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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-566

Filed: 21 July 2020

Mecklenburg County, No. 16-CVD-9730 (CTM)

CARMEN COUSIN, Plaintiff,

v.

TERRY COUSIN, Defendant.

Appeal by Defendant from an order entered 13 July 2018 by Judge Christy T. Mann in Mecklenburg County District Court. Heard in the Court of Appeals 15 April 2020.

Plumides, Romano, Johnson & Cacheris, P.C., by Richard B. Johnson, for Plaintiff-Appellee.

Collins Family Law Group, by Rebecca K. Watts, for Defendant-Appellant.

DILLON, Judge.

Defendant Terry Cousin appeals from an equitable distribution order. For the following reasons, we affirm.

I. Background

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Carmen Cousin (“Wife”) and Terry Cousin (“Husband”) were married in January 1999 and separated in May 2016. They have two minor children.

Following their separation, Wife commenced this action against Husband for equitable distribution and other relief. Husband answered and counterclaimed for equitable distribution and other relief.

On 12 July 2018, following a three-day trial, the trial court entered an equitable distribution order. In its order, the trial court considered the parties’ 1965 Lincoln Continental (“Lincoln”) to be fully restored and assigned it a value of \$26,070.00. Further, the trial court distributed the parties’ Myrtle Beach property to Husband and ordered him to refinance the mortgage into his own name before receiving the deed from Wife.

Following entry of the trial court’s equitable distribution order, Husband timely appealed.

II. Analysis

Husband contends that the trial court erred in the valuation of the Lincoln and in making the distribution of the Myrtle Beach home to him *contingent upon* his refinance of the mortgage on that property.

An equitable distribution order is a final judgment of a district court in a civil action under N.C. Gen. Stat. § 7A-27(c) (2009). Thus, we have appellate jurisdiction.

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In an equitable distribution proceeding, there are three steps that the trial court must address when dividing parties' marital assets. Pursuant to N.C. Gen. Stat. § 50-20 (2009), the trial court must "(1) identify the property as either marital, divisible, or separate property after conducting appropriate findings of fact; (2) determine the net value of the marital property as of the date of the separation; and (3) equitably distribute the marital and divisible property." *Mugno v. Mugno*, 205 N.C. App. 273, 277, 695 S.E.2d 495, 498 (2010). Parties concede they take no issue with the first step and that their property was identified properly by the trial court. Husband appeals the valuation of the vehicle under step two and the equitable distribution of a piece of real property under step three.

A. Valuation of the 1965 Lincoln Continental

Husband first argues that there was no competent evidence in the record to support the value the trial court placed on the Lincoln. We disagree. We conclude that there was sufficient evidence in the record to support the trial court's valuation.

When reviewing an equitable distribution order, "this Court will uphold the trial court's written findings of fact [so] long as they are supported by competent evidence." *Id.* at 276, 695 S.E.2d at 498. *See also Fitzgerald v. Fitzgerald*, 161 N.C. App. 414, 419, 588 S.E.2d 517, 521 (2003) (noting that "the trial court is to determine the net fair market value of property based on the evidence offered by the parties"). "The mere existence of conflicting evidence or discrepancies in evidence will not

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justify reversal.” *Mrozek v. Mrozek*, 129 N.C. App. 43, 48, 496 S.E.2d 836, 840 (1998) (citation omitted).

At trial, Wife testified to the value of the Lincoln being \$26,070.00 based on an online classic car research tool. Our Supreme Court has held that unless it affirmatively appears that a property owner does not know the market value of his property, he is generally competent to testify as to its value. *N.C. State Highway Comm’n v. Helderman*, 285 N.C. 645, 652, 207 S.E.2d 720, 725 (1974); *see also Hill v. Hill*, 244 N.C. App. 219, 229, 781 S.E.2d 29, 37 (2015) (reaffirming that a property owner is generally competent to testify to the value of his property and there is no requirement that the owner be familiar with items of similar value).

She also offered a National Automobile Dealers Association (“NADA”) value of the Lincoln, which was admitted into evidence over Husband’s objection. The NADA tool showed that the “high retail” value of the vehicle was \$26,700.00, while the “average retail” value was \$9,240 (Husband’s opinion of value). Our Court has held that the NADA value is competent evidence as to a car’s value. *See State v. Dallas*, 205 N.C. App. 216, 220, 695 S.E.2d 474, 477 (2010).

Wife admitted that “I don’t know what fully restored is for classic cars. I don’t know what that means.” But she did testify that the Lincoln was in “excellent” condition and that her husband had substantially restored the vehicle by having it

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repainted, replacing the engine, adding new upholstery, rims and sound system, etc. Husband offered a picture of the car into evidence.

We hold that the NADA values offered were competent evidence. Admittedly, the evidence was conflicting as to the car's condition, but we further hold that there was competent evidence from which the trial court could find that the Lincoln was in "high retail" condition, rather than in "average retail" condition. Specifically, there was testimony from which the trial court could have found that the Lincoln fell within NADA's definition of "high retail," as a vehicle in "excellent condition overall[,] that had been "completely restored" where the "exterior paint, trim and mechanics are not in need of reconditioning" and that the "interior would be in excellent condition." Therefore, we affirm the trial court's valuation of that property.

Marital property is valued as of the date of separation, *Davis v. Davis*, 360 N.C. 518, 526-27, 631 S.E.2d 114, 120 (2006), which, in this case, was 2016. The court found that the fair market value of the vehicle was \$26,070.00 at the date of separation. The court specifically cites improvements made to the vehicle as stated in Wife's testimony.

Given that the trial court's findings are supported by competent evidence, we cannot say that the trial court's valuation of the parties' Lincoln was in error.

B. Distribution of Myrtle Beach Property

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Husband's second argument concerns a home the parties owned in Myrtle Beach, South Carolina. Husband argues that the trial court erred when it made the distribution of the parties' Myrtle Beach home to him *contingent* upon his refinance of the mortgage on that property. In one part of the order, the trial court made a present distribution of the home to Husband; however, in another part, the trial court stated that Wife did not have to "relinquish[] her interest" in the home unless and until Husband refinanced the mortgage on the home (taking Wife's name off the mortgage). Specifically, the trial court ordered as follows:

6. Defendant is hereby distributed the marital and divisible property ... set out herein below:

[Home in] Myrtle Beach, SC

* * *

9. Within 60 days of the date of the entry of this ED judgment, Defendant shall attempt in good faith to refinance the [Myrtle Beach] Property. [Court defines "good faith."] Contemporaneously with the closing on the refinance of the [Myrtle Beach] Property into Defendant's sole name, Plaintiff shall execute a quitclaim deed relinquishing her interest in the [] Property. The [] Property shall be Defendant's sole and separate property....

There is language in paragraph 9 that suggests that the trial court did not make an absolute distribution of the home. However, we conclude that the language speaks to the *method* in which the title would ultimately be transferred over, as in *Green v. Green*, 255 N.C. App. 719, 806 S.E.2d 45 (2017). In *Green*, Husband argued

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that because the trial court did not require Wife to remove Husband's name from the mortgage, it was not really distributed. *Id.* at 728, 806 S.E.2d at 52. However, our Court upheld the distribution because Husband's argument was based primarily on the method of distribution. *Id.* at 729-30, 806 S.E.2d at 52-53.

In the present case, whether or not Husband ever refinances the home, it is still his for all practical purposes. When he sells it, Wife will be required to sign a quitclaim deed at that time; and he will be entitled to all of the proceeds.

III. Conclusion

The trial court's valuation of the Lincoln was supported by sufficient evidence and is affirmed. The trial court made a distribution of the Myrtle Beach home and did not abuse its discretion in not requiring Wife to sign a quitclaim deed until the home was refinanced.

AFFIRMED.

Judges DIETZ and INMAN concur.

Report per Rule 30(e).