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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-959

Filed: 1 September 2020

Moore County, No. 13 CVD 001263

INGRID P. RAY, Plaintiff,

v.

GORDON T. RAY and LAWRENCE V. RAY, Defendants.

Appeal by Defendant Gordon T. Ray from order entered 3 May 2019 by Judge Don W. Creed, Jr., in Moore County District Court. Heard in the Court of Appeals 9 June 2020.

Mast, Johnson, Trimyer, Booker, Wright & Van Patten, P.A., by Lily Van Patten, for Plaintiff-Appellee.

Janvier Law Firm, PLLC, by Kathleen O'Malley, for Defendant-Appellant.

COLLINS, Judge.

Defendant Gordon T. Ray appeals from an Equitable Distribution, Alimony, and Attorney's Fees Order.¹ Defendant argues that the trial court erred in its

¹ Defendant Lawrence V. Ray is an adult son of the parties. He is not a party on appeal and our record does not indicate that he participated in the case before the trial court. We will refer to husband Gordon T. Ray as Defendant and son Lawrence V. Ray as Lawrence.

valuation of the marital estate, improperly ordered Defendant to pay a distributive award, erred in the amount of alimony ordered, and erred by awarding attorney's fees. We affirm in part, reverse in part, vacate in part, and remand the matter for further proceedings.

I. Background

Plaintiff Ingrid Ray and Defendant met while working at AT&T and married on 14 July 1978. As AT&T policy at the time prohibited employees from entering into personal relationships, Plaintiff left her job at AT&T and became a homemaker. On 7 September 2004, the couple purchased a house in Pinehurst, North Carolina. Sometime in 2006, they purchased a townhouse in New Jersey.

On 1 May 2013, the couple separated. On 28 October 2013, Plaintiff filed a complaint for divorce from bed and board, post-separation support, alimony, attorney's fees, equitable distribution, injunctive relief, interim distribution, trespass, and an accounting and constructive trust in the event the court finds that the marital funds were being improperly distributed. Defendant filed an answer and counterclaim for equitable distribution. On 11 March 2014, the trial court ordered Defendant to pay post-separation support to Plaintiff in the amount of \$2,500 per month. On 18 July 2014, Defendant deeded his interest in the New Jersey property to Plaintiff; the deed was recorded on 9 December 2014. Thereafter, Defendant filed an amended answer and counterclaim for equitable distribution.

During the litigation for the equitable distribution and alimony claims, Defendant twice filed for Chapter 13 bankruptcy relief, first on 19 February 2015 and again on 22 July 2016. Both suits were originally dismissed; but on 16 November 2016, the bankruptcy court entered an order reinstating the 22 July 2016 case and terminating the automatic stay imposed by 11 U.S.C. § 362 to allow Plaintiff to pursue her equitable distribution claim.

On 14 February 2019, the trial court notified the parties that a hearing would be held on 3 April 2019 on all issues. Defendant's counsel had been allowed to withdraw and although Defendant had notice that the case would be heard on 3 April 2019, he did not appear for the hearing.

On 3 May 2019, the trial court entered an Equitable Distribution, Alimony and Attorney's Fees Order ("Order"). The trial court determined that an unequal distribution was equitable and ordered both the Pinehurst and New Jersey properties to be distributed to Plaintiff, along with two bank accounts, the personal property in the New Jersey property, and a 1989 Mercedes vehicle. The trial court also ordered Defendant to pay Plaintiff a distributive award of \$75,000 within ninety days. The trial court further ordered Defendant to pay Plaintiff \$7,500 in past-due post-separation support. In addition, the trial court ordered Defendant to pay \$2,800 per month in alimony until the death of either party or Plaintiff's remarriage or

cohabitation. Finally, Defendant was ordered to pay \$6,390 of Plaintiff's attorney's fees within sixty days.

Defendant timely appealed.

II. Discussion

Defendant argues that the trial court erred by failing to value all of the marital estate, ordering Defendant to pay a distributive award, ordering an amount of alimony that was not supported by the findings, and awarding Plaintiff attorney's fees.

A. Preservation

As an initial matter, Plaintiff contends this appeal must be dismissed because Defendant failed to preserve any errors for appeal as he failed to appear in court to make specific objections to the evidence or the trial court's ultimate ruling. *See* N.C. R. App. P. 10(a)(1) (“[T]o preserve a question for appellate review, a party must have presented to the trial court a timely request, objection or motion, stating the specific grounds for the ruling the party desired to make.”).

However, Rule 10 allows an appellant to challenge whether “the judgment is supported by the verdict or by the findings of fact and conclusions of law.” *Id.* *See also Rumely v. Inman*, 62 N.C. App. 324, 324, 302 S.E.2d 657, 657 (1983). Here, Defendant's arguments involve whether the trial court's findings of fact are supported

by the evidence and whether those findings support the conclusions of law. Accordingly, Defendant's arguments are properly before us.

B. Equitable Distribution

1. Valuation of Marital Assets

Defendant first argues that the trial court erred by failing to identify, classify, and value all of the parties' property and debts, including: the New Jersey property, the pre-marital value of his pension, and personal property that the parties may possess.

We review a trial court's order for equitable distribution for abuse of discretion. *Robinson v. Robinson*, 210 N.C. App. 319, 322, 707 S.E.2d 785, 789 (2011). "When the trial court sits without a jury, the standard of review on appeal is whether there was competent evidence to support the trial court's findings of fact and whether its conclusions of law were proper in light of such facts." *Dechkovskaia v. Dechkovskaia*, 232 N.C. App. 350, 356, 754 S.E.2d 831, 836 (2014) (quoting *Kelly v. Kelly*, 228 N.C. App. 600, 601, 747 S.E.2d 268, 272 (2013)). The trial court's findings of fact are conclusive if they are supported by any competent evidence from the record. *Robinson*, 210 N.C. App. at 322, 707 S.E.2d at 789.

Under N.C. Gen. Stat. § 50-20 (2019), "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*, 260 N.C.

App. 467, 469, 818 S.E.2d 155, 157 (2018). “In determining the value of the property, the trial court must consider the property’s market value, if any, less the amount of any encumbrance serving to offset or reduce the market value.” *Robinson*, 210 N.C. App. at 323, 707 S.E.2d at 789 (citing *Alexander v. Alexander*, 68 N.C. App. 548, 550–51, 315 S.E.2d 772, 775 (1984)). The trial court’s findings “must be specific and detailed enough to enable a reviewing court to determine what was done and its correctness.” *Carr v. Carr*, 92 N.C. App. 378, 379, 374 S.E.2d 426, 427 (1988) (citing *Wade v. Wade*, 72 N.C. App. 372, 376, 325 S.E.2d 260, 266, *disc. review denied*, 313 N.C. 612, 330 S.E.2d 616 (1985)).

a. New Jersey property

Defendant argues that the trial court erred by “find[ing] the marital value of the New Jersey property to be zero (\$0) dollars” as no evidence was offered which would support the trial court’s valuation. Although evidence regarding the New Jersey property’s value and mortgage debt was presented, we agree that the trial court failed to make sufficient findings of fact regarding the value of the New Jersey property.

In the pre-trial order, Plaintiff valued the New Jersey property at \$330,000 while Defendant valued it at \$340,000; neither party listed any secured debt associated with the New Jersey property. At trial, Defendant did not present any evidence of the value of the New Jersey property, since he did not appear in court. In

his absence, Plaintiff testified that there was a mortgage on the New Jersey property and that “practically the whole amount[, m]aybe 300-and something-thousand dollars” was still owed on the mortgage. She also testified, and the trial court found, that the parties purchased the New Jersey property for their son, Carl, although it was titled to the parties and the mortgage was in their name, and that sometime in 2014, Defendant signed over his interest in the New Jersey property to Plaintiff. The trial court classified the New Jersey property as marital property and valued it at zero dollars.

Defendant does not challenge the classification of the New Jersey property as marital or the distribution of the property to Plaintiff. Defendant challenges only the valuation of the property as the trial court failed to explain how it calculated the marital value of the property at “zero (\$0) dollars.”²

Based on the evidence presented, the trial court may have valued the New Jersey property at zero dollars, perhaps due to Plaintiff’s testimony about the New Jersey property’s mortgage. The order before us does not so indicate because the trial court failed to explain the basis for its zero-dollar valuation, and this Court cannot make such findings of fact. Therefore, we must remand this matter for the trial court to make additional findings of fact as to the basis for its valuation of the New Jersey property.

² Plaintiff did not cross-appeal from the Order and did not challenge the classification of the New Jersey Property as marital.

b. Pre-marital value of pension

Defendant next contends that the trial court erred by failing to determine the pre-marital value of his pension. Defendant essentially contends his pension should be classified as partially separate and partially marital. However, Defendant failed to appear at the hearing and, as he concedes on appeal, “did not introduce any evidence of the pre-marital value of the pension.”³ *Embler v. Embler*, 159 N.C. App. 186, 191, 582 S.E.2d 628, 632 (2003). Thus, the trial court “had no evidence by which it could accurately calculate the pre-marital value of the pension. Defendant bore the burden of showing what portion of the pension was separate property and cannot now complain because he failed to meet this burden.” *Id.*

c. Personal property

Defendant next argues that the trial court erred in its distribution of the tangible personal property by ordering that “[e]ach party is awarded as their sole and separate property any and all personal property and household furnishings in their respective possessions[,]” because there was no evidence presented as to whether any such personal property exists. Defendant’s argument overlooks the pretrial order, which is based upon equitable distribution inventory affidavits submitted by the

³ Defendant’s equitable distribution inventory affidavit did not take any position on the classification of his pension; he listed only the value.

parties.⁴ The pretrial order includes a detailed listing of almost seven single-spaced pages of items of personal and household property. Defendant signed the pretrial order, and the pretrial order allowed each party to make modifications to their contentions and listings of property up to seven days prior to trial. Defendant did not make any modifications to the listing of property and did not present any evidence at trial.

Defendant cannot now claim that the trial court erred by dividing property which purportedly does not exist, where the property was listed in detail in the pretrial order. The relevant date for identification of property to be divided is the date of separation. Defendant does not claim the personal property did not exist as of the date of separation. Consequently, the trial court did not abuse its discretion and properly distributed the parties' marital tangible personal property.

2. Distributive Award

Defendant also argues that the trial court abused its discretion by ordering Defendant to pay a distributive award instead of an in-kind distribution.

“Subject to the presumption of subsection (c) of [N.C. Gen. Stat. § 50-20] that an equal division is equitable, it shall be presumed in every action that an in-kind distribution of marital or divisible property is equitable.” N.C. Gen. Stat. § 50-20(e).

⁴ The parties also had previously entered a consent order addressing the tangible personal property, agreeing for certain items to be distributed to each party.

“In any action in which the presumption is rebutted, the court in lieu of in-kind distribution shall provide for a distributive award in order to achieve equity between the parties.” *Id.*

“[I]n equitable distribution cases, if the trial court determines that the presumption of an in-kind distribution has been rebutted, it must make findings of fact and conclusions of law in support of that determination.” *Urciolo v. Urciolo*, 166 N.C. App. 504, 507, 601 S.E.2d 905, 908 (2004). “It is not enough that there may be evidence in the record sufficient to support findings which *could have been made*. The trial court must itself determine what pertinent facts are actually established by the evidence before it.” *Warren v. Warren*, 175 N.C. App. 509, 514–15, 623 S.E.2d 800, 804 (2006) (citations and quotations omitted).

“Further, N.C. Gen. Stat. § 50-20(c) enumerates distributional factors to be considered by the trial court.” *Urciolo*, 166 N.C. App. at 507, 601 S.E.2d at 908. “One of those factors is ‘[t]he liquid or nonliquid character of all marital property and distributive property.’” *Id.* (quoting N.C. Gen. Stat. § 50-20(c)(9)). “The trial court is required to make findings as to whether the defendant has sufficient liquid assets from which he can make the distributive award payment.” *Id.* (citing *Embler*, 159 N.C. App. at 188–89, 582 S.E.2d at 630).

Here, the trial court concluded an unequal distribution was equitable and ordered Defendant to pay a distributive award of \$75,000 within 90 days. However,

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the trial court failed to make the requisite findings of fact or conclusions of law to support a determination that the presumption of an in-kind distribution had been rebutted. *Id.* Nor did it “make findings as to whether [D]efendant has sufficient liquid assets from which he can make the distributive award payment.” *Id.* (citing *Embler*, 159 N.C. App. at 188–89, 582 S.E.2d at 630). Instead, it merely stated that “[i]n entering this Order, the Court has considered . . .the non-liquid character of *most* of the assets.”

Accordingly, we remand this case back to the trial court for further findings of fact and conclusions of law consistent with those findings to support a determination that the presumption of an in-kind distribution has been rebutted, and findings as to whether Defendant has sufficient liquid assets from which he can make the distributive award payment. On remand, if the trial court determines that an in-kind distribution is inequitable and Defendant has sufficient liquid assets, then the trial court may also consider whether Defendant may pay the distributive award over a period of time other than 90 days. *See* N.C. Gen. Stat. § 50-20(e) (“The court may provide that any distributive award payable over a period of time be secured by a lien on specific property.”)

C. Alimony

Defendant next contends that the trial court erred in awarding Plaintiff \$2,800 per month in alimony until the death of either party, or Plaintiff’s remarriage or

cohabitation, because the trial court failed to consider several factors under N.C. Gen. Stat. § 50-16.3A(b) and the trial court’s findings of fact do not support the amount of alimony awarded.

The amount of an alimony award is reviewed for abuse of discretion. *Barrett v. Barrett*, 140 N.C. App. 369, 371, 536 S.E.2d 642, 644 (2000). “In determining the amount, duration, and manner of payment of alimony, the court shall consider all relevant factors, including” those enumerated in N.C. Gen. Stat. § 50-16.3A(b). In its order, “the court shall set forth . . . the reasons for its amount, duration, and manner of payment [and] . . . shall make a specific finding of fact on each of the factors in [N.C. Gen. Stat. § 50-16.3A(b)] if evidence is offered on that factor.” N.C. Gen. Stat. § 50-16.3A(c) (2019).

Defendant asserts the trial court erred in its findings regarding the following factors under N.C. Gen. Stat. § 50-16.3A(b):

- (2) The relative earnings and earning capacities of the spouses;
- (3) The ages and the physical, mental, and emotional conditions of the spouses;
-
- (10) The relative assets and liabilities of the spouses and the relative debt service requirements of the spouses, including legal obligations of support;
-
- (13) The relative needs of the spouses;

N.C. Gen. Stat. § 50-16.3A(b).

With regard to Defendant's earning capacity, Defendant argues that the trial court erred by relying on his 2015 bankruptcy schedule when calculating his alimony obligations. "Alimony is ordinarily determined by a party's actual income, from all sources, at the time of the order." *Kowalick v. Kowalick*, 129 N.C. App. 781, 787, 501 S.E.2d 671, 675 (1998) (citation and emphasis omitted). However, if a trial court does not have sufficient evidence regarding a spouse's actual income because that information was not available before the court, it may use the spouse's prior years' income. *Diehl v. Diehl*, 177 N.C. App. 642, 650, 630 S.E.2d 25, 30 (2006).

Here, the trial court made the following findings regarding Defendant's income:

34. As of the date of separation, the Defendant Husband had income from social security in the amount of two thousand two hundred twenty one dollars (\$2,221.00) per month and a monthly pension from Verizon of four thousand five hundred forty eight dollars and seventy five cents (\$4,548.75) and dividends.

35. The Defendant Husband's 2015 Bankruptcy filing lists Defendant Husband's monthly income as eight thousand five hundred twenty dollars and forty four cents (\$8,520.44). The Pension benefit included as part of that total monthly income is listed as only four thousand seventy one dollars (\$4,071.00) per month. The income total includes four hundred dollars (\$400.00) a month as income from South Texas Syndicate Trust and monthly "Support from Family" at one thousand nine hundred dollars (\$1,900.00) a month.

Although a trial court may rely upon Defendant's previous bankruptcy filings to support its findings regarding his income, the order must still contain a "finding of fact establishing Defendant's income at the time the award [was] made." *Green v. Green*, 255 N.C. App. 719, 733, 806 S.E.2d 45, 55 (2017) (internal quotations omitted); *see also Wise v. Wise*, 826 S.E.2d 788 (N.C. Ct. App. 2019). Here, the order does not contain such a finding; thus, we are unable to determine if the trial court based the alimony award on Defendant's actual income at the time of the order.

Additionally, the trial court failed to explain why it chose to rely on Defendant's income from his 2015 bankruptcy schedule, which lists his income at \$8,520.44, instead of his 2016 schedule, which lists his income at \$6,651.44. Accordingly, we reverse the alimony award and remand for the trial court to make findings of fact regarding Defendant's "actual income, from all sources, at the time of the order." *Kowalick*, 129 N.C. App. at 787, 501 S.E.2d at 675.

Next, Defendant contends that while the trial court recited that it considered the age and health of the parties, it failed to make sufficient findings to show the relevance of these factors. N.C. Gen. Stat. § 50-16.3A(b)(2). Moreover, Defendant contends that no evidence was presented at trial regarding either party's age or his health, and the trial court made no specific findings regarding Plaintiff's health which might indicate a need for alimony.

We agree that the trial court failed to make sufficiently detailed findings explaining the relevance of the parties' ages and health in determining the alimony award. Here, Plaintiff submitted a police report which listed her date of birth. Thus, the trial court's finding that Plaintiff was seventy-seven years old is supported by the evidence. However, the trial court failed to explain how her age is relevant to the award of alimony. As for health, Plaintiff testified that she has difficulty hearing and has had surgery on both ears, she needed knee replacement surgery, and she required substantial dental work which would cost approximately \$16,000. Carl also testified regarding Plaintiff's poor health and need for medical care. Plaintiff also correctly notes that the trial court was able to observe her age and demeanor, and we note that the cold transcript substantiates Plaintiff's hearing difficulties. Plaintiff argues that these facts support her alimony award, and while this may be true, we are unable to review this issue because the trial court failed to make any findings showing how these facts support the award. N.C. Gen. Stat. § 50-16.3A(b)(3).

Additionally, Defendant contests the trial court's findings as to the parties' liabilities because the "only evidence of debt [found by the trial court] was the evidence regarding the mortgage on the Pinehurst Property," even though a mortgage existed on the New Jersey property. With regard to the New Jersey property, as we explained above, Plaintiff testified that their son Carl made all the payments on the mortgage. Thus, for purposes of alimony, the trial court may not have considered the

debt on the New Jersey property because the evidence showed neither Plaintiff nor Defendant had ever paid it.

As for the Pinehurst property, while the trial court acknowledged that Defendant was still liable for a mortgage on the property, it failed to consider the effect of that mortgage liability on the alimony award. Thus, the trial court should on remand make findings addressing the amount and effects of the Defendant's debts when calculating the alimony award.

Finally, Defendant argues that the trial court failed to consider his relative needs in determining the alimony award. N.C. Gen. Stat. § 50-16.3A(b)(13). Although Defendant failed to appear and present evidence, Plaintiff presented some evidence regarding Defendant's income, expenses, and debts—including Defendant's affidavits for both equitable distribution and alimony. The trial court made findings regarding Defendant's 2015 and 2016 bankruptcy documents, his income, and his depletion of the marital estate by paying "hundreds of dollars" a month to various other adults. These findings simply do not address either Plaintiff's reasonable need for support or Defendant's ability to pay in sufficient detail for this Court to review the amount of alimony awarded. Even though Defendant failed to appear or present evidence, the statute still requires the trial court to make these findings based upon the evidence available. N.C. Gen. Stat. § 50-16(b)(10), (13).

Accordingly, the alimony award is reversed, and we remand the matter back to the trial court to make the findings required under N.C. Gen. Stat. § 50-16(b) to support its alimony award.

D. Attorney's Fees

Lastly, Defendant argues that the trial court's award for attorney's fees should be reversed because it failed to follow certain statutory mandates when awarding those fees. "[T]he amount of the award rests within the sound discretion of the trial judge and is reviewable on appeal only for an abuse of discretion." *Francis v. Francis*, 169 N.C. App. 442, 446, 612 S.E.2d 141, 143 (2005).

"At any time that a dependent spouse would be entitled to alimony pursuant to [N.C. Gen. Stat. §] 50-16.3A, or postseparation support pursuant to [N.C. Gen. Stat. §] 50-16.2A, 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." N.C. Gen. Stat. § 50-16.4 (2019). "In its order awarding attorney's fees, the court must include findings as to the basis of the award, including: the nature and scope of the legal services, the skill and time required, and the relationship between the fees customary in such a case and those requested." *Robinson*, 210 N.C. App. at 337, 707 S.E.2d at 798. *See also Falls v. Falls*, 52 N.C. App. 203, 221, 278 S.E.2d 546, 558 (1981) ("To support an award of attorney's fees, the trial court should make findings as to the lawyer's skill, his hourly rate, its

reasonableness in comparison with that of other lawyers, what he did, and the hours he spent.”). Once these “statutory requirements have been met, the amount of attorney’s fees to be awarded rests within the sound discretion of the trial judge and is reviewable on appeal only for abuse of discretion.” *Robinson*, 210 N.C. App. at 337, 707 S.E.2d at 798 (internal quotation marks and citation omitted).

Here, the trial court found that Plaintiff was a dependent spouse and was entitled to alimony. However, the trial court failed to include findings regarding “the nature and scope of the legal services, the skill and time required, and the relationship between the fees customary in such a case.” *Id.* It merely found that the attorney’s fees were reasonable. Accordingly, we vacate the award of attorney’s fees and remand the matter for further findings.

III. Conclusion

For the reasons stated above, we affirm the Order as to the classification of the parties’ marital property. We reverse and remand the Order regarding valuation of the New Jersey property and the distributive award. We also reverse the alimony award and remand for additional findings, as noted above, to support any award of alimony.

We vacate and remand for additional findings regarding the award of attorney’s fees and for entry of a new order. On remand, the trial court may, in its discretion, receive new evidence.

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AFFIRMED IN PART; REVERSED IN PART; VACATED IN PART; AND
REMANDED.

Judge STROUD concurs in a separate opinion. Judge TYSON concurs.

Report per Rule 30(e).

No. COA19-959 – *Ray v. Ray*

STROUD, Judge, concurring.

Although I concur with the majority opinion, I write separately to note some unusual features of this case. I believe these issues are worth mentioning for two reasons. First, on remand, the trial court may have the opportunity to consider them. Second, although this opinion is unpublished and thus has no precedential value, parties often cite and rely upon unpublished cases, both before trial courts and before this Court. I would caution that this case should not be relied upon due to its oddities and the failure of the record to explain many of the facts relevant to the classification and valuation of the debt and properties in this case.

This case includes some rather unusual features and the record before us does not fully explain the potential relevance, if any, of those features. First, according to the initial pleadings filed by both parties, each claimed the other was incompetent. Wife testified that just prior to their separation, Husband pushed her into the wall in the shower, injuring her back. His behavior was odd, and she thought he might have Alzheimer's disease. She testified that she had two herniated discs which required surgery and she had to use a wheelchair. Wife testified that shortly after this incident, Husband had her committed to a hospital in order to avoid paying alimony. After she was released and returned to North Carolina, she found that Lawrence Ray had moved into her home in Pinehurst and would not allow her inside. She described

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Lawrence as “a very vicious, dangerous person, even though he’s my son. He’s been in prison, involved with The Mafia. He’s hurt a lot of people, beat up a lot of people. He even once beat up Gordon, so I don’t know why they are living together now.” The trial court’s findings of fact indicate that Lawrence moved into the Pinehurst home with Husband, apparently with “one or more adults,” and that Husband was giving them money on a regular basis—all of which would seem to support Wife’s claim of Husband’s incompetency. But since neither Husband nor Lawrence appeared at trial, we do not know what their response to these contentions would be.

The trial court’s order states the parties’ claims of the other’s incompetency were resolved by a consent order, although that consent order is not in our record. It is entirely possible that both parties were evaluated and determined to be competent and thus capable of entering into a valid consent order to resolve the issue of incompetency. This issue was not raised on appeal. Neither party was appointed a guardian ad litem or adjudicated incompetent, at least in North Carolina. But the record and the evidence presented at the hearing both suggest the parties’ mutual claims of incompetency were far from frivolous.

Considering the record and transcript in their entirety, this case presents a story of an elderly and infirm couple, both possibly incompetent, with two adult sons who may or may not be acting in their parents’ best interests. The evidence indicates Lawrence was estranged from the family for many years, but then he moved into the

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parties' home in Pinehurst and apparently brought other adults with him. The trial court found that as of July 2013, "Defendant Lawrence Ray was occupying the marital residence in Pinehurst[,] and that Husband and "one or more adults" were living in the Pinehurst house. Husband was "giving several hundreds dollars to third parties" after separation "and thereby depleted the marital assets for division." According to Wife, Lawrence was a criminal and had physically abused Husband, who was eighty-five years old when she filed her original complaint. Wife testified Lawrence was a party defendant to this case because she believed he had assisted Husband in hiding assets, but the record does not indicate that Defendant Lawrence Ray has participated in this case in any way. According to the evidence, the parties' other son, Carl, purchased the New Jersey townhome but it is titled to the parties. Carl is not a party to the case, although the trial court found that the parties purchased the New Jersey property for Carl, and he paid the mortgage on that property. The trial court also found that Carl, Wife, and Husband were the owners of the Pinehurst residence, but Carl quitclaimed his interest in the home to Wife and Husband in 2012. Husband has filed for bankruptcy twice since 2015, and there is a strong suggestion Husband may have been using his sons to hold property for him. But the classification of the New Jersey townhome as marital property was not challenged either at trial or on appeal.

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All of these factors, along with Husband's two bankruptcy filings, his failure to appear at the trial, and the deficiencies in both parties' Equitable Distribution Inventory Affidavits and the Pretrial Order, make this a perplexing case. The majority opinion has addressed the issues actually raised by the parties as well as it can be done on the record and briefs before us, so I concur. But this opinion is unpublished and nonprecedential for good reason, and it should be considered as such in the future.