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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-1070

Filed 05 September 2023

Mecklenburg County, No. 19-CVD-3065

RONALD CLARK DeATLEY, Plaintiff,

v.

CHRISTINE LOUISE DeATLEY, Defendant.

Appeal by Plaintiff and cross-appeal by Defendant from a judgment and order entered 12 January 2022 by Judge Jena P. Culler in Mecklenburg County District Court. Heard in the Court of Appeals 8 August 2023.

Wofford Burt, PLLC, by J. Huntington Wofford and Rebecca B. Wofford, for Plaintiff-Appellant/Cross-Appellee.

James McElroy & Diehl, P.A., by Preston O. Odom, III, and Haley E. White, for Defendant-Appellee/Cross-Appellant.

RIGGS, Judge.

Plaintiff Ronald Clark DeAtley and Defendant Christine Louise DeAtley both appeal from an equitable distribution order and judgment awarding an unequal division of the marital estate in favor of Defendant. On appeal, Plaintiff argues that the trial court's findings in support of the unequal distribution are either unsupported by the evidence, improper, or insufficient, while Defendant asserts that the trial

court's valuation of the marital home at separation and distribution are likewise in error. After careful review, we agree with the parties that several findings in the trial court's order are erroneous and remand is required for further findings of fact appropriately resolving the equitable distribution.

I. FACTUAL AND PROCEDURAL HISTORY

Plaintiff and Defendant married on 1 May 2010 and separated on 7 March 2019. One child was born of the marriage. Prior to the marriage, the parties purchased a home together in Cornelius, North Carolina, which became the marital residence.

On 15 February 2019, Plaintiff filed a complaint for child custody, child support, and attorney's fees. Defendant filed an answer and counterclaims for child custody, child support, and equitable distribution on 15 March 2019. In her claim for equitable distribution, Defendant alleged that an unequal distribution of the marital property in her favor would be equitable. Plaintiff filed a Verified Amended Complaint that included a claim for an unequal equitable distribution on 20 March 2019.

Both parties filed equitable distribution affidavits. On 24 June 2019, the parties entered into a Temporary Parenting Agreement and agreed to share joint legal and physical custody of the minor child, with each party having physical custody 50% of the time. The parties also filed a pretrial order and schedule ahead of the equitable distribution hearing, which included their valuations of every item of

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marital and divisible property. The pretrial order stated that any agreed-upon valuations in the schedule were stipulations and would not require further evidence at trial.

The trial court held a hearing on the parties' equitable distribution claims on 20 July 2021. The parties called their own expert witnesses to testify about the value of the marital residence. Plaintiff called Matt Sarver, a real estate agent hired by Plaintiff. The trial court accepted Mr. Sarver as an expert witness in comparative market analysis over two objections from Defendant's counsel. Mr. Sarver testified that the current value of the marital residence was \$1.3 million, and his comparative market analysis report was entered into evidence. Defendant called Matthew McDonald, a residential real estate appraiser. The parties stipulated that Mr. McDonald was an expert in residential real estate appraisals. Mr. McDonald testified that he appraised the house for the first time on 7 March 2019, and that the value as of that date was \$775,000. Mr. McDonald testified that he appraised the house for a second time on 8 July 2021, and that the value as of that date was \$1,135,000.

The trial court also heard testimony from both parties relating to the marital and separate property as well as damage done to the marital residence by the Plaintiff after the date of separation.

The trial court entered its equitable distribution judgment and order on 12 January 2022. The order included findings of fact related to all the marital and divisible property owned by the parties. Notably, the trial court found that the value

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of the marital residence on the date of separation was \$1,126,746 and that the current value was \$1,301,353. The trial court stated that it “considered all the factors set forth in N.C.G.S. § 50-20(c)” and made the following findings regarding the relevant distributional factors:

47a. The parties currently exercise 50/50 custody of their minor child and Defendant/Wife has resided in the former marital residence since the date of separation and wants to keep possession of the house. There is value in the child having some consistency by living in the child’s home one-half of the time.

47b. It is difficult to value the marital residence in the current market conditions.

47c. Plaintiff/Husband damaged the marital residence by busting in doors and breaking door frames.

47d. Plaintiff/Husband appears to have paid off non-marital debt close to the date of separation thereby reducing the marital assets.

The trial court also found that an unequal division of the marital estate was equitable and that it would be equitable to distribute 55% of the marital estate to Defendant and 45% to Plaintiff. To effectuate this distribution, the trial court found that Defendant should pay Plaintiff a cash distributive award of \$361,082.06. The trial court did not make a finding as to the total value of the marital estate. The trial court distributed the marital residence and mortgage to Defendant.

Plaintiff filed his notice of appeal on 10 February 2022. Defendant filed a notice of cross-appeal eight days later.

II. ANALYSIS

Plaintiff asserts that the unequal distribution award lacks sufficient and proper findings, arguing that: (1) Findings of Fact 47a and 47b are not findings authorized by N.C. Gen. Stat. § 50-20(c) in support of an unequal distribution; (2) Findings of Fact 47c and 47d are too vague to constitute proper findings; and (3) the trial court failed to make findings on other statutory factors for which evidence was presented. Defendant disputes Plaintiff's first two arguments but agrees that the trial court failed to make explicit findings on several distribution factors established by the evidence—all favoring Defendant, in her view—in ordering an unequal distribution. Defendant further argues that there was insufficient evidence to support the trial court's valuation of the marital home at separation and distribution. We agree with the parties insofar as: (1) Finding of Fact 47d is not a proper finding of fact; (2) the trial court failed to make findings on distributional factors for which evidence was presented; and (3) the trial court's valuation of the marital home at the time of separation is unsupported by the evidence. For these reasons, we vacate those portions of the trial court's order and remand for further findings and proceedings not inconsistent with this opinion.

A. Standards of Review

We review a trial court's equitable distribution order for abuse of discretion. *Bodie v. Bodie*, 239 N.C. App. 281, 286, 768 S.E.2d 879, 883 (2015). When a party

challenges findings of fact, “we are strictly limited to determining whether the trial judge’s underlying findings of fact are supported by competent evidence, in which event they are conclusively binding on appeal, and whether those factual findings in turn support the judge’s ultimate conclusions of law.” *Comstock v. Comstock*, 240 N.C. App. 304, 312, 771 S.E.2d 602, 608-09 (2015) (citations and quotation marks omitted). Conclusions of law are, unlike the findings of fact, reviewable *de novo*. *Brown v. Brown*, ___ N.C. App. ___, ___, 886 S.E.2d 656, 662 (2023). Questions of statutory construction are likewise reviewed *de novo*. *Read v. Read*, ___ N.C. App. ___, ___, 886 S.E.2d 579, 583 (2023).

B. Plaintiff’s Challenges to Findings 47a-47d and the Unequal Distribution

Plaintiff first challenges Findings of Fact 47a and 47b as improper considerations outside the scope of N.C. Gen. Stat. § 50-20(c). He then asserts that Findings of Fact 47c and 47d are too vague to constitute proper findings. Finally, he argues that the trial court failed to make findings on other dispositional factors for which evidence was presented. We address each contention in turn.

1. Findings of Fact 47a and 47b

N.C. Gen. Stat. § 50-20(c) establishes eleven discrete factors and one “catch-all” provision for consideration in ordering an unequal distribution. N.C. Gen. Stat. § 50-20(c)(1)-(12) (2021). Among those enumerated factors is “[t]he need of a parent with custody of a child or children of the marriage to occupy or own the marital

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residence and to use or own its household effects.” *Id.* § 50-20(c)(4). If not contained in the eleven specifically enumerated factors, a trial court may consider “[a]ny other factor which the court finds to be just and proper,” *id.* § 50-20(c)(12), so long as it is “relevant to the marital economy,” *Smith v. Smith*, 314 N.C. 80, 87, 331 S.E.2d 682, 687 (1985). The “catch-all” provision thus applies to any other unenumerated factor, considered in the trial court’s discretion, that is “related to the financial circumstances of the marriage.” *Hill v. Hill*, 229 N.C. App. 511, 525, 748 S.E.2d 352, 362 (2013).

Here, the trial court found that Defendant’s joint custody of the parties’ daughter and desired receipt of the marital home weighed in favor of an unequal distribution. The finding specifically linked Defendant’s receipt of the marital home to her custodial needs, noting that it would benefit the joint-custody arrangement. Contrary to Plaintiff’s argument that joint custody cannot be considered under N.C. Gen. Stat. § 50-20(c)(4), the trial court’s finding falls within the plain language of the statute, which in no way restricts its application to sole custody arrangements. Superimposing the word “sole” into the statute would add new substantive language that meaningfully alters the statute’s scope, and we may not “insert words not used in the relevant statutory language during the statutory construction process.” *Midrex Techs., Inc. v. N.C. Dep’t. of Revenue*, 369 N.C. 250, 258, 794 S.E.2d 785, 792 (2016) (citations and quotation marks omitted). Nor can we say that the trial court’s finding is wholly divorced from the economics of the marriage. *Cf. Burnett v. Burnett*, 122

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N.C. App. 712, 716, 471 S.E.2d 649, 652 (1996) (“The need of a spouse to occupy the marital residence, *unless it involves a spouse with custody of the children, N.C.G.S. § 50-20(c)(4)*, does not relate to the economic condition of the marriage” (emphasis added)). The trial court received evidence concerning the living arrangements of the parties, Defendant’s liabilities for the marital home and related repairs, and the household belongings of each—including as they related to the care of the parties’ daughter. For these reasons, we hold that Finding of Fact 47a was proper.

We similarly hold that Finding of Fact 47b is proper. Assuming that it does not fall within any of the statutorily enumerated factors, it is “relevant to the marital economy.” *Smith*, 314 N.C. at 87, 331 S.E.2d at 687. Indeed, the parties’ marital home was the single largest marital asset—however valued by the parties’ conflicting evidence¹—in this case. Any uncertainty in the valuation of and ability to lend against or sell the property undoubtedly bears upon the marital economy. *Cf.* N.C. Gen. Stat. § 50-20(c)(10) (enumerating difficulty in evaluating business interests as a distributional factor). So, too, does the difficulty of determining its value for purposes of distribution as a marital asset. *See Mugno v. Mugno*, 205 N.C. App. 273, 277, 695 S.E.2d 495, 498 (2010) (recognizing that equitable distribution requires valuation and division of marital assets). We therefore leave Finding of Fact 47b

¹ Relatedly, the hotly contested valuation of the marital home, as well as testimony concerning the difficulty of appraising real property during the substantial market volatility at the time of the hearing, provided sufficient evidence to support this finding of fact.

undisturbed.

2. Findings of Fact 47c and 47d

Plaintiff next asserts that Findings of Fact 47c and 47d are too vague to constitute proper findings. As to the former, he contends that absent evidence of and findings on the economic impacts of the damage to the home, Finding of Fact 47c cannot support the equitable distribution award. But the trial court heard testimony from Defendant that she incurred costs trying to “band-aid” some of the damage and that one of the destroyed door frames “can’t be replaced.” The trial court was not required to phrase Finding of Fact 47c in any particular manner, *Rosario v. Rosario*, 139 N.C. App. 258, 267, 533 S.E.2d 274, 279 (2000), and we can discern from both the evidence and the finding itself that Finding of Fact 47c was a proper determination relating to Plaintiff’s “[a]cts . . . to waste, neglect, [or] devalue . . . the marital property . . . during the period after separation of the parties and before the time of distribution.” N.C. Gen. Stat. § 50-20(c)(11a).

Though we reject his other arguments, we do agree with Plaintiff that Finding of Fact 47d is so vague as to be improper. Specifically, the finding purports to find only that Plaintiff “appears to have paid off non-marital debt close to the date of separation thereby reducing the marital assets.” But whether a party *seems* to have done something is not a finding that the party *did* do something: “Findings of fact are statements of *what happened* in space and time.” *State ex rel. Utilities Comm. v. Eddleman*, 320 N.C. 344, 351, 358 S.E.2d 339, 346 (1987) (emphasis added). A proper

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finding of fact is thus one that sets forth what actually occurred rather than what merely appears to have transpired. *See, e.g., Davis v. Davis*, 11 N.C. App. 115, 117, 180 S.E.2d 374, 375 (1971) (“Where . . . it becomes incumbent of the trial court to make findings of fact, the court should make its own determination as to what pertinent facts are actually established by the evidence, rather than merely reciting what the evidence may tend to show.”). And, for purposes of the equitable distribution factors, we are concerned with whether Plaintiff truly did use marital assets to pay off non-marital debts—a fact for which there is conflicting evidence. *See Smith*, 314 N.C. at 88, 331 S.E.2d at 687 (“[T]he only fault or misconduct that is ‘just and proper’ under N.C.G.S. 50-20(c)(12) is that which dissipates or reduces marital property for nonmarital purposes. . . . Such economic misconduct, *if proved*, is only one factor for the court to consider[.]” (citations omitted) (emphasis added)).

Evidence does exist in the record sufficient to find that Plaintiff did engage in this economic misconduct, but only the trial court is empowered to resolve the conflicts in the evidence in making such a finding. *Carolina Mulching Co., LLC v. Raleigh-Wilmington Invs. II, LLC*, 272 N.C. App. 240, 246, 846 S.E.2d 540, 545 (2020). Because Finding of Fact 47d only finds what appears to have happened, “it fails to make the ultimate finding[] of fact required for resolving [the] disputed issue[].” *Id.* (citations omitted). We therefore hold that Finding of Fact 47d is not a proper finding of fact supporting the unequal distribution and vacate that finding as a result.

3. Other Distributional Factors

Plaintiff brings a final challenge to the equitable distribution award on the basis that the trial court failed to make findings as to all factors for which evidence was presented. Specifically, he contends that evidence was introduced—but no distributional findings were made—concerning: (1) the parties’ incomes, property, and liabilities; (2) the duration of the marriage; (3) the parties’ expected retirement compensation; (4) the tax consequences to Plaintiff should he liquidate his retirement accounts; and (5) the contribution of separate funds to acquire the marital property. Defendant asserts, and we agree, that Plaintiff has failed to argue or demonstrate prejudice as to several of these arguments.² *See Lawing v. Lawing*, 81 N.C. App. 159, 162, 344 S.E.2d 100, 104 (“The party asserting error must show from the record not only that the trial court committed error, but that the aggrieved party was prejudiced as a result.”). We therefore hold that the trial court did not reversibly err in failing to make distributional findings concerning those factors for which no prejudice has

² Beyond arguing lack of prejudice, Defendant alternatively argues pursuant to N.C. R. App. P. 28(c) that the trial court’s failure to make distributional findings on the parties’ separate estates and retirement accounts prejudiced her insofar as it deprived her of an alternative basis in law to support the 55/45 distributional split in her favor. But, assuming Defendant is correct, we cannot say that the trial court would order that same split if those findings had been made; indeed, it is conceivable that the trial court could exercise its discretion to enter a distribution that is even more favorable to Defendant in light of these factors. In any event and as discussed *infra*, the trial court’s consideration of an improperly made finding on Plaintiff’s possible misuse of marital assets and failure to make findings concerning the parties’ separate contributions to the marital home both require remand for new findings and reevaluation of the unequal distribution independent of Defendant’s alternative Rule 28(c) argument. We therefore decline to affirm the equitable distribution award entered by the trial court on this alternative basis.

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been shown, namely consideration of: (1) the parties' incomes, property, and liabilities; (2) the duration of the marriage; and (3) the parties' expected retirement compensation.

As for potential tax consequences, Plaintiff claims only that he would have to pay penalties and taxes in the event he liquidated his retirement accounts. Our caselaw unambiguously demonstrates that such speculative consequences are not appropriate considerations for equitable distributions. *See, e.g., Wilkins v. Wilkins*, 111 N.C. App. 541, 552-53, 432 S.E.2d 891, 897 (1993) (holding no potential tax consequences appropriate for consideration at equitable distribution arose when the "funds could be withdrawn from plaintiff's retirement plans only upon the occurrence of certain events, none of which had occurred on or before the date of separation or the date of the hearing, and many of which could not occur until at least several years after" judgment); *Harvey v. Harvey*, 112 N.C. App. 788, 793, 437 S.E.2d 397, 400 (1993) ("[I]t is improper to consider possible tax consequences as a distributive factor . . . in the absence of evidence that some taxable event has already occurred or that the distribution ordered by the court will itself create some immediate tax consequences to either of the parties.").

We do agree with Plaintiff, however, that the trial court erred in failing to make distributional findings concerning the parties' contribution of separate funds to acquire marital property. Both parties introduced conflicting evidence concerning the purchase and renovation of the marital home with their separate funds, and the

trial court was required to resolve the conflict in this evidence and enter a finding concerning this factor. *See Minter v. Minter*, 111 N.C. App. 321, 329-30, 432 S.E.2d 720, 726 (holding a trial court's failure to make a finding under N.C. Gen. Stat. § 50-20(c)(12) on evidence of the parties' contribution of separate property to the marital estate required remand for entry of an order containing such a finding). While Defendant contends no remand is required because Plaintiff's testimony on this point was inconsistent and unsupported by documentary evidence, these inconsistencies, along with the credibility and weight to give Plaintiff's testimony, are for the trial court alone to resolve. *Ward v. Ward*, 252 N.C. App. 253, 262-63, 797 S.E.2d 525, 532 (2017).

4. Disposition

Having held that Finding of Fact 47d was improper and the trial court failed to make an appropriate distributional finding concerning the parties' separate contributions towards the purchase and upkeep of the marital home, we turn to the remedy required. We note that any one distributional factor may support an unequal distribution. *Carpenter v. Carpenter*, 245 N.C. App. 1, 15, 781 S.E.2d 828, 839 (2016). However, when at least one of the factors relied upon by the trial court was improperly found and "we are unable to discern how much weight the trial court gave to the [improperly found] factor," the appropriate disposition is remand for proper findings and reconsideration of the distributional factors. *Id.* Thus, while a trial court is not required to explicitly state how it weighed each of the factors, *Montague*

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v. Montague, 238 N.C. App. 61, 70-71, 767 S.E.2d 71, 78 (2014), the presence of an improper finding among other proper factors without such an indication stymies our “ab[ility] to review and conclude the statutory factors were followed,” *Mosiello v. Mosiello*, 285 N.C. App. 468, 471, 878 S.E.2d 171, 176 (2022) (citing *Montague*, 238 N.C. App. at 70-71, 767 S.E.2d at 78). Relatedly, when the trial court hears evidence of a factor but fails to enter a finding thereon, remand for such a finding is proper. *Minter*, 111 N.C. App. at 330, 432 S.E.2d at 726.

Consistent with *Carpenter* and *Minter*, we remand this action to the trial court to make proper findings as to: (1) whether Plaintiff spent marital funds for non-marital debts; and (2) the parties’ separate contributions towards the marital home. The trial court shall weigh these findings alongside those properly found in Findings of Fact 47a through 47c. The trial court is not to take additional evidence on these questions, as the record contains adequate evidence to resolve the contested issue and we will not order a new equitable distribution trial unless necessary. *See Glaspy v. Glaspy*, 143 N.C. App. 435, 444, 545 S.E.2d 782, 788 (2001) (“This Court is hesitant to remand equitable distribution cases and even more hesitant to reverse an equitable distribution judgment and grant the appellant a new trial.”); *Minter*, 111 N.C. App. at 330, 432 S.E.2d at 726 (remanding for further distributional findings without authorizing the taking of additional evidence). We note that “[o]ur remand does not mean that the trial court’s ultimate decision was in error,” *Carpenter*, 245 N.C. App. at 15, 781 S.E.2d at 839 (citation and quotation marks omitted), and the trial court

may still, in its discretion, award an unequal distribution to Defendant upon correction of the deficiencies identified in this opinion.

C. Defendant’s Challenges to Valuation of the Marital Home

Defendant also appeals the trial court’s order, arguing that its valuation of the marital home at separation and distribution are both unsupported by competent evidence. We agree only as to the separation value, vacate that finding, and remand for a proper finding as to that issue.

1. Separation Value of Marital Home

In Finding of Fact 11, the trial court valued the marital home on the date of separation at \$1,126,746. No evidence was introduced in support of this value; instead, it appears to be derived solely from Plaintiff’s asserted value in the pretrial order—which was unverified—filed with the trial court. That value was not stipulated to and, per the terms of the pretrial order, required additional evidence to prove, as only “contentions in the final pretrial order that are agreed upon [were] deemed stipulations and [did] not require further evidence.” Plaintiff did not testify to that value, nor did he submit a sworn affidavit to that effect. We therefore strike this valuation of the marital home at the date of separation and the calculated increase in value through distribution as unsupported by the evidence and remand for further findings on this topic.

2. Distribution Value of Marital Home

Defendant also challenges Finding of Fact 11’s \$1,301,353.00 valuation of the

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marital home at the time of distribution. In a nuanced argument, she asserts that Plaintiff's expert opinion in the form of a comparative market analysis was not competent evidence of the home's fair market value. *See N.C. Dep't of Transp. v. Mission Battleground Park, DST*, 370 N.C. 477, 484-85, 810 S.E.2d 217, 223 (2018) (opining, in an eminent domain case, that probable selling price derived from a comparative market analysis and fair market value "are conceptually distinct, and an estimate of one cannot appropriately substitute for an estimate of the other"). We ultimately need not answer this question, however, as other evidence in the record supports the trial court's finding.

Our caselaw is clear that "[l]ay opinions as to the value of the property are admissible if the witness can show that he has knowledge of the property and some basis for his opinion. *Unless it affirmatively appears that the owner does not know the market value of his property*, it is generally held that he is competent to testify as to its value. *Hill v. Hill*, 244 N.C. App. 219, 229, 781 S.E.2d 29, 37 (2015) (citations and quotation marks omitted) (emphasis added). In the present case, Plaintiff testified consistent with his assertion in the pretrial order that the marital home was worth \$1.3 million at distribution. He then told the trial court that he arrived at that figure after "look[ing] into the market for this home" and speaking with numerous persons who were moving to the area and had recently made cash offers above asking price on homes. Absent affirmative evidence that Plaintiff did not know the market value of the marital property or lacked some basis for that opinion, this testimony

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was competent evidence to prove the \$1.3 million valuation found by the trial court. *See, e.g., Robinson v. Robinson*, 210 N.C. App. 319, 322, 707 S.E.2d 785, 789 (2011) (“[F]indings of fact are conclusive if they are supported by any competent evidence from the record.” (citations and quotation marks omitted)).

III. CONCLUSION

For the foregoing reasons, we strike Finding of Fact 47d and the separation value and calculated increase in value of the marital home found in Finding of Fact 11. We remand this matter to the trial court to make proper findings as to whether Plaintiff used marital assets to pay marital debts and what the parties separately contributed to the marital home, and to reweigh those findings alongside undisturbed Findings of Fact 47a through 47c. We likewise remand for a finding as to the value of the marital home at the time of separation based on the evidence presented, and a recalculation of any change in value between separation and distribution. The trial court shall make all these findings on the existing record, and it shall make any other relevant mathematical calculations necessary to effectuate this mandate. *Carpenter v. Carpenter*, 225 N.C. App. 269, 279, 737 S.E.2d 783, 790 (2013).

AFFIRMED IN PART, VACATED IN PART AND REMANDED.

Judges ZACHARY and COLLINS concur.

Report per Rule 30(e).