. While we may have arrived at a different division of the property of the marital estate were we sitting as

the finder of facts, the law of North Carolina grants trial court judges with such wide discretion, we must disagree with these contentions and affirm the trial court.

### **I. Factual and Procedural History**

Our Court previously reviewed this case. *Shope v. Pennington*, 231 N.C. App. 569, 753 S.E.2d 688 (2014) (“*Shope I*”). In *Shope I*, we reviewed the trial court’s 14 January 2013 equitable distribution order that found an unequal distribution in favor of Defendant was equitable.

Plaintiff and Defendant married on 21 November 2002 and separated on 28 May 2009. On 15 July 2009, Plaintiff filed a complaint for divorce from bed and board, post-separation support, alimony, and equitable distribution. During the marriage, the parties acquired farming equipment and other assets to establish “Pennington Farms,” a poultry farm in Carthage, NC. The farm and the marital home are situated on 63.79 acres, which Defendant acquired before the marriage. During the marriage, Defendant operated the farm and Plaintiff worked as a manager at McDonald’s.

On 3 November 2011, the trial court entered a pretrial equitable distribution order. The trial court heard the parties on their equitable distribution claims on 10 and 17 November 2011. On 10 May 2012, the trial court entered an equitable distribution judgment, which (pursuant to a Rule 59 motion) it later amended on 14 January 2013. Plaintiff appealed the amended equitable distribution judgment, which this Court heard in *Shope I*.

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In *Shope I*, we reversed the equitable distribution judgment. Key to our Court's holding was the following directive:

In its amended equitable distribution order, the trial court found that:

The [d]efendant has paid \$511,522.69 toward marital debts associated with Pennington Farms after the date of separation and before the date of trial as stipulated to in Schedule M of the pretrial order. The funds for these payments came from the [d]efendant *by virtue of his effort in operating Pennington Farms after the date of separation which generated income to pay these debts*. The Court will consider this divisible property, as defined in G.S. 50-20(b)(4) and(d) in its final judgment. This divisible property is assigned to the [d]efendant.

Here, unlike *Bodie*, the trial court properly classified the defendant's payment of debts associated with Pennington Farms as divisible property in its amended equitable distribution order. However, the trial court distributed all of those payments, \$511,522.69, to defendant without making specific findings as to the source of those funds. While a trial court may distribute payments unequally, *see Stovall v. Stovall*, 205 N.C. App. 405, 413, 698 S.E.2d 680, 686 (2010), plaintiff would be entitled to some consideration of those payments if the source of those funds was marital property. *See Bodie*, — N.C. App. at —, 727 S.E.2d at 15. Here, the trial court's identification of the source of those funds is ambiguous. However, given that the average monthly gross income defendant earned from the operation of Pennington Farms was \$1,275.00, it seems unlikely that defendant was able to generate over half of a million dollars in debt payments solely on income he earned from his work on the farm. In other words, the numbers do not add up. Consequently, the trial court erred in not making clear findings as to the source of these funds and, if the source included defendant's use of the marital

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property to generate income, in not giving plaintiff any consideration for that use. Therefore, we remand this matter back to the trial court to make additional findings of fact which identify the source of the funds used to pay down the marital debt associated with Pennington Farms and redistribute those payments if necessary.

*Shope*, 231 N.C. App. at 572–73, 753 S.E.2d at 690–91 (emphasis in original).

On remand, the trial court issued a new equitable distribution judgment on 17 June 2015 and made additional findings of fact per this Court’s instruction in *Shope*

*I.*

48. As required by the decision of the Court of Appeals in this matter, the Court expressly finds as a fact that the source of funds used to pay marital debt secured by and associated with Pennington Farms after the date of separation was generated by the Defendant’s operation of Pennington Farms and the payments received from its production agreements with Mountaire Farms, LLC. The Court recognizes and finds that income generated by marital property, that being Pennington Farms, was used to reduce the principal secured marital indebtedness in the amount of \$511,522.69.

The trial court made the following findings of fact regarding Defendant’s post-separation labor, his contracts with Mountaire Farms, debts owed to Bank of America, and his forbearance agreements:

49. The Defendant was actively involved in the operation and management of Pennington Farms after the date of separation. The Defendant was the manager and planner for Pennington Farms responsible for negotiating contracts with Mountaire Farms, LLC, the entity that provided flocks to Pennington Farms to grow, and to make financial decisions regarding the poultry farming operation.

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50. The production agreements Pennington Farms entered into with Mountaire Farms established Pennington Farms as an independent third party contractor grower primarily responsible for the care, maintenance and growth of each flock pursuant to Mountaire Farms' "growing program." The Mountaire Farms broiler production agreements imposed a variety of performance requirements upon Pennington Farms which had to be met in order to continue to receive flocks of birds to grow and the Mountaire agreement expressly provides "Mountaire does not guarantee a continued agreement, which rights are based on grower performance including compliance with this agreement."

51. In addition to providing strategic management services for Pennington Farms, the Defendant provided daily labor for the farming operation frequently going to work at 4:00 in the morning where he was responsible for feeding flocks, maintaining equipment and removing dead birds. The Defendant was responsible for maintaining proper temperature in the poultry houses and proper sanitation. The Defendant was also responsible for helping to collect birds for return to Mountaire when the flock was grown. This is physical, back breaking labor, particularly for a man in his early to mid-70s.

52. [ ] The reduced availability of flocks caused Pennington Farms to default on its four loans with Bank of America[,] and during September and October 2010, the Defendant entered into four forbearance agreements with Bank of America for four debts secured by Pennington Farms which had the following balances as of June 22, 2010:

A. \$514,977.91 (Original note from December 15, 2006 in the amount of \$538,000.00)

B. \$60,363.35 (Original note from January 10, 2007 in the amount of \$65,000.00)

C. \$892,770.22 (Original note in the amount of

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\$1,130,000.00 from February 24, 2005)

D. \$2, 533.22 (Original note \$17,800.00 dated February 9, 2006)

The original notes referred to above were entered into during the marriage and prior to the date of separation and solely in the name of the Defendant. In addition to the property of Pennington Farms being pledged as security for these debts, the Defendant's separate land, as referred to in this judgment, was also security for the debts. The Defendant also personally guaranteed these debts and had personal liability for these debts. The Plaintiff has at no time had personal liability for these debts and the Plaintiff played no role in obtaining the forbearance agreements. By the Defendant obtaining the forbearance agreements, he was able to prevent foreclosure on the secured indebtedness. Foreclosure would have resulted in the loss of Pennington Farms. Through the Defendant's efforts post date of separation, he was able to bring the secured debt payments owed to Bank of America into compliance with the forbearance agreement and avoid foreclosure.

53. The Plaintiff made no effort or contribution of any kind after the date of separation to the payment of secured debt relating to Pennington Farms, its operation, nor did she provide any assistance when the secured debt went into default.

54. As of the date of this hearing, this is a non-liquid estate with the Defendant not having any readily available source of cash or other liquidity with which to pay a distributive award. As of the date of this hearing, the Defendant still personally owed slightly over \$1,000,000.00 to Bank of America for the secured debts referred to above relating to Pennington Farms. . . .

57. That the Court has considered the contentions on Schedule O of the [Equitable Distribution Pre-Trial Order] set forth by Plaintiff and the contentions on Schedule P of

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the [Equitable Distribution Pre-Trial Order] set forth by Defendant as follows:

A. The Court considered the income, property and liabilities of each party at the time division is to become effective. N.C.G.S. § 50-20(c)(1). Plaintiff is working as a manager at McDonalds in Spring Lake, North Carolina earning \$10.00 per hour for an average 40 hour work week. In addition, she receives \$1,419.40 each month in Social Security benefits and \$282.95 per month as a pension. She has a current average monthly gross income of \$3,435.68. As of date of separation, Plaintiff had an Edward Jones IRA valued at \$225,293.00. Plaintiff retains various pieces of personal property as her separate property as shown on Schedule K of the [Equitable Distribution Pre-Trial Order] and valued, by consent, at \$4,210.00. Plaintiff retains separate debts as shown on Schedule K of the [Equitable Distribution Pre-Trial Order] and valued, by consent, at \$16,920.00. Plaintiff's net separate estate on date of separation is valued, by consent, pursuant to the [Equitable Distribution Pre-Trial Order] at \$204,163.00. No testimony was offered at trial regarding any increase or decrease in the value of Plaintiff's IRA, her personal property, or her separate debts after date of separation. Plaintiff is not obligated under any of the promissory notes tot Bank of America or the other martial debts . . . . Defendant has outstanding obligations for the debts on Schedule M of \$1,404,616.68 as of the date of the original trial. Defendant continues to operate Pennington Farms poultry business where he earns an average monthly gross income of \$1,275.00, after operating expenses and repayment of debts, and receives \$702.00 per month in Social Security benefits. He has a current average monthly gross income of \$1,977.00. This compensation is substantially less than the \$70,000.00 per year the parties agreed and stipulated would be fair

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compensation for the services that the Defendant provided in operating Pennington Farms. Defendant has a separate estate as set forth on the [Equitable Distribution Pre-Trial Order] of \$19,035.00 in personal property and the 63.79 acres . . . valued at \$223,000.00. The 63.79 acres . . . served as collateral to Bank of America for the marital debts . . . . Defendant also owns the residence located on 2.65 acres of the 63.79 acre tract . . . as his separate property, such residence is also encumbered by the aforescribed Bank of America loans. . . . His separate estate has a gross value of \$435,035.00; however the real estate is encumbered as collateral by outstanding martial indebtedness of \$1,387,837.07 to Bank of America as of the date of trial. This finding favors Defendant.

B. Neither party presented any testimony that either has any obligation for support arising out of a marriage. N.C.G.S. § 50-20(c)(2). Each of the parties former spouses is deceased. This finding favors neither party.

C. The Court considered the duration of the marriage and the age and physical and mental health of both parties. The parties were married for approximately 6 ½ years prior to the date of separation. Plaintiff and Defendant each work each day. Defendant has had both knees replaced and takes medication for high blood pressure. He currently has a problem with his shoulder. N.C.G.S. § 50-20(c)(3). This finding favors Defendant.

D. The parties have no minor children and therefore there is no need for either party to own or use their former marital residence and its effects for the use and benefit of a minor child. N.C.G.S. § 50-20(c)(4). This finding favors neither party.

E. The Court considered that Plaintiff has the



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expectation of pension, retirement or other deferred compensation rights that are not marital property. Defendant has no pension, retirement, or other deferred compensation rights that are not marital property. N.C.G.S. § 50-20(c)(5). This finding favors Defendant.

F. The Court considered that Plaintiff mowed the grass around the poultry houses at times during the marriage and that Defendant paid Plaintiff for her efforts. Plaintiff also occasionally helped Defendant in the poultry houses as he picked up dead chickens to take to the incinerator. Plaintiff received at least half of the check that Defendant received from each flock of chickens after expenses were paid and Defendant's sons were paid for their work in the poultry business. N.C.G.S. § 50-20(c)(6). This finding favors Defendant.

G. The Court considered that there was no evidence presented that either party made any direct or indirect contribution to help educate or develop the career potential of the other spouse. N.C.G.S. § 50-20(c)(7). This finding favors neither party.

H. There was no evidence presented that there was any direct contribution to an increase in value of separate property which occurred during the course of the marriage of the parties. N.C.G.S. § 50-20(c)(8). This findings favors neither party.

I. The Court considered the lack of liquidity of all marital property. This is a marital estate with a negative value and there appears to be nothing liquid in this marital estate to be sold. N.C.G.S. § 50-20(c)(9). This finding favors neither party.

J. The Court considered the difficulty of evaluating the components and interests in Pennington Farms and the economic desirability of retaining such asset

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or interest, intact and free from any claim or interference by the other party. The Court rejected appraisals offered by Plaintiff as to the value of Pennington Farms and the value of the equipment associated with Pennington Farms for reasons previously set forth herein. Defendant and his sons operate Pennington Farms. The poultry houses are constructed on Defendant's separate property and it is in the parties' best interest that he continues to own, service, and maintain Pennington Farms. Defendant has continued to service the loans and other marital debts associated with Pennington Farms after date of separation. Defendant is the party with the knowledge to operate Pennington Farms and Plaintiff has presented no evidence that she wishes to own or operate Pennington Farms. N.C.G.S. § 50-20(c)(10). This finding favors Defendant.

K. The Court considered that no evidence was offered by either party as to the tax consequences to each party . . . that would have been incurred if the marital and divisible property had been sold or liquidated on the date of valuation. N.C.G.S. § 50-20(c)(11). This finding favors neither party.

L. The Court considered the acts of Plaintiffs and Defendant to maintain and preserve the marital property both during the period after separation and before the time of distribution. Plaintiff has paid off her debt to BB&T for her vehicle in the amount of \$11,841.84 while Defendant has paid \$511,522.69 toward marital debts associated with Pennington Farms after separation and before the date of the original trial. N.C.G.S. § 50-20(c)(11a). This finding favors Defendant.

M. The Court finds that both parties survived this action and that there were no estate claims. N.C.G.S. § 50-20(c)(11b). This finding favors both

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parties equally.

N. The Court considered other factors as set forth and incorporated herein in the Findings of Fact above in determining whether an equal division of property and debts is equitable. N.C.G.S. § 50-20(c)(12). This finding favors Defendant.

58. That Defendant has wanted to retain the poultry farm and equipment and therefore the debts and divisible property associated with the farming operation should be distributed to Defendant. This results in an unequal division in favor of Defendant and such unequal distribution is equitable.

59. That Plaintiff is distributed marital assets, divisible property and liabilities that had a net value of \$1,329.00 on date of separation. At time of distribution, Plaintiff is encumbered by no marital debt. She has received divisible property of \$11,841.84 relating to payment of debt post date of separation.

60. That Defendant is distributed marital assets, divisible property and liabilities that had a net value of (\$20,982.33) on date of separation. In the event that Defendant is able to continue to receive flocks of chickens and pay off the debts encumbering his property, he will have a poultry farm constructed to Mountaire specifications. If he fails to continue to receive flocks of chickens, his poultry operation will likely cease and he will fall victim to foreclosure and lose the poultry houses, much of his operating equipment, and his home and land that he had as his separate property prior to the marriage. Defendant has received divisible property of \$511,522.69 relating to payment of marital debt post date of separation.

61. The Plaintiff has provided a summary of her proposed distribution . . . .

Plaintiff (Wife)

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Schedule A assets	\$12,000.00
Marital Debts	\$<10,671.00>
Divisible Property Distributed to Wife	\$11,841.84
Net Distribution	\$13,171.00
Equal Division of Marital/Divisible Estate	\$250,527.00
Equitable Division of Martial Estate	\$195,171.00
Distributive Award	\$182,000.00

Defendant (Husband)

Schedule A assets	\$1,554,809.00
Schedule B assets	\$84,400.00
Schedule E assets	\$7,461.00
Marital Debts	\$<1,670,310.33>
Divisible Property Distributed to Husband	\$511,522.68
Net Distribution	\$487,883.00
Equal Division of Marital/Divisible Estate	\$250,527.00
Equitable Division of Marital Estate	\$305,883.00
Distributive Award	\$<182,000.00>

The Court has given careful consideration to this proposed distribution and declines to adopt the proposed distribution for those reasons specified in the conclusions of law.

In its conclusions of law, the trial court awarded Plaintiff 1% of the debt payments in the form of a \$5,115.22 distributive award. The trial court awarded Defendant 99% of the debt payments, worth \$506,407.47. Thereafter, Plaintiff timely filed her notice of appeal on 1 July 2015.

**II. Standard of Review**

“Equitable distribution is vested in the discretion of the trial court and will not be disturbed absent a clear abuse of that discretion. Only a finding that the judgment was unsupported by reason and could not have been a result of competent inquiry, or a finding that the trial judge failed to comply with the statute, will establish an abuse

of discretion.” *Wiencek-Adams v. Adams*, 331 N.C. 688, 691, 417 S.E.2d 449, 451 (1992) (internal citations omitted).

### **III. Analysis**

On appeal, Plaintiff contends the trial court committed error by: (1) finding she did not contribute to Pennington Farm’s post-separation payments towards the marital debt; (2) finding facts to support an unequal distribution in Defendant’s favor and concluding an unequal distribution is equitable; (3) failing to award Plaintiff credit for Defendant’s use of marital property and “awarding Defendant an unequal distribution including 99% of the divisible property as a credit;” and (4) failing to give effect to the parties’ stipulations. We disagree and affirm the trial court.

#### **A. Equitable Distribution**

A trial court must follow a three-step analysis when it makes an equitable distribution: “(1) identify the property as either marital, divisible, or separate property after conducting appropriate findings of fact; (2) determine the net value of the marital property as of the date of separation; and (3) equitably distribute the marital and divisible property.” *Mugno v. Mugno*, 205 N.C. App. 273, 277, 695 S.E.2d 495, 498 (2010) (citation omitted). In *Shope I*, the trial court “properly classified the defendant’s payment of debts associated with Pennington Farms as divisible property,” with which our Court agreed. *Shope*, 231 N.C. App. at 573, 753 S.E.2d at 691. Therefore, the law of the case did not permit the trial court or our Court to

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review this characterization. *See Waters v. North Carolina Phosphate Corp.*, 61 N.C. App. 79, 84, 300 S.E.2d 415, 418 (1983), *aff'd as modified*, 310 N.C. 438, 312 S.E.2d 428 (1984) (“[W]hen an appellate court decides a question and remands the case for further proceedings, the questions determined by the appellate court become the law of the case, both in subsequent proceedings in the trial court, and on appeal.”) (citation omitted).

First, section 50-20(b)(4) defines divisible property, in relevant part, as follows:

“Divisible property” means 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.
- b. All property, property rights, or any portion thereof received after the date of separation but before the date of distribution that was acquired as a result of the efforts of either spouse during the marriage and before the date of separation, including, but not limited to, commissions, bonuses, and contractual rights.
- c. Passive income from marital property received after the date of separation, including, but not limited to, interest and dividends.
- d. Passive increases and passive decreases in marital debt and financing charges and interest related to marital debt.

N.C. Gen. Stat. § 50-20(b)(4) (2015).

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As applicable to this case, the pre-2013 version of N.C. Gen. Stat. § 50-20(b)(4)(d) (2012), defines all “increases and decreases in marital debt” as divisible property, in contrast to the current version of section 50-20(b)(4)(d), which includes only passive increases and decreases as divisible property. *See* 2013 N.C. Sess. Law 103. This Court has held that any postseparation payments made to marital debt before 1 October 2013 are examined under the pre-2013 Amendment version of the statute. *See Lund v. Lund*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 779 S.E.2d 175, 183 (2015). Therefore, in the case *sub judice*, all increases and decreases in the value of the marital property due to the parties’ actions after separation are divisible property, in accordance to N.C. Gen. Stat. § 50-20(b) (2012). *See Warren v. Warren*, 175 N.C. App. 509, 517, 623 S.E.2d 800, 805 (2006); *see also McNeely v. McNeely*, 195 N.C. App. 705 (2009) (where husband made postseparation payments decreasing marital debt and it was classified as divisible property).

Second, the trial court must calculate the net value of the marital property as of the date of separation. Here, the trial court found the net value was \$22,311.33.

Third, the trial court must equitably distribute the marital and divisible property. To make an equitable distribution, the trial court must “make written findings of fact that support the determination that the marital property and divisible property has been equitably divided.” N.C. Gen. Stat. § 50-20(j) (2015). Under N.C. Gen. Stat. § 50-20(c) (2015), an equal division of the net value of marital property and

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the net value of divisible property is presumed equitable, “unless the [trial] court determines that an equal division is not equitable.” N.C. Gen. Stat. § 50-20(c) (2015). “If the court determines that an equal division is not equitable, the court shall divide the marital property and divisible property equitably.” *Id.* To make an equitable division, the trial court relies upon the fourteen factors established in N.C. Gen. Stat. § 50-20(c) (2015). One of these factors, section 50-20(c)(12), gives a trial court discretion to consider any “just and proper” factors. In this case, the trial court, on remand, weighed all of the section 50-20(c) statutory factors and found seven of the fourteen factors supported an unequal distribution in favor of Defendant, six factors favored neither party, and one factor favored both parties equally.

A trial court may support an unequal division by finding “[a] single distributional factor.” *Mugno*, 205 N.C. App. at 278, 695 S.E.2d at 499 (citing *Judkins v. Judkins*, 113 N.C. App. 734, 741, 441 S.E.2d 139, 143 (1994)). “Pursuant to the abuse of discretion standard, our Courts have held that where the trial court finds that a factor justifies an unequal distribution, that finding will not be disturbed on appeal if supported by competent evidence.” *Mugno*, 205 N.C. App. at 278, 695 S.E.2d at 499 (citing *Upchurch v. Upchurch*, 128 N.C. App. 461, 468, 495, S.E.2d 738, 743 (1998); *Becker v. Becker*, 127 N.C. App. 409, 489 S.E.2d 909 (1997); *Jones v. Jones*, 121 N.C. App. 523, 466 S.E.2d 342 (1996)).



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The record contains a plethora of competent evidence to support findings of fact and conclusions of law to equitably distribute the marital estate, unequally, in Defendant's favor. This evidence includes the following: Defendant's testimony about working on the farm with his sons, and their interest in continuing to operate the farm; the forbearance agreements Defendant entered into and secured with his realty, which he owned prior to the marriage; the existence of Plaintiff's retirement funds, and nonexistence of Defendant's retirement funds; and Defendant's 10 March 2014 motion to present additional evidence, which taken as a whole, details the source of funds used to pay Pennington Farm's debts by including scanned checks, bank statements, and income statements itemizing the farm's income, expenses, and cash flow.

What appears to be missing from the record is a determination as to whether the \$511,522.69 in debt payments had an effect on the net value of Pennington Farms as of the date of distribution. Were assets sold off in production so that the net value of the estate was reduced proportionally? We still do not have an answer to this question, however, the answer to this question would not materially change the position of Plaintiff because whether competent evidence supports the findings of fact is all that we review. We only review for "clear abuse of discretion," in which "a party must show 'that the decision was unsupported by reason and could not have been the result of a competent inquiry[.]'" *O'Brien v. O'Brien*, 131 N.C. App. 411, 508 S.E.2d

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300 (1998) (citation omitted), or show the trial court failed to comply with the equitable distribution statutes. *See Wiencek-Adams*, 331 N.C. at 691, 417 S.E.2d at 451.

We pause to consider this standard of review, with our Supreme Court's guidance on alimony appeals before North Carolina became an equitable distribution state. Our Supreme Court stated the following about a trial court's abuse of discretion:

By the exercise of his discretion, a judge ought not to arrogate unto himself arbitrary power to be used in such a manner so as to gratify his personal passions or partialities. Discretion is properly applied in those instances where, upon deliberation and with firmness, a judge deems its use necessary to the proper execution of justice. A judge is subject to reversal for abuse of discretion only upon a showing by a litigant that the challenged actions are manifestly unsupported by reason.

*Clark v. Clark*, 301 N.C. 123, 128–29, 271 S.E.2d 58, 63 (1980) (internal citations omitted).

Plaintiff's appeal is an equitable plea. She contends the purpose of equitable distribution is to create mathematical parity among the parties of the marital estate, and contends a judgment that does not substantially achieve that end is reversible. Specifically, Plaintiff contends the trial court's distribution is inequitable because Pennington Farms is a marital asset and reduction in the farm's debt is a benefit enjoyed by the marital estate. Plaintiff contends Defendant's hard work, alone, cannot logically support a 1:99 distribution in Defendant's favor. In effect, the 1:99

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distribution is the functional equivalent of rescheduling marital property as Defendant's separate property. We have reviewed our case with reviews of equitable distribution orders which sought to reverse unequal distributions of marital property. We recognize that there is language in these opinions that allows the appellate courts to reverse for a "clear abuse of discretion." *Wiencek-Adams*, 331 N.C. at 691, 417 S.E.2d at 451. Here, seven statutory factors weigh in favor of an unequal distribution to Defendant and only one factor weighs in favor of Plaintiff and Defendant equally. Our review of these cases provides no judicially manageable standard for an appellate court to reverse a trial court given these facts. *See White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985) ("The legislative intent to vest our trial courts with such broad discretion is emphasized by the inclusion of the catch-all factor codified in N.C. Gen. Stat. § 50-20(c)(12)."); *see also Zurosky v. Shaffer*, 236 N.C. App. 219, 235, 763 S.E.2d 755, 764 (2014).<sup>1</sup> Plaintiff offers no such standard, although she does suggest a differing distribution. However, the contentions of the parties are in the end a fairness determination, which our law leaves to the trial court, not appellate courts. We simply lack a judicially manageable standard to make a better fairness determination than the trial court, and no other standard is suggested by Plaintiff to

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<sup>1</sup> In *Zurosky v. Shaffer*, this Court affirmed the trial court's distribution of a mountain house to the plaintiff and the trial court's distribution of a \$123,000.00 decrease in value in the mountain house, from date of separation to date of distribution, to the defendant because the trial court "conducted the proper analysis" under section 50-20(c) and "its conclusions were supported by findings that were, in turn, supported by competent evidence." *Zurosky*, 236 N.C. App. at 235, 763 S.E.2d at 764.

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review equitable decision of the trial court. Therefore, we hold the decision of the trial judge is within the bounds of her discretion and supported by competent evidence.

**IV. Conclusion**

For the foregoing reasons we affirm the trial court.

**AFFIRMED.**

Judges CALABRIA and TYSON concur.

Report per Rule 30(e).