

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-940

Filed 21 October 2026

Wake County, No. 24CV007469-910

ALANA MCARTHUR, Plaintiff,

v.

JESSE J. MCARTHUR, II, Defendant.

Appeal by defendant from order entered 14 February 2025 by Judge Rhonda Young in District Court, Wake County. Heard in the Court of Appeals 3 June 2026.

Poyner Spruill LLP, by Steven B. Epstein, for plaintiff-appellee.

Connell & Gelb PLLC, by Michelle D. Connell, for defendant-appellant.

STROUD, Judge.

Defendant-Husband Jesse McArthur, II appeals from the trial court's equitable distribution order involving a townhome he purchased prior to marrying Plaintiff-Wife Alana McArthur. Husband challenges the trial court's classification of the townhome as marital property. Husband is correct that the trial court erred by classifying the townhome as marital property instead of a mixed asset with marital and separate components. But based on the evidence, Husband's separate interest was 0 percent of the date of separation value, and the marital interest was 100 percent of the value. So technically the trial court erred in its conclusion of law classifying the townhome as entirely marital property, but on these facts, the result

would be the same even if we were to remand to the trial court to issue a new order correcting the wording of the order as to classification of the townhome as a mixed asset with a marital component of 100 percent and a separate component of 0 percent. Therefore, we affirm the trial court’s order.

I. Procedural Background

The parties married on 19 December 2008 and separated on 23 June 2023. Wife filed a complaint seeking equitable distribution on 5 March 2024.¹ Husband filed an answer and counterclaim for equitable distribution on 7 May 2024. Both parties filed equitable distribution affidavits and engaged in discovery. On 18 November 2024, the trial court entered a final pretrial order setting out the parties’ stipulations and the issues for the hearing. The hearing began that day. On 14 February 2025, the court entered an equitable distribution order. Husband timely appealed on 12 March 2025.

II. Jurisdiction

This Court has jurisdiction because the equitable distribution order is a “final judgment of a district court in a civil action.” N.C. Gen. Stat. § 7A-27(b)(2) (2025).

III. Townhome’s Classification as Marital Property

Husband raises one issue on appeal: whether the trial court erred in

¹ Wife’s complaint and Husband’s counterclaims also raised claims for child custody, child support, post-separation support, alimony, and attorney’s fees. But only equitable distribution is at issue on appeal.

“classifying property that [he] acquired prior to the date of marriage as marital property rather than separate.” The property is a townhome Husband bought from his parents the day before the parties married.

A. Standard of Review

This Court’s standard of review of an equitable distribution order is well established:

[W]hen the trial court sits without a jury, the standard of review on appeal is whether there was competent evidence to support the trial court’s findings of fact and whether its conclusions of law were proper in light of such facts. While findings of fact by the trial court in a non-jury case are conclusive on appeal if there is evidence to support those findings, conclusions of law are reviewable *de novo*. We review the trial court’s distribution of property for an abuse of discretion.

Romulus v. Romulus, 215 N.C. App. 495, 498, 715 S.E.2d 308, 311 (2011) (citations, quotation marks, and brackets omitted). “[U]nchallenged findings of fact are presumed to be supported by competent evidence and are binding on appeal.” *Klein v. Klein*, 290 N.C. App. 570, 577, 892 S.E.2d 894, 903 (2023). The classification of property is a conclusion of law, which we review *de novo*. See *Romulus*, 215 N.C. App. at 500, 715 S.E.2d at 312 (“Because the classification of property in an equitable distribution proceeding requires the application of legal principles, this determination is most appropriately considered a conclusion of law.” (citation and quotation marks omitted)).

B. Order’s Provisions Regarding the Townhome

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The trial court made detailed findings of fact about the townhome. Husband does not challenge those findings as unsupported by the evidence, except as noted below, so they are binding on appeal.² See *Klein*, 290 N.C. App. at 577, 892 S.E.2d at 903. Our summary of facts is based on the unchallenged findings.

In the order, the trial court classified, valued, and distributed substantial other property.³ But Husband challenges only two rulings: the townhome’s classification as marital property and the townhome’s post-separation rental income’s classification as divisible property. These rulings resulted in the townhome’s full value being included in the marital estate and thus distributed. We omit all facts on the remainder of the parties’ marital estate.

Husband’s parents purchased the townhome in Raleigh as a residence for Husband and his brother while the two attended college. Husband was living there with roommates when he and Wife began dating in early 2008. During the late summer of that year, they learned Wife was pregnant. Husband and Wife began living together in the townhome and stayed there after their marriage that December. Before the marriage, Husband was looking for another home to buy, but he decided

² Wife points out that Husband failed to challenge the trial court’s findings as unsupported by the evidence. Husband replies that he did, citing his “Proposed Issues on Appeal” listed in the record. But despite listing these potential issues in the record under North Carolina Rule of Appellate Procedure 10(b), Husband’s principal brief presents no argument challenging any findings as unsupported by the evidence. See N.C. R. App. P. 10(b). We recognize that some of the trial court’s conclusions of law do appear under the order’s “Findings of Fact,” and we address Husband’s arguments challenging those conclusions.

³ The marital estate’s total net value was \$2,733,130.38.

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that buying the townhome from his parents was “the most financially viable option.”

On 18 December 2008, the day before the parties married, Husband bought the townhome from his parents. The purchase price was \$132,500, and he did not make a downpayment. Husband obtained a mortgage from State Employee’s Credit Union (SECU), in his name alone, for \$133,500. The parties began making payments on the SECU mortgage in February 2009. They lived in the townhome until 2011.

In the summer of 2011, the parties bought and moved to another home, titled jointly, and began renting out the townhome. Since 2011, they have used the townhome as “a long-term rental,” leasing it mainly to college students on annual terms. The rental income covered the mortgage payments, insurance, taxes, and repair and maintenance costs. Every year, the townhome produced net income.

In May 2013, the parties refinanced the SECU loan for \$105,600, with both Husband and Wife listed as obligors on the loan. They refinanced again in September 2019, for \$92,000, again with both listed as obligors.

After the findings about the townhome’s purchase and use, the trial court summarized the parties’ arguments and set out its conclusions of law on classification:

h. [Wife] contends the [townhome] is entirely marital property. [Husband] contended the property is his separate property, as it was acquired prior to marriage, but

nevertheless has a marital component of \$27,900^[4] consisting of the reduction in mortgage principle paid by the parties during the marriage as well as active appreciation, if any, from improvements to the property during the marriage. The court disagrees with [Husband]'s analysis of the property.

i. At the time of the parties' separation, 100% of all funds used to acquire this property had been paid during the parties' marriage.

j. Pursuant to the source-of-funds rule, [Husband] did not have a separate ownership interest in the property either on the date of marriage or as of the date of separation and the property is therefore entirely marital property.

k. [Wife]'s expert real estate appraiser, Mike Ogburn, testified to his opinion that the fair market value of this property on the date of separation was \$315,000 and that that value had increased to \$320,000 as of the date of trial as the result of changed market conditions. [Husband] offered no contrary evidence. The [c]ourt therefore concludes that the distributable value associated with this property is \$320,000 and that this value should be distributed to whomever receives distribution of this property.

l. The parties have stipulated and agreed to the distribution of this property to [Husband].

m. The parties have stipulated and agreed that the principal balance owed on the jointly held mortgage as of the date of separation was \$82,517 and at the time of trial was \$78,686 and that this debt should be distributed to [Husband].

⁴ Husband claimed that this figure represented the mortgage reduction *while the parties lived in the townhome*—from their marriage until 2011, when they moved out and began renting it—not the reduction over the entire marriage. The remaining findings make that clear. Obviously, *Husband* did not contend that 100 percent of the mortgage reduction during the marriage came from marital funds; that was Wife's contention.

n. The [c]ourt has considered and rejects [Husband]’s contention that \$12,573 in net rental income associated with this property since the parties’ separation should be considered his sole and separate property. Based on the foregoing finding related to the source-of-funds rule, all such rental income is properly classified as divisible property and was fully consumed by the parties to pay their individual and joint expenses during the 17 months between their separation and the trial, as is discussed further in the findings below.

The trial court then concluded that the townhome was “marital property within the meaning of [North Carolina General Statute Section] 50-20.” Consistent with the parties’ stipulations, it distributed the townhome as marital property to Husband at a value of \$320,000, along with the \$78,686 mortgage. Exhibit A to the order—a spreadsheet listing each item of property with its value, classification, and distribution—likewise classified the townhome as “Marital Property—source of funds rule.”

C. Classification of Townhome

Husband argues that the townhome is his separate property because: (1) property “acquired prior to the date of marriage is separate property”; (2) the source of funds rule “determine[s] the percentage of separate property or marital property in an asset after the asset has been classified”; and (3) marital and separate property “may be acquired by various methods and not just by financial contributions.”

1. Relevant Law

“Under North Carolina General Statute [Section] 50-20(c), equitable

distribution is a three-step process: the trial court must (1) classify property as being marital, divisible, or separate property; (2) calculate the net value of the marital and divisible property; and (3) distribute equitably the marital and divisible property.” *Asare v. Asare*, 281 N.C. App. 217, 239, 869 S.E.2d 6, 22 (2022); *see also* N.C. Gen. Stat. § 50-20(c) (2025) (“There shall be an equal division by using net value of marital property and net value of divisible property unless the court determines that an equal division is not equitable. If the court determines that an equal division is not equitable, the court shall divide the marital property and divisible property equitably.”).

North Carolina General Statute Section 50-20(b)(1) defines marital property as “[a]ll real and personal property acquired by either spouse or both spouses during the course of the marriage and before the date of the separation of the parties, and presently owned, except property determined to be separate property or divisible property in accordance with this subsection.” N.C. Gen. Stat. § 50-20(b)(1b) (2025). Section 50-20(b)(2) defines separate property as “[a]ll real and personal property acquired by a spouse before marriage or acquired by a spouse by devise, descent, or gift during the course of the marriage.” N.C. Gen. Stat. § 50-20(b)(2) (2025). The trial court “calculates the marital property’s net value at the date of the parties’ separation.” *MacDonald v. MacDonald*, No. COA 24-759, ___ N.C. App. ___, ___ 932 S.E.2d 254, 273 (2026) (citation and quotation marks omitted).

The party claiming that property is marital bears the burden of showing, “by

a preponderance of the evidence,” that the property “(1) was acquired by either spouse or both spouses; (2) during the marriage; (3) before the date of the separation of the parties; and (4) is presently owned.” *Ahdi v. Ahdi*, Nos. COA 24-344, 24-638, ___ N.C. App. ___, ___ S.E.2d ___, 2026 WL 1407626, at *11 (2026) (citation omitted). When property is “acquired with a mixture of marital and separate property, North Carolina courts apply the ‘source of funds’ rule.” *Crago v. Crago*, 268 N.C. App. 154, 159–60, 834 S.E.2d 700, 705 (2019) (citation omitted). Under that rule, “property is ‘acquired’ as it is paid for,” so it “may include both marital and separate ownership interests.” *Id.*

2. Acquisition of Townhome

Husband argues that the townhome, which he owned before the marriage, is his separate property. He admits the townhome has a small “marital component as a result of active appreciation during the marriage; specifically, marital funds being used to reduce the mortgage principal.” But the trial court, he says, “committed reversible error by transmuting the property from separate property to marital property.” Although the parties paid the mortgage and other expenses throughout the marriage, Husband contends that marital contributions stopped in 2011 because rental income from the townhome covered its expenses. As the trial court found, the marital contribution to the reduction in the mortgage before 2011 was \$27,900.

Husband also claims that since he owned and took title to the townhome before the parties’ marriage, the townhome is separate property under Section 50-20(b)(2).

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And separate property, he notes, includes “[t]he increase in value of separate property and the income derived from separate property is considered separate property.” N.C. Gen. Stat. § 50-20(b)(2) (2025). The trial court thus erred, Husband argues, in finding and concluding that he “did not have a separate ownership interest in the property” on the date of marriage and in classifying the townhome as entirely marital.

Husband also contends that he could have held equity in the townhome at the time of the marriage even without making a payment, because he bought it from his parents and the original purchase price may have been below fair market value. But he offered no evidence of the townhome’s value on the date of marriage beyond the \$132,500 purchase price.

Wife responds that, although Husband received title to the townhome before the marriage, our previous cases have read “acquire” as a dynamic process, not a static event. She is right. Husband held legal title to the townhome before the marriage, but he acquired equity in it through the marital estate’s contributions during the marriage. As this court explained in *McLeod*, the property’s “acquisition” is the key to Section 50-20(b)’s definitions:

The key term in both definitions is “acquired.” In *Wade v. Wade*, 72 N.C. App. 372, 325 S.E.2d 260 (1985), this Court adopted the source of funds rule, by which property is “acquired” as it is paid for, so that it may include both marital and separate ownership interests. . . . It does not depend upon inception of title but upon monetary or other contributions made by one or both of the parties. In adopting this rule by which to characterize property as marital or separate or some combination, this Court

recognized “that a dynamic rather than static interpretation of the term ‘acquired’ as used in [Section] 50–20(b)(1)” best serves to implement the remedial intent of the statute.

Using a source of funds analysis, this Court drew a distinction in *Wade* between increases in value of separate property due to passive appreciation, such as by inflation or governmental action, . . . and increases due to active appreciation, such as by financial or managerial contributions from one or both of the spouses. It interpreted [Section] 50–20(b)(2), which classifies increase in value of separate property as separate property, as referring only to increase due to passive appreciation, which does not deplete the marital estate. It held that increase in value of separate property due to active appreciation, which otherwise would have augmented the marital estate, is marital property. Thus the marital partnership shares in increases in value of property it has proportionately “acquired” in its own right.

McLeod v. McLeod, 74 N.C. App. 144, 148, 327 S.E.2d 910, 913 (1985) (citation and quotation marks omitted), *overruled in part on other grounds by Johnson v. Johnson*, 317 N.C. 437, 346 S.E.2d 430 (1986).

3. Source of Funds Rule

After briefing closed and just before oral argument, Husband submitted a memorandum of additional authority, citing *Bailey v. Bailey*, No. COA25-483, ___ N.C. App. ___, ___, 928 S.E.2d 325, 327 (2026), filed on 18 March 2026. At oral argument, both parties addressed whether *Bailey* squares with earlier cases on classifying mixed assets.

Husband’s counsel contended that *Bailey* required the trial court to classify the

townhome as his separate property, apart from the \$27,900 marital component reflecting the mortgage reduction while the parties lived there from the date of marriage until 2011. Wife’s counsel read *Bailey* the same way. Though the opinion cites *Wade*, 72 N.C. App. at 372, 325 S.E.2d at 260, and discusses the source of funds rule, counsel said, it “seems to suggest” that “there is no ability for separate property ever to be distributed despite what funds are paid during the course of the marriage to acquire it.” Counsel added that *Bailey* relied “almost exclusively” on *Turner v. Turner*, 64 N.C. App. 342, 307 S.E.2d 407 (1983)—a decision that predates *Wade* and thus the source of funds rule by two years. Husband agreed that *Turner*, as the older case, was the controlling authority under *In re Civil Penalty*. See 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989) (“Where a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court.” (citations omitted)).

Wife’s counsel recognized the reach of that reading. *Bailey*, counsel said, “seems to be saying that *Wade*, *McLeod*, *McIver*, *Johnson*, and *Mishler* were all wrongly decided because in each of those cases, this Court held that the real property itself had both a marital and a separate component and that the real property was distributable.”⁵ So if the parties read *Bailey* and *Turner* correctly, *In re Civil Penalty*

⁵ The parties’ briefs cite all these cases.

compels us to follow *Turner*, and the later cases the briefs rely on would not bind us.

We take challenges to settled precedents (like *Wade* and *McLeod*) seriously. We therefore begin with *Turner*'s precedential effect. We then determine whether *Bailey* actually relied on *Turner* and, in doing so, departed from *Wade*, *McLeod*, and the cases that followed them.

a. Turner v. Turner

“In 1981, the General Assembly sought to alleviate the unfairness of the common law rule by enacting our Equitable Distribution Act which is now codified as [North Carolina General Statute Sections] 50-20 and 21.” *White v. White*, 312 N.C. 770, 774–75, 324 S.E.2d 829, 831 (1985). The Equitable Distribution Act took effect on 1 October 1981. *See Myers v. Myers*, 62 N.C. App. 291, 296, 302 S.E.2d 476, 480 (1983) (“Section 7 of the Act for the Equitable Distribution of Marital Property (c. 815, Sess. Laws 1981) became effective in actions for absolute divorce filed on and after 1 October 1981.”). By 1983, few appeals from equitable distribution orders had reached this Court, and only two cases—issued in 1983—dealt with equitable distribution.⁶

Turner was the first reported case from this Court addressing a substantive issue under Section 50-20. *See Turner*, 64 N.C. App. at 345–46, 307 S.E.2d at 408–09. But the order on appeal was not really an equitable distribution order, although

⁶ The other was *White v. White*, 64 N.C. App. 432, 308 S.E.2d 68 (1983), *aff'd as modified*, 312 N.C. 770, 324 S.E.2d 829 (1985).

it dealt with an equitable distribution claim. The husband instead appealed an interlocutory order. *Id.* at 344–45, 307 S.E.2d at 408. The opinion quotes the trial court’s findings and conclusions nearly in full, and they read much like the pretrial order that North Carolina General Statute Section 50-21(d) requires today.⁷ *Id.*; see N.C. Gen. Stat. § 50-21(d) (2025). The order directed the wife to “inquire through subpoena or otherwise” about the husband’s Duke Power shares, required the parties to have the marital residence appraised, and enjoined the husband from disposing of the stock or encumbering the residence pending further hearing. *Id.* at 345, 307 S.E.2d at 408. It explicitly *did not* make a final distribution of all marital property. It also set the cause “for further hearing before the undersigned at which time both parties may offer additional evidence as to the value of said marital property above described to achieve an equitable distribution.” *Id.*

This Court reversed and remanded. The findings and conclusions, we held, would not permit review. *See id.* at 345–46, 307 S.E.2d at 408–09. The Court’s holding—the binding precedent of the case—was as follows:

These findings and conclusions are inadequate or incorrect for several reasons. For one thing, the findings of fact and conclusions of law are not stated separately, as Rule 52(a)(1) of the North Carolina Rules of Civil Procedure requires. This requirement is not a mere technicality; it

⁷ Section 50-21(d) requires the trial court to hold a scheduling and discovery conference and a pretrial conference. N.C. Gen. Stat. § 50-21(d). It also requires it to enter a pretrial order addressing “any matters reasonably necessary to effect a fair and prompt disposition of the case in the interests of justice.” *Id.* The General Assembly added Subsection (d) in 1995, twelve years after *Turner*. *See* 1995 North Carolina Laws Ch. 244 (H.B. 269).

serves a necessary purpose. Only by examining specific findings and conclusions can either the litigants, the trial court, or a reviewing court determine if there has been a correct application of law to fact. Nor do the written findings and conclusions “support the determination that the marital property has been equitably divided,” as [Section] 50-20(j) directs.

Id. at 345, 307 S.E.2d at 408 (citation omitted).

After noting the order’s many deficiencies, we described several hypothetical conclusions that the trial court *might* reach on remand, depending on its findings, since it had not yet made the required findings on the parties’ marital estate:

If the house was purchased by [the husband] before the marriage, as the finding states, then it was error to subject the house, as such, to equitable distribution, since under [Section] 50-20(b)(2), property acquired by a spouse before marriage is “separate,” rather than “marital,” property.

If, however, an equity in this property developed during the marriage because of improvements or payments contributed to by [the wife], that equity (as distinguished from a mere increase in value of separate property, excluded by the statute) could be marital property, in our opinion, upon appropriate, supportable findings being made. And if not marital property, such equity, if it developed, would be a factor requiring consideration by the court, along with the other factors specified in the statute, before determining how much of the marital property each party is entitled to receive. The stock also could be marital property if appropriate, supportable findings are made. But the findings made do not support the division ordered.

Id. at 346, 307 S.E.2d at 409 (emphasis added).

So again, the ruling in *Turner*—the legal question decided by this Court—was only that the order on appeal lacked the findings and conclusions that Section 50-20

requires. This is unsurprising, because it was not a final equitable distribution order. While *Turner* never discussed mixed classification property—i.e., property with both marital and separate components—it recognized the possibility of the classification. *Id.* To the extent *Wade* or later cases seem inconsistent with *Turner*, we first note that most of *Turner* is dicta. See *Obiter Dictum*, Black’s Law Dictionary (12th ed. 2024) (“A judicial comment . . . unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive).”); see also *Hayes v. City of Wilmington*, 243 N.C. 525, 536, 91 S.E.2d 673, 682 (1956) (“In every case what is actually decided is the law applicable to the particular facts; all other legal conclusions therein are but *obiter dicta*.” (citation and quotation marks omitted)). Courts have cited *Turner*’s language with approval many times, including in *Wade* and in decisions of our Supreme Court. But repetition does not convert it into a holding.

It is a maxim not to be disregarded, that general expressions in every opinion are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit where the very point is presented for decision.

Moose v. Board of Com’rs of Alexander County, 172 N.C. 419, 433, 90 S.E. 441, 448–49 (1916). As our Supreme Court put it more recently, “dicta upon dicta does not the law make.” *McKinney v. Goins*, 387 N.C. 35, 57, 911 S.E.2d 1, 17 (2025) (citation and quotation marks omitted).

b. Wade v. Wade

Two years after *Turner*, this Court adopted the source of funds rule and with it the concept of mixed property. *See Wade*, 72 N.C. App. at 372, 325 S.E.2d at 260.

In *Wade*, the husband owned unimproved land before the marriage, titled solely in his name. *Id.* at 377, 325 S.E.2d at 266–67. During the marriage, the parties built a house on that land; the husband’s business stood on another part of it. *Id.* at 375, 377, 325 S.E.2d at 265, 266–67. He tried to show at trial that he had put some \$40,000 of separate funds into the house against the wife’s \$5,000. *Id.* at 378, 325 S.E.2d at 267. But the trial court found his testimony untruthful and tainted by forgery. *Id.* Instead, it found that the wife had contributed substantial sums to the construction and maintenance of the house and that construction began only after the marriage. *Id.*

The trial court determined that the house was marital property and a “separate asset from the realty on which it was built.” *Id.* at 377, 325 S.E.2d at 266–67. It awarded the wife the house, the land underlying it, and a 1977 automobile; the husband received the remaining marital property. *Id.* at 375, 325 S.E.2d at 265. Because the “land on which the house was built was titled solely in [the husband’s] name,” the court ordered him to

deed to [the wife] the house and all of the land underlying or contiguous to the house, excluding that part of the land on which [the husband]’s business was built, but not to exceed three acres. The court further ordered that [the husband], in lieu of deeding such property to [the wife],

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could elect to pay [the wife] the sum of \$80,000 in cash or certified funds.

Id. at 375, 325 S.E.2d at 265.

The husband appealed, arguing that the “court did not have authority to order the transfer of his land which he claims was his separate property.” *Id.* at 375, 325 S.E.2d at 265. Based on several problems in the judgment, this Court vacated and remanded for entry of a new order. *Id.* at 387, 325 S.E.2d at 272. We concluded that the trial court’s order failed to meet “the standards for orders of equitable distribution” established in *Alexander v. Alexander*, 68 N.C. App. 548, 315 S.E.2d 772 (1984).⁸ *Id.* at 376, 325 S.E.2d at 266.

The final question remaining in *Wade* was the same one that matters here: how to classify, value, and distribute the house and land.

This Court held that the house and the land were a single asset. A house affixed to land ordinarily becomes part of the realty, and the party claiming otherwise bears the burden of showing an agreement to that effect. *Id.* at 377, 325 S.E.2d at

⁸ The trial court in *Alexander* made no findings on the net value of the marital property at the date of separation, and it ordered an unequal division without findings on most of the Section 50-20(c) factors—the parties’ property and liabilities, their age and health, the custodial parent’s need for the residence, and the liquid or nonliquid character of the property. *Alexander v. Alexander*, 68 N.C. App. 548, 552–53, 315 S.E.2d 772, 776 (1984). This Court reversed and remanded. *Id.* at 553, 315 S.E.2d at 776. The Equitable Distribution Act was new then—effective 1 October 1981—and *Alexander*, *Wade*, and *Turner* all arose in its first years, before trial courts had fully appreciated the statute’s steps of classification, valuation, and distribution or the detailed findings those steps require. Both *Alexander* and *Wade* also came burdened with substantial appellate rule violations that this Court excused because of the importance of the issues presented. *See, e.g., id.* at 550, 315 S.E.2d at 774–75 (“Such procedure is in clear violation of Rules 10 and 28 of the Rules of Appellate Procedure and therefore this appeal is subject to dismissal. Because of the important questions apparent in the appeal, we deem it appropriate, in our discretion, to consider [the] plaintiff’s appeal on its merits.”).

267. No evidence showed any agreement to separate the house and land. *Id.* So we said that we “must view the house and the land as one asset, that asset being real property.” *Id.*

The next question was whether that single asset—the house and land together—was marital or separate property. *Id.* Because the husband acquired the unimproved land before the marriage, the land would ordinarily be separate in character. *Id.* at 378, 325 S.E.2d at 267. And if the land was separate, one might argue that the house merely increased the land’s value, which Section 50-20(b)(2) also classifies as separate property. *Id.* at 378–79, 325 S.E.2d at 267. This Court found that argument unpersuasive. *Id.*

Section 50-20, we explained, is a “remedial statute enacted to ensure a fairer distribution of marital assets than under common law rules,” and remedial statutes are construed broadly in light of the evils they address. *Id.* at 379, 325 S.E.2d at 267-68. Reading the increase-in-value provision to swallow the house would defeat that purpose. This Court therefore construed that provision as “referring only to passive appreciation of separate property, such as that due to inflation, and not to active appreciation resulting from the contributions, monetary or otherwise, by one or both of the spouses.” *Id.* at 379, 325 S.E.2d at 268. The appreciation there was active, so the provision did not require classifying the improved property as entirely separate. *Id.* Any other rule, this Court added, would invite a “sophisticated spouse to divert marital funds into improving his or her separate property,” cutting the other spouse

out of any return on the marital investment. *Id.* at 380, 325 S.E.2d at 268 (citation omitted).

This Court then noted it was clear the marital estate had “invested substantial sums” to improve the land by building the house, so

the marital estate [was] entitled to a proportionate return of its investment. *Accord, Turner v. Turner*, 64 N.C. App. 342, 307 S.E.2d 407 (1983) (where an equity developed in a house purchased by the husband before marriage because of improvements or payments contributed to by the wife during the marriage, that equity could be marital property).

Id. That is, the *Wade* Court recognized “a dynamic rather than static interpretation of the term ‘acquired’ as used in [Section] 50–20(b)(1)” to prevent inequity. *Id.* This “dynamic” interpretation saw “acquisition . . . as the ongoing process of making payment for property or contributing to the marital estate rather than being fixed on the date that legal title to property is obtained.” *Id.* at 380, 325 S.E.2d at 268–69 (citation omitted). The marital estate had “invested substantial sums” in the property by building the house on it, so the estate was “entitled to a proportionate return of its investment.” *Id.* This Court cited *Turner* in accord. *Id.*

On the other hand, the wife urged this Court to adopt the “transmutation through commingling” theory and hold the improved real property entirely marital. *Id.* at 381, 325 S.E.2d at 269. We declined to do so. Nothing in Section 50-20 supported that theory or indicated a legislative preference for classifying property as marital. *Id.* Just the opposite: the statute, this Court said, reflects “a clear legislative

intent that separate property brought into the marriage or acquired by a spouse during the marriage be returned to that spouse, if possible, upon dissolution of the marriage.” *Id.*

We held instead that the property had to be “characterized as part separate and part marital”—the source of funds approach:

Under this theory, when both the marital and separate estates contribute assets towards the acquisition of property, each estate is entitled to an interest in the property in the ratio its contribution bears to the total investment in the property. Thus, both the separate and marital estates receive a proportionate and fair return on its investment.

Id. at 382, 325 S.E.2d at 269 (citations omitted). Applied to the *Wade* property, the theory produced a result “not very different” from the trial court’s: the unimproved land the husband owned before the marriage was separate in character, the house built during the marriage with marital funds was marital in character, and the husband was “entitled to a return of, or reimbursement or credit for” his separate contribution. *Id.* at 382, 325 S.E.2d at 269.

Because the husband had hidden, sold, or otherwise put beyond the court’s reach most of the other marital property, the house was the only asset of “any significant and practical value” the trial court could award the wife—and awarding her the house meant awarding her part of the land beneath it. *Id.* at 382, 325 S.E.2d at 269–70. This Court held that the trial court had authority to do so. Because the house and land were one asset, “at least partly marital in character,” the court could

include it in the distribution, and it could award the wife the part separate in character when necessary to achieve equity, “so long as [the husband] [wa]s reimbursed or given credit for the value of his separate property contribution.” *Id.* at 382–83, 325 S.E.2d at 270. That separate part “should be returned in kind to the person contributing it so far as it is practical,” but where returning it in kind is neither practical nor equitable, the trial court could take whatever measures the equities require. *Id.* at 383, 325 S.E.2d at 270.

The trial court had awarded only “so much of the subjacent land” as the use and enjoyment of the house reasonably required, and it had given the husband the option to pay a sum of money in lieu of deeding the property. *Id.* Given that option and that limit, this Court held, “it was not error as a matter of law for the court to award to [the wife] the house and subjacent land.” *Id.* The court had not been sufficiently specific, though, in identifying the part of the land to be deeded, and on remand it was to determine that part precisely, find its value, and account in its judgment for the husband’s right to reimbursement or credit. *Id.*

c. Bailey v. Bailey

In *Bailey*, ___ N.C. App. at ___, 928 S.E.2d at 325, the husband bought a house in 2009 with his former wife. *Id.* at ___, 928 S.E.2d at 327. His former wife deeded the property to him on 13 January 2015, and he refinanced it that same day. *Id.* He married the defendant (the wife) on 18 April 2015 and refinanced again in November 2020. *Id.* He never conveyed any interest in the property to the wife. *Id.* The parties

rented the house out from 2015 until early 2020, when they moved in and made it their primary residence. *Id.* They separated in the fall of 2021. *Id.*

The parties filed signed stipulations on the day of the second and final hearing, setting the property's value and the mortgage balance on the date of marriage, the date of separation, and the date of signing—but stipulated nothing about classification. *Id.* at ___, 928 S.E.2d at 328. Those figures set the house's net value at negative \$24,000 on the date of marriage and \$73,816.64 on the date of separation. *Id.*

The trial court's equitable distribution order “did not classify the [house] itself but found that the property had negative equity on the date of marriage and that there were no active contributions of separate property in the home.” *Id.* It found that both the active contributions—the mortgage reduction—and the passive appreciation were marital property, and it distributed the house and all its equity to the wife. *Id.* The husband appealed, arguing the “trial court erred by failing to classify the [house] as his separate property, failing to distinguish the classification and the appreciation of the [house], finding that the appreciation of the [house] was active, and failing to determine a date of separation to value the [house].” *Id.* This Court agreed, holding that “the trial court erred by distributing the [house] to [wife] and classifying the passive appreciation of the property as marital.” *Id.* at ___, 928 S.E.2d at 330.

Contrary to Husband's contentions, *Bailey* did not reject years of cases discussing the source of funds rule. Rather, it applied settled law to an unusual set of facts: separate property carrying a negative net value on the date of marriage. After noting *Turner*, this Court in *Bailey* explained that *Wade* had "reaffirmed" *Turner*:

This Court reaffirmed that North Carolina law recognizes the dual nature of real property in *Wade*. There, the [husband] purchased land prior to the marriage and then he and the [wife] built a house on the land. *Wade*, 72 N.C. App. at 378, 325 S.E.2d 260. The [husband] was awarded both the land and the house in the trial court's equitable distribution order. The [wife] appealed and asked this Court to "adopt the theory of 'transmutation through commingling'" under which "affirmative acts of augmenting separate property by commingling it with marital resources is viewed as indicative of an intent to transmute, or transform, the separate property to marital property." *Id.* at 381, 325 S.E.2d 260. This [C]ourt refused to adopt the theory of transmutation because [Section] 50-20 demonstrates "a clear legislative intent that separate property brought into the marriage or acquired by a spouse during the marriage be returned to that spouse, if possible, upon dissolution of the marriage."¹ *Id.* Accordingly, this Court recognized that the land and the house constituted one asset that was partially separate and partially marital. *Id.* at 382, 325 S.E.2d 260.

Id. (footnote omitted).

The trial court's main error in *Bailey* was that it never classified the house at all because of its negative equity on the date of marriage. Still, it distributed the house to the wife, based on its classification of the property's passive appreciation as marital. But classification and valuation are distinct steps. *See id.* at ___, 928 S.E.2d

at 328–29 (“In an action for equitable distribution, the trial court is required to conduct a three-step process: (1) classify property as being marital, divisible, or separate property; (2) calculate the net value of the marital and divisible property; and (3) distribute equitably the marital and divisible property.” (citation and quotation marks omitted)). And classification is the essential first step. *See id.*

The husband’s negative equity on the date of marriage was one of the unusual features of *Bailey*, and the townhome here shares it. But that negative equity did not excuse the trial court from classifying the home. *See id.* at ___, 928 S.E.2d at 330. Marital contributions to the equity cannot “transform the property from separate property to marital property, contrary to our caselaw and the legislature’s intent to keep separate property separate.” *Id.* This Court reversed and remanded “to the trial court to reconsider the classification of the [house], including equity and appreciation, in a manner consistent with th[e] opinion.” *Id.* A classification “consistent” with *Bailey* would recognize the house as a mixed asset, with both marital and separate interests. *Id.*

Bailey does not change the source of funds rule as *Wade* applied it. Recall that in *Wade*, we held that the trial court had authority to transfer title to part of a mixed-classification asset—the house built on the husband’s separate land—to the wife, based on the marital contributions to the property. *Wade*, 72 N.C. App. at 382–83, 325 S.E.2d at 270. Because the house and land were one asset, part separate and

part marital, the trial court could distribute it. *Id.* And the *Wade* Court certainly believed that it was following *Turner*, not departing from it:

In this case it is clear the marital estate invested substantial sums in improving the real property by constructing a house on it; therefore, the marital estate is entitled to a proportionate return of its investment. *Accord*, . . . *Turner*, 64 N.C. App. [at] 342, 307 S.E.2d [at] 407 . . . (where an equity developed in a house purchased by the husband before marriage because of improvements or payments contributed to by the wife during the marriage, that equity could be marital property). [The wife] contributed substantially towards construction of the house and it would be contrary to the intent of the statute to deprive her of any possible return of her contributions to the marital estate.

Id. at 380, 325 S.E.2d at 268.

Husband reads *Bailey* to bar the distribution of separate property even when it carries a marital component, as he concedes the townhome does. But “distribution” here does not mean transfer to the other spouse—like the distribution this Court addressed and affirmed in *Wade*. The parties stipulated that the townhome itself would be “distributed” to Husband, in that it would continue to belong to him after the equitable distribution was done, whether the trial court classified it as his separate property, marital property, or a mixed classification. Their dispute, as set out in the pretrial order, was over the townhome’s classification and the value of any marital component: Husband argued that it was his separate property and Wife contended that it was marital property. Distributable property under Section 50-20

means marital property, or the marital component of the value of a mixed-classification asset, brought into the equitable distribution.

It is true that a trial court cannot distribute a spouse's *purely* separate property or order it sold to pay a distributive award. *See Crowell v. Crowell*, 372 N.C. 362, 370, 831 S.E.2d 248, 254 (2019) ("Therefore, we conclude that trial courts are not permitted to disturb rights in separate property in making equitable distribution award orders."). But *Bailey* does not change the law, going back to *Wade*, that a mixed asset, part separate and part marital, must be included in the equitable distribution of the marital estate under Section 50-20, because the marital component of that asset must be valued and distributed. Again, *Bailey* treats mixed assets as *Wade* adopted them. *See Bailey*, ___ N.C. App. ___, 928 S.E.2d at 330 ("This Court reaffirmed that North Carolina law recognizes the dual nature of real property in *Wade*.").

The trial court's error in *Bailey*, then, was twofold: it had distributed the husband's presumptively separate property without classifying it as separate, marital, or mixed, and it classified the passive appreciation in that property as marital. *Id.* ("Here, the trial court erred by distributing the [house] to [the wife] and classifying the passive appreciation of the property as marital."). On remand, this Court directed the trial court to determine which portions of the equity and appreciation in the house were marital and which were separate. *Id.* at ___, 928 S.E.2d at 331. The trial court was to consider the mortgage payments made during

the marriage—which may be active appreciation and marital, depending on the source of the payments—and the increase in value based on property values, which would be passive and separate. *Id.*

4. Effect of Rental Income During Marriage on Classification

Husband also relies on *Bailey* to argue that his separate property generated all the rental income from the townhome after the parties moved out in 2011. On that view, the only marital contributions were the mortgage payments made from 2009 to 2011, while the parties lived there. He is right that *Bailey* treated rental income from a separate house as a separate contribution. But the facts here differ, and under the same law and the same mathematical formula, they lead to a different result: the rental income was generated by the marital interest in the townhome.

The difference lies in timing—*when* the rental income came in relative to the mortgage reduction. Here, on the date of marriage, the townhome was Husband's separate property with net equity of negative \$1,000. All the mortgage reduction from the date of marriage until 2011 came from marital funds, so by 2011, all the net equity in the townhome was marital. When the parties moved out and began renting, the income came from a mixed asset in which Husband held a 0 percent separate interest and the marital estate held a 100 percent interest *based on the mortgage reduction since the original loan's inception*. The equity that developed before 2011 was entirely from marital contributions, as even Husband conceded at trial as to the marital component of \$27,900.

In *Bailey*, the timing was opposite; the husband's separate contributions from rental income started at the beginning of the marriage and continued until about a year before the date of separation. *Bailey*, ___ at ___, 928 S.E.2d at 327. The net equity on the date of marriage was negative \$24,000. *Id.* at ___, 928 S.E.2d at 328. The house was rented out from the start of the marriage until about a year and a half before separation, and the rents covered the mortgage and expenses. *Id.* Because the house was the husband's separate property—negative net value notwithstanding—and because no marital contribution had yet been made, that rental income was entirely separate. *Id.* Only the mortgage payments after the parties moved in came from marital funds. *Id.* By the date of separation, the home's net value was \$73,816.64. *Id.* Rental income from the husband's separate property had built much of that equity through mortgage principal reduction; rising property values had built the rest through passive appreciation. On remand, we directed the trial court to classify the house as a mixed asset and to determine the proportionate marital and separate values. *Id.* at ___, 928 S.E.2d at 330.

Husband is correct that he did “acquire” the townhome before the marriage and held an “ownership interest” in it on the date of marriage. He was its sole owner. So under Section 50-20(b)(2), the townhome was his separate property, with a net value of negative \$1,000.00 on the date of marriage. He contends that the trial court improperly treated the parties' payment of the mortgage during the marriage as “transmutation through commingling” that converted the townhome into marital

property. *See Wade*, 72 N.C. App. at 381, 325 S.E.2d at 269 (“Under that theory [of transmutation through commingling] affirmative acts of augmenting separate property by commingling it with marital resources is viewed as indicative of an intent to transmute, or transform, the separate property to marital property.”). And technically, he is right. The townhome was acquired before marriage, and the trial court erred by classifying it simply as marital property. It is a mixed asset.

Husband’s difficulty lies in the timing and math in this case. All the equity in the townhome before 2011 was created by marital contributions, since the parties were living there and paying the mortgage from marital funds. When they moved out, the townhome carried 100 percent marital equity and 0 percent separate equity—so the rental income it generated was likewise 100 percent marital.

Husband also surmises that the townhome *may* have been worth more than \$132,500 because his parents *may* have sold it to him at below market price. But he presented no evidence at trial of any value other than the purchase price. His hypothetical is sound as far as it goes: had his parents given him equity in the townhome, his separate interest would have been worth more than zero. But it remains a hypothetical, unsupported by the evidence at trial. As the party claiming that a substantial portion of the townhome’s value is separate, Husband bore the burden of presenting evidence of that portion. *See Johnson v. Johnson*, 230 N.C. App. 280, 285, 750 S.E.2d 25, 29 (2013) (“The burden of showing the property to be marital is on the party seeking to classify the asset as marital and the burden of showing the

property to be separate is on the party seeking to classify the asset as separate. Additionally, the party claiming property to be marital has the burden of presenting evidence on the value of such property.” (citations, quotation marks, and brackets omitted)). As his brief suggests, that evidence could have shown equity in the townhome when he purchased it, along with passive appreciation on any separate portion as property values rose. But he presented none.

Based on the evidence, the net equity in the townhome on the date of marriage was negative \$1,000.00, as the trial court found. With no evidence that the townhome’s fair market value exceeded the mortgage, the trial court could not find otherwise. *See, e.g., Ross v. Ross*, 230 N.C. App. 28, 34, 749 S.E.2d 84, 89 (2013) (“The burden, therefore, then shifted to [the p]laintiff to present evidence establishing what portion, if any, of the \$65,000.00 loan was reduced prior to the marriage and was, therefore, his separate property.” (citation omitted)).

Under *Wade*, Husband’s separate estate and the marital estate are “entitled to an interest in the property in the ratio its contribution bears to the total investment in the property.” *Wade*, 72 N.C. App. at 382, 325 S.E.2d at 269. Based on the evidence and the trial court’s findings, the townhome was worth \$132,500 on the date of marriage against a mortgage of \$133,500, leaving a net equity of negative \$1,000. Husband’s separate interest was therefore 0 percent, and the marital interest 100 percent, because the parties’ financial contributions during the marriage created all the townhome’s net value.

In a purely academic sense, the trial court's conclusion classifying the townhome as entirely marital property is thus incorrect: Husband did hold a separate property interest, but one with no net value against the marital estate's contribution of 100 percent of the net value. So the trial court erred by *classifying* the townhome as marital property. It should have been classified as a mixed asset, with 100 percent marital equity and 0 percent separate equity.⁹

As in *Wade*, though, that correction leaves “the result . . . not very different from the result reached by the trial court.” *Wade*, 72 N.C. App. at 382, 325 S.E.2d at 269. The practical effect is identical. Thus, although the trial court's conclusion of law classifying the townhome as entirely marital property was error, we see no need to remand to the trial court to issue a new order. A remand would change only the order's wording. The parties had already agreed that the townhome would be Husband's property and that he would pay the mortgage on it. So revising the order to classify the townhome as a mixed asset with a 0 percent separate interest and a 100 percent marital interest would accomplish nothing beyond additional work for the trial court. We therefore decline to remand. But we caution that the facts of this case are unusual. Trial courts should not rely on the lack of remand here to justify skipping the step of classifying and valuing the marital and separate interests in mixed assets in future cases.

⁹ Like our analysis on the issue of rental income, any passive appreciation on the townhome is a marital asset because it also arose out of the 100 percent marital component of the townhome.

IV. Conclusion

For the reasons explained above, we affirm the trial court's order.

AFFIRMED.

Judge COLLINS concurs.

Judge TYSON concurs in part and dissents in part by separate opinion.

Husband appeals from the trial court’s equitable distribution order classifying a townhome he had purchased in his sole individual name prior to marriage as marital property. The majority’s opinion holds the trial court erred in classifying the townhome “simply as marital property” because it is a “mixed asset.” The townhome is a separate property under the plain language of N.C. Gen. Stat. § 50-20(b) and our precedents. The trial court’s order is properly reversed and remanded for a new hearing. I respectfully dissent.

I. Background

The facts are not disputed. Husband’s parents purchased a townhome with their funds to be used as a residence for him and his brother, while the two of them attended college in Raleigh. Husband was living in the townhome with roommates when he and Wife began dating in early 2008. Husband and Wife later began living together in the townhome. Husband purchased the townhome from his parents in his sole name prior to the parties’ date of marriage. The purchase price was \$132,500. Husband obtained a mortgage in his sole name from State Employee’s Credit Union (SECU) for \$133,500. The couple remained in the townhome and lived there after their marriage on 19 December 2008 until 2011, when they purchased a marital home, titled as tenants by the entirety.

After securing and moving into the marital home, Husband leased his separate townhome to college students on annual terms. The rental income covered the mortgage payments, insurance, taxes, and repair and maintenance costs. Every year,

the townhome produced net income over debt and expenses. The net income from his separate property was used to offset family and marital expenses.

Husband re-financed the townhome twice with SECU in 2013 and 2019 for lesser amounts than the original acquisition cost and debt, \$105,600 and \$92,000 respectively. The property has remained in Husband's sole name since acquisition prior to the marriage until now. The parties stipulated the principal balance owed on the townhome's mortgage as of the parties' date of separation was \$82,517, and at the time of trial was \$78,686. This entire debt was distributed solely to Husband.

II. Analysis

The statutes and laws governing this issue are unambiguous and long settled. N.C. Gen. Stat. § 50-20(c) mandates: "There shall be an *equal division* by using *net value of marital property* and net value of divisible property unless the court determines that an equal division is not equitable." N.C. Gen. Stat. § 50-20(c) (2025) (emphasis supplied). N.C. Gen. Stat. § 50-20(b) defines *separate property* as "[a]ll real and personal property *acquired by a spouse before marriage* or acquired by a spouse by devise, descent, or gift during the course of the marriage." N.C. Gen. Stat. § 50-20(b)(2) (2025) (emphasis supplied). "The *increase in value* of separate property and the *income derived* from separate property is considered separate property." *Id.* (emphasis supplied).

In contrast, N.C. Gen. Stat. § 50-20(b)(1) defines *marital property* as "[a]ll real and personal property *acquired* by either spouse or both spouses *during the course of*

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the marriage and before the date of the separation of the parties, and presently owned, *except property determined to be separate property* or divisible property in accordance with this subsection.” N.C. Gen. Stat. § 50-20(b)(1b) (2025) (emphasis supplied).

“In an equitable distribution action, the burden of proof is upon the party claiming that property is marital property to show by a preponderance of the evidence that the property: (1) was acquired by either spouse or both spouses; (2) *during the marriage*; (3) before the date of the separation of the parties; and (4) is presently owned.” *Moore v. Jordan*, 259 N.C. App. 590, 593, 816 S.E.2d 218, 221 (2018) (emphasis supplied).

“[T]he party claiming an interest in [an asset also], ha[s] the burden of proof as to the value of the [asset] on the date of the parties’ separation.” *Albritton v. Albritton*, 109 N.C. App. 36, 40, 426 S.E.2d 80, 83 (1993). That “party claiming” is also required to “provide evidence by which that property is to be valued.” *Moore*, 259 N.C. App. at 593, 816 S.E.2d at 221 (citation omitted).

Husband correctly argues he acquired sole title and owned the townhome, prior to the marriage as his separate property. He admits to “marital funds being used to reduce the mortgage principal” on his separately-owned townhome. Husband contends any marital contributions to reduce the mortgage ceased in 2011 due to the acquisition of the jointly-titled marital home, and because rental income from the townhome more than covered its expenses and produced a net income used for family and marital expenses.

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The trial court specifically found and concluded the marital contribution to the townhome's mortgage reduction until 2011 was \$27,900 when the parties acquired their jointly-titled martial home and moved out. This finding is not challenged and is binding upon appeal. "[U]nchallenged findings of fact are presumed to be supported by competent evidence and are binding on appeal." *Klein v. Klein*, 290 N.C. App. 570, 577, 892 S.E.2d 894, 903 (2023). The classification of property is a conclusion of law, which the Court reviews *de novo*. *Hunt v. Hunt*, 112 N.C. App. 722, 729, 436 S.E.2d 856, 861 (1993).

A. Turner v. Turner

The General Assembly enacted the Equitable Distribution Act, effective on 1 October 1981, and codified as N.C. Gen. Stat. § 50-20 and 21 (1981). *Turner v. Turner* was one of the first applicable cases considered by this Court after the Act became effective wherein the Court reversed the order and remanded to the trial court. *Turner v. Turner*, 64 N.C. App. 342, 307 S.E.2d 407 (1983). The Court reviewed and applied the plain language of the statute: "If the house was purchased by [one spouse] before the marriage, as the finding states, then it was error to subject the house, as such, to equitable distribution, since . . . property acquired by a spouse before marriage is 'separate,' rather than 'marital,' property." *Id.* at 346, 307 S.E.2d at 409.

The Court further addressed the precise situation here, where martial funds were used to reduce the debt on separate property, and stated: "If, however, an equity in this property developed during the marriage because of improvements or payments

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contributed to by [one spouse], that equity (as distinguished from a mere increase in value of separate property, excluded by the statute) could be marital property, in our opinion, upon appropriate, supportable findings being made. *Id.*

B. *Wade v. Wade*

Plaintiff and the majority's opinion cite the later case of *Wade v. Wade*, 72 N.C. App. 372, 325 S.E.2d 260 (1984). The facts in *Wade* are markedly different from those here. In *Wade*, the parties *built a new house during the marriage* on property the husband had acquired prior to the marriage and was titled solely in the husband's name. *Id.* at 375, 325 S.E.2d at 265. This Court in *Wade* cited *Turner* with approval and stated increases in value of separate property under the statute is "passive appreciation . . . such as that due to inflation, and not to active appreciation resulting from the contributions, monetary or otherwise, by one or both of the spouses." *Id.* at 379, 325 S.E.2d at 268. That "passive appreciation" is what occurred here. *Id.*

The trial court's unchallenged finding and conclusion states debt reduction on the townhome during the marriage from 2009 until the parties acquired a jointly-titled marital home and moved to it in 2011 was \$27,900. Since that time the townhome has been entirely supported and sufficient from its passive income, with the net income therefrom being used for family and marital expenses.

Unlike in *Wade*, the marital estate in this case never "invested substantial sums" in the separate property by building the house on it, to hold it was "entitled to a proportionate return of its investment." *Id.* at 380, 325 S.E.2d at 268. The martial

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estate received credit for the \$27,900 debt reduction paid and enjoyed the benefits of the net cash flows to defray family expenses as “source of funds,” far more than it was entitled to under the statute. N.C. Gen. Stat. § 50-20(b) (2025).

In *Wade*, this Court concluded the statute objectively states “a clear legislative intent that separate property brought into the marriage or acquired by a spouse during the marriage be returned to that spouse, if possible, upon dissolution of the marriage.” 72 N.C. App. at 381, 325 S.E.2d at 269. This Court vacated and remanded the trial court’s order requiring the husband in *Wade* to “deed to [the wife] the house and all of the land underlying or contiguous to the house” or to pay the wife a cash equivalent. *Id.* at 375, 325 S.E.2d at 265. Also in *Wade*, the trial court found the husband had hidden, sold, or otherwise put beyond the court’s reach most of the other marital property, and the house *added during the marriage* was the only asset of “any significant and practical value. . . .” *Id.* at 382, 325 S.E.2d at 269-70. No such allegation or finding is present here.

Here, the townhome is not a “mixed asset,” whatever that means, and there is no evidence whatsoever of any bad faith or concealment by Husband to warrant remedial or equitable relief to purportedly strip him of his admittedly separately owned property that was “*acquired by a spouse before marriage*.” N.C. Gen. Stat. § 50-20(b)(2) (2025) (emphasis supplied). *Wade* is wholly inapplicable to the facts at bar.

C. Bailey v. Bailey

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In the recent case of *Bailey v. Bailey*, __ N.C. App. __, 928 S.E.2d 325 (2026), this Court considered a similar set of facts. The husband owned a house prior to the parties' marriage ("the Aberdeen property"). *Id.* at __, 928 S.E.2d at 327. The parties married in 2015 and used the Aberdeen property for rental income until they moved into the house in 2020. *Id.* The trial court's order "did not classify the Aberdeen property itself but found that the property had negative equity on the date of marriage and that there were no active contributions of separate property in the home. Instead, the trial court found that all of the active contributions, namely the mortgage reduction, and the passive appreciation of the Aberdeen property was marital property." *Id.* at __, 928 S.E.2d at 328. The trial court distributed the Aberdeen property and all equity therein to the wife. *Id.*

Like the facts in this case, the husband argued the trial court erred by failing to classify the house as his separate property. *Id.* at __, 928 S.E.2d at 328. Our Court held:

[T]he trial court erred by distributing the Aberdeen property to [the wife] and classifying the passive appreciation of the property as marital. The Aberdeen property was purchased by [the husband] prior to the marriage, making it his separate property. Thus, the Aberdeen property is not subject to distribution under N.C.G.S. § 50-20(b)(2) and any passive appreciation of the property is separate property. Under *Turner*, any increase in equity that was developed because of mortgage payments made with marital funds may be marital property, but that does not convert the property itself into marital property.

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Id. at ___, 928 S.E.2d at 330.

The statutes and holdings in *Turner*, *Wade*, and *Bailey* all make it clear that: (1) property acquired by a spouse prior to marriage is not subject to equitable distribution; (2) if the marital estate improves the property or makes payments to reduce the principal during the marriage, that use of marital funds in the property could be a marital interest upon the appropriate findings; and, (3) a passive increase in value of the property, such as market driven appreciation, during the marriage is and remains separate property. *Turner* at 346, 307 S.E.2d at 409; *Wade* at 379, 325 S.E.2d at 268; *Bailey* at ___, 928 S.E.2d at 330.

The majority's opinion overanalyzes these principles in an effort to avoid remand and reaches an erroneous and prejudicial result. The analysis here is simple. I concur and we all agree the trial court erred by classifying the townhome as marital property. It was and is the husband's separate property, acquired prior to the marriage, within the plain and unambiguous language of the statute. *Turner* at 346, 307 S.E.2d at 409; N.C. Gen. Stat. § 50-20(b) (2025).

Our Supreme Court has held a trial court, and this Court, cannot distribute a spouse's *purely* separate property or order it sold to pay a distributive award. *Crowell v. Crowell*, 372 N.C. 362, 370, 831 S.E.2d 248, 254 (2019) (“[T]rial courts are not permitted to disturb [vested title and pre-existing ownership] rights in separate property in making equitable distribution award orders.”).

The marital estate is entitled to a credit of \$27,900 for sums paid toward

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reducing the mortgage from marriage until 2011. Any passive appreciation of husband's separate property remains separate property. *Bailey* at ___, 928 S.E.2d at 328.

The majority's opinion asserts the classification of the property as marital makes no difference, because it "should have been classified as a mixed asset, with 100 percent marital equity and 0 percent separate equity," and the result would be the same upon remand. This is incorrect. The only marital component properly considered in equitable distribution of the marital estate is the \$27,900 the parties paid during the marriage, which reduced the debt, less credits for the net income therefrom which was used for marital expenses.

Defendant acquired title to all lawful and equitable rights attributable to his sole ownership in real property: *i.e.*, exclusive possession and use, right to exclude others through self-help and trespass, and right of quiet enjoyment, among others. Defendant's equity lies in his rights in ownership of property subject only to the debt. The creditor's only right is to be repaid the debt as agreed in the promissory note, using the property solely as collateral for the debtor's written promise to repay.

The majority opinion's unsupported notion asserting Defendant had no equity in the property is especially troubling. They purport to place the burden on Defendant to prove value and equity, while admitting it is clearly Defendant's separate property under the statute. N.C. Gen. Stat. § 50-20(b) (2025). "[T]he party claiming and interest in [an asset also], ha[s] the burden of proof as to the value of

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the [asset] on the date of the parties' separation." *Albritton v. Albritton*, 109 N.C. App. 36, 40, 426 S.E.2d 80, 83 (1993). See also *Moore*, 259 N.C. App at 593, 816 S.E.2d at 221 (The party claiming the property is marital is also required to "provide evidence by which that property is to be valued.").

III. Conclusion

I completely agree and concur with that portion of the majority's opinion asserting: "Husband is correct that he did 'acquire' the townhome before the marriage and held an 'ownership interest' in it on the date of marriage. He was [and is] its sole owner." The trial court's order is properly vacated and remanded to comply with the clear and unambiguous mandates of the statute and our precedents. I respectfully dissent.