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NO. COA04-695

NORTH CAROLINA COURT OF APPEALS

Filed: 17 May 2005

ROBERT M. BERSIN,
Plaintiff,
v . **Mecklenburg County**
No. 99 CVD 7786
JULIA R. GOLONKA,
Defendant.

Appeal by both parties from judgment entered 2 October 2003 by Judge Lisa C. Bell in Mecklenburg County District Court. Heard in the Court of Appeals 26 January 2005.

Michelle D. Reingold; and KMZ Rosenman, by L. Stanley Brown, for plaintiff appellant-appellee.

Casstevens, Hanner, Gunter & Riopel, P.A., by Nelson M. Casstevens, Jr., for defendant appellant-appellee.

McCULLOUGH, Judge.

Plaintiff, Dr. Robert Bersin, and defendant, Ms. Julia Golonka, appeal from a district court order equitably distributing their marital and divisible property. Ms. Golonka also appeals from the district court's orders awarding child support and alimony. We affirm.

The evidence presented in district court tended to show the following: Dr. Bersin and Ms. Golonka were married on 29 June 1985, separated on 7 May 1998, and were divorced by judgment entered 12 August 1999. Two boys were born of the marriage, one in 1988 and one in 1990. During the early years of their marriage, the parties lived in California. In 1989, the parties moved to Charlotte, North Carolina so that Dr. Bersin could accept employment at the Sanger Clinic, P.A., as an invasive cardiologist. In this position, he earned income ranging from $522,000 to $751,000 per year. In approximately three years, Dr. Bersin became a senior partner at the clinic.

Ms. Golonka worked as a nurse until the birth of the parties' first child, after which she was not employed outside of the home in a full-time capacity; she was briefly employed as a part-time faculty member at a nursing school in 1993. Ms. Golonka presented evidence that she had enjoyed a high standard of living during the marriage, including expensive shopping trips, country club membership, and social engagements, and that her lifestyle did not change following the parties' separation.

When the parties first moved to Charlotte, they lived in a rental home. In 1991, they purchased a 5,578-square-foot home on Cortleyou Road in Charlotte for $625,000. In

July 1995, they purchased a lot on Morrocroft Farms Lane. In the Spring of 1996, they sold the Cortleyou Road residence and moved into a rental home on Valencia Terrace while awaiting completion of their new residence on Morrocroft Farms Lane. During the construction of this residence, a dispute arose between the parties and the homebuilder over the quality of the workmanship, and a new builder was hired to complete the project. When the parties separated, theMorrocroft Farms Lane home was still under construction. When it was completed, Dr. Bersin moved into this house. Ms. Golonka and the parties' children continued to reside in the rental home on Valencia Terrace.

Following a hearing, the trial court determined that an unequal division of the parties' marital and divisible property was equitable, awarded fifty-three percent of the marital and divisible estate to Ms. Golonka, and ordered Dr. Bersin to pay a distributive award in five installments. The trial court also ordered Dr. Bersin to pay Ms. Golonka $3,535 per month in child support and alimony in the amount of $3,000.00 for March and April 2003 and $2,000 each month thereafter for ten years or until one of the parties died or Ms. Golonka remarried or cohabitated within the meaning of the General Statutes. Both parties now appeal.

On appeal, Dr. Bersin raises, inter alia, the following issues: (I) whether the trial court erred in determining the fair market value of the Morrocroft Farms Lane property; (II) whether the trial court erroneously valued his stock in the Sanger Clinic as of the date of separation; (III) whether the trial court erred by failing to make findings and conclusions with respect to certain evidence presented at trial; and (IV) whether the trial court erred by ordering Dr. Bersin to pay a distributive award without determining his ability to pay such an award. Ms. Golonka raises the following issues on appeal: (I) whether the trial court erred in imputing gross income to her based upon her earning capacity;(II) whether the trial court abused its discretion in setting the amounts of alimony and child support; (III) whether the trial court erred by finding that post-separation increases in Dr. Bersin's Fidelity Investment account were the results of active appreciation and awarding these increases to him as his separate property; and (IV) whether the trial court erred by denying her motion for attorney's fees.

DR. BERSIN'S APPEAL

I.

We first address Dr. Bersin's appeal. In his first argument, Dr. Bersin contends that the trial court erred by valuing the Morrocroft property as of the date of separation based upon incompetent evidence provided by Ms. Golonka's expert. We do not agree.

At the equitable distribution hearing, two experts testified as to the value of the Morrocroft property, which included a lot and a partially completed house on the date of separation. Dr. Bersin's expert, William G. Granger, testified that, in his opinion, the fair market value of the Morrocroft property on the date of separation was $425,000.

According to Granger, construction defects rendered the partially completed house valueless such that the value of the property was limited to the value of the lot.

Ms. Golonka's expert, Thomas B. Harris, Jr., testified that, in his opinion, the fair market value of the Morrocroft property onthe date of separation was $1,315,000. To arrive at this figure, Harris first determined the market value of the house as if it had been completed on the date of separation. When determining the as- completed value of the house, Harris used three post-separation appraisals to corroborate his own determination. He then reduced the value based upon his assessment that the house was only seventy percent complete as of the date of separation. Starting with the seventy percent figure, Harris added the value of the lot, and then deducted $80,000 as a depreciation contingency, to arrive at the fair market value of the Morrocroft property on the date of separation.

The trial court essentially adopted Harris' estimate as to the value of the Morrocroft house on the date of separation, but deducted a larger amount for depreciation based upon some readily discoverable problems. The trial court found that the value of the Morrocroft property was $1,226,000 as of the date of separation.

"For purposes of equitable distribution, marital property shall be valued as of the date of the separation of the parties." N.C. Gen. Stat. § 50-21(b) (2003). Specifically, the trial court must determine the net fair market value of marital property. Beightol v. Beightol, 90 N.C. App. 58, 63, 367 S.E.2d 347, 350, disc. review denied, 323 N.C. 171, 373 S.E.2d 104 (1988).

Fair market value is defined as the price which a willing buyer would pay to purchase the asset on the open market from a willing seller, with neither party being under any compulsion to complete the transaction. The trial court calculates the net fair marketvalue, by reducing the fair market value of the property by the value of any debts that are attached to the asset.

Carlson v. Carlson, 127 N.C. App. 87, 91, 487 S.E.2d 784, 786, disc. review denied, 347 N.C. 396, 494 S.E.2d 407 (1997) (citations and internal quotation marks omitted). "[T]he trial court is to determine the net fair market value of the property based on the evidence offered by the parties." Walter v. Walter, 149 N.C. App. 723, 733, 561 S.E.2d 571, 577 (2002). "There is no single best method for assessing that value, but the approach utilized must be 'sound'" Id. (citations omitted).

The trial court must not consider evidence of value that is premised upon "mere speculation" of "a fact not in existence at the date of separation." Carlson, 127 N.C. App. at 90, 487 S.E.2d at 786. However, "evidence of . . . postseparation occurrences or values is competent as corroborative evidence of the value of marital property as of the date of the separation of the parties." N.C. Gen. Stat. § 50-21(b).

Dr. Bersin argues that Harris' testimony concerning the value of the property is speculative because Harris consulted three post- separation appraisals to corroborate his

determination of the property's value and because Harris considered the value of the Morrocroft home as if it had been completed on the date of separation as a starting point for his analysis. However, the statute permits evidence of post-separation value to be used as corroborative evidence of the value of marital property on the dateof separation. N.C. Gen. Stat. § 50-21(b). Moreover, we are unpersuaded that, given the facts of the instant case, Harris's appraisal method was premised on mere speculation.

These assignments of error are overruled.

II.

In his second argument on appeal, Dr. Bersin contends that the trial court erred by finding that the value of his 1000 non-voting shares in the Sanger Clinic was $374,000 as of the date of separation. We do not agree.

The gravamen of Dr. Bersin's argument is that the value of his shares was definitively established by the stock restriction agreement entered into by Dr. Bersin and his colleagues at the Sanger Clinic which valued the Clinic's stock as follows:

For the purpose of this Agreement, the value of each share of stock shall be the greater of: (i) its per share book value shown at the last preceding year-end of the Company; or (ii) one dollar ($1.00); provided, however, that either the Company or the Shareholder or Shareholder's estate may request a determination of adjusted book value as of the date of the event which gives rise to the need for valuation.

Dr. Bersin testified that the Clinic does not have year-end earnings because all revenues are distributed as bonuses to shareholders. He also testified that five doctors who had previously left the Clinic had received one dollar for each share of non-voting stock they owned.

Court-appointed appraiser George Hawkins analyzed the value of Dr. Bersin's stock using several valuation methods. Hawkins relied most heavily upon an “income approach” which utilized the“capitalization of earnings method” for the Clinic's earnings for 1996 and for a three-year average between 1994 and 1996; under this approach, it was determined that Dr. Bersin and his fellow shareholders in the Sanger Clinic realized earnings which rated above the ninetieth percentile nationally and which significantly exceeded the median earnings for the southeastern United States. Hawkins also relied upon “market approach methodology” under which he considered the sale of similar practices and practice interests and the estimated price per shareholders' agreement in determining the value of Dr. Bersin's stock. Hawkins determined that Dr. Bersin's 1000 shares of non-voting stock had a fair market value of $374,000 on the date of separation.

The trial court found that Hawkins was credible and that his valuation of the stock most reasonably represented the true fair market value of Dr. Bersin's interest in the Sanger Clinic. Accordingly, the trial court found that Dr. Bersin's 1000 shares of non-voting stock in the Sanger Clinic had a value of $374,000 on the date of separation.

On appeal, a trial court's valuation of an interest in a professional organization or practice will not be disturbed where "the approach used by the trial court reasonably approximated the net value of the partnership interest." Poore v. Poore, 75 N.C. App. 414, 419, 331 S.E.2d 266, 270, disc. review denied, 314 N.C. 543, 335 S.E.2d 316-17 (1985) (citation omitted). "The valuation of each individual practice will depend on its particular facts andcircumstances." Id. (citation omitted). "[T]here is no single best approach to valuing an interest in a professional association or practice, and . . . various appraisal methods can and have been used . . . ." Id.

[The] court should consider the following components of the practice: (a) its fixed assets . . . ; (b) its other assets including accounts receivable and the value of work in progress; (c) its goodwill, if any; and (d) its liabilities. Among the valuation approaches courts may find helpful are: (1) an earnings or market approach, which bases the value of the practice on its market value, or the price which an outside buyer would pay for it taking into account its future earning capacity; and (2) a comparable sales approach which bases the value of the practice on sales of similar businesses or practices.

Id. at 419-20, 331 S.E.2d at 270 (citation omitted). "[A] restriction on the transfer of stock does not apply to interspousal transfers of stock which is marital property absent an express provision [addressing] such transfers." Bryan-Barber Realty, Inc., v. Fryar, 120 N.C. App. 178, 182, 461 S.E.2d 29, 32 (1995); see also Poore, 75 N.C. App. at 419, 331 S.E.2d at 270 ("If the practice is conducted as a partnership, and the value of the practice or an interest therein is set in a partnership or redemption agreement, then the value set in the agreement should certainly be considered but should not be treated as conclusive.").

In the instant case, we find no error in the trial court's rejection of Dr. Bersin's argument that the stock restriction agreement definitively established the value of his shares in the Sanger Clinic for the purpose of equitable distribution. Moreover,we conclude that the valuation methods relied upon by the court were sound and that the court's valuation of Dr. Bersin's Sanger Clinic shares is supported by the competent evidence of record.

These assignments of error are overruled.

III.

In his third argument on appeal, Dr. Bersin contends that the trial court erred by failing to make findings of fact and conclusions of law regarding evidence that he presented at trial. Specifically, Dr. Bersin asserts that the court's equitable distribution order fails to address evidence that (1) there was an additional outstanding debt of $113,586 on the Morrocroft home on the date of separation, and (2) he made post-separation payments which maintained or increased the value of the marital estate. This argument lacks merit.

"In all actions tried upon the facts without a jury . . . , the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the

appropriate judgment." N.C. Gen. Stat. § 1A-1, Rule 52(a) (2003). "Rule 52(a) does not, of course, require the trial court to recite in its order all evidentiary facts presented at hearing." Quick v. Quick, 305 N.C. 446, 451, 290 S.E.2d 653, 657 (1982). "The facts required to be found specially are those material and ultimate facts from which it can be determined whether the findings are supported by the evidence and whether they support the conclusions of law reached." Id.

A.

The evidence in the instant case tended to show that, prior to the date of separation, Dr. Bersin applied $113,586 towards completion of the Morrocroft home. After the date of separation, Dr. Bersin was reimbursed for the $113,586 by a bank loan draw; the bank loan was secured by the Morrocroft property. The trial court did not include the $113,586 in the marital debt related to the Morrocroft home existing on the date of separation, and it distributed the Morrocroft property and the remaining mortgage thereon to Dr. Bersin.

Dr. Bersin essentially argues that the pre-separation expenditure of $113,586 became debt existing on the date of separation because, after the date of separation, he was reimbursed with funds that added to the debt against the Morrocroft property. According to Dr. Bersin, the trial court was required to make a finding to this effect. However, Dr. Bersin has not directed this Court to any legal authority directly in support of his contention that the post-separation activity converted the pre-separation expenditure into a loan. Likewise, he has not apprised this Court of any evidence at trial which tended to show that the $113,586 pre-separation expenditure was structured as a loan as of the date of separation. Further, even if there was a pre-separation loan by Dr. Bersin, he was reimbursed for it, and he was not entitled to further reimbursement. As such, the trial court did not err by declining to find that the $113,586 was a debt existing on the dateof separation or by declining to award Dr. Bersin a credit for this expenditure.

B.

There was also evidence that Dr. Bersin spent an additional $900,000 of his post-separation income to complete the home. The trial court specifically addressed this expenditure in the following finding of fact:

The [c]ourt has considered and has determined that after the date of separation [Dr. Bersin] . . . expended funds to complete the construction of the . . . Morrocroft Farms Lane home and to pay for the taxes, insurance and other expenses connected with the continued ownership of the property.

The court considered this post-separation activity as a distributional factor and, as already indicated, distributed the Morrocroft home to Dr. Bersin. See N.C. Gen. Stat. § 50-20(c) (2003) (stating that, in distributing the marital estate, the court may consider "[a]cts of either party to maintain, preserve, develop, or expand . . . the marital property or divisible property, or both, during the period after the separation of the parties and before the time of distribution").

Dr. Bersin argues that the trial court was required to make findings detailing the amounts of his "extraordinary" post- separation expenditures because such expenditures would affect the outcome of the equitable distribution. However, the above referenced finding comports with Rule 52(a) in that it resolves the ultimate factual issue presented by the evidence, and this Court is able to review the finding for whether it is supported by therecord and whether it supports the trial court's conclusion of law. Accordingly, more specific findings are not required.

These assignments of error are overruled.

IV.

In his fourth argument on appeal, Dr. Bersin contends that the trial court erred by ordering him to pay a distributive award to Ms. Golonka without determining his ability to pay, or the ramifications of his paying, such an award. This contention lacks merit.

This Court has held that where the evidence is sufficient to raise the question of where a party will obtain the funds to pay a distributive award, the trial court must "(1) determine the means by which [the payor] is to pay the amount; and (2) adjust the award from [payor] to [payee] to offset any adverse financial consequences of using the non-liquid assets." Embler v. Embler, 159 N.C. App. 186, 189, 582 S.E.2d 628, 630-31 (2003). However, if a party's ability to pay an award may be readily gleaned from the trial court's findings of fact, then the distributive award will be affirmed, notwithstanding the absence of a specific finding. See Allen v. Allen, __ N.C. App. __, __, 607 S.E.2d 331, 336-37 (2005) (affirming distributive award where findings of fact indicated that defendant could pay the award from his business and rental income and home equity loan).

In the instant case, the trial court ordered Dr. Bersin to pay the following distributive award: [Dr. Bersin] shall pay a $200,000 distributive award to [Ms. Golonka] on August 24, 2003. The remaining $323,907.46 shall be paid at the rate of $100,000 on March 15, 2004, $100,000 on March 15, 2005, $100,000 on March 15, 2006 and $23,907.46 on March 15, 2007. Plaintiff may accelerate his payments of this distributive award if he chooses. If not, the unpaid balance of the distributive award shall accrue interest at the legal rate of 8% per annum until paid in full beginning on August 24, 2003.

The court's order is replete with findings detailing Dr. Bersin's extensive income and assets, and we conclude that, on the record before us, there is no question raised as to where he may obtain the funds to pay the distributive award.

These assignments of error are overruled.

V.

In addition, we have considered the remaining assignments of error brought forward in Dr. Bersin's brief to this Court and have determined that they lack merit. They are, therefore, overruled.

MS. GOLONKA'S APPEAL

I.

We next address Ms. Golonka's appeal. In her first argument, Ms. Golonka contends that the trial court erred by imputing gross income to her based on her earning capacity. We do not agree.

The trial court made the following findings of fact concerning Ms. Golonka's earnings capacity:

21. From his employment with The Sanger Clinic, P.A. and from income from other sources [Dr. Bersin] has gross income of $47,643 per month. . . .

22. [Ms. Golonka] obtained a Bachelor of Science in Nursing from Indiana University in 1977 and a Master's in Nursing in 1981 from the University ofCalifornia at Los Angeles. After receiving her nursing degree, [Ms. Golonka] worked in The Children's Hospital in Oakland, California, taught beginner level nursing at the University of San Francisco, and from 1983 to 1986 was an instructor at Cal State-Hayward and continued to work as a staff nurse at Children's Hospital, Oakland.

23. [Ms. Golonka] terminated her full-time employment at Pacific Presbyterian Medical Center in San Francisco, California when the parties' first child . . . was born on October 25, 1988. [Ms. Golonka] has not worked in a full-time capacity since October 1988. She was briefly employed in a position as part-time faculty member at Carolinas Medical Center Nursing School in 1993.

24. At the time of the trial of this matter, [Ms. Golonka] was . . . certified and licensed to practice nursing in the State of North Carolina.

25. Based upon the education and experience [Ms. Golonka] has as a nurse, [she] has the ability to earn an annual gross income of $42,767, although she will likely have to enroll in and complete a refresher course. The Court imputes gross income to [Ms. Golonka] of $42,767 per year or $3,564 per month gross.

26. Thus the monthly gross income of [Dr. Bersin] and [Ms. Golonka] totals $51,207. [Dr. Bersin's] income is 93% of the total gross joint income. [Ms. Golonka's] income is 7% of the total gross joint income.

. . . .

30. Of the $3,747 of shared family expenses incurred by [Ms. Golonka] and the two minor children on a monthly basis, the Court allocates one-half of the expenses, $1,873, to the two children and the remaining $1,874 to [Ms. Golonka].

31. The reasonable individual monthly expenses . . . are . . . $1,689.96 [for Ms. Golonka and] . . . $1,929.00 [for the two children]. The shared family expenses for the two children . . . and the individual expenses for the two children . . . total . . . $3,801 per month. [Dr. Bersin] shall beresponsible for 93% of the $3,801 per month or $3,535 per month in child support, which shall be paid by [Dr. Bersin] to [Ms. Golonka]. [Ms. Golonka] shall be responsible for $266 per month in child support.

. . . .

39. . . . During the last few years of the marriage, [Dr. Bersin] was the only income earner.

40. On the date of separation and presently, [Ms. Golonka] was and is substantially dependent upon [Dr. Bersin] for her maintenance and support, and was and is substantially in need of maintenance and support from [him].

41. During the marriage [Dr. Bersin] provided support and maintenance for [Ms. Golonka], and has done so since the separation. [Dr. Bersin] is the individual upon whom [Ms. Golonka] is actually and substantially dependent for maintenance and support, and from whom [Ms. Golonka] is substantially in need of maintenance and support.

. . . .

43. In arriving at the appropriate amount to award as alimony to [Ms. Golonka] in this matter, the [c]ourt has imputed gross income on a monthly basis to [her] of $3,563.92. From this amount, [Ms. Golonka] will pay approximately 35% for federal and state income taxes, which leaves a net monthly amount to [Ms. Golonka] of $2,316.55. [Ms. Golonka] must pay $266 per month for her share of the children's expenses as set forth in Paragraph 32 hereof, which leaves [her] with a net amount of $2,050.55. [Ms. Golonka's] shared expenses are $1,874.00 per month, which would leave [her] only $176.55 for her individual expenses. If her individual expenses of $1,689.96 are deducted from the $176.55 remaining, [Ms. Golonka] would have a shortfall each month of $1,513.41.

44. . . . [A]limony of $2,000 per month is sufficient to give [Ms. Golonka] net income of $1,515.65. The [c]ourt believes it appropriate that the $2,000 per month in alimony should begin on May 1, 2003 and [Ms. Golonka] is entitled to be paid $3,000 per month in alimony for March and April 2003, so thatshe may expend that amount for a refresher course in nursing if she chooses to do so.

Thus, the trial court imputed income to Ms. Golonka for the purposes of determining the relative child support obligations of the parties and the amount of alimony that Ms. Golonka would receive. Neither party has challenged the trial court's deviation from the North Carolina Child Support Guidelines.

In determining the amount, duration, and manner of alimony, a trial court is required by statute to consider "the relative earnings and earning capacities of the spouses." N.C. Gen. Stat. § 50-16.3A(b)(2) (2003) (emphasis added). In fixing the amount of child support, a trial court must abide by the following statutory directive:

> The court shall determine the amount of child support payments by applying the presumptive guidelines . . . . However, upon request of any party, the Court shall hear evidence, and from the evidence, find the facts relating to the reasonable needs of the child for support and the relative ability of each parent to provide support. If, after considering the evidence, the Court finds by the greater weight of the evidence that the application of the guidelines would not meet or would exceed the reasonable needs of the child considering the relative ability of each parent to provide support or would be otherwise unjust or inappropriate the Court may vary from the guidelines.

N.C. Gen. Stat. § 50-13.4(c) (2003) (emphasis added); see also North Carolina Child Support Guidelines, AOC-A-162, p. 1 (effective 1 October 2002) (noting that, when deviating from the presumptionset by the guidelines, the trial court must make findings regarding "the relative ability of each parent to provide support").

On the facts presented in the instant case, we are unpersuaded that the trial court's findings with respect to Ms. Golonka's earning capacity are in contravention of the foregoing statutory imperatives. These assignments of error are overruled.

II.

In her second argument on appeal, Ms. Golonka contends that the trial court erred by failing to award her alimony and child support in amounts sufficient to enable her and her children to achieve the standard of living to which they had become accustomed during the parties' marriage. We are unpersuaded by this contention.

In ruling on a request for alimony, a trial court must consider "[t]he standard of living of the spouses established during the marriage." N.C. Gen. Stat. § 50-16.3A(b)(8). The amount, duration, and manner of payment of alimony is consigned to the discretion of the court. N.C. Gen. Stat. § 50-16.3A(b). Our appellate courts will only review an alimony award to determine whether the trial court abused its discretion. Quick v. Quick, 305 N.C. 446, 453, 290 S.E.2d 653, 658 (1982).

A trial court's order for child support must be "in such amount as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the childand the parties, the child care and homemaker contributions of each party, and other facts of the

particular case." N.C. Gen. Stat. § 50-13.4(c) (2003). In reviewing a child support order in which the trial court has deviated from the Child Support Guidelines, our review is limited to a determination of whether the trial court abused its discretion. Spicer v. Spicer, __ N.C. App. __, __, 607 S.E.2d 678, 684 (2005).

In the instant case, the trial court made numerous findings related to the standard of living enjoyed by the parties and their children during the parties' marriage. Specifically, the court made the following finding of fact with respect to alimony:

The parties enjoyed a high standard of living during their marriage. They enjoyed significant travel opportunities, both within the United States and internationally. They enjoyed nice homes and material belongings, which [Dr. Bersin's] income enabled them to do.

In addition, the trial court made numerous findings concerning the significant expenditures for the children's activities, entertainment, recreation, and necessities. Accordingly, we are unpersuaded that the trial court ignored its statutory obligations to consider the standard of living of the parties and their children during the marriage. Moreover, we discern no abuse of discretion in the amounts awarded by the trial court for alimony and child support.

These assignments of error are overruled.

III.

In her third argument on appeal, Ms. Golonka contends that the trial court erred by finding that post-separation increases in Dr. Bersin's Fidelity Investment account were the result of active appreciation and by distributing these increases to Dr. Bersin as his separate property. We do not agree.

"Divisible property" is defined to include "appreciation . . . in [the] value of marital property and divisible property of the parties occurring after the date of separation and prior to the date of distribution" and "[p]assive income from marital property received after the date of separation, including, but not limited to, interest and dividends." N.C. Gen. Stat. § 50-20(b)(4) (2003). "[A]ppreciation . . . in value which is the result of postseparation actions or activities of a spouse shall not be treated as divisible property." Id. "Active appreciation refers to financial or managerial contributions of one of the spouses . . . ; whereas, passive appreciation refers to enhancement of the value of . . . property due solely to inflation, changing economic conditions or other such circumstances beyond the control of either spouse." O'Brien v. O'Brien, 131 N.C. App. 411, 420, 508 S.E.2d 300, 306 (1998), disc. review denied, 350 N.C. 98, 528 S.E.2d 365 (1999) (citation omitted). "[I]f either or both of the spouses perform substantial services . . . which result in an increase in the value of an investment account, that increase is to be characterized as an active increase . . . ." Id. at 421, 508 S.E.2d at 307. In determining whether the services of a spouse aresubstantial, the trial court should consider, inter alia, the following factors:

(1) the nature of the investment; (2) the extent to which the investment decisions are made only by the party or parties, made by the party or parties in consultation with their investment broker, or solely made by the investment broker; (3) the frequency of contact between the investment broker and the parties; (4) whether the parties routinely made investment decisions in accordance with the recommendation of the investment broker, and the frequency with which the spouses made investment decisions contrary to the advice of the investment broker; (5) whether the spouses conducted their own research and regularly monitored the investments in their accounts, or whether they primarily relied on information supplied by the investment broker; and (6) whether the decisions or other activities, if any, made solely by the parties directly contributed to the increased value of the investment account.

Id. A trial court's classification of property will not be disturbed on appeal where there is competent evidence to support that classification. See Holterman v. Holterman, 127 N.C. App. 109, 113, 488 S.E.2d 265, 268, disc. review denied, 347 N.C. 267, 493 S.E.2d 455 (1997).

In the instant case, Dr. Bersin testified that he personally made the decisions about whether to buy or sell the individual stocks in his Fidelity Investment account, when to make deposits, when to make withdrawals, and how long to hold stock, and that he did not consult with a stockbroker, financial planner, or advisor. According to Dr. Bersin, he sometimes called for updates on his investments as often as five to ten times per day, and he neverallowed more than a few days to pass before accessing this information. Dr. Bersin further testified that he physically visited the research and development departments of some of the companies in which he was investing, used these companies' products and the products of their competitors, and was mindful of the possibility of take-overs of these companies.

The trial court made the following finding of fact regarding the Fidelity Investment account:

[Dr. Bersin's] Fidelity Investment Account No. 168-066249. On the date of separation, [Dr. Bersin's] Fidelity Investment Account No. 168-066249 had a value of $406,848. [He] performed substantial service in the management of this account thereby contributing to its increase in value. While [Dr. Bersin] did have the benefit of a bull market during some of this time between the date of separation and the date of trial, he was the decision maker regarding what investments to make, when to buy or sell, conducted his own research and regularly monitored the account. The account consisted primarily of medical and technology stock relating to his practice. [Dr. Bersin] did not rely on investment brokers in making decisions about this account. Therefore all increases in the value of this account after the date of separation were the results of active appreciation and constitute [Dr. Bersin's] separate property.

As the trial court's classification is based on competent evidence in the record, it must be affirmed. These assignments of error are overruled.

IV.

In her final argument on appeal, Ms. Golonka contends that the trial court erred by denying her claim for attorney's fees for litigation related to the alimony and child support actions. In such actions, the decision to award attorney's fees is consigned tothe discretion of the trial court. N.C. Gen. Stat. § 50-13.6 (2003) (providing that the court "may in its discretion order payment of reasonable attorney's fees" in an action for child custody and/or child support); N.C. Gen. Stat. § 50-16.4 (2003) (providing that the court "may . . . enter an order for reasonable counsel fees" to a spouse entitled to alimony). We discern no abuse of discretion in the trial court's decision to deny her motion for attorney's fees. These assignments of error are overruled.

Thus, with respect to both parties' appeals, the trial court's orders are
Affirmed.
Judges McGEE and LEVINSON concur.
Report per Rule 30(e).