IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-831

Filed: 7 April 2020

Cumberland County, No. 15 CVD 1837

JASON LOGUE, Plaintiff,

v.

CHESSICA LOGUE and CHESSICA A. LOGUE, DDS, PA, Defendants.

Appeal by defendant from order entered 16 October 2018 by Judge A. Elizabeth Keever in Cumberland County District Court. Heard in the Court of Appeals 4 March 2020.

Smith Debnam Narron Drake Saintsing & Myers, L.L.P., by Alicia J. Jurney, and The Hardin Law Firm, PLLC, by Victoria G. Hardin, for defendants-appellants.

No brief filed on behalf of plaintiff-appellee.

BERGER, Judge.

Chessica Logue ("Defendant") appeals from an equitable distribution order. On appeal, Defendant contends the trial court erred in its valuation of Logue P.A. We affirm in part, and vacate and remand in part.

Factual and Procedural Background

Plaintiff and Defendant were married on December 29, 2004. Plaintiff was finishing his undergraduate education, and Defendant was attending dental school at the University of North Carolina at Chapel Hill.

After Defendant graduated from dental school in 2008, the parties moved to Fayetteville, North Carolina, where Defendant began a one-year residency at the Veterans' Administration Hospital. Defendant completed her residency in July 2009, two to three weeks before having a baby. Six weeks after their daughter was born, Defendant began work with Hedgecoe Dentistry. As an associate, Defendant earned approximately $5,000.00 per month with additional pay based on production. Defendant's annual salary as a dental associate was approximately $159,000.00. Hedgecoe Dentistry was owned by Dr. Joel Hedgecoe ("Joel") and his son, Dr. David Hedgecoe ("David").

Defendant's S corporation, Chessica A. Logue, DDS, PA ("Logue P.A."), purchased Joel's 50% interest in Hedgecoe Dentistry in December 2012 for $1,249,800.00. The purchase price, which was fully financed, was based on an appraisal by McGill and Hill Group, P.A. The purchase price was based on goodwill ($1,018,800.00), restrictive covenants ($10,000.00), supplies ($14,152.00), equipment and furniture ($196,848.00), and patient files ($10,000.00). As a result of the December 2012 purchase, Logue P.A. and David each owned 50% of Hedgecoe Dentistry.

To purchase its interest, Logue P.A. executed a promissory note in the amount of $999,800.00 to Joel, obtained a $200,000.00 loan from Bank of America, and agreed to assume $50,000.00 of a $100,000.00 loan from BB&T. In addition to the $1,249,800.00 purchase price, Hedgecoe Dentistry agreed to pay Joel $75,000.00. Logue P.A. was responsible for paying half of this amount. Defendant personally guaranteed all of these obligations.

While Logue P.A. was deciding whether to purchase Joel's interest in the dental practice, three pro forma financial estimates were prepared by McGill and Hill Group, to show the projected practice income and after-tax salaries for each dentist. One estimate anticipated Logue P.A.'s allocable collections would be $758,096.00 in 2014; $765,677.00 in 2015; $773,334.00 in 2016; and $781,067.00 in 2017. Logue P.A.'s income tax returns showed actual gross receipts in the amount of $490,650.00 in 2014; $611,181.00 in 2015; $577,520.00 in 2016; and $595,434.00 in 2017. According to the pro forma financial estimate, Defendant's anticipated salary was $256,373.00 in 2014; $261,538.00 in 2015; $266,578.00 in 2016; and $282,269.00 in 2017. Defendant testified that she received approximately $250,000.00 each year. Lester Sumner, of McFadyen and Sumner P.A., testified regarding Defendant's individual taxable income and taxable wages. Defendant's individual income, after taxes and deductions, was $198,173.00 in 2014; $187,360.00 in 2015; $285,380.00 in

2016; and $247,451.00 in 2017. Defendant's taxable wages were $247,118.00 in 2014; $247,060.97 in 2015; $257,895.00 in 2016; and $257,369.00 in 2017.

Plaintiff and Defendant separated on February 28, 2015, and subsequently divorced on July 14, 2016. As of the date of the parties' separation, Logue P.A. owed $834,521.00 on the promissory note to Joel, $181,270.00 on the Bank of America loan, and $14,442.00 to BB&T.

On March 10, 2015, Plaintiff commenced this action, asserting claims against Defendant for equitable distribution, post-separation support, and alimony. An order for post-separation support and interim equitable distribution was entered on July 30, 2015. On September 14, 2015, the trial court entered a consent order, establishing the parties' date of separation as February 28, 2015.

In December 2015, Plaintiff filed motions requesting David Hedgecoe, DDS, P.A., and Logue P.A. be joined as parties to this action. The trial court entered an order on March 28, 2016, joining Logue P.A. as a party defendant. On June 16, 2016, an equitable distribution discovery order was entered, providing that Plaintiff was entitled to obtain an appraisal of Logue P.A.; Plaintiff must begin the appraisal process by July 15, 2016; Plaintiff and Defendant would then exchange valuation reports concerning Logue P.A. within 10 days of receipt; Defendant would then provide the necessary documents for the appraisal upon request; and Defendant was entitled to obtain her own appraisal of Logue P.A.

Plaintiff filed a motion for additional time for discovery on January 24, 2017. The trial court denied Plaintiff's motion on April 17, 2017, finding that Plaintiff had failed to timely employ an appraiser to value Logue P.A. On May 7, 2017, Plaintiff requested a meeting with Defendant and the presiding judge. Defendants objected to the meeting, which ultimately occurred on May 10, 2017.

On June 9, 2017, the trial court entered an order denying Plaintiff's oral motion for emergency relief and for enlargement of time for discovery. On June 22, 2017, Plaintiff filed a motion for relief under Rule 59, contesting the trial court's order denying additional time for discovery. Plaintiff's motion was denied on July 19, 2017.

Plaintiff issued subpoenas to McFadyen & Sumner, P.A., the accounting firm that prepares tax returns for Defendant and Logue P.A., on April 28, 2017 and August 10, 2018. In an order entered on August 15, 2017, the trial court found the April subpoena was issued in an effort to subvert the court's prior discovery orders and quashed the subpoena in part. On August 22, 2018, Defendant and Logue P.A. filed an objection and motion to quash regarding the August subpoena. Defendant's motion was denied.

On August 24, 2018, Plaintiff filed a pre-trial motion seeking the appointment of an expert to appraise Logue P.A. The trial court denied Plaintiff's pre-trial motion and oral motion to continue the equitable distribution proceeding.

The question of Logue P.A.'s value arose at the equitable distribution hearing in August 2018. Although the entity was not appraised, Plaintiff contended the fair market value of Logue P.A. was $1,249,800.00. Defendant did not offer a value for Logue P.A., but testified that she believed Logue P.A. had either a negative value, or no value due to the restrictive covenants in the Hedgecoe Dentistry partnership agreement and the outstanding debt. Further, Defendant contended that the value of Logue P.A. had been adversely affected by competition from large corporate dental practices, staff turnover, and dental insurance procedural changes.

On October 16, 2018, the trial court filed its Order for Equitable Distribution (the "Order"), in which the trial court made the following finding of fact concerning valuation of Logue P.A.:

> At the time of the parties' separation, the $75,000.00 had been fully paid. The promissory note to Joel Hedgecoe had a balance of $834,521.00 and the loan at Bank of America had a balance of $181,270.00. Defendant/Wife's share of the BB&T loan had a balance of $17,108.01 as of December 31, 2014 and based on the corporate tax returns would have had a balance on the date of separation of approximately $14,442.00. Joel Hedgecoe continued to work in the practice after the sale and was paid by the practice as an associate. He continued to work past the time originally contemplated when the sale was consummated so that Defendant/Wife developed her own patients rather than taking over many of his. He has now slowed considerably and only works on Monday and Tuesday. Despite Joel Hedgecoe continuing past the anticipated date, Defendant/Wife is receiving income from the practice generally as anticipated. Her gross receipts have increased since the date of separation. Her gross receipts as reported

> by the S corporation were $490,660.00 in 2014, $611,181.00 in 2015, $577,520.00 in 2016, and $595,434.00 in 2017. Following a loss by the corporation in 2014 of $5,432.00, it showed taxable income of $1,404 in 2015, $105,147.00 in 2016 and $76,407.00 in 2017 in addition to Defendant/Wife's salary of $250,000.00 per year. Although the Court did not receive an independent appraisal of the value of Chessica Logue, DDS, PA, based on the information provided, it is clear that its value was at least the same as the purchase price less the debt or $219,565.00.

Using this valuation, the trial court ordered Defendant to pay a distributive award in the amount of $181,600.00 to Plaintiff to achieve an equal division of the parties' marital property. It is from this Order that Defendant appeals. On appeal, Defendant contends the trial court erred in its valuation of Logue P.A.

Analysis

Defendant argues the trial court's findings regarding Logue P.A.'s valuation were insufficient. We agree.

> The division of property in an equitable distribution is a matter within the sound discretion of the trial court. When reviewing an equitable distribution order, the standard of review is limited to a determination of whether there was a clear abuse of discretion. A trial court may be reversed for abuse of discretion only upon a showing that its actions are manifestly unsupported by reason.

Petty v. Petty, 199 N.C. App. 192, 197, 680 S.E.2d 894, 897-98 (2009) (internal citations and quotation marks omitted).

Pursuant to N.C. Gen. Stat. § 50-20, a court shall determine what qualifies as marital and divisible property, and shall provide for an equitable distribution of such

property between the parties. N.C. Gen. Stat. § 50-20(a) (2019). Pursuant to Section 50-21(b), "marital property shall be valued as of the date of the separation of the parties, and evidence of preseparation and postseparation occurrences or values is competent as corroborative evidence of the value of marital property as of the date of the separation of the parties." N.C. Gen. Stat. § 50-21(b) (2019).

Here, the trial court properly classified Logue P.A. as marital property. However, for the reasons explained herein, we find that the trial court did not make sufficient findings of fact regarding the valuation of Logue P.A. as of the date of separation.

"In valuing a marital interest in a business, the task of the trial court is to arrive at a date of separation value which *reasonably approximates* the net value of the business interest." *Offerman v. Offerman*, 137 N.C. App. 289, 292, 527 S.E.2d 684, 686 (2000) (citation and quotation marks omitted) (emphasis added). "It is generally agreed that in valuing a professional practice, or an interest therein, for equitable distribution, it should not make any significant difference whether the practice is conducted as a corporation or professional association, a partnership, or a sole proprietorship." *Poore v. Poore*, 75 N.C. App. 414, 419, 331 S.E.2d 266, 270 (1985).

> The valuation of each individual practice will depend on its particular facts and circumstances. In valuing a professional practice, a court should consider the following components of the practice: (a) its fixed assets including

> cash, furniture, equipment, and other supplies; (b) its other assets including accounts receivable and the value of work in progress; (c) its goodwill, if any; and (d) its liabilities. Among the valuation approaches courts may find helpful are: (1) an earnings or market approach, which bases the value of the practice on its market value, or the price which an outside buyer would pay for it taking into account its future earning capacity; and (2) a comparable sales approach which bases the value of the practice on sales of similar businesses or practices. Courts might also consider evidence of offers to buy or sell the particular practice or an interest therein.

Id. at 419-20, 331 S.E.2d at 270 (citations omitted).

> In ordering a distribution of marital property, a court should make specific findings regarding the value of a spouse's professional practice and the existence and value of its goodwill, and should clearly indicate the evidence on which its valuations are based, preferably noting the valuation method or methods on which it relied. On appeal, if it appears that the trial court reasonably approximated the net value of the practice and its goodwill, if any, based on competent evidence and on a sound valuation method or methods, the valuation will not be disturbed.

Id. at 422, 331 S.E.2d at 272.

In *Patton v. Patton*, 318 N.C. 404, 348 S.E.2d 593 (1986), the defendant owned an interest in Patco, Inc., a closely held corporation. Our Supreme Court held the trial court's valuation of Patco, Inc. was "too vague and conclusory to permit appellate review" based on the following reasoning:

> finding of fact No. 34 appears to be merely an enumeration of the factors considered by the trial court in determining the value of defendant's interest in Patco, lacking any indication of what value, if any, the trial court may have

> attributed to each of the enumerated factors. The trial court's conclusion that the value of defendant's interest in Patco "was at least $85,000" is nebulous, if not meaningless. The finding of fact is not clear as to how much more than $85,000 the interest may be worth. Distributions of this nature require more precise findings and determinations of ultimate facts.

Id. at 407, 348 S.E.2d at 595.

In *Fitzgerald v. Fitzgerald*, the plaintiff owned a 50% partnership interest in his surgical practice on the date of separation. *Fitzgerald v. Fitzgerald*, 161 N.C. App. 414, 416, 588 S.E.2d 517, 519 (2003). The plaintiff's expert valued the plaintiff's interest in his surgical practice at $89,500.00, based on quarterly financial reporting from one month prior to the date of separation. *Id.* at 416, 588 S.E.2d at 519. The defendant's expert valued plaintiff's ownership interest at $170,000.00. *Id.* at 416, 588 S.E.2d at 519. The trial court found the plaintiff's interest in the surgical practice to be $125,000.00 on the date of separation. *Id.* at 416, 588 S.E.2d at 519.

On appeal, this Court noted that although the "trial court apparently rejected both expert's (*sic*) valuations," the trial court "failed to identify the evidence on which it based its valuation or the method it used to reach its figure." *Id.* at 420, 588 S.E.2d at 522. This Court reversed and remanded "to the trial court for further findings of fact on the valuation of the plaintiff's interest in his surgical practice." *Id.* at 420, 588 S.E.2d at 522.

Here, the trial court's findings regarding the value of Logue P.A. were not specific. As in *Patton*, the trial court's conclusion was nebulous as it simply stated,

"it is clear that its value was at least the same as the purchase price less the debt or $219,565.00."

The trial court stated that it based its valuation "on the information provided." However, it is unclear what "the information provided" was. *See Fitzgerald*, 161 N.C. App. at 420, 588 S.E.2d at 522 (noting that the trial court "failed to identify the evidence on which it based its valuation"); *Robertson v. Robertson*, 174 N.C. App. 784, 789, 625 S.E.2d 117, 121 (2005) (vacating judgment because it contained "no findings regarding the evidence used to reach the $230,000.00 figure"). At the hearing, neither party provided appraisals of the value of Logue P.A. at the time of separation. Although both parties testified about the appraisal and three pro formas created in 2012, and their respective tax returns since 2014, both parties presented conflicting evidence as to what the value of Logue P.A. was at the time of separation and what they relied on in making their determinations. Even if the trial court relied on the information provided in those documents, the trial court's findings do not specify what values were relied on from those documents.

While there is no single best method for assessing the value of a business, "the trial court must determine whether the methodology underlying the testimony in support of the value of a marital asset is sufficiently valid and whether that methodology can be properly applied to the facts in issue." *Williamson v. Williamson*, 217 N.C. App. 375, 376, 719 S.E.2d 628, 630 (2011) (citation and quotation marks

omitted). Here, the methodology utilized by the trial court is unspecific. It appears that the trial court valued Logue P.A. as "the purchase price less the debt," but did not specify what values it may have attributed to each factor.

Logue P.A. purchased Joel's interest in December 2012 for $1,249,800.00, which accounted for goodwill, restrictive covenants, equipment and furniture, and patient files. Even though the trial court received evidence suggesting these values could have changed from the date of acquisition in 2012 through the date of separation in 2015, the trial court appears to have relied on the appraisal created in 2012. The court did not make findings explaining how the value of the assets included in the purchase price of Joel's interest had varied between the 2012 purchase price and the 2015 date of separation. Thus, we are unable to determine how the trial court arrived at the value of $219,565.00.

"The purpose for the requirement of specific findings of fact that support the court's conclusion of law is to permit the appellate court on review to determine from the record whether the judgment—and the legal conclusions that underlie it—represent a correct application of the law." *Patton*, 318 N.C. at 406, 348 S.E.2d at 595 (citation and quotation marks omitted). Because the trial court did not make sufficient findings regarding the value of Logue P.A. on the date of separation, we remand to the trial court to use specific and clear methodology in valuing Logue P.A. "Upon remand, the trial court may receive such additional evidence as is necessary

to allow it to arrive at a figure which reasonably approximates the valuation of [Logue P.A.]." *Offerman*, 137 N.C. App. at 297, 527 S.E.2d at 688-89 (quotation marks omitted).

Defendant also contests the trial court's admission, over Defendant's objection, of the 2012 pro forma statements into evidence under Rules 801 and 802 of the North Carolina Rules of Evidence. Defendant specifically contends the trial court erroneously relied on the pro forma statements in determining Logue P.A.'s value because it contains hearsay not subject to any exception. Defendant concedes the trial court did not expressly reference the pro forma statements in its findings. Nonetheless, Defendant argues the trial court improperly relied on the estimates because it made the following finding in the Order: "Despite Joel Hedgecoe continuing past the anticipated date, Defendant/Wife is receiving income from the practice generally as anticipated." We find the trial court did not err in admitting the pro forma statements.

"The admissibility of evidence at trial is a question of law and is reviewed *de novo*." *State v. McLean*, 205 N.C. App. 247, 249, 695 S.E.2d 813, 815 (2010). " 'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." N.C. Gen. Stat. § 8C-1, Rule 801(a), (c) (2019) (defining "statement" as "(1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by him as an

assertion."). Hearsay is generally inadmissible unless it falls within one of the exceptions recognized in the North Carolina Rules of Evidence or by statute. N.C. Gen. Stat. § 8C-1, Rule 802 (2019) ("Hearsay is not admissible except as provided by statute or by these rules.").

One such exception to hearsay is "admissions by a party opponent" pursuant to Rule 801(d). Rule 801(d) states: "A statement is admissible as an exception to the hearsay rule if it is offered against a party and it is . . . a statement of which he has manifested his adoption or belief in its truth." N.C. Gen. Stat. § 8C-1, Rule 801(d). "An admission may be express or implied from conduct." *FCX, Inc. v. Caudill*, 85 N.C. App. 272, 278, 354 S.E.2d 767, 772 (1987). Admissions may be implied from silence or a failure to respond in circumstances that call for a response, or from some affirmative act of a party by which the party relies upon or makes use of the statement of another for her own benefit or otherwise indicates that she believes it is true. *Id.* at 278-79, 354 S.E.2d at 772.

Here, the pro forma statements were admitted into evidence only after Defendant presented her personal opinion and understanding of their significance. Defendant testified that the pro forma statements were completed while she was negotiating the purchase of the dental practice, with the purpose of demonstrating that it was "profitable for both parties to make a shift in position, so that it's beneficial to the associate and to the selling previous dentist." Defendant met with the McGill

and Hill Group to review the pro formas and to gain an understanding of the anticipated profits. During that meeting, Defendant took handwritten notes on her personal pro forma statement. Based on the evidence, it appears as if Defendant did rely at least in part on the pro forma statements prior to Logue P.A. purchasing Joel's interest. Defendant's affirmative actions demonstrate that she believed the statements were true.

Because Defendant's actions demonstrate an implied adoptive admission, the pro forma statements were properly admitted as an exception to hearsay rule.

Conclusion

The trial court did not err when it admitted the pro forma statements into evidence as an exception to hearsay. Those portions of the Order which identify and value marital property, other than Logue P.A., are affirmed. We vacate those portions of the Order which value Logue P.A. and remand for a new valuation of Logue P.A. and entry of a new distribution order.

AFFIRMED IN PART; VACATED AND REMANDED IN PART.

Judges DIETZ and BROOK concur.

Report per Rule 30(e).