IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1304

Filed: 5 November 2019

Mecklenburg County, No. 16 CVD 11052

DIETER CRAGO, Plaintiff,

v.

CANDICE CRAGO, Defendant.

Appeal by defendant from order entered 19 June 2018 by Judge Jena P. Culler in Mecklenburg County District Court. Heard in the Court of Appeals 19 September 2019.

Rosenwood, Rose & Litwak, PLLC, by Nancy S. Litwak, Erik M. Rosenwood, and Meredith R. Hiller, for plaintiff.

Plumides, Romano, Johnson & Cacheris, P.C., by Richard B. Johnson and John Cacheris, for defendant.

ARROWOOD, Judge.

Candice Crago ("defendant") appeals from an equitable distribution and alimony Order awarding her ex-husband, Dieter Crago ("plaintiff"), $120,000.00, and challenges the denial of alimony and attorney's fees. For the following reasons, we affirm.

I. Background

Plaintiff and defendant were married on 23 June 2007. Plaintiff and defendant both worked as engineers until 2010, when they were laid off. In order to support themselves through unemployment, plaintiff and defendant liquidated their 401(k) accounts and pension plans. Plaintiff later obtained work again and became the sole wage earner for the remainder of the marriage, while defendant enrolled in school to pursue various areas of study. In 2013, plaintiff and defendant opened a joint bank account, from which defendant would sometimes withdraw funds to transfer to her separate account. Defendant would also deposit checks written to her by plaintiff into her separate account. The parties had no children together, but defendant had two children from a previous marriage to Michael Heintz.

On 22 September 2004, defendant and Mr. Heintz took out a $1,000,000.00 life insurance policy on Mr. Heintz's life and named defendant as the beneficiary. During her marriage to plaintiff, defendant paid the insurance premiums partly with funds she received from plaintiff. In October 2015, following Mr. Heintz's death in September, defendant received the payout from the life insurance policy. On 16 January 2016, plaintiff and defendant separated. On 24 June 2016, plaintiff filed a "Complaint" for equitable distribution of the parties' assets. On 20 October 2016, defendant filed a counterclaim for equitable distribution, alimony, and attorney's fees.

A trial was held on 15 March 2018, and the trial court issued an "Order for Equitable Distribution and Alimony" ("Order") in which it determined the life insurance policy to be marital property, and distributed the property 80% to defendant and 20% to plaintiff. Plaintiff was awarded $120,000.00 in proceeds from the life insurance policy, and was assigned all of the parties' tax debt. Defendant's claims for alimony and attorney's fees were denied. Defendant subsequently appealed.

II. Discussion

On appeal, defendant assigns as error the trial court's: (1) classification of life insurance proceeds, 2012 GMC Sierra, BB&T Trust Account, and certain tax debt as marital property; (2) distribution to plaintiff in the amount of $120,000.00; and (3) denial of defendant's claims for alimony and attorney's fees.

When the trial court sits without a jury, this Court reviews a trial court's equitable distribution order for "whether there was competent evidence to support the trial court's findings of fact and whether those findings of fact supported its conclusions of law." *Casella v. Alden*, 200 N.C. App. 24, 28, 682 S.E.2d 455, 459 (2009) (citing *Oakley v. Oakley*, 165 N.C. App. 859, 861, 599 S.E.2d 925, 927 (2004)). "The division of property in an equitable distribution 'is a matter within the sound discretion of the trial court.' " *Cunningham v. Cunningham*, 171 N.C. App. 550, 555, 615 S.E.2d 675, 680 (2005) (quoting *Gagnon v. Gagnon*, 149 N.C. App. 194, 197, 560

S.E.2d 229, 231 (2002)). "A trial court may be reversed for abuse of discretion only upon a showing that its actions are manifestly unsupported by reason." *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985).

A. Classification of the Life Insurance Proceeds

1. The Mechanistic Approach Was Proper

Defendant first argues the trial court abused its discretion when it rejected the analytic approach when determining that the life insurance proceeds were marital property in its equitable distribution Order. We disagree.

"Pursuant to N.C. Gen. Stat. § 50-20 [(2017)], equitable distribution is a three-step process requiring the trial court to '(1) determine what is marital [and divisible] property; (2) find the net value of the property; and (3) make an equitable distribution of that property.' " *Petty v. Petty*, 199 N.C. App. 192, 197, 680 S.E.2d 894, 898 (2009) (quoting *Cunningham*, 171 N.C. App. at 555, 615 S.E.2d at 680)). Under North Carolina law, marital property is "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) (2017). Separate property is that acquired by a spouse before marriage, or acquired by devise, descent, or gift during the marriage. N.C. Gen. Stat. § 50-20(b)(2). Generally,

divisible property refers to certain property received after the date of separation but prior to distribution. N.C. Gen. Stat. § 50-20(b)(4).

North Carolina courts have adopted two different approaches for determining what is marital and separate property: the "mechanistic" approach and the "analytic" approach. In *Johnson v. Johnson*, our Supreme Court described the mechanistic approach as:

> literal and looks to the general statutory definitions of marital and separate property and concludes that since the award was acquired during the marriage and does not fall into the definition of separate property or into any enumerated exception to the definition of marital property, it must be marital property.

317 N.C. 437, 446, 346 S.E.2d 430, 435 (1986). In contrast, "[t]he analytic approach asks what the award was intended to replace," focusing on the purpose of the compensation rather than its statutory definition. *Id.*

In support of her argument the trial court erred by not applying the analytic approach, defendant cites several cases concerning classification of personal injury settlements and disability benefits. *See Johnson*, 317 N.C. 437, 346 S.E.2d 430 (1986); *Cooper v. Cooper*, 143 N.C. App. 322, 545 S.E.2d 775 (2001); *Finkel v. Finkel*, 162 N.C. App. 344, 590 S.E.2d 472 (2004). However, defendant also acknowledges North Carolina courts have never applied this approach in the context of life insurance proceeds. *See Foster v. Foster*, 90 N.C. App. 265, 368 S.E.2d 26 (1988). Nevertheless, she urges us to adopt the analytic approach in this case, based on

"important public policy considerations" surrounding whether life insurance proceeds intended to benefit a spouse's children from another marriage should be considered marital property. Furthermore, she argues *Foster* is distinguishable from the present case and therefore should not be binding on this Court.

In *Foster*, the husband and wife had purchased a life insurance policy on their children during their marriage. 90 N.C. App. at 265, 368 S.E.2d at 26. After the parties separated, the husband alone paid the premiums for the policy. During the separation period, one of the children passed away and the life insurance proceeds were paid and placed in a trust account. *Id.* at 265, 368 S.E.2d at 27. In divorce proceedings, the wife claimed the life insurance proceeds were a marital asset because some of the policy premiums had been paid for with marital funds. *Id.* at 266, 368 S.E.2d at 27. We disagreed, holding that because the claim for death benefits did not arise until after separation, when their son passed away, the policy proceeds were the husband's separate property. *Id.* at 268, 368 S.E.2d at 28. In making our ruling, we noted that, pursuant to N.C. Gen. Stat. § 50-20, "in order for property to be considered marital property it must be 'acquired' before the date of separation and must be 'owned' at the date of separation." *Id.* at 267, 368 S.E.2d at 27.

Defendant argues the present case is distinguishable from *Foster* because that case concerned a life insurance policy on the lives of the parties' own children, whereas the policy in dispute here covered the life of her ex-husband and was

intended to be used to care for her children from her prior marriage. However, the relevant fact under the mechanistic approach we applied in *Foster* was whether the property was acquired before the date of separation, not who the policy covered or what its intended purpose was. *See id.*

Here, defendant executed the life insurance policy on her ex-husband prior to her marriage to plaintiff. However, evidence showed defendant paid the insurance premiums in part with money she received from plaintiff. Thus, the insurance premiums were paid in part with marital funds. In addition, the claim for death benefits arose prior to the parties' separation, upon Mr. Heintz's death in September 2015. The proceeds were also paid to defendant prior to her separation from plaintiff in January 2016. In keeping with our holding in *Foster*, whether the property was acquired prior to the parties' separation controls whether it is considered marital or separate property. Accordingly, because defendant received the proceeds before separating from plaintiff, the trial court did not err in concluding the proceeds were marital property. The trial court also did not abuse its discretion in applying the mechanistic approach, which this Court has applied in the insurance context, instead of the analytic approach advocated by defendant.

2. Source of Funds

In the alternative, defendant contends the trial court abused its discretion in its source of funds analysis. We disagree.

In making an equitable distribution determination, "all property must be classified as marital or separate, and when property has dual character, the component interests of the marital and separate estates must be identified[.]" *McIver v. McIver*, 92 N.C. App. 116, 124, 374 S.E.2d 144, 149 (1988). If property is acquired with a mixture of marital and separate property, North Carolina courts apply the "source of funds" rule to determine whether the property is marital or separate. *Id.* "Under the source of funds analysis, property is 'acquired' as it is paid for, and thus may include both marital and separate ownership interests." *Id.*

Here, the trial court made the following findings of fact:

> i) Wife's State Employee's Credit Union Account (aka "SECU") ending in 3207. The Court finds this account to be marital. The date of separation value of $3,738.00. This was Wife's primary checking account since 2007 and Wife has not overcome the presumption that it is marital property. Her testimony was that the sources of funds for this account were income, liquidated pension, unemployment, sale of her personal property, child support and moneys from the joint account. While the account may have existed prior to the date of the marriage, there is certainly no tracing and the evidence points to the fact that the contents of this account as of the date of separation were marital. The Court distributes this account to the Wife.
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> . . . .
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> vii) BB[&]T Account ending in 0655 [containing the life insurance proceeds]. . . . The evidence shows that Wife took out the policy on her former husband's life prior to marriage on 9/22/04. She always paid the

> premiums from the same bank account, which is the SECU account ending 3207 (Item #7). The account was in her name and owned by her prior to marriage. During the marriage, the source of deposits into this account, were: (a) income from liquidated pension; (b) unemployment; (c) transfers from the parties' joint account; (d) proceeds from consignment sale of her personal property; and (e) child support payments from her former husband. . . . In the month before Wife's first husband passed away, per D39, the SECU account had a beginning balance on 8/6/15 of $156.34. There was a deposit on 8/6/15 of $1,000[.00] from the parties' joint account, pursuant to Wife's testimony, and a deposit on 8/6/15 of $705.43 from a child support check from Wife's former husband (D37). There were three debit purchase transactions between 8/6/15 and 8/10/15 totaling $62.67, and an internet debit transfer of $1,100[.00] to Wife's savings account on 8/10/15. On 8/11/15, the $364.50 Allstate life insurance premium payment was debited. . . . Even if the Court found her child support to be separate, which it does not, then there is nothing to indicate what the source of the funds was that paid the premium.

Defendant contends "the trial court used an improper analysis under the source of funds rule[.]" Under defendant's proposed source of funds analysis, the trial court should have found there was 36% in separate funds in the account and 64% marital at the time the last insurance premium payment was drafted on 11 August 2015. Based on our decision in *Wade v. Wade*, 72 N.C. App. 372, 325 S.E.2d 260 (1985), she argues the trial court should have determined the insurance proceeds to be 36% separate and 64% marital, according to the ratio of separate to marital funds used to pay the last insurance premium. We reject defendant's argument.

Defendant's analysis relies on the assumption there was separate property in the account, which the trial court expressly found was not the case. The evidence showed defendant opened the SECU account ending in 3207 in 2007, the same year she married plaintiff, and used it to pay for the life insurance premiums on Mr. Heintz. Throughout her marriage to plaintiff, defendant funded that account with her income, liquidated pension, unemployment benefits, sale of her personal property, child support, and money from the joint account with plaintiff. Pursuant to N.C. Gen. Stat. § 50-20, marital property is all real and personal property acquired by either spouse after marriage and before separation, with the exception of separate property. N.C. Gen. Stat. § 50-20(b). Defendant presented no evidence showing any of the money in the 3207 account was acquired by devise, descent, or gift, such that it would constitute separate property. *Id.* She also presented no evidence showing any premarital funds still existed in the account after eight years. The trial court acknowledged this fact, finding that "[w]hile the account may have existed prior to the date of marriage, there is certainly no tracing." On the contrary, that defendant has been unemployed for years and was at one point forced to liquidate her pension in order to support herself and plaintiff, indicates nothing of her premarital funds remains. Accordingly, the trial court's finding that the account ending in 3207 was marital, and thus the funds used to pay the last life insurance premium were marital, was not an abuse of discretion.

B. 2012 GMC Sierra and BB&T Trust

Defendant next argues the trial court erred in distributing a 2012 GMC Sierra and a BB&T Trust account ending in 2110 titled in the name of C. Crago Trust because the trial court lacked jurisdiction to do so. We disagree.

Plaintiff contends defendant waived this argument by not raising it at trial. However, "[i]t is well settled that 'the issue of a court's jurisdiction over a matter may be raised at any time, even for the first time on appeal or by a court *sua sponte*.' " *Carpenter v. Carpenter*, 245 N.C. App. 1, 8, 781 S.E.2d 828, 835 (2016) (quoting *State v. Gorman*, 221 N.C. App. 330, 333, 727 S.E.2d 731, 733 (2012)). We review a trial court's jurisdiction *de novo*. *McKoy v. McKoy*, 202 N.C. App. 509, 511, 689 S.E.2d 590, 592 (2010) (citing *Harper v. City of Asheville*, 160 N.C. App. 209, 213, 585 S.E.2d 240, 243 (2003)).

We have previously held that

> [W]hen a third party holds legal title to property which is claimed to be marital property, that third party is a necessary party to the equitable distribution proceeding, with their participation limited to the issue of the ownership of that property. Otherwise the trial court would not have jurisdiction to enter an order affecting the title to that property.

Upchurch v. Upchurch, 122 N.C. App. 172, 176, 468 S.E.2d 61, 63-64 (1996) (citations omitted). More recently, in *Carpenter*, we held that a trial court lacked jurisdiction to distribute a Wells Fargo UTMA account where the party who held legal title to the

property was not joined in the action. 245 N.C. App. at 10-11, 781 S.E.2d at 836-37. *See also Nicks v. Nicks*, 241 N.C. App. 487, 496, 774 S.E.2d 365, 373 (2015) (holding the trial court lacked jurisdiction to order distribution of Entrust, LLC where the Trust holding legal title to the property was not made party to the action).

Here, defendant claims the 2012 GMC Sierra and the BB&T Trust account ending in 2110 were titled in the name of the C. Crago Trust. However, there is no evidence in the Record supporting this assertion. In support of her claim, defendant directs us to a vague reference to a GMC vehicle owned by C. Crago Trust, but defendant and plaintiff owned multiple GMC vehicles, and there is no proof the particular vehicle referenced is the 2012 GMC Sierra at issue here. In addition, the Record contains no mention at all of a BB&T Trust account owned by C. Crago Trust. Although the trial court does reference a BB&T Trust Account in its findings, there is no evidence in the Record a third-party owned the trust. Thus, we reject defendant's argument because there is no evidence the trial court lacked jurisdiction to distribute this property. *See Lawing v. Lawing*, 81 N.C. App. 159, 162, 344 S.E.2d 100, 104 (1986) ("Where the record is silent on a particular point, we presume that the trial court acted correctly").

C. Tax Debt

Defendant next argues the trial court erred in classifying certain income tax debt as marital. We disagree.

"A marital debt . . . is one incurred during the marriage and before the date of separation by either spouse or both spouses for the joint benefit of the parties." *Huguelet v. Huguelet*, 113 N.C. App. 533, 536, 439 S.E.2d 208, 210 (1994). "The party who claims that any debt is marital bears the burden of proof on that issue" and "must show both the value of the debt on the date of separation and that it was incurred during the marriage for their joint benefit[.]" *Riggs v. Riggs*, 124 N.C. App. 647, 652, 478 S.E.2d 211, 214 (1996) (internal quotation marks omitted), *disc. review denied*, 345 N.C. 755, 485 S.E.2d 297 (1997).

This Court has previously held that income tax debt incurred during marriage and before separation constitutes marital debt. In *Lund v. Lund*, the Husband owed $2,495.00 in federal taxes in 2012, and the parties did not separate until 2013. 244 N.C. App. 279, 287, 779 S.E.2d 175, 181 (2015). Based on those facts, we held that there was competent evidence to support the trial court's finding that the 2012 tax debt was marital. *Id.* We also upheld the trial court's finding that credit card debt incurred during the same month the parties separated was marital. *Id.* at 288, 779 S.E.2d at 181.

Here, the evidence showed the parties were married on 23 June 2007 and separated on 16 January 2016. From approximately 2010 to 2016, plaintiff was the sole wage earner of the family. During that time, the parties' accrued federal income tax debt totaling $62,783.96, including failure-to-pay penalties. The trial court found

that the federal income taxes owed from 2010 to 2015 were marital. It further found that a majority of plaintiff's 2016 tax debt was separate, but a portion amounting to $358.00 on the date of separation was marital. There is competent evidence to support the trial court's findings of fact, thus the trial court did not abuse its discretion.

D. $120,000.00 Distributive Award to Husband

Defendant next contends the trial court abused its discretion by ordering her to make a distributive award of $120,000.00 to plaintiff without first finding if she had sufficient funds to make such distribution. This argument is without merit.

In its finding of fact number 16, the trial court found:

> [T]here is over $200,000.00 remaining in the BB&T account ending in 0655 [containing the proceeds of the life insurance policy]. However, if it is not possible to still do an in-kind distribution from that account so as to distribute $120,000.00 from that account to Husband, then it is to be considered a distributive award of $120,000.00 to be paid to Husband within the next 60 days.

Defendant contends there was no evidence of the amount of funds available in the account as of the date of trial. Citing to our decision in *Embler v. Embler*, 159 N.C. App. 186, 582 S.E.2d 628 (2003), defendant asserts "when an in-kind distribution is rebutted, and the trial [c]ourt orders a lump sum distribution, the trial [c]ourt must make findings that there are sufficient funds available for the distribution." However, in *Embler* we were concerned with a defendant who "had no

obvious liquid assets" and that the trial court had not taken into account any adverse financial ramifications that could result from ordering a defendant to pay an award from a non-liquid asset. *Embler*, 159 N.C. App. at 188-89, 582 S.E.2d at 630. We are not faced with the same concerns in this case.

Here, the evidence showed defendant did have "obvious liquid assets" from which to make a distributive award, consisting primarily of the life insurance proceeds in defendant's BB&T bank account. The trial court found there was $841,784.00 remaining in the account as of the parties' date of separation. Defendant testified she had been using the life insurance proceeds to support herself and her children, with her expenses averaging $3,250.00 per month. Though defendant argues two years have passed since the parties separated, based on the evidence, it was reasonable for the trial court to conclude that there was at least $200,000.00 remaining from the $841,784.00. Accordingly, there was competent evidence to support the trial court's finding and the trial court did not abuse its discretion in ordering defendant to make a distributive award of $120,000.00.

E. Alimony and Attorney's Fees

Finally, defendant contends the trial court erred in denying defendant's claim for alimony because it did not make sufficient findings on the parties' financial status and accustomed standard of living. We disagree.

We review a determination of whether a spouse is entitled to alimony *de novo*. *Barrett v. Barrett*, 140 N.C. App. 369, 371, 536 S.E.2d 642, 644 (2000) (citations omitted). The amount of alimony awarded is reviewed for abuse of discretion. *Id.*

Pursuant to N.C. Gen. Stat. § 50-16.3A, "[t]he court shall award alimony to the dependent spouse upon a finding that one spouse is a dependent spouse, that the other spouse is a supporting spouse, and that an award of alimony is equitable after considering all relevant factors, including those set out in subsection (b)[.]" N.C. Gen. Stat. § 50-16.3A(a) (2017). A dependent spouse is "a spouse, whether husband or wife, who is actually substantially dependent upon the other spouse for his or her maintenance and support or is substantially in need of maintenance and support from the other spouse." N.C. Gen. Stat. § 50-16.1A(2) (2017). The spouse asserting the claim for alimony has the burden of proving dependency. *Williamson v. Williamson*, 217 N.C. App. 388, 392, 719 S.E.2d 625, 627 (2011).

In denying defendant's claim for alimony, the trial court made the following finding of fact:

> 17) Alimony: Husband is representing himself and the first two sentences of his closing argument was "how is she [Wife] dependent upon me if she has a $1,000,000.00." The Court agrees with Husband. Wife does not have all of the $1,000,000.00 but she has $777,851.00 from this distribution. Though Husband was earning money during the marriage, part of Wife's complaint is that Husband was not supporting her during [the] marriage. Nevertheless, Wife got the life insurance proceeds and had them at her disposal

> of over a $1,000,000.00 while they were still married, kept them and had access and use of those proceeds in any investments [ ] that she could have yielded from those proceeds after the date of separation. The Court finds that she is not a dependent spouse as of the date of trial, which is the date that it is determined and therefore the Court does not award alimony.

In sum, the trial court found defendant was not dependent on plaintiff for her maintenance and support, nor in need of maintenance and support from plaintiff, because she had substantial unearned income in the form of the life insurance proceeds. Defendant produced no evidence to the contrary. In addition, throughout its Order, the trial court made findings concerning the duration of the parties' marriage, education level, earning capacity, debts, assets, standard of living, and plaintiff's contribution to the education and increased earning power of defendant. Reading the trial court's Order as a whole, it is reasonable to conclude the trial court relied on the same findings it used to distribute the parties' property as it did to determine defendant's eligibility for alimony, as both required the court to consider similar factors and were ruled upon in the same Order. *See* N.C. Gen. Stat. §§ 50-20, 50-16.3A(b)-(c) (2017). Accordingly, we hold the trial court's findings of fact were sufficient to meet the requirements of N.C. Gen. Stat. § 50-16.3A.

The dissent, citing to *Williams v. Williams*, 299 N.C. 174, 261 S.E.2d 849 (1980), asserts the life insurance proceeds should not disqualify defendant from receiving alimony because the law does not require she support herself through estate

depletion. However, the dissent ignores the context in which the insurance proceeds were used to support the trial court's decision to deny alimony. The *Williams* court held that "the trial court consideration of the 'estates' of the parties is intended primarily for the purpose of providing it with another guide in evaluating the earnings and earning capacity of the parties, and not for the purpose of determining capability of self-support through estate depletion." *Id.* at 184, 261 S.E.2d at 856. Looking at the trial court's findings as a whole, it becomes clear the trial court did consider the life insurance proceeds the way *Williams* intended—as a way to evaluate the earnings and earning capacity of defendant. The trial court found defendant had substantial unearned income from the life insurance proceeds, and also that she "has the ability to earn substantial income." These findings were supported by competent evidence, including defendant's own testimony that she periodically sent out some job applications and was confident she would get a job opportunity soon. Accordingly, the trial court did not, as the dissent argues, simply disqualify defendant from receiving alimony based solely on her ability to support herself through estate depletion.

We also hold the trial court properly denied defendant's request for attorney's fees. "We [have] interpreted [N.C. Gen. Stat. § 50-16.4 (2017)] to require that '[a] spouse is entitled to attorney's fees if that spouse is (1) the dependent spouse, (2) entitled to the underlying relief demanded (e.g., alimony and/or child support), and

(3) without sufficient means to defray the costs of litigation.' " *Friend-Novorska v. Novorska*, 163 N.C. App. 776, 777-78, 594 S.E.2d 409, 410 (2004) (quoting *Barrett*, 140 N.C. App. at 374, 536 S.E.2d at 646). "Whether the moving party meets these requirements is a question of law fully reviewable *de novo* on appeal." *Id.* at 778, 594 S.E.2d at 410 (citing *Hudson v. Hudson*, 299 N.C. 465, 473, 263 S.E.2d 719, 724 (1980)).

Here, defendant was found not to be dependent, was not entitled to alimony, and also had sufficient means to bear the cost of litigation using the life insurance proceeds. Accordingly, the trial court's denial of defendant's request for attorney's fees was proper.

III. Conclusion

For the foregoing reasons, we affirm the Order of the trial court.

AFFIRMED.

Judge ZACHARY concurs.

Judge HAMPSON concurs in result in part and dissents in part by separate opinion.

HAMPSON, Judge, concurring in result in part and dissenting in part.

I concur in the result reached by the majority on the Equitable Distribution claim. I dissent from the majority opinion on the Alimony claim. Both of these conclusions stem from the trial court's treatment of the proceeds from the life insurance policy insuring the life of Defendant's first husband.

I.

The trial court classified the proceeds of a life insurance policy, which insured Defendant's first husband and was intended to provide familial support for her and the children from that prior marriage, as marital property belonging to the marital estate and distributed $120,000 from those proceeds to Plaintiff, Defendant's second husband. In affirming the trial court, the majority adopts what it terms a "mechanistic" approach to classification of these proceeds. In actuality, the majority simply applies the standard statutory analysis applicable to other assets acquired during the marriage using a traditional source of funds methodology.

The limited scenario presented by this case, however, may well cry out for application of the "analytic" method. Indeed, there are both practical and policy reasons for allowing a spouse to retain as her separate property insurance proceeds arising from the dissolution of a prior marriage intended to support her and the children from that prior marriage. This would be so notwithstanding the fact funds from the subsequent marriage contributed to the payment of the insurance

premiums. *See Finkel v. Finkel*, 162 N.C. App. 344, 348, 590 S.E.2d 472, 475 (2004) (applying analytical approach to disability insurance benefits and noting the "monthly benefits do not lose their classification as separate property because the source of the premiums was marital"). Under our existing case law, had Defendant's first husband not died until after her separation from Plaintiff, the opposite result may have been reached and the insurance proceeds classified as Defendant's separate property; again, notwithstanding the fact marital funds contributed to the payment of the premiums. *See Foster v. Foster*, 90 N.C. App. 265, 267, 368 S.E.2d 26, 28 (1988).

It appears undisputed in this case the existence of the insurance policy was the result of arrangements Defendant made with her first husband to ensure, in the event of his death, she and the children from that marriage would be financially protected and have an independent source of support. It surely was not originally intended to provide a six-figure, lump-sum payment to Defendant's next husband. Moreover, it is evident there was a clear expectation and agreement between Plaintiff and Defendant that during their marriage their marital funds would be used to pay, in part, the premiums for this policy.

Here, though, the evidence also supports a determination the insurance proceeds—acquired during the marriage partially from the use of marital funds to pay the premiums—were also intended, in whole or part, to be contributed to the marital estate and applied to marital obligations. In the absence of evidence

sufficient to trace out what share of the proceeds should be marital and separate, the presumption remains property acquired during the marriage is marital. Thus, in that regard, it was reasonable for the trial court to classify the entirety of the proceeds as marital property and, then, in the distribution phase take the nature of these insurance proceeds into account as a significant factor in its distribution. This the trial court did in awarding Defendant an 80/20 unequal distribution. On the facts of this case, this was not an abuse of discretion, and I concur in the result reached by the majority affirming the trial court's Equitable Distribution award.

II.

I do, however, disagree with the majority on the decision to affirm the denial of Alimony and attorneys' fees. The trial court concluded Defendant was not a dependent spouse because she was awarded the balance of the life insurance proceeds and, in the trial court's view, this provided her with a source of support such that she was not in need of maintenance or support from Plaintiff. In my view, this runs directly contrary to a central tenet of our Supreme Court's decision in *Williams v. Williams*. The ruling in *Williams v. Williams* remains the governing standard for determining whether a spouse is actually substantially dependent or substantially in need of maintenance and support. *See* 299 N.C. 174, 183, 261 S.E.2d 849, 856 (1980). *Williams* was decided under the pre-1995 alimony statute providing for "fault-based" alimony, and "on 1 October 1995, this fault-based approach was replaced by a need-

based alimony statute." *Alvarez v. Alvarez*, 134 N.C. App. 321, 323, 517 S.E.2d 420, 422 (1999). Nevertheless, our Courts continue to look to *Williams* to guide the economic analysis for purposes of determining entitlement to alimony. *See, e.g.*, *Crocker v. Crocker*, 190 N.C. App. 165, 171, 660 S.E.2d 212, 216 (2008) (applying *Williams* to determine whether the trial court made findings supporting its conclusion of dependency).

In making a dependency determination, the relevant *Williams* factors include:

> (1) the accustomed standard of living of the parties prior to the separation, (2) the income and expenses of each of the parties at the time of the trial, (3) the value of the estates, if any, of both spouses at the time of the hearing, and (4) "the length of [the] marriage and the contribution each party has made to the financial status of the family over the years."

Hunt v. Hunt, 112 N.C. App. 722, 726-27, 436 S.E.2d 856, 859 (1993) (quoting *Williams*, 299 N.C. at 183-85, 261 S.E.2d at 856-57). "The conclusions made by the court as to whether a spouse is 'dependent' or 'supporting' must be based on findings of fact sufficiently specific to indicate that the court properly considered the factors set out in *Williams*." *Talent v. Talent*, 76 N.C. App. 545, 548, 334 S.E.2d 256, 259 (1985).

As it relates to the consideration of the parties' estates, the Supreme Court was clear:

> The financial worth or "estate" of both spouses must also be considered by the trial court in determining which spouse is the dependent spouse. We do not think, however, that usage of the

> word "estate" implies a legislative intent that a spouse seeking alimony who has an estate sufficient to maintain that spouse in the manner to which he or she is accustomed, through estate depletion, is disqualified as a dependent spouse. Such an interpretation would be incongruous with a statutory emphasis on "earnings," "earning capacity," and "accustomed standard of living." It would also be inconsistent with plain common sense. If the spouse seeking alimony is denied alimony because he or she has an estate which can be spent away to maintain his or her standard of living, that spouse may soon have no earnings or earning capacity and therefore no way to maintain any standard of living.
>
> We think, therefore, that the trial court consideration of the "estates" of the parties is intended primarily for the purpose of providing it with another guide in evaluating the earnings and earning capacity of the parties, and not for the purpose of determining capability of self-support through estate depletion. We think this is equally true in giving consideration to the estate of the alleged supporting spouse. Obviously, a determination that one is the supporting spouse because he or she can maintain the dependent spouse at the standard of living to which they were accustomed through estate depletion could soon lead to inability to provide for either party.

Williams, 299 N.C. at 183-84, 261 S.E.2d at 856 (emphasis omitted). The Court went on to hold the General Assembly "did not intend that one seeking alimony be disqualified as a dependent spouse because, through estate depletion, that spouse would be able to maintain his or her accustomed standard of living." *Id.* at 185, 261 S.E.2d at 857.

In this case, however, this is exactly what the trial court did: disqualify Defendant from alimony simply because, through estate depletion, she may be able to maintain her accustomed standard of living. The trial court quite plainly found:

> 17) Alimony: Husband is representing himself and the first two sentences of his closing argument was "how is she [Wife] dependent upon me if she has a $1,000,000.00" The Court agrees with Husband. Wife does not have all of the $1,000,000.00 but she has $777,851.00 from this distribution. Though Husband was earning money during the marriage, part of Wife's complaint is that Husband was not supporting her during marriage. Nevertheless, Wife got the life insurance proceeds and had them at her disposal of over a $1,000,000.00 while they were still married, kept them and had access and use of those proceeds in any investments she that she [sic] could have yielded from those proceeds after the date of separation. The Court finds that she is not a dependent spouse as of the date of trial, which is the date that it is determined and therefore the Court does not award alimony.

Based on this finding, the trial court concluded Defendant's Alimony claim should be denied.[1] This conclusion was error, and I would vacate the denial of Alimony and remand the matter to the trial court for reconsideration of its Alimony decision. I would therefore also vacate the denial of attorneys' fees related to Defendant's Alimony claim and remand that issue for further consideration.

[1] I do not, as the majority claims, ignore the context in which the trial court used the insurance proceeds. To the contrary, Finding of Fact 17—the only finding expressly addressing Alimony—speaks for itself and is perfectly clear in explaining exactly how the trial court used these proceeds in denying Alimony. The additional findings the majority uses to bolster its analysis are contained within the trial court's Equitable Distribution analysis under the heading: "The distributional factors applied by the Court[.]" *See* N.C. Gen. Stat. § 50-20(f) (2017) ("The court shall provide for an equitable distribution without regard to alimony . . . ."). In Equitable Distribution, after requiring Defendant to pay Plaintiff $120,000, the trial court distributed the balance of the insurance proceeds to Defendant. Based solely on this fact, and without any other consideration, the trial court denied Defendant alimony. This was error.

Consequently, I would affirm the trial court's decision as to Equitable Distribution and vacate and remand the Alimony portion of the trial court's Order. Accordingly, I respectfully concur in the result in part and dissent in part.