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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-141

Filed: 16 October 2018

Transylvania County, No. 16 CVD 37

GARRETH BENJAMIN FRADY, Plaintiff,

v.

VICKI CAGLE FRADY, Defendant.

Appeal by plaintiff from order entered 20 October 2017 by Judge Fritz Mercer in Transylvania County District Court. Heard in the Court of Appeals 22 August 2018.

*Donald H. Barton, P.C., by Donald H. Barton, for plaintiff-appellant.*

*Carr, Blackwell & Associates, P.C., by Derek A. Jones, for defendant-appellee.*

ELMORE, Judge.

Plaintiff Garreth Benjamin Frady (“Husband”) appeals from an order of equitable distribution in which the trial court classified, valued, and distributed the marital property of Husband and defendant Vicki Cagle Frady (“Wife”) following their divorce. On appeal, Husband contends the trial court erred in its findings of fact and

conclusions of law related to three retirement assets, three pieces of living room furniture, and a distributive award to Wife in the amount of \$4,261.00.

For the reasons stated herein, we affirm in part, vacate in part, and remand.

### **I. Background**

Husband commenced this action with the filing of a complaint for absolute divorce in January 2016, while Wife filed an answer and counterclaim for equitable distribution in February 2016. In their respective filings, both parties alleged to have been married on 2 September 1987 and separated on 21 January 2015. In March 2016, the trial court entered a judgment for absolute divorce in which it preserved the issue of equitable distribution for determination at a later date.

According to their own allegations as well as the trial court's unchallenged findings of fact, the parties were married for 328 months prior to their date of separation (or "d.o.s."). Beginning in the year 2000, Wife was incarcerated on four different occasions for a total of 106.6 of those 328 months. Husband continued to foster the marital relationship by visiting Wife during her various periods of incarceration, the last of which ended in July 2013, and the parties lived together in the marital residence following Wife's release from custody.

With the parties' consent, the trial court entered an equitable distribution pre-trial order on 17 April 2017 ("pre-trial order"). The pre-trial order provided that "Husband and Wife agree on the following values of Retirement Plans held in

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Husband's name": (1) a traditional IRA 547(b) plan valued at \$0.00 on the date of marriage (or "d.o.m.") and \$45,898.62 on the d.o.s.; (2) a LGERS plan valued at \$1,163.55 on the d.o.m. and \$48,223.01 as of 31 December 2014; and (3) a 401(k) plan valued at \$0.00 on the d.o.m. and \$13,302.00 on the d.o.s. The parties also valued two couches, two love seats, a coffee table, and a sewing machine at \$750.00.

Following a 24 April 2017 hearing, the trial court entered an order of equitable distribution ("ED order") in which it found

6. [Husband] is the owner and beneficiary of the following retirement plans:

a. A traditional IRA 547(b) Plan that had a net value on d.o.s. of \$45,898.62. . . . [O]ne hundred percent (100%) of this traditional IRA 547(b) Plan is marital. [Husband] has not presented this Court evidence regarding separate contributions made to this retirement plan during the course of marriage and while [Wife] was incarcerated.

b. . . . [A] LGERS Plan that had a net d.o.s. value of \$48,223.01[.] . . . The months during which [Wife] was incarcerated during the marriage shall reduce [Husband's] number of months of participation in this plan during the marriage. . . . 59.52% of the value of this retirement plan as of April 24, 2017, is marital property.

c. . . . [A] 401k Plan that had a net d.o.s. value of \$13,603.00[.] . . . [O]ne hundred percent (100%) of this 401(k) value at d.o.s. is marital. [Husband] has not presented this Court evidence regarding separate contributions made to this retirement plan during the course of marriage and while [Wife] was incarcerated. [Husband] shall have as separate property his separate contributions made after date of separation of \$4,710.00. The value of this 401(k) as of 4-27-17—minus the \$4,710.00

of said separate contributions of [Husband]—shall be distributed equally (50/50) between [Husband] and [Wife].

....

7. That the living room furniture of one (1) couches [sic], one (1) love seats [sic] and coffee table are marital property having a d.o.s. and current value of \$750.00 and are distributed to the Husband.

....

40. That the division of Marital property, as herein, is equal and equitable and in order to achieve equity between the parties in the distribution of Marital Property i[t] i[s] necessary [Husband] pay a distributive award to [Wife] of \$4,261.00 for the difference in value of the items of Marital property described in paragraphs 7 through 38 above.

In its conclusions of law, the trial court noted that “where the current net value equals the net d.o.s. value the court bases the net current value equal to d.o.s. value on the lack of evidence [ ] submitted by the parties as to the evidence of the current value being any different than the net d.o.s. value.”

Husband entered timely notice of appeal.

## **II. Assignments of Error**

While Husband purports to present thirteen distinct issues on appeal, he essentially contends the trial court erred (1) in classifying one-hundred percent of the IRA and 401(k) plans as marital property; (2) in valuing the LGERS and 401(k) plans as of the hearing date rather than the date of separation; (3) in failing to accurately value and distribute the LGERS and 401(k) plans; (4) in valuing one couch, one love

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seat, and a coffee table at \$750.00; and (5) in ordering Husband to pay a \$4,261.00 distributive award to Wife within thirty days of the entry of the ED order. However, because we conclude that Husband has abandoned issues one through four by failing to provide any meaningful support for his bare assertions related thereto, we limit our discussion to the merits of issue five. *See* N.C. R. App. P. 28(a)–(b) (providing that assignments of error in support of which no reason or argument is stated or authority cited will be deemed abandoned); *see also Hill v. Hill*, 229 N.C. App. 511, 514–15, 748 S.E.2d 352, 356 (2013) (explaining that it is not the role of this Court “to supplement and expand upon poorly made arguments of a party filing a brief. . . . We address only those issues which are clearly and understandably presented to us.”).

As to the distributive award to Wife, Husband specifically contends the trial court “made mathematical errors in its calculation of the difference in value of the value of the marital property allocated to [Husband] and the value of that allocated to [Wife],” asserting that the difference in value amounts to \$1,475.00 rather than \$4,261.00. Husband further contends the trial court erred in ordering him to pay the award within thirty days of the entry of the ED order without first finding that Husband had the ability to pay within the time allowed.

Wife agrees that the trial court erred in its calculation of the distributive award. However, she contends that the difference in value of the property at issue

amounts to \$2,325.00 rather than \$1,475.00 as argued by Husband or \$4,261.00 as determined by the trial court.

### **III. Standard of Review**

“In making an award in an equitable distribution action, the trial court is vested with wide discretion, and appellate review of the equitable distribution award is limited to a determination of whether there was a clear abuse of discretion.’” *Sharp v. Sharp*, 116 N.C. App. 513, 520, 449 S.E.2d 39, 43 (1994) (quoting *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985)). “A trial court may be reversed for abuse of discretion only upon a showing that its actions are manifestly unsupported by reason.” *White*, 312 N.C. at 777, 324 S.E.2d at 833 (citation omitted).

### **IV. Discussion**

Husband contends the trial court miscalculated the distributive award to Wife and that the correct calculation amounts to \$1,475.00. He asserts that the difference “appears to be the result of a mathematical error.” Wife concedes that the trial court miscalculated the award based on the difference in value of personal property, but asserts that the correct calculation amounts to \$2,325.00.

We must start by seeking to determine what the trial court actually did as Husband fails to set forth this information in his brief, and in doing so, we express the trial court’s relevant findings in table form as follows:

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<b>Finding of Fact</b>	<b>Item(s)</b>	<b>Husband</b>	<b>Wife</b>
7	Couch, love seat, coffee table	750.00	
9	Table, four chairs	100.00	
10	Four TVs	225.00	75.00
11	Dishes, utensils		75.00
12	Baking supplies		500.00
13	Lawn mower	1,000.00	
14	China		500.00
15	Microwave	100.00	
16	Silverware	50.00	
17	Two end tables		50.00
18	Curtains		100.00
19	Wife's belongings		2,000.00
20	Sewing machine		250.00
22	Linens		100.00
23	Washer, dryer		400.00
24	Vacuum		100.00
25	Steam mop		50.00
26	Bath towels		250.00
33	Bedroom furniture	500.00	
34	Computer	50.00	
35	Tractor	7,000.00	
36	Motorcycle		5,300.00
37	Yard tools	2,000.00	
38	Carpentry tools	300.00	
<b>TOTAL</b>		<b>12,075.00</b>	<b>9,750.00</b>

Based on the above totals, we agree with Wife's conclusion that the difference in value of the items of personal property as distributed between the parties amounts to \$2,325.00. Thus, the trial court erred in ordering Husband to pay a \$4,261.00 distributive award to Wife as that amount is not supported by the evidence.

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Husband also contends the trial court erred in ordering him to pay the award without first finding that Husband had the ability to pay within the time allowed. However, due to Husband's mistaken belief that the correct calculation amounts to \$1,475.00, he states merely that "the reduced figure of \$1,475.00 is so low as to make the [c]ourt's failure to inquire into [Husband's] ability to pay, harmless error." Husband provides no further explanation and cites no authority in support of this portion of his argument, which is therefore deemed abandoned on appeal. *See* N.C. R. App. P. 28.

In addition to the issues raised on appeal by Husband, Wife—without appealing the trial court's order—raises her own issues for this Court's review. Specifically, Wife contends the trial court erred in reducing the coverture fraction applied to the LGERS plan by the amount of time Wife was incarcerated, where neither Husband nor Wife had the intent to remain permanently separated during Wife's various periods of incarceration. She also contends the trial court "completely failed to include the items of marital real property which were distributed to [Husband]" in its calculation of the distributive award and instead calculated the award based solely on the difference in value of personal property as distributed between the parties.

The Rules of Appellate Procedure provide that, "[w]ithout taking an appeal, an appellee may present issues on appeal based on any action or omission of the trial



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court that deprived the appellee of an alternative basis in law for *supporting* the judgment, order, or other determination from which appeal has been taken.” N.C. R. App. P. 28(c) (emphasis added). In the present case, however, the issues raised by Wife are not alternative bases in law for supporting the order, but are distinct challenges that seek affirmative relief. As such, the issues are not properly before this Court, and we decline to consider their merit.

**V. Conclusion**

Because we conclude that the trial court erred in ordering Husband to pay a \$4,261.00 distributive award to Wife, we vacate the distributive award and remand for the trial court to correct its miscalculation. As to all other issues, we affirm.

**AFFIRMED IN PART; VACATED IN PART AND REMANDED.**

Judges DILLON and DAVIS concur.

Report per Rule 30(e).