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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-317

No. COA20-762

Filed 6 July 2021

Cabarrus County, No. 15 CVD 2160

BARBARA CORRIHER CLEMONS, Plaintiff,

v.

GEORGE BELL CLEMONS, Defendant.

Appeal by plaintiff from judgment entered 30 June 2020 by Judge Steven A. Grossman in Cabarrus County District Court. Heard in the Court of Appeals 28 April 2021.

Ferguson, Hayes, Hawkins & DeMay, PLLC, by Edwin H. Ferguson, Jr., for plaintiff-appellant.

No appellee brief filed.

DIETZ, Judge.

¶ 1 Plaintiff Barbara Clemons appeals the trial court's equitable distribution judgment. She contends that the trial court ordered an unequal distribution without making findings required by the equitable distribution statute.

¶ 2 As explained below, we agree that the trial court's unequal distribution is not supported by sufficient findings of fact. To support an unequal distribution, the trial

court must find that an equal distribution is not equitable. Here, the trial court found that an unequal distribution *is* equitable, but that is not the same as finding that an equal distribution is *not* equitable. We therefore vacate the trial court’s judgment and remand for further proceedings.

Facts and Procedural History

¶ 3 Plaintiff Barbara Clemons and Defendant George Clemons were married in 2003 and separated in 2015. In December 2017, the trial court entered an equitable distribution judgment ordering an equal division of the parties’ marital property. Plaintiff appealed to this Court.

¶ 4 In that first appeal, Plaintiff challenged the trial court’s findings that a townhome she purchased prior to the marriage had a “marital component” and thus that a portion of its value was marital property. We reversed the trial court’s equitable distribution judgment and remanded with instructions for the trial court to “enter a new order classifying the townhome as [Plaintiff’s] separate property and distributing the marital property and debts.” *Clemons v. Clemons*, 265 N.C. App. 113, 125, 828 S.E.2d 501, 509 (2019). We further provided that, “[s]ince we have reversed the classification and valuation of the most valuable asset included in the marital estate, and the trial court considered this factor as part of its analysis of the distributional factors, we remand for the trial court to reconsider whether ‘an equal division is not equitable.’” *Id.*

¶ 5 On 3 June 2020, with no new evidence presented by either party, the court conducted a hearing on remand. On 30 June 2020, the court entered a new equitable distribution judgment, adopting most of the original findings from its prior judgment. The trial court’s only new findings were that Plaintiff “owns the townhome as her separate property with a net value of at least \$70,000” and that, as a result, “she has significantly more assets than” Defendant for purposes of the distributional factor in N.C. Gen. Stat. § 50-20(c)(1). It then found that “[a]n unequal division of the marital property and marital debt is equitable,” distributing “70% of the negative marital estate” to Plaintiff and “30% of the negative marital estate” to Defendant. To carry out this 70/30 division, the trial court ordered Defendant to pay Plaintiff a distributive award of \$26,676.41. Plaintiff timely appealed.

Analysis

I. Challenge to unequal division

¶ 6 Plaintiff first argues that the trial court’s findings of fact do not support an unequal division of the marital assets. Specifically, Plaintiff contends that trial court made no “finding as to why an equal distribution is not equitable in the present case” before determining that an unequal division is equitable.

¶ 7 “Equitable distribution is vested in the discretion of the trial court and will not be disturbed absent a clear abuse of that discretion.” *Wiencek-Adams v. Adams*, 331 N.C. 688, 691, 417 S.E.2d 449, 451 (1992). In an equitable distribution order, the

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findings of fact “must support the determination that the marital property has been equitably divided.” *McIver v. McIver*, 92 N.C. App. 116, 127, 374 S.E.2d 144, 151 (1988) (citation omitted).

¶ 8 By law, there must be an “equal division” of marital property in an equitable distribution proceeding “unless the court determines that an equal division is not equitable.” N.C. Gen. Stat. § 50-20(c); *White v. White*, 312 N.C. 770, 775, 324 S.E.2d 829, 832 (1985). “[T]he statute is a legislative enactment of public policy so strongly favoring the equal division of marital property that an equal division is made *mandatory* unless the court determines that an equal division is not equitable. N.C.G.S. 50–20(c).” *Id.* at 776, 324 S.E.2d at 832.

¶ 9 As a result of this equal distribution doctrine, “to divide a marital estate other than equally, the trial court must first find that an equal division is not equitable and explain why.” *Lucas v. Lucas*, 209 N.C. App. 492, 504, 706 S.E.2d 270, 278 (2011). In *Lucas*, for example, this Court reversed and remanded an equitable distribution judgment because the trial court only found that “an unequal distribution of marital property *is* equitable rather than that an equal division by using net value of marital property *is not* equitable.” *Id.* at 503, 706 S.E.2d at 278 (emphasis added). The Court in *Lucas* explained that, given “the language of the trial court’s order, we cannot be assured that the trial court gave proper consideration to the policy favoring an equal division of the estate.” *Id.* at 504, 706 S.E.2d at 278. We held that, on remand, “the

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trial court must make the determinations required by N.C. Gen. Stat. § 50–20(c) and *White*. This remand does not mean that the trial court’s ultimate decision was in error—we simply need to have an order demonstrating consideration of the policies and factors established by the General Assembly.” *Id.*

¶ 10 Here, as in *Lucas*, the trial court found that an “unequal division of the marital property and marital debt is equitable,” but did not make any findings that an equal division was *not* equitable. This is a determinative omission because, on any given outcome, there can be more than one result that is equitable. Thus, to support an unequal distribution, the trial court must make findings that an equal distribution is not equitable, explain why, and then identify the appropriate unequal distribution and explain why that distribution is equitable. N.C. Gen. Stat. § 50-20(c).

¶ 11 The trial court’s judgment did only the latter; not the former. The judgment found that an “unequal distribution of the marital property and martial debt is equitable” and made corresponding findings explaining why the 70/30 unequal distribution was equitable. But the trial court’s order does not find that a 50/50 equal distribution was *not* equitable. Without that critical finding, the trial court’s judgment does not meet the statutory criteria for an unequal distribution. Accordingly, we must vacate the trial court’s judgment and remand to the trial court for further proceedings. *See Lucas*, 209 N.C. App. at 504, 706 S.E.2d at 278. On remand, the trial court, in its discretion, may enter a new order on the existing record,

or conduct any further proceedings that the court deems necessary.

II. Challenges to findings and distributive award

¶ 12 Plaintiff also argues that the trial court erred by finding that she owns the townhome as her separate property with a new value of at least \$70,000, and by finding that Plaintiff has significantly more assets than Defendant. Plaintiff also asserts that the trial court made a mathematical error in calculating the distributive award necessary to carry out the 70/30 division of the marital estate.

¶ 13 We need not reach these arguments because we are vacating the trial court's judgment, rendering these challenges moot. On remand, Plaintiff may assert these arguments to the trial court should these issues arise again.

Conclusion

¶ 14 For the reasons set forth above, we vacate the trial court's equitable distribution judgment and remand for further proceedings.

VACATED AND REMANDED.

Judges COLLINS and JACKSON concur.

Report per Rule 30(e).