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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-899

No. COA22-253

Filed 20 December 2022

Sampson County, No. 18 CVD 837

PAMELA LARUE WAGNER WILSON, Plaintiff.

v.

ERIC GENE WILSON, Defendant.

Appeal by Plaintiff from judgment and subsequent order denying a new trial entered by Judge Sarah C. Seaton in Sampson County District Court. Heard in the Court of Appeals 6 September 2022.

Lewis, Deese & Ditmore, LLP, by Renny W. Deese, for the Plaintiff-Appellant.

Elizabeth Myrick Boone, for the Defendant-Appellee.

DILLON, Judge.

¶ 1 Plaintiff Pamela Larue Wagner Wilson (“Wife”) and Defendant Eric Gene Wilson (“Husband”) were married in 1986 and separated in 2018. Shortly after the parties separated, Wife commenced this domestic action.

¶ 2 In January 2021, after a trial on the matter, the trial court entered its judgment awarding Wife alimony and other relief. Wife, though, moved for a new trial, but her motion was denied. Wife appeals from the judgment and from the order

denying her a new trial.

I. Analysis

¶ 3 Husband has moved to dismiss Wife’s appeal, arguing that Wife’s motion for a new trial, pursuant to Rule 59 of our Rules of Civil Procedure, was insufficient to toll the time within which she was required to notice her appeal from the judgment.

¶ 4 Without determining the merits of Husband’s motion, in our discretion we grant *certiorari* to address the merits of Wife’s appeal.

¶ 5 Wife essentially makes five arguments, which we address in turn.

A. Alimony

¶ 6 In resolving the equitable distribution claim, the trial court distributed the marital home, where Wife was residing post-separation, to Wife, but distributed the debt secured by that home to Husband. Separately, the trial court awarded Wife alimony in the amount of \$1,000.00 per month, as follows:

21. That Defendant Husband is hereby ordered to pay Plaintiff Wife alimony as follows:
 - a. Defendant shall continue to pay the [mortgage on Wife’s home], which is approximately \$2,108.95 per month, until said mortgage is paid in full; and
 - b. Upon the payment of the aforesaid mortgage the Defendant shall pay alimony to the Plaintiff in the amount of \$1,000.00 per month until as law provided.

On appeal, Wife interprets the above paragraph as an award of monthly alimony in

WILSON V. WILSON

2022-NCCOA-899

Opinion of the Court

the amount of \$2,108.95 per month, subject to reduction to \$1,000.00 per month in the future. She argues, though, that the trial court erred by requiring the \$2,108.95 monthly alimony award to be used to satisfy a debt obligation distributed to Husband as part of the equitable distribution. That is, since the trial court distributed the debt to Husband as part of the equitable distribution, it was error for the trial court to require Wife to use the alimony awarded to her to satisfy Husband's obligation.

¶ 7 We disagree with Wife's interpretation of the alimony paragraph. We construe the paragraph as awarding alimony of \$1,000.00 per month, to begin in the future (after Husband completes paying off his debt obligation). We do not construe the reference to Husband's monthly debt obligation in the first subparagraph as part of the alimony award itself. Rather, this reference merely describes the point when Husband's obligation to pay \$1,000.00 per month in alimony was to begin.

¶ 8 A trial court's decision on the amount of alimony to be awarded "will not be disturbed in the absence of a clear abuse of discretion." *Beall v. Beall*, 290 N.C. 669, 673, 228 S.E.2d 407, 410 (1976). And "[a] ruling committed to a trial court's discretion is to be accorded great deference and will be upset only upon a showing that it was so arbitrary that it could not have been the result of a reasoned decision." *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985). Furthermore, the trial court is afforded "discretion in determining the amount, duration, and manner of payment of alimony. The duration of the award may be for a specified or for an indefinite term."

WILSON V. WILSON

2022-NCCOA-899

Opinion of the Court

N.C. Gen. Stat. § 50-16.3A(b) (2021).

¶ 9

Our resolution of Wife’s argument requires us to interpret paragraph 21 of the judgment. Our Supreme Court has instructed that a judgment is to be interpreted “in the light of the pleadings, the issues, the findings of fact, and the conclusions of law[.]” *Queen City v. Carolina Coach*, 237 N.C. 697, 704, 76 S.E.2d 47, 52 (1953), and that “where a judicial ruling is susceptible to two interpretations, the court will adopt the one which makes it harmonize with the law properly applicable to the case,” *Alexander v. Brown*, 236 N.C. 212, 215, 72 S.E.2d 522, 523 (1952). Our Court recently reiterated these principles. *Faucette v. 6303 Carmel Rd.*, 242 N.C. App. 267, 273, 755 S.E.2d 316, 322 (2015) (although the trial court order expressly denied summary judgment as to only one of two defendants, interpreting it to deny summary judgment as to both defendants harmonized the judgment with applicable law).

¶ 10

We agree with Wife that it would have been inappropriate for the trial court to require her to apply alimony awarded to her to pay for Husband’s debt obligation. And the alimony provision in the judgment *could* be interpreted this way.

¶ 11

However, the judgment can be harmonized with applicable law by interpreting the first subparagraph as describing the event to trigger Husband’s obligation to begin paying \$1,000.00 per month in alimony to Wife, rather than being part of the alimony award itself. Indeed, subparagraph a. merely recites that Husband has the obligation to make the mortgage payments distributed to him in the equitable

distribution part of the judgment and does not otherwise expressly describe these monthly payments as “alimony”. But subparagraph b. expressly states that Husband “shall pay alimony to [Wife] in the amount of \$1,000.00 per month” Further, the fact that Wife’s death would not relieve Husband from his obligation to continue making the mortgage payments reflects that these mortgage payments are not alimony. In any event, the alimony award, including the specific start of alimony after the mortgage debt has been satisfied, was within the trial court’s discretion.

B. Retrospective Support

¶ 12 Wife argues that the trial court erred by denying her request for retrospective alimony or child support, that is, support for the period between the parties’ separation and the entry of the judgment. We disagree.

¶ 13 Our Supreme Court has held that “[t]he amount of alimony is determined by the trial judge in the exercise of his sound discretion and is not reviewable on appeal in the absence of an abuse of discretion.” *Quick v. Quick*, 305 N.C. 446, 453, 290 S.E.2d 653, 658 (1982). In addition, “[c]omputing the amount of child support is normally an exercise of sound discretion[.]” *Plott v. Plott*, 313 N.C. 63, 69, 326 S.E.2d 863, 867 (1985).

¶ 14 In determining the amount, duration, and manner of payment of alimony, the court considers “all relevant factors, including those in subsection b” such as the earnings of the spouses, standard of living during the marriage, and the debts of the

WILSON V. WILSON

2022-NCCOA-899

Opinion of the Court

parties. N.C. Gen. Stat. § 50-13.6A(b). Similarly, under the Child Support Guidelines, “[c]hild support calculations . . . are based on the parents’ current incomes at the time the order is entered.” *State ex rel. Midgett v. Midgett*, 199 N.C. App. 202, 207, 680 S.E.2d 876, 879 (2009).

¶ 15 Here, the trial court did not award Wife retroactive support as the trial court found that Husband had already paid Wife \$93,000.00 during their separation and that this amount was sufficient to support Wife and the children as well as providing Wife half of Husband’s pension.

¶ 16 Wife does challenge two of the trial court’s findings (FOF 26 and FOF 29) which pertain to the amount Husband paid during the period of separation. The evidence, however, supported these findings of fact:

¶ 17 In support of FOF 26, the evidence showed that Husband paid the mortgage on Wife’s mortgage (\$2,108.95 monthly) during the separation as well as provided her half of his pension. There was evidence that these payments totaled \$93,000.00 and were sufficient to support Wife. And in support of FOF 29, the evidence revealed that these payments were made for her benefit because they: (1) reduced the amount of debt on her home mortgage; (2) enabled her to live at the same standard of living she was accustomed to during the marriage; and (3) paid all of her bills as she had made no payments for any marital debts or living expenses from the time of separation through the time of trial.

¶ 18 We hold the trial court did not abuse its discretion in this regard.

D. Attorney's Fees

¶ 19 Wife also argues that the trial court erred in denying her attorney's fees.

¶ 20 Our Supreme Court has instructed that:

Before attorney's fees may be awarded in an alimony case to the dependent spouse under N.C. Gen. Stat. §§ 50-16.3, 50-16.4 . . . that person must have *insufficient means to defray the expense of the suit*; that is, as interpreted by cases, he or she must be unable to employ adequate counsel in order to proceed as litigant to meet the other spouse as litigant in the suit.

Hudson v. Hudson, 299 N.C. 465, 468, 263 S.E.2d, 719, 721 (1980) (emphasis added).

To determine whether a plaintiff has insufficient means to defray the expense of litigation, "a court should generally focus on the disposable income and estate of just that spouse, although a comparison of the two spouses' estates may sometimes be appropriate." *Van Every v. McGuire*, 348 N.C. 58, 62, 497 S.E.2d 689, 691 (1998). However, an award of reasonable counsel fees is not mandatory. N.C. Gen. Stat. § 50-16.4 (2021). "[T]he guiding principle behind the allowance of counsel fees is to enable the dependent spouse, as litigant, to meet the supporting spouse, as litigant, on substantially even terms by making it possible for the dependent spouse to employ adequate and suitable legal representation." *Clark v. Clark*, 301 N.C. 123, 136, 271 S.E.2d 58, 67 (1980).

¶ 21 Based on its findings, the trial court did not abuse its discretion by denying

Wife's request for attorney's fees.

E. Motion for a New Trial

¶ 22 Finally, Wife argues that the trial court abused its discretion by denying her motion for a new trial. We disagree.

¶ 23 Our Supreme Court has instructed that:

It has been long settled in our jurisdiction that an appellate court's review of a trial judge's discretionary ruling either granting or denying a motion to set aside a verdict and order a new trial is strictly limited to the determination of whether the record affirmatively demonstrates a manifest abuse of discretion by the judge.

Worthington v. Bynum, 305 N.C. 478, 482, 290 S.E.2d 599, 602 (1982); *see Goldston v. Chambers*, 272 N.C. 53, 59, 157 S.E.2d 676, 680 (1967); *Bryant v. Russell*, 266 N.C. 629, 146 S.E.2d 813 (1966).

¶ 24 Because Wife failed to show that the trial court erred, we conclude that the trial court did not err in denying her motion for a new trial.

III. Conclusion

¶ 25 The trial court did not abuse its discretion by awarding Wife monthly alimony payments to begin after her mortgage is paid in full. The trial court did not err by denying Wife's request for retrospective support. All findings challenged by Wife are supported by the evidence. The trial court did not abuse its discretion by denying Wife's request for attorney's fees. And the trial court did not abuse its discretion by

WILSON V. WILSON

2022-NCCOA-899

Opinion of the Court

denying Wife's motion for a new trial. Accordingly, we affirm the judgment and subsequent order denying Wife's motion for a new trial.

AFFIRMED.

Judges MURPHY and INMAN concur.

Report per Rule 30(e).