IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1213

Filed: 15 October 2019

Iredell County, No. 10 CVD 2362

TED WILLIAM CROMIE, Plaintiff,

v.

TRACY T. CROMIE, Defendant.

Appeal by plaintiff from order entered 10 April 2018 by Judge Edward L. Hedrick, IV in Iredell County District Court. Heard in the Court of Appeals 23 May 2019.

Horack Talley Pharr & Lowndes, P.A., by Kyle A. Frost, for plaintiff-appellant.

Jonathan McGirt for defendant-appellee.

DIETZ, Judge.

Ted Cromie and Tracy Cromie separated and later divorced. In this equitable distribution proceeding, the trial court ordered an unequal distribution in favor of Ms. Cromie. Mr. Cromie appealed.

As explained below, we hold that Ms. Cromie properly requested an unequal distribution. We also hold that the trial court's findings of fact concerning that

unequal distribution are supported by the record and those findings, in turn, support the court's conclusions and its ultimate, discretionary decision to make an unequal but equitable distribution. We therefore affirm the trial court's order.

Facts and Procedural History

Ted Cromie and Tracy Cromie married in 1988. They separated in 2010 and divorced in 2014. The Cromies have litigated their equitable distribution claims for a number of years. After a trial in 2018, the court entered an order determining that an unequal distribution in favor of Ms. Cromie was equitable. The court distributed fifty-three percent of the marital property to Ms. Cromie, including the marital home. Mr. Cromie appealed.

Analysis

I. Purported failure to request an unequal distribution

Mr. Cromie first argues that the trial court erred by awarding an unequal distribution because Ms. Cromie "did not even request an unequal distribution at trial." As explained below, we reject this argument because the parties entered this equitable distribution trial aware that they both requested an unequal distribution and the court received evidence at trial supporting an unequal distribution.

"In an equitable distribution proceeding, the trial court must classify the parties' property into one of three categories—marital, divisible, or separate—and then distribute the parties' marital and divisible property." *Berens v. Berens*, __ N.C.

App. __, __, 818 S.E.2d 155, 157 (2018). The applicable statute provides that there shall be an equal division "unless the court determines that an equal division is not equitable." N.C. Gen. Stat. § 50- 20(c). "If the court determines that an equal division is not equitable, the court shall divide the marital property and divisible property equitably." *Id.*

"When making an unequal distribution, the trial court must consider the factors enumerated in G.S. § 50-20(c) and must make findings which indicate that it has done so. It is not necessary that the findings recite in detail the evidence considered but they must include the ultimate facts considered by the trial court." *Britt v. Britt*, 168 N.C. App. 198, 204, 606 S.E.2d 910, 914 (2005) (citations omitted). With respect to the determination of whether those ultimate facts warrant an unequal distribution, we review the trial court's decision solely for abuse of discretion. *Khajanchi v. Khajanchi*, 140 N.C. App. 552, 558, 537 S.E.2d 845, 849–50 (2000).

Here, Ms. Cromie unquestionably sought an unequal distribution throughout the proceeding. In February 2016, Ms. Cromie filed a form affidavit indicating that she believed multiple statutory factors entitled her "to more than half distribution." Then, in May 2016, the parties filed a pre-trial order stating that they both "contend that an unequal division would be equitable." Finally, at trial, Ms. Cromie presented evidence on various statutory factors that the statute identifies as relevant to an unequal division of the parties' property. *See*, *e.g.*, N.C. Gen. Stat. § 50- 20(c)(1), (3).

To be sure, at no point in the trial proceeding did Ms. Cromie expressly ask the court to make any particular unequal division. Nor did she identify what unequal division she believed would be equitable. But our case law does not require that she do so. So long as a litigant in an equitable distribution proceeding presents the evidence supporting an unequal distribution, she is under no obligation to propose a particular division—instead she may make the strategic decision to leave that determination to the trial court's sound discretion. *Khajanchi*, 140 N.C. App. at 558, 537 S.E.2d at 849–50. Accordingly, because Ms. Cromie stated repeatedly in pre-trial filings that she would seek an unequal distribution, and because she presented evidence at trial supporting an unequal distribution, the trial court was well within its sound discretion to make an equitable, but unequal, distribution.

II. Sufficiency of findings of fact

Mr. Cromie next challenges certain findings of fact in the trial court's order. We review challenges to factual findings to determine whether those findings are supported by at least some competent evidence in the record. *Romulus v. Romulus*, 215 N.C. App. 495, 498, 715 S.E.2d 308, 311 (2011).

We begin with Mr. Cromie's challenge to Finding of Fact 89. There, the trial court found that Mr. Cromie had more separate property than Ms. Cromie. The court found that Mr. Cromie had bank accounts, a retirement account, a jet ski, and a club membership, all of which were separate property. By contrast, the court found that

"[i]nsufficient credible evidence was presented for the court to determine" that Ms. Cromie had any separate property.

Mr. Cromie argues that the trial court erred in this finding because "[w]ithout knowing what one party's assets are, it is impossible to compare those assets with those of" the other party. The flaw in this argument is that the trial court *did* know what Ms. Cromie's separate assets are, for purposes of its decision: Ms. Cromie has none.

In equitable distribution proceedings, the trial court makes determinations about the parties' property based on evidence submitted by the parties. *Miller v. Miller*, 97 N.C. App. 77, 79, 387 S.E.2d 181, 183 (1990). If there is no credible evidence establishing the existence of a piece of property, then for purposes of the proceeding that property does not exist. For this reason, the trial court's finding is fully supported by the record. The same is true for Finding of Fact 90, which Mr. Cromie challenges on the same grounds.

We next turn to Finding of Fact 96, in which the trial court found that "[m]uch of the marital estate is not liquid." Specifically, the court found that selling the marital home "would likely take some time and commissions to a realtor," that the "parties' 401(k) plans are subject to taxes and penalties if liquidated," and that certain cars and boats categorized as marital property "would be difficult to readily sell" because of depreciation.

Mr. Cromie contends that there was no testimony or evidence at trial concerning the liquidity of the assets other than the marital home. But even if we held that some of these evidentiary findings are unsupported by any testimony or evidence—and to be fair, that a car is less liquid than, say, a checking account is rather axiomatic—there was ample testimony to support the court's primary finding that "much of the marital estate is not liquid." The marital home was a large portion of the marital property and there was testimony establishing that the home could not readily be converted to cash—instead, it would need to be listed, marketed, and ultimately sold.

Mr. Cromie also argues that the court's finding concerning the sale of the marital home is erroneous because the court mentioned "commissions to a realtor." Specifically, Mr. Cromie contends that the court ignored Ms. Cromie's testimony that, as a licensed realtor, she could sell the home and receive the commission herself. This is a non sequitur. That the work of listing the home, finding a buyer, closing the deal, and earning the commission would be done by Ms. Cromie and not some third party does not undermine the court's finding that the sale would involve a commission to "a realtor." Even if Ms. Cromie sold the home herself, the court's finding would be accurate. Ms. Cromie is a realtor.

Finally, Mr. Cromie argues that "it appears from the trial court's Findings of Fact that the distributional factors weigh in favor of" him, not Ms. Cromie. To be sure,

some factors weighed in his favor. Others did not. The determination of *how much* weight to give these competing factors is left to the sound discretion of the trial court. *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985). This Court cannot overrule that discretionary decision unless it is so arbitrary that it could not have been the result of a reasoned decision. *Id.* Here, the decision was a reasoned one, even if there was evidence that could have led the court to reach a different result. We therefore reject this argument and affirm the trial court's order.

Conclusion

We affirm the trial court's equitable distribution order.

AFFIRMED.

Judges MURPHY and COLLINS concur.

Report per Rule 30(e).