

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-520

Filed: 7 April 2020

Mecklenburg County, No. 15-CVD-12244

ROBERT FINN, Plaintiff,

v.

JENNIFER R. FINN, Defendant.

Appeal by defendant from order entered 17 October 2018 by Judge Christy T. Mann in Mecklenburg County District Court. Heard in the Court of Appeals 7 January 2020.

No appellee brief filed.

Emblem Legal, PLLC, by Stephen M. Corby, Esq., for defendant-appellant.

DIETZ, Judge.

This alimony case returns to us for a second time, after we previously remanded with instructions for the trial court to make additional findings. Defendant Jennifer Finn contends that, on remand, the trial court violated our mandate and improperly chose not to consider Plaintiff Robert Finn's future annual bonus income.

We reject this argument. The record in this appeal, including the trial court's alimony order on remand and the transcript of the hearing on remand, demonstrate that the trial court complied with this Court's mandate, determined that calculating the likelihood and amount of Mr. Finn's future annual bonuses was unreliable, and therefore, in the court's sound discretion, chose not to consider the possibility of annual bonuses in its alimony determination.

The trial court's findings in this regard are supported by competent evidence in the record and the court's alimony determination, in light of its fact findings, was well within the court's sound discretion. We therefore affirm the trial court's order.

Facts and Procedural History

The underlying facts and procedural history in this case are detailed in this Court's prior opinion in *Finn v. Finn*, 258 N.C. App. 564, 811 S.E.2d 244, 2018 WL 1386210, at *1–2 (2018) (unpublished). We address only the facts and procedural history relevant to this second appeal.

In 2016, the trial court entered an order denying Ms. Finn's claims for alimony and attorneys' fees. Ms. Finn appealed. This Court vacated the trial court's order because it "did not contain sufficient facts to enable us to determine the validity of the court's determinations on the issue of alimony" and remanded the matter with instructions for the trial court to make additional findings of fact "on the factors set out in N.C. Gen. Stat. § 50-16.3A(b) for which evidence was introduced" and to

“consider whether to include plaintiff’s annual bonus in its calculation of plaintiff’s income.” *Id.* at *5–6.

In 2018, the trial court entered a new order which contained additional findings of fact addressing each of the statutory factors under N.C. Gen. Stat. § 50-16.3A(b), as required by this Court’s opinion. In that order, the trial court found that Mr. Finn is “eligible for an annual bonus” and “has received a bonus for [the] past 2 years around \$48,000 gross.” But the trial court then stated that it would not “consider[] any bonus in the calculation of [Mr. Finn]’s income” because “[t]here was a lack of evidence that [Mr. Finn] had received beyond these two years or that he will receive an annual bonus in the future.” Based on its findings, the trial court concluded that although Mr. Finn is “a supporting spouse” and Ms. Finn is “a dependent spouse,” alimony was inappropriate because Mr. Finn “does not have the present ability to pay Alimony.” Because the court denied Ms. Finn’s alimony claim, it also denied her related claim for attorneys’ fees. Ms. Finn appealed.

Analysis

I. Denial of Alimony

Ms. Finn first argues that the trial court erred by failing to consider Mr. Finn’s future annual bonuses in its determination that Mr. Finn did not have the ability to pay alimony. We reject this argument.

FINN V. FINN

Opinion of the Court

In a proceeding for alimony, the trial court must award alimony if the party requesting it shows the following: “(1) that party is a dependent spouse; (2) the other party is a supporting spouse; and (3) an award of alimony would be equitable under all the relevant factors.” *Barrett v. Barrett*, 140 N.C. App. 369, 371, 536 S.E.2d 642, 644 (2000). “Decisions regarding the amount of alimony are left to the sound discretion of the trial judge and will not be disturbed on appeal unless there has been a manifest abuse of that discretion.” *Bookholt v. Bookholt*, 136 N.C. App. 247, 249–50, 523 S.E.2d 729, 731 (1999).

In this Court’s previous appeal in this case, we held that when “a supporting spouse receives bonuses on a consistent basis, this amount *may* be included in the calculation of the spouse’s income.” *Finn*, 2018 WL 1386210, at *5. Because, at the time, the record did not indicate whether the trial court considered Mr. Finn’s possible future bonuses in its determination, the Court instructed that, on remand, “the trial court should consider whether to include plaintiff’s annual bonus in its calculation of plaintiff’s income.” *Id.*

This instruction to the trial court was part of our mandate. “On the remand of a case after appeal, the mandate of the reviewing court is binding on the lower court, and must be strictly followed, without variation and departure from the mandate of the appellate court.” *Bodie v. Bodie*, 239 N.C. App. 281, 284, 768 S.E.2d 879, 881 (2015). Generally, when we remand a case and instruct the trial court to take a

FINN V. FINN

Opinion of the Court

specific action on a specific issue, the trial court's future ruling will be upheld so long as we are "unable to identify any actions by the trial court that departed from our remand instructions." *Id.* at 285, 768 S.E.2d at 882.

Here, the trial court unquestionably complied with our mandate and considered whether to include Mr. Finn's possible annual bonus as part of its alimony determination. The court explained at the hearing that it chose not to do so because the record was insufficient for the court to find that Mr. Finn would continue to receive those annual bonuses going forward:

THE COURT: And I just didn't have enough evidence that, other than those two years that – the last two years that this bonus would – that he would receive or continue to receive the annual bonus, so I didn't include it.

I mean, I don't know if that's good enough for them [the Court of Appeals], but they said they needed more information, so I gave them a lot more information.

MS. FINN'S COUNSEL: So Judge just to be clear the finding –

THE COURT: Make two copies of that. Yeah, I'm not changing anything. I just beefed up what they [the Court of Appeals] told me. I did what I said –

MR. FINN'S COUNSEL: More findings.

THE COURT: -- which is give them more findings of fact, that's what I did, more findings of facts. Here's why I did what I did.

MS. FINN'S COUNSEL: And specifically your finding on the bonus was that because there had only been a two-year

FINN V. FINN

Opinion of the Court

pattern in the past, you didn't find enough evidence to continue to assume that he would get in the future?

THE COURT: Right, that may happen in the future. And I just don't know . . .

Based on this determination, the trial court made the following finding in its written order:

Plaintiff is eligible for an annual bonus. He has received a bonus for past 2 years around \$48,000 gross. There was no evidence presented as to the net amount of these 2 bonuses. There was a lack of evidence that Plaintiff had received beyond these two years or that he will receive an annual bonus in the future, therefore, the Court is not considering any bonus in the calculation of Plaintiff's income.

The trial court followed this Court's mandate on remand: it considered "whether to include plaintiff's annual bonus in its calculation of plaintiff's income" for purposes of alimony and chose not to do so because the court found the evidence was insufficient to reliably determine that past annual bonuses would continue into the future. *Finn*, 2018 WL 1386210, at *5. Although Ms. Finn points to some contrary evidence in the record, there was competent evidence to support the trial court's finding that it could not predict with any certainty the likelihood or amount of Mr. Finn's future annual bonuses. We are therefore bound by that finding on appeal. *Robbins v. Robbins*, 240 N.C. App. 386, 395, 770 S.E.2d 723, 728 (2015). In light of that finding, the trial court acted well within its sound discretion by declining to

consider the possibility of future annual bonuses in assessing the appropriateness of alimony. *Bookholt*, 136 N.C. App. at 249–50, 523 S.E.2d at 731.

II. Denial of Attorneys’ Fees

Ms. Finn next argues that the trial court erred in denying her claim for attorneys’ fees under N.C. Gen. Stat. § 50-16.4. Again, we reject this argument.

Section 50-16.4 provides that at “any time that a dependent spouse would be entitled to alimony . . . the court may, upon application of such spouse, enter an order for reasonable counsel fees, to be paid and secured by the supporting spouse in the same manner as alimony.” *Id.* Because, as explained above, we hold that the trial court properly denied Ms. Finn’s claim for alimony, the trial court also properly denied her request for attorneys’ fees under N.C. Gen. Stat. § 50-16.4. *See Puett v. Puett*, 75 N.C. App. 554, 558–59, 331 S.E.2d 287, 291 (1985).

Conclusion

We affirm the trial court’s order.

AFFIRMED.

Chief Judge McGEE and Judge YOUNG concur.

Report per Rule 30(e).