

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

2021-NCCOA-373

No. COA20-503

Filed 20 July 2021

Mecklenburg County, No. 17-CVD-17119(THH)

WENDY RISSMANN, Plaintiff/Mother,

v.

MARTIN RISSMANN, Defendant/Father.

Appeal by Defendant from order entered 31 October 2019 by Judge Tracy H. Hewett in Mecklenburg County District Court. Heard in the Court of Appeals 12 May 2021.

Marcellino & Tyson, PLLC, by Matthew T. Marcellino and Danielle J. Walle, for Plaintiff-Appellee.

Thurman, Wilson, Boutwell & Galvin, P.A., by John D. Boutwell, for Defendant-Appellant.

DILLON, Judge.

¶ 1 Defendant Martin Rissmann appeals from an “Order for Alimony, Child Support, and Attorney Fees” entered 31 October 2019.

I. Background

¶ 2 Plaintiff Wendy Rissmann (“Wife”) and Defendant Martin Rissmann (“Husband”) were married in 2004 and separated in 2017. One child was born during

the marriage. On 8 September 2017, Wife filed a Complaint seeking custody, child support, post separation support, alimony, equitable distribution, and attorneys' fees. Defendant filed his Answer and Counterclaims. Following a trial, the court entered its final "Order for Alimony, Child Support, and Attorney Fees" (the "Order"). Defendant appeals from the Order.

II. Analysis

¶ 3 Husband makes several arguments on appeal. We address each in turn.

A. Alimony

¶ 4 Husband argues that the trial court erred in awarding alimony to Wife. We disagree.

¶ 5 Whether a party is entitled to alimony is reviewed *de novo* on appeal. *Rickert v. Rickert*, 282 N.C. 373, 379, 193 S.E.2d 79, 82 (1972). However, we review the *amount* of alimony awarded for an abuse of discretion. *Sayland v. Sayland*, 267 N.C. 378, 382, 148 S.E.2d 218, 221 (1966).

¶ 6 Our General Statutes provide that a 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[.]" N.C. Gen. Stat. § 50-16.3A(a) (2017). A "dependent spouse" is the spouse 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.” *Id.* § 50-16.1A(2). A “supporting spouse” is the spouse “upon whom the other spouse is actually substantially dependent for maintenance and support or from whom such spouse is substantially in need of maintenance and support.” *Id.* § 50-16.1A(5); *see also Carpenter v. Carpenter*, 245 N.C. App. 1, 6, 781 S.E.2d 828, 834 (2016) (“The trial court may properly conclude a party is a supporting spouse if it determines that he enjoys a surplus of income over expenses.”)

¶ 7 “Actually substantially dependent requires that the party seeking alimony would be actually unable to maintain the accustomed standard of living established before separation from his or her own means” and “substantially in need of maintenance” means that the “dependent spouse will be unable to meet future needs even if current needs are met.” *Collins v. Collins*, 243 N.C. App. 696, 701, 778 S.E.2d 854, 857 (2015).

¶ 8 In determining its award of alimony, the trial court shall consider the following factors (in pertinent part): any marital misconduct by either spouse, the relative earnings and earning capacity of the parties, the earned and unearned income of the parties, duration of the marriage, the contribution of one spouse to the education of the other, the parties’ standard of living during the marriage, the relative education of the spouses, the assets and liabilities of the parties, the property brought to the marriage, the contributions to the marriage by a spouse as a homemaker, the relative

needs of the spouses, and any other factor relating to the economic circumstances of the parties that the court finds to be just and proper. N.C. Gen. Stat. § 50-16.3A(b).

¶ 9

Under this assignment of error, Husband challenges fourteen (14) Findings of Fact, arguing that they do not support Conclusions of Law 6, 8, and 11. The challenged Findings of Fact cumulatively stated that (1) Wife was a dependent spouse and (2) Husband was a supporting spouse, had the ability to pay alimony, and had a monthly surplus. More specifically, the challenged findings detailed Husband's income, expenses (reasonable and unreasonable), and focused on Husband's Hilton Head Property, which he had been awarded by consent order. Conclusions of Law 6, 8, and 11 read as follows:

6. Mother is a dependent spouse and Father is a supporting spouse, as those terms are defined in [N.C. Gen. Stat § 50-16.1A.]

8. Per [N.C. Gen. Stat.] § 50-16.4, [Wife] is entitled to alimony, is a dependent spouse, and is without sufficient means to subsist during the prosecution of this lawsuit and to defray the necessary expenses, including attorney fees and costs.

11. [Husband] has the means and ability to pay alimony, child support (including arrears), and attorney's fees to [Wife] as set forth herein.

¶ 10

In challenging these Findings of Fact and Conclusions of Law, Husband specifically argues: (1) the trial court erred in determining that some of Husband's expenses were unreasonable and (2) the trial court erred in choosing the time period

of July 2017 to June 2018 to examine the finances of the Hilton Head Property.

¶ 11 As to Husband’s first argument, we have “long recognized that the determination of what constitutes the reasonable needs and expenses of a party in an alimony action is within the discretion of the trial judge, and he is not required to accept at face value the assertion of living expenses offered by the litigants themselves.” *Burger v. Burger*, 249 N.C. App 1, 5-6, 790 S.E.2d 683, 687 (2016); *see also Bookholt v. Bookholt*, 136 N.C. App. 247, 251, 523 S.E.2d 729, 732 (1999) (stating that a trial court “is not bound by the financial assertions of the parties and may resort to common sense and every-day experiences” in determining the parties’ reasonable expenses).

¶ 12 The trial court appeared to carefully consider the evidence presented and found many of Husband’s expenses to be reasonable. However, in its Findings 22 and 27, the trial court itemized the expenses it found to be unreasonable. Finding 22 concerned the Hilton Head Property, and included expenses such as landscaping, pest control, pool service and repairs, cleaning fees, and legal fees.¹ Finding 27 listed personal expenses, including house and lawn maintenance, a car loan taken out one

¹ Among the \$138,881.36 in yearly expenses the trial court found to be reasonable for the Hilton Head Property were the mortgage payment, insurance, repairs, cleaning fees, utilities, supplies, maintenance, and taxes.

month prior to trial, and certain debts.² We find no abuse of discretion in the trial court's findings as to Husband's reasonable and unreasonable expenses.

¶ 13 Further, Husband disagrees with the time period the trial court chose to evaluate the income and expenses of the Hilton Head Property, arguing that this resulted in a false inflation of his income. The trial court chose a full twelve-month span of July 2017 to June 2018 to examine the income and expenses for Husband's rental property. This timeframe accounted for an entire year of income and expenses which included both busy and uneventful rental periods for the beach property. We cannot conclude that the trial court abused its discretion in selecting this timeframe to evaluate the finances of the Hilton Head Property.

¶ 14 Ultimately, the trial court found that Wife's monthly net income after deductions was \$3,460.08, and that she had reasonable and necessary monthly expenses of \$6,476.13. Therefore, Wife had a monthly deficit of \$3,016.05, making her a dependent spouse. The trial court found that Husband's monthly net income after deductions was \$7,917.46, and he had reasonable and necessary monthly expenses of \$6,701.98. Therefore, Husband had a monthly surplus. For each party, the trial court considered properly admitted evidence, including paystubs and

² Among the \$6,701.98 in personal monthly expenses the trial court found to be reasonable were Husband's mortgage payment, utilities, food and supplies, expenses for his child, and certain debts.

testimony.

¶ 15 We conclude that the trial court made proper findings supported by the evidence in its award of alimony. It considered the factors set out in N.C. Gen. Stat. § 50-16.3A(b). The trial court’s findings in turn supported its conclusions of law. Accordingly, we affirm the award of alimony.

B. Child Support

¶ 16 Husband also argues that the trial court erred in its calculation of child support. We disagree.

¶ 17 “Child support orders entered by a trial court are accorded substantial deference by appellate courts and our review is limited to a determination of whether there was a clear abuse of discretion.” *Leary v. Leary*, 152 N.C. App. 438, 441, 567 S.E.2d 834, 837 (2002). “The ultimate objective in setting awards for child support is to secure support commensurate with the needs of the children and ability of the obligor to meet the needs.” *Smith v. Smith*, 247 N.C. App. 135, 150, 786 S.E.2d 12, 25 (2016).

¶ 18 Under this assignment of error, Husband challenges two Findings of Fact relating to the Hilton Head Property. Because Husband’s argument for overturning the child support award is the same as his alimony argument, we disagree for the same reasons. We find no abuse of discretion in the trial court’s award of child support.

C. Attorneys' Fees

¶ 19 Finally, Husband argues that the trial court erred in its award of attorneys' fees to Wife. We vacate and remand this portion of the Order to the trial court for further findings.

¶ 20 The determination of whether a spouse (1) is a dependent spouse, (2) is unable to subsist during the suit, and (3) is unable to defray the expenses of the suit are questions of law which we review *de novo*. *Clark v. Clark*, 301 N.C. 123, 136, 271 S.E.2d 58, 67 (1980). We review the amount of attorneys' fees awarded for abuse of discretion. *Hudson v. Hudson*, 299 N.C. 465, 472, 263 S.E.2d 719, 724 (1980).

¶ 21 Attorneys' fees are recoverable in a suit for alimony once the trial court determines that the spouse seeking alimony is the dependent spouse and is without sufficient means to "subsist during the prosecution of the suit and to defray the necessary expenses." *Owensby v. Owensby*, 312 N.C. 473, 475, 322 S.E.2d 772, 774 (1984); *see also* N.C. Gen. Stat. § 50-16.4 (providing for the recovery of attorneys' fees in an alimony suit).

¶ 22 Attorneys' fees are also recoverable in a child custody or support action for an "interested party acting in good faith who has insufficient means to defray the expense of the suit." N.C. Gen. Stat. § 50-13.6. However, attorneys' fees are generally *not* recoverable in an action for equitable distribution. *See Patterson v. Patterson*, 81 N.C. App. 255, 262, 343 S.E.2d 595, 600 (1986) ("[A]ttorneys' fees are not recoverable

in an action for equitable distribution so that, in a combined action, the fees awarded must be attributable to work by the attorneys on the divorce, alimony and child support actions.”).

¶ 23 Additionally, a trial court must also make findings “upon which a determination of the requisite reasonableness can be based, such as findings regarding the nature and scope of the legal services rendered, the skill and time required, the attorney’s hourly rate, and its reasonableness in comparison with that of other lawyers.” *Cobb v. Cobb*, 79 N.C. App. 592, 595, 339 S.E.2d 825, 828 (1986).

¶ 24 Under this assignment of error, Husband challenges Findings of Fact 47 and 50, arguing that they do not support Conclusions of Law 8, 9, 10, and 11. Findings 47 and 50 stated that Wife incurred substantial attorneys’ fees, acted in good faith, and that Husband had the ability to pay attorneys’ fees. Conclusions of Law 8, 9, 10, and 11 read as follows:

8. Per [N.C. Gen. Stat.] § 50-16.4, [Wife] is entitled to alimony, is a dependent spouse, and is without sufficient means to subsist during the prosecution of this lawsuit and to defray the necessary expenses, including attorney fees and costs.

9. Per [N.C. Gen. Stat.] § 50-13.6, [Wife] is an interested party acting in good faith and has insufficient means to defray the costs of the action herein.

10. [Wife] is entitled to an award of reasonable attorney fees. The amount of attorney’s fees set forth in the decretal portion of this Order is reasonable.

RISSMANN V. RISSMANN

2021-NCCOA-373

Opinion of the Court

11. [Husband] has the means and ability to pay alimony, child support (including arrears), and attorney's fees to [Wife] as set forth herein.

¶ 25 The trial court made the required statutory findings under N.C. Gen. Stat. § 50-16.4 and N.C. Gen. Stat. § 50-13.6 in that it found that Wife: (1) was a dependent spouse, (2) was without sufficient means to subsist during the suit and defray her expenses, (3) was an interested party acting in good faith, and (4) had insufficient means to defray the costs of the action herein.

¶ 26 However, the trial court did *not* make required findings as to “the nature and scope of the legal services rendered, the skill and time required, the attorney’s hourly rate, and its reasonableness in comparison with that of other lawyers.” *See Cobb*, 79 N.C. App. at 595, 339 S.E.2d at 828. The proper remedy is to remand this portion of the order for entry of these necessary findings. *See Owensby*, 312 N.C. at 477, 322 S.E.2d at 774-75 (remanding the attorneys’ fee award for lack of findings as to (1) hours of labor expended by attorneys, (2) customary charge for attorneys’ services, (3) novelty and difficulty of the questions of law, and (4) adequacy of the legal representation).

¶ 27 Further, the trial court did not sufficiently differentiate between attorneys’ fees awarded for Wife’s different claims. The Order awarded \$85,969.88 as attorneys’ fees to Wife in one lump sum “for her claims for child custody and alimony[.]” We

have remanded similar orders when a single lump award for multiple claims makes a proper review of reasonableness too difficult. *See Hill v. Hill*, 261 N.C. App. 600, 632, 821 S.E.2d 210, 232 (2018) (remanding an attorneys' fees award with instructions to separate the amount of fees awarded for each component of the case).

¶ 28 For example, under this assignment of error, Husband argues that the trial court ordered attorneys' fees related to child support be removed, but that the final award was only reduced by about \$5,000 in the revised fee schedule. Without more detailed findings related to the labor Wife's attorneys devoted to each claim, we are unable to sufficiently evaluate whether the resulting award was reasonable. This information should be included in the trial court's order, not merely in the record.

¶ 29 We conclude that the trial court made insufficient findings in its award of attorneys' fees and remand this portion of the order for further findings. On remand, the trial court should: (1) set forth the amount of attorneys' fees awarded as to each of Wife's claims³ and (2) make findings regarding the nature and scope of the legal services rendered, the skill and time required, the attorney's hourly rate, and its reasonableness in comparison with that of other lawyers.

III. Conclusion

¶ 30 We affirm the trial court's award of alimony and child support. We remand

³ This action should also ensure that any incorrectly included entries related to equitable distribution and child support are removed.

RISSMANN V. RISSMANN

2021-NCCOA-373

Opinion of the Court

the portion of the Order relating to attorneys' fees for the trial court to make additional necessary findings and corrections as noted above.

AFFIRMED IN PART, VACATED AND REMANDED IN PART.

Judges GRIFFIN and JACKSON concur.

Report per Rule 30(e).