IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-425

Filed: 21 November 2017

Scotland County, No. 12 CVD 1206

SUSAN KAY MEDLIN, Plaintiff,

v.

RANDY EARL MEDLIN, Defendant.

Appeal by defendant from judgment and order entered 20 October 2016 by Judge Amanda L. Wilson in Scotland County District Court. Heard in the Court of Appeals 19 October 2017.

Wyrick Robbins Yates & Ponton, LLP, by Tobias S. Hampson and K. Edward Greene, for plaintiff-appellee.

John M. Kirby for defendant-appellant.

ZACHARY, Judge.

Defendant Randy Earl Medlin appeals from portions of an equitable distribution order classifying and valuing marital property. For the following reasons, we affirm.

Background

Plaintiff Susan Medlin ("Ms. Medlin") and Defendant Randy Earl Medlin ("Mr. Medlin") married in June 1992 and separated in July 2009. The Medlins were granted an absolute divorce on 15 August 2013. On 2 January 2014, the trial court entered a Judgment and Order for Interim Equitable Distribution. A final Judgment for Equitable Distribution and Order was entered on 20 October 2016.

The portions of the equitable distribution order at issue on appeal are (1) the trial court's valuation of the parties' 10.21 acre tract of land ("the 10.21 acre tract"), (2) the value that the trial court attributed to the marital portion of the parties' scrap wood and lumber collection ("the wood"), and (3) the trial court's classification of one of the parties' vacant lots ("Lot 48A") as marital property.

1. The 10.21 Acre Tract

The Medlins agreed that the 10.21 acre tract was marital property. The 10.21 acre tract was distributed to Ms. Medlin in an earlier interim distribution order. Ms. Medlin subsequently sold the 10.21 acre tract for $17,000 in February 2016.

The Medlins disagreed as to the value of the 10.21 acre tract. At the equitable distribution proceedings, Ms. Medlin, in addition to the $17,000 sales price, introduced the 10.21 acre tract's tax value as of the date of separation. The tax value was $22,760. Mr. Medlin contended that the 10.21 acre tract was worth much more. Mr. Medlin offered the testimony of real estate broker and auctioneer Damon Shortt. Mr. Shortt valued the 10.21 acre tract at $217,000, based on its potential to be

subdivided. However, the 10.21 acre tract had yet to be subdivided, and Mr. Medlin had not begun the process of doing so. The trial court valued the 10.21 acre tract at $22,760.

2. The Wood

The parties owned a great deal of wood. Mr. Medlin is a licensed contractor and specializes in repairing and restoring old homes. Mr. Medlin claimed that he acquired all of the wood prior to the marriage and that, as such, it should be classified as his separate property. However, Ms. Medlin testified that Mr. Medlin did not have much wood when they married and that most of the wood was acquired during the marriage. Ms. Medlin introduced receipts showing wood purchases made during the marriage, and Mr. Medlin introduced receipts of purchases made prior to the marriage. The trial court found that one of the receipts Mr. Medlin introduced had been altered in order to reflect a purchase date prior to marriage, and determined that the receipt was actually written in 2004. In addition to the purchased wood, Ms. Medlin testified that a significant portion of the wood came from the houses that Mr. Medlin tore down during the marriage. Ms. Medlin introduced an appraisal of the wood that valued the entire accumulation at $75,000.

The trial court valued the wood at $75,000. In addition, the trial court concluded that most of the wood had been acquired during the marriage, and

determined that $60,000 of the wood was marital property. The trial court valued Mr. Medlin's separate interest in the remaining wood at $15,000.

3. Lot 48A

Mr. Medlin asserted that Lot 48A was his separate property because he contracted for its purchase prior to the marriage, even though a deed was not executed at that time. However, Lot 48A was purchased, and the deed was executed, during the marriage. Mr. and Ms. Medlin held title to Lot 48A as tenants by the entireties. The trial court classified Lot 48A as marital property.

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Mr. Medlin timely filed notice of appeal following the trial court's entry of the equitable distribution order. On appeal, Mr. Medlin argues (1) that the trial court erred in valuing the 10.21 acre tract, (2) that the trial court erred in attributing $60,000 in marital value to the wood, and (3) that the trial court erred in finding that Lot 48A was marital property. We disagree, and affirm those portions of the trial court's equitable distribution order.

Discussion

In a proceeding for equitable distribution, after all of the parties' property has been identified, the trial court "must classify each item as either separate or marital property[.]" *Nix v. Nix*, 80 N.C. App. 110, 113, 341 S.E.2d 116, 118 (1986) (citations omitted). "There is a presumption, rebuttable by clear, cogent and convincing

evidence, that all property acquired by the parties during the marriage is marital property." *Id.* (citation omitted).

Second, "the court must determine the net [fair market] value of the property." *Id.* The property must be valued as of the date of separation. N.C. Gen. Stat. § 50-21(b) (2016). The trial court "determine[s] the net fair market value of the property based on the evidence offered by the parties." *Fitzgerald v. Fitzgerald*, 161 N.C. App. 414, 419, 588 S.E.2d 517, 521 (2003) (citation omitted). Fair market value is "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." *Carlson v. Carlson*, 127 N.C. App. 87, 91, 487 S.E.2d 784, 786 (1997) (citation and quotation marks omitted). The net market value is then calculated "by reducing the fair market value of the property by the value of any debts that are attached to the asset." *Id.*

Lastly, the trial court equitably distributes the marital property between the parties. *Fitzgerald*, 161 N.C. App. at 418, 588 S.E.2d at 520. Pursuant to N.C. Gen. Stat. § 50-20(c) (2016), an equal division of marital property is presumed to be equitable. However, after considering the various factors contained in N.C. Gen. Stat. § 50-20(c), a trial court may order an unequal distribution if an equal distribution would not be equitable. *Petty v. Petty*, 199 N.C. App. 192, 199, 680 S.E.2d 894, 899 (2009).

I. Standard of Review

"When reviewing an equitable distribution order, the standard of review is limited to a determination of whether there was a clear abuse of discretion." *Petty*, 199 N.C. App. at 197, 680 S.E.2d at 898 (citation and quotation marks omitted). "A trial court's findings of fact in an equitable distribution case are conclusive if supported by any competent evidence." *Fitzgerald*, 161 N.C. App. at 419, 588 S.E.2d at 521. The trial court's findings of fact must support its conclusions of law. *Quick v. Quick*, 305 N.C. 446, 450, 290 S.E.2d 653, 656-57 (1982).

II. Valuation of the 10.21 Acre Tract

Mr. Medlin first attacks the trial court's valuation of the 10.21 acre tract. Specifically, Mr. Medlin argues that the trial court erred (1) when it did not consider Mr. Shortt's testimony regarding the potential value of the tract as a subdivision, (2) when it excluded Mr. Medlin's testimony concerning the amount for which he would have sold the tract, and (3) when it relied on the tax value in determining the value of the 10.21 acre tract.

A. Mr. Shortt's testimony

Mr. Medlin contends that the trial court was required to make findings on Mr. Shortt's testimony pertaining to the 10.21 acre tract's value in light of its potential to be developed and subdivided. Mr. Medlin cites *Wall v. Wall* for the proposition that even if the trial court did not find this evidence to be credible, the court was

nonetheless required to make "findings of fact to indicate that the court had considered the testimony, but rejected it or gave it little weight."

The trial court's duty in a bench trial is to "find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment." N.C. Gen. Stat. § 1A-1, Rule 52(a)(1) (2016). However, "[t]he trial court need not recite in its order every evidentiary fact presented at hearing[.]" *Mitchell v. Lowery*, 90 N.C. App. 177, 184, 368 S.E.2d 7, 11 (1988) (citation omitted). Instead, specific findings are only required on the "material and ultimate facts from which it can be determined whether the findings are supported by the evidence and whether they support the conclusions of law reached." *Quick*, 305 N.C. at 451, 290 S.E.2d at 657. In *Wall*, because the applicable statute *required* the trial court to consider the "physical and mental health of both parties[,]"we held that the trial court was required to make findings of fact on the defendant's health condition. *Wall v. Wall*, 140 N.C. App. 303, 311, 536 S.E.2d 647, 652 (2000). Because the defendant introduced evidence of that particular factor, it was "error for the trial court to fail to make findings of fact with respect to that factor." *Id.*

Mr. Medlin's reliance on *Wall* is misplaced. The trial court was required to make findings on the evidence that *supported* its ultimate valuation of the 10.21 acre tract. *Quick*, 305 N.C. at 451, 290 S.E.2d at 657. The trial court's conclusion was that, of all the evidence presented, the 10.21 acre tract's tax value at the time of separation

(which was roughly corroborated by the subsequent 2016 sale) was the most appropriate measure of its net fair market value. Mr. Shortt's testimony regarding the potential value of the 10.21 acre tract if subdivided was not essential to support that conclusion.

Moreover, it was proper for the trial court to disregard this testimony in that the evidence was purely speculative. *See Carlson*, 127 N.C. App. at 90, 487 S.E.2d at 786 ("The evidence of the value of the grantor's *promise* to build the road may have added to the land was mere speculation and improperly considered by the trial court.").

Mr. Shortt testified that the 10.21 acre tract had yet to be subdivided, and there was no suggestion that Mr. Medlin had begun applying for the necessary permits required to subdivide the property. Therefore, it would have been improper to consider Mr. Shortt's valuation based on the property's potential to be subdivided and developed. *Cf. Id.*, at 92, 487 S.E.2d at 787 (holding that a contractual *obligation* to improve property "should have been included in the trial court's fair market valuation[,]" whereas the *potential* for such an improvement should have been excluded from the valuation).

Accordingly, we conclude that the trial court did not err in failing to make specific findings of fact concerning Mr. Shortt's testimony of the potential value of the 10.21 acre tract as a subdivision.

B. Exclusion of Mr. Medlin's Testimony

Mr. Medlin next argues that the trial court erred in not allowing him to testify as to the price for which he could have sold the 10.21 acre tract. However, we cannot review the propriety of the trial court's exclusion because Mr. Medlin did not make an offer of proof of what that price would have been.

" 'It is well established that an exception to the exclusion of evidence cannot be sustained where the record fails to show what the witness'[s] testimony would have been had he been permitted to testify.' " *River Hills Country Club, Inc. v. Queen City Automatic Sprinkler Corp.*, 95 N.C. App. 442, 446, 382 S.E.2d 849, 851 (1989) (citation and quotation marks omitted). Likewise, Rule 103 provides that "[e]rror may not be predicated upon a ruling which . . . excludes evidence unless . . . the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked." N.C. Gen. Stat. § 8C-1, Rule 103(a)(2) (2016). A reviewing court is unable to determine whether an alleged error was prejudicial unless "the essential content or substance of the witness's testimony is" shown. *Currence v. Hardin*, 296 N.C. 95, 100, 249 S.E.2d 387, 390 (1978).

At trial, counsel questioned Mr. Medlin regarding the value of the 10.21 acre tract. When asked the amount for which the tract would have sold, Ms. Medlin's counsel objected and the trial court sustained the objection:

> Q. . . . And whenever you separate the property, you said you were going to wait to divide it until you were

> ready?
>
> A. I intended it, when it got older, as the land became more value, harvest the trees, sell the lots.
>
> Q. Okay. And did you know what the lots would have sold for?
>
> A. They would have been sold at my price and I had several –
>
> MS. SUTHERLAND: I'm going to object.
>
> THE COURT: Sustained. That calls for speculation as to what they would have been sold for.
>
> . . .
>
> A. I had people ask me –
>
> Q. It's been objected to and sustained.
> To your knowledge, and only if you know, would it have been – the value have been more than the $22,000?
>
> A. Yes, ma'am. It's worth more than that.

Mr. Medlin is correct in asserting that a landowner is inherently qualified to testify as to the value of his property. However, Mr. Medlin's contention on appeal is that the fair market value of the 10.21 acre tract was higher than its tax value at the time of the parties' separation. Unless this Court knows the precise value that Mr. Medlin would have assigned to the property, we cannot determine whether that value exceeded the tax value to such a degree that its exclusion would be prejudicial. In other words, to establish prejudice, Mr. Medlin must be able to demonstrate not only

that the property was worth more than its tax value, but how *much* more it was worth. Therefore, a dollar value is required, and for purposes of Mr. Medlin's appeal, the testimony's "essential content or substance" is that dollar value. *Currence*, 296 N.C. at 100, 249 S.E.2d at 390.

We are unable to ascertain the amount that Mr. Medlin believed the 10.21 acre tract was worth from his testimony that the amount was "more than the $22,000[,]" or that the tract "would have been sold at my price[.]" Neither can we ascertain a particular price "from the context within which [the] questions were asked." N.C. Gen. Stat. § 8C-1, Rule 103(a)(2) (2016). Mr. Shortt's subsequent testimony that each individual lot, if subdivided, would sell for around $9,000 or $10,000 cannot be attributed to the overall price for which *Mr. Medlin* believed he could have sold the tract, and we decline to speculate as to what that price may have been.

Even assuming, *arguendo*, that the trial court erred in excluding Mr. Medlin's testimony, we are unable to ascertain the prejudice, if any, from the exclusion because Mr. Medlin did not make an offer of proof of what his testimony would have been. Accordingly, we dismiss that portion of Mr. Medlin's appeal.

C. Reliance on Tax Value

Lastly, Mr. Medlin argues that the trial court erred in relying on the tax value in determining the 10.21 acre tract's net market value. We disagree.

Tax records are "generally not competent to prove [market] value" of real property. *Edwards v. Edwards*, ___ N.C. App. ___, ___, 795 S.E.2d 823, 826 (2017). Tax records are not favored "because 'in the valuation of land, for taxation, the owner is not consulted[,]' and 'the assessors were not witnesses in the case, sworn and subject to cross-examination[.]' " *Id.* at ___, 795 S.E.2d at 825 (quoting *Bunn v. Harris*, 216 N.C. 366, 373, 5 S.E.2d 149, 153 (1939) and *Cardwell v. Mebane*, 68 N.C. 485, 487 (1873)) (alteration omitted).

Nonetheless, this Court has held that evidence of a property's tax value is properly relied upon where neither party has objected to its admission. *Edwards*, ___ N.C. App. at ___, 795 S.E.2d at 825. This Court has also held that tax value may be relevant where the trial court is tasked with valuing property many years after the separation date. *See Plummer v. Plummer*, 198 N.C. App. 538, 541, 680 S.E.2d 746, 749 (2009) (concluding that tax values were competent evidence where "the trial court was in the unenviable position of attempting to value real property approximately nine years after the date of separation[,]" and "the parties presented tax values, outstanding tax bills, and evidence of outstanding mortgages").

In the instant case, Mr. Medlin concedes that he did not object to the introduction of the tax value of the 10.21 acre tract. Because Mr. Medlin did not object to the tax value, the trial court was entitled to consider that evidence "for whatever probative value it may have" had. *Edwards*, ___ N.C. App. at ___, 795 S.E.2d at 825

(citation and quotation marks omitted). Additionally, the trial court was faced with the difficult task of determining the value of the 10.21 acre tract over six years after the parties' separation. Moreover, evidence was presented that Ms. Medlin sold the 10.21 acre tract for roughly $5,000 *less* than its tax value. This indicated that the tax value was in the ballpark of the net fair market value. Accordingly, it was appropriate for the trial court to consider the tax value of the 10.21 acre tract, and the trial court did not abuse its discretion when it determined that the 10.21 acre tract's tax value on the date of separation was an appropriate estimate of its value at that time.

III. The Marital Wood

Mr. Medlin's next assignment of error is that the trial court's findings of fact fail to explain its determination that 80 percent of the wood was marital property and 20 percent was his separate property. However, this finding falls well within the trial court's "broad discretionary powers[.]" *Nix*, 80 N.C. App. at 112, 341 S.E.2d at 118.

Where a precise valuation cannot clearly be determined from the evidence, while not permitted to "guess," the trial court "may arrive at such a . . . figure after considering the factors involved in the various appraisals." *Nix*, 80 N.C. App. at 115, 341 S.E.2d at 119. The trial court "is entitled to assess the credibility of the witnesses, and to determine the weight to be afforded their testimony." *Id.* The trial court has broad discretionary powers in equitable distribution cases, and "may be reversed for abuse of discretion only upon a showing that its actions are manifestly unsupported

by reason, or that its ruling could not have been the result of a reasoned decision." *Id.* at 112, 341 S.E.2d at 118. "Findings of fact by the trial court are upheld on appeal as long as they are supported by competent evidence." *Gum v. Gum*, 107 N.C. App. 734, 738, 421 S.E.2d 788, 791 (1992) (citation omitted).

The trial court made the following findings with respect to the apportionment of the wood:

> 40. The parties amassed a tremendous amount of wood storage, various sizes, during the marriage. The Court received evidence in the form of an appraisal . . . which valued this wood storage at $75,000.00.
>
> 41. The Defendant testified that every piece of wood storage was acquired prior to June 7, 1992. The Defendant is a Licensed North Carolina General Contractor; a 5th generation Wood Worker, a carpenter, a Master Builder and Restoration Contractor; and his specialty is restoration work and high end remodeling. The Defendant's contention that he did not use or acquire any of the wood during the marriage, or use any of his separately acquired during the marriage, is not believable or credible.
>
> 42. The Court received receipts from the Defendant which purported to establish the date of acquisition for some of the wood storage prior [to] the date of marriage. The Defendant submitted Defendants exhibit 5M, which purported to be a check . . . for wood storage dated August 30, 1990. This Court finds that the check for this wood was actually written August 30, 2004, and the check date was changed prior to its being submitted as evidence.
>
> 43. The Court finds that although the Defendant originally testified that all the wood was acquired prior to the marriage, on cross examination he admitted, and the Court finds that the Cypress was purchased during the

> marriage[.]
>
> 44. The Plaintiff testified and the Court finds that most of the wood storage was acquired during the marriage, and that the Plaintiff assisted the Defendant in moving the wood to its current location during the marriage.
>
> 45. This Court finds that the Defendant had some wood prior to the marriage and does value the Defendant's separate interest in the wood at $15,000.00.
>
> 46. This Court finds that the marital portion of the wood storage is valued at $60,000.00.

The record contains conflicting evidence regarding precisely how much of the wood was marital property and how much of it was Mr. Medlin's separate property. The trial court was nonetheless required to assign a value to each. The trial court found that "most of the wood storage was acquired during the marriage[,]" and then determined that "most of the wood" roughly amounted to 80 percent.

After examining the record, we conclude that these findings are supported by competent evidence. Ms. Medlin testified that, before the marriage, Mr. Medlin "may have had a few [wood] boards laying around in the shop somewhere . . . , but nothing like we accumulated." Ms. Medlin also testified about accompanying Mr. Medlin to pick up "[t]railer loads" of wood during the marriage. The wood was valued at $75,000 in total. Receipts were entered into evidence showing wood purchases from just seven out of the seventeen years of marriage. Those receipts showed that, in those seven

years alone, the parties purchased roughly $20,000 worth of wood[1]. Those purchases were in addition to all of the scrap wood that the Medlins acquired from the buildings torn down during the marriage. Ms. Medlin testified that "75 to 80 percent of" the wood was accumulated during the marriage. Thus, the evidence shows that the trial court did not pull a number out of thin air. Rather, the trial court simply found Ms. Medlin's testimony to be more credible than Mr. Medlin's. The trial court acted well within its discretion in doing so, particularly given its finding that Mr. Medlin entered an altered check into evidence.

We are "not here to second-guess values of marital and separate property where there is evidence to support the trial court's figures." *Petty*, 199 N.C. App. at 197, 680 S.E.2d at 898. The trial court's decision to value the marital wood at 80 percent of the total wood was not so "manifestly unsupported by reason" as to constitute an abuse of discretion. *Id.* We affirm that portion of the trial court's order.

IV. Lot 48A

Lastly, Mr. Medlin argues that the trial court erred when it classified Lot 48A as marital property because it did not consider his argument that the property was "essentially" acquired before the marriage.

[1] During those seven years, the Medlins purchased an average of $2,400 in wood each year. Applying that same average, the Medlins would have purchased another $24,000 in wood over the remaining ten years. This would equal $44,000 in total *purchased* wood during the marriage. This is in addition to all of the scrap wood that the Medlins acquired from the buildings torn down during the marriage. The marital wood was valued at $60,000, or 80 percent of $75,000.

The classification of property is a conclusion of law. *Romulus v. Romulus*, 215 N.C. App. 495, 504, 715 S.E.2d 308, 315 (2011). "Classification of property must be supported by the evidence and by appropriate findings of fact." *McIver v. McIver*, 92 N.C. App. 116, 127, 374 S.E.2d 144, 151 (1988). The findings need only allow "the appellate court on review to determine from the record whether the judgment—and the legal conclusions that underlie it—represent a correct application of the law." *Patton v. Patton*, 318 N.C. 404, 406, 348 S.E.2d 593, 595 (1986) (citation and quotation marks omitted).

"It is presumed that all property acquired after the date of marriage and before the date of separation is marital property[.]" N.C. Gen. Stat. § 50-20(b)(1) (2016). Likewise, when a spouse conveys property "to the other spouse in the form of tenancy by the entireties, a presumption of a gift of separate property to the marital estate arises[.]" *McLeod v. McLeod*, 74 N.C. App. 144, 154, 327 S.E.2d 910, 917 (1985).

Here, the trial court found that "[t]he parties disagree whether . . . Lot 48A . . . was marital or separate. Although the Defendant contends he acquired this property prior to marriage, this Court finds that the real property was purchased during the marriage and titled as tenants by the entireties." Mr. Medlin has not challenged the competency of the evidence underlying this finding, and so it is binding on appeal. Mr. Medlin argues only that the trial court's conclusion of law that Lot 48A was

marital property was not supported by the findings in light of its failure to address his conflicting testimony.

The trial court was free to assess the credibility of Mr. Medlin's testimony concerning the acquisition of Lot 48A prior to marriage and to assign the weight to that testimony that it deemed appropriate. The trial court was not required to manifest that determination in its ultimate findings. *Romulus*, 215 N.C. App. at 505, 715 S.E.2d at 315 ("[T]he trial court need not and should not recite all of the evidence[.]"). Nonetheless, Mr. Medlin argues that the trial court erred because it failed to find that he did not rebut the marital property presumption pursuant to N.C. Gen. Stat. § 50-20(b)(1). However, the trial court was not required to find that the marital property presumption had *not* been rebutted in order to classify Lot 48A as marital property. Rather, N.C. Gen. Stat. § 50-20(b)(1) simply provides that if the trial court *does* find that the marital property presumption is rebutted, that finding must be supported "by the greater weight of the evidence." N.C. Gen. Stat. § 50-20(b)(1) (2016). The trial court need only make "specific findings of the ultimate facts established by the evidence . . . essential to support the conclusions of law reached." *Romulus*, 215 N.C. App. at 505, 715 S.E.2d at 315 (citation omitted). Here, the conclusion of law reached was that Lot 48A was marital property. Because the findings provide that Lot 48A was purchased after the marriage and titled as tenants by the entireties, we conclude that those findings provide the sufficient facts

necessary to support the trial court's classification of Lot 48A as marital property. *See* N.C. Gen. Stat. § 50-20(b)(1) and (2); *Cf. Romulus*, 215 N.C. App. at 505, 715 S.E.2d at 315 ("The order contains no findings as to the facts necessary for the determination of whether the property is marital or separate such as when it was acquired, how it was acquired, or even how it was titled."). Accordingly, we affirm the trial court's classification of Lot 48A as marital property subject to equitable distribution.

Conclusion

For the reasons explained above, the trial court's Judgment for Equitable Distribution and Order is

AFFIRMED.

Judges DAVIS and BERGER, JR. concur.

Report per Rule 30(e).