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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-669

Filed 16 April 2024

Mecklenburg County, No. 20 CVD 6366

WAYNE NEWELL, Plaintiff,

v.

ANN CECELIA NEWELL, Defendant.

Appeal by Defendant from order entered 23 March 2023 by Judge Roy H. Wiggins in Mecklenburg County District Court. Heard in the Court of Appeals 24 January 2024.

*Law Office of LaRocha M. Moore, PLLC, by LaRocha M. Moore, for Plaintiff-Appellee.*

*The Blain Law Firm, PC, by Sabrina Blain, for Defendant-Appellant.*

CARPENTER, Judge.

Ann Cecelia Newell (“Wife”) appeals from the trial court’s order (the “Order”), requiring Wayne Newell (“Husband”) to pay alimony to Wife. On appeal, Wife argues that the trial court: (1) abused its discretion in determining Husband’s alimony obligation; and (2) made insufficient conclusions of law to support Husband’s alimony obligation. After careful review, we agree with Wife on her first argument; the trial

court erred in calculating the amount of alimony Husband owed Wife. We disagree, however, with Wife's second argument; the trial court need not make additional conclusions of law. Accordingly, we affirm in part, and reverse and remand in part for the trial court to recalculate Husband's alimony arrears.

### **I. Factual & Procedural Background**

Husband and Wife married on 13 August 1993 and lived together until they separated on 26 May 2015. On 22 April 2020, Husband filed a complaint seeking divorce and equitable distribution. On 21 July 2020, Wife filed an answer and counterclaim, seeking post-separation support, alimony, attorney fees, and equitable distribution.

On 11 and 12 January 2023, the trial court heard Wife's claim for alimony. On 23 March 2023, the trial court entered the Order, requiring Husband to pay Wife alimony. The trial court made several pertinent findings, including: that Husband engaged in marital misconduct; that Wife is a dependent spouse; the amount of Husband and Wife's monthly income and expenses; the earning potential of Husband and Wife; the age and health of Husband and Wife; Wife's standard of living; and the duration of their marriage.

The trial court concluded that Husband must pay Wife \$1,500 of alimony per month for a ten-year period, beginning 1 May 2015. The trial court gave Husband a credit concerning his alimony arrearage. Specifically, the trial court found that:

37. At the time of separation, the parties had two adult

children and one minor child who lived with Wife. Husband provided Wife access to a joint checking account into which Husband had deposited varying amounts of money. Wife had a least \$1,000.00 available to her through said account for approximately fifty-four (54) months while she was still providing for the needs of and raising the parties' then minor child. Husband was not under any Court ordered obligation to pay child support at that time. The Court finds it reasonable to assume that the teenage minor child would cost a minimum of \$1,000.00 per month to rear. The minor child reached the age of majority on December 12, 2019, and graduated from High School in May of 2020.

38. The Court will provide a credit to Husband in the amount of \$67,000.00 for the monies he made available to Wife as outlined in Paragraph 37 above.

39. The Court recognizes that Husband made payments to Wife pursuant to the Postseparation Support Order in the amount of \$1,029.00 per month for a total of eight (8) months[,] and he will receive a credit of \$8,232.00 towards his arrears.

40. Husband will receive a total arrearage credit of \$75,232.00.

On 24 April 2023, Wife filed written notice of appeal. On 15 January 2024, Wife moved to amend the record; we granted her motion to amend. On 22 January 2024, Wife moved to withdraw her appeal. We denied Wife's motion to withdraw.

## **II. Jurisdiction**

This Court has jurisdiction under N.C. Gen. Stat. § 7A-27(b)(2) (2023).

## **III. Issues**

The issues on appeal are whether the trial court: (1) abused its discretion in

determining Husband's alimony obligation; and (2) made sufficient conclusions of law to support Husband's alimony obligation.

#### **IV. Analysis**

##### **A. Amount of Alimony**

We review alimony amounts for abuse of discretion. *Sayland v. Sayland*, 267 N.C. 378, 382, 148 S.E.2d 218, 221 (1966). "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988).

##### **1. Failure to Explain Alimony Award**

Wife first argues the Order "lacks any findings of fact setting forth the reasons why alimony was awarded at a rate of \$1,500 per month for a term of 10 years." We disagree.

Under section 50-16.3A, "[t]he court shall set forth the reasons for its award or denial of alimony and, if making an award, the reasons for its amount, duration, and manner of payment." N.C. Gen. Stat. § 50-16.3A(c) (2023). When analyzing an order under subsection 50-16.3A(c):

the findings of fact required to support the amount, duration, and manner of payment of an alimony award are sufficient if findings of fact have been made on the ultimate facts at issue in the case[,] and the findings of fact show the trial court properly applied the law in the case. The findings of fact need not set forth the weight given to the factors in [sub]section 50-16.3A(b) by the trial court when

determining the appropriate amount, duration, and manner of payment, as the weight given the factors is within the sound discretion of the trial court.

*Friend-Novorska v. Novorska*, 143 N.C. App. 387, 395–96, 545 S.E.2d 788, 794 (2001) (footnote omitted).

Subsection 50-16.3A(b) includes several factors for a trial court to consider when awarding alimony, including, but not limited to: marital misconduct, earnings and earnings capacity, age, health, standard of living, duration of the marriage, and property brought to the marriage. *See* N.C. Gen. Stat. § 50-16.3A(b). “A trial court does not abuse its discretion when it considers all relevant factors under N.C. [Gen. Stat.] § 50-16.3A(b) for which evidence is offered.” *Putnam v. Putnam*, 278 N.C. App. 667, 667, 863 S.E.2d 291, 292 (2021).

Here, the trial court made several relevant findings of fact, including: that Husband engaged in marital misconduct; that Wife is a dependent spouse; the amount of Husband and Wife’s monthly income and expenses; the earning potential of Husband and Wife; the age and health of Husband and Wife; Wife’s standard of living; and the duration of their marriage. Wife does not dispute the sufficiency of evidence offered to support these findings. After making these findings, the trial court concluded that Husband must pay Wife \$1,500 of alimony per month for a ten-year period.

The trial court’s findings show that the court “properly applied the law,” *see Friend-Novorska*, 143 N.C. App. at 395–96, 545 S.E.2d at 794, because the findings

show that the trial court carefully considered the relevant factors listed in subsection 50-16.3A(b), *see* N.C. Gen. Stat. § 50-16.3A(b). Accordingly, the trial court did not abuse its discretion by awarding Wife \$1,500 per month for ten years because a “trial court does not abuse its discretion when it considers all relevant factors under [subsection] 50-16.3A(b) for which evidence is offered.” *See Putnam*, 278 N.C. App. at 667, 863 S.E.2d at 292.

## **2. Calculation of Alimony Arrears**

Next, Wife argues that the trial court erred in calculating Husband’s alimony arrears because (1) the trial court should not have reduced Husband’s arrears by the amount of his previous payments to support the parties’ minor child; and (2) even if Husband’s arrears were properly reduced by his previous payments to support the parties’ minor child, the trial court miscalculated the amount of previous payments. We agree with Wife.

Alimony is “payment for the support and maintenance of a spouse or former spouse, periodically or in a lump sum, for a specified or for an indefinite term, ordered in an action for divorce, whether absolute or from bed and board, or in an action for alimony without divorce.” N.C. Gen. Stat. § 50-16.1A(1) (2023).

When awarding alimony, a trial court may “consider the expenses and financial obligations related to serving as a custodian of a minor child when setting the amount and duration of an alimony award.” *Harris v. Harris*, 188 N.C. App. 477, 482, 656 S.E.2d 316, 319 (2008); N.C. Gen. Stat. § 50-16.3A(b)(7) (listing “[t]he extent to which

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the earning power, expenses, or financial obligations of a spouse will be affected by reason of serving as the custodian of a minor child” as a relevant alimony factor). But as we noted in *Fink v. Fink*, alimony and child support are distinct: “the two must be kept separate when the court determines the appropriate awards as to each . . . .” 120 N.C. App. 412, 420, 462 S.E.2d 844, 851 (1995) (quoting *Wolfburg v. Wolfburg*, 27 Conn. App. 396, 402, 606 A.2d 48, 52 (1992)).

Here, in paragraph 37 of the Order, the trial court found that after their separation, Husband funded the joint checking account “for approximately fifty-four (54) months while [Wife] was still providing for the needs of and raising the parties’ then minor child.” The trial court then found “it reasonable to assume that the teenage minor child would cost a minimum of \$1,000.00 per month to rear.” Based on these findings, it appears the trial court credited Husband’s alimony arrears “for the monies he made available to Wife as outlined in Paragraph 37 above.”

The trial court did not err by considering the needs of the parties’ minor child when calculating Husband’s alimony arrearage because subsection 50-16.3A(b) allows a trial court to do so. *See Harris*, 188 N.C. App. at 482, 656 S.E.2d at 319. But the trial court did err by failing to keep alimony separate from child support. *See Fink*, 120 N.C. App. at 420, 462 S.E.2d at 851.

The trial court ordered Husband to pay total monthly alimony of \$1,500. And based on the trial court’s findings in paragraphs 37 and 38, it appears Husband’s \$1,000 alimony credit was attributable to his past support of his child; the trial court

gave Husband a \$1,000 credit for money that he made available to Wife, who was “still providing for the needs of and raising the parties’ then minor child.”

But as the trial court noted, the parties’ child “reached the age of majority on December 12, 2019, and graduated from High School in May of 2020,” yet Husband’s alimony obligation remained \$1,500 after May of 2020. It appears that the trial court conflated monies made available to care for the parties’ minor child with alimony. Husband is not entitled to a credit on his alimony arrears for monies provided and allocated to care for the parties’ minor child. The conflating of the two distinct obligations is evident when considering the credit given towards arrears (\$67,000) and the continued \$1,500 alimony obligation for the balance of the ten-year period notwithstanding the minor child having reached the age of majority.

Therefore, the trial court erred by failing to keep alimony and child support separate. *See Fink*, 120 N.C. App. at 420, 462 S.E.2d at 851; N.C. Gen. Stat. § 50-16.1A(1). Accordingly, Husband’s alimony credit is “manifestly unsupported by reason” and thus an abuse of discretion. *See Hennis*, 323 N.C. at 285, 372 S.E.2d at 527.

Further, assuming the trial court maintained the distinction between alimony and child support, the trial court still erred in calculating Husband’s arrearage credit. As detailed above, the trial court found that the parties’ “minor child would cost a minimum of \$1,000.00 per month to rear,” and that Husband made “\$1,000.00 available to [Wife] . . . for approximately fifty-four (54) months while she was still



providing for the needs of and raising the parties' then minor child." The trial court then "provide[d] a credit to Husband in the amount of \$67,000.00 for the monies he made available to Wife as outlined in Paragraph 37 above."

Fifty-four multiplied by \$1,000 equals \$54,000. So without additional support, crediting Husband for \$67,000 concerning the "monies he made available to Wife as outlined in Paragraph 37" is arbitrary. Therefore, even if the trial court maintained the distinction between alimony and child support, it was arbitrary for the trial court to credit Husband for \$67,000 based on the reasoning in paragraph 37, and thus, doing so was an abuse of discretion. *See Hennis*, 323 N.C. at 285, 372 S.E.2d at 527.

### **B. Conclusions of Law**

Lastly, Wife argues that the trial court erred because it was "required to make a conclusion of law that the designated amount of alimony awarded is fair and just to all parties." We disagree. Because we hold that the trial court abused its discretion by crediting Husband's alimony arrearage, we need not reach the trial court's conclusions of law supporting its alimony award. But to facilitate any future alimony calculations in this case, we will address Wife's argument.

We review the trial court's conclusions of law de novo. *See Luna ex rel. Johnson v. Div. of Soc. Servs.*, 162 N.C. App. 1, 4, 589 S.E.2d 917, 919 (2004). Under a de novo review, this Court "considers the matter anew and freely substitutes its own judgment' for that of the lower tribunal." *State v. Williams*, 362 N.C. 628, 632–33, 669 S.E.2d 290, 294 (2008) (quoting *In re Greens of Pine Glen, Ltd. P'ship*, 356 N.C.

642, 647, 576 S.E.2d 316, 319 (2003)).

To support her proposition that the trial court was “required to make a conclusion of law that the designated amount of alimony awarded is fair and just to all parties,” Wife cites *Quick v. Quick*. 305 N.C. 446, 290 S.E.2d 653 (1982), *superseded by statute*, An Act to Make Changes in the Laws Pertaining to Alimony, 1995 N.C. Sess. Laws Ch. 319. In *Quick*, our state Supreme Court analyzed section 50-16.5 and held that it required “conclusions of law that the supporting spouse is able to pay the designated amount and that the amount is fair and just to all parties.” *Id.* at 453, 290 S.E.2d at 659 (citing N.C. Gen. Stat. § 50-16.5 (1976)). But section 50-16.5 was repealed and replaced by Chapter 319 of the 1995 North Carolina Session Laws, which included section 50-16.3A.

Assuming *Quick* required a specific “fair and just” conclusion of law, this requirement was replaced by the required consideration of the section 50-16.3A factors. *See* N.C. Gen. Stat. § 50-16.3A(a)–(b). And as detailed above, the trial court’s findings show that it carefully considered the factors listed in subsection 50-16.3A(b). *See id.* Therefore, the trial court did not err in failing to formally conclude that the challenged alimony amount was “fair and just to all parties” because, other than miscalculating Husband’s credit, the trial court complied with section 50-16.3A. *See id.*

## V. Conclusion

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We hold that the trial court abused its discretion by miscalculating Husband's alimony arrearage. Therefore, the Order is affirmed in part, reversed in part, and remanded. On remand, the trial court is to enter an order increasing the balance of Husband's alimony arrears by \$67,000. The required modification may be made without additional hearings or receiving additional evidence.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Judges HAMPSON and GORE concur.

Report per Rule 30(e).