MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Tiffany L. Hein,
Appellant-Petitioner,

v.

Justin C. Hein,
Appellee-Respondent.

April 12, 2022

Court of Appeals Case No. 21A-DC-1626

Appeal from the Parke Circuit Court

The Honorable Stephanie S. Campbell, Special Judge

Trial Court Cause No. 61C01-2001-DC-22

Najam, Judge.

Statement of the Case

[1] Tiffany L. Hein ("Wife") appeals the dissolution court's final decree dissolving her marriage to Justin C. Hein ("Husband"). Wife presents three issues for our review, which we revise and restate as follows:

1. Whether certain findings of fact by the dissolution court are supported by the evidence.

2. Whether the court erred when it granted Husband substantially equal parenting time.

3. Whether the court abused its discretion when it divided the marital estate equally.

[2] We affirm.

Facts and Procedural History

[3] Husband and Wife began dating in May 2008. Thereafter, on September 8, Wife gave birth to D.H. In January 2009, Husband, who is not the biological father of D.H., was involved in an incident that caused injury to D.H. According to Husband, he slipped on ice and accidentally "dropped" D.H. down some stairs while D.H. was in his car seat. Tr. Vol. 2 at 16. D.H. was transported to the hospital, and medical personnel reported that D.H.'s injuries were "inconsistent" with Husband's version of the events. *Id*. at 48. As a result, the Indiana Department of Child Services ("DCS") "substantiated" a case against Husband. *Id*. Husband and Wife continued their relationship. On

August 6, 2012, Wife gave birth to B.H. Husband and Wife then married on January 1, 2014. At some point, Husband adopted D.H.

[4] On January 17, 2020, Husband and Wife were involved in an incident of domestic violence. The parties had a verbal argument that escalated into a physical altercation. Wife hit Husband, and Husband pushed Wife and held her down, which resulted in bruises to Wife. B.H. was in the room and witnessed the altercation. D.H. was in his bedroom and was able to hear it. Husband ultimately pleaded guilty to domestic battery in the presence of a minor child, as a Level 6 felony. DCS investigated the allegation and implemented a "safety plan," under which D.H. and B.H. (collectively, "the Children") "would not be exposed to domestic violence." *Id*. at 46. However, DCS did not substantiate the allegation.

[5] On January 20, Wife filed a petition to dissolve the parties' marriage. In March 2021, the dissolution court held a hearing on Wife's petition. During the hearing, Husband testified that, even though he had pleaded guilty to domestic battery, he had acted in "self-defense" after Wife "tried to swing at" him. *Id*. at 35. In addition, DCS Family Case Manager ("FCM") Jenna Pearson testified that DCS did not substantiate the claim regarding the incident of domestic violence because it could not "prove the impact" the incident had had on the Children. *Id*. at 49. And FCM Pearson testified that Husband was not "any kind of danger" to the Children and that the Children had "reported feeling safe with [Husband] alone." *Id*. at 52.

[6] Following the hearing on Wife's petition for dissolution, the court held a hearing on an outstanding motion. During that hearing, Wife asserted that it was not in the Children's best interests for Husband to have equal parenting time. Wife then informed the dissolution court that there is a statute that creates a rebuttable presumption that a noncustodial parent's visitation should be supervised following an incident of domestic violence. Wife stated that "it's very clear" that that was "something [she] could ask for." *Id*. at 227. However, Wife specifically stated that she was "not asking for supervised visits." *Id*. And later in the hearing Wife again stated: "It's discretionary, Judge. It's up to you to make that determination on whether he's supervised, but we're not asking for supervised." *Id*. at 232.

[7] Thereafter, the court issued the following findings and conclusions:

> 1. That the parties were married on or about January 1, 2014 and separated on or about January 17, 2020.
>
> 2. There are two children born of the marriage, [D.H.] (DOB: 09/08/2008) and [B.H.] (DOB: 08/06/2012). Wife testified years ago there was a DCS investigation regarding one of the children being injured while in the care of the Husband. The Court finds no evidence as to substantiation that Husband intentionally or negligently caused the injury. The Court finds that thereafter Wife did not take any steps to prevent Husband from caring for the [C]hildren o[r] being alone with them. At or about the time of separation the parties were involved in a domestic violence episode where[]in [W]ife admitted to hitting Husband several times in anger after which Husband pushed [W]ife and held her down more than once causing bruising to [W]ife. Husband ultimately pleaded guilty to Domestic Battery

> in the presence of a minor child as a felony conviction. Wife admitted that during this incident she was also aggressive toward Husband. The Court finds that Husband has had substantial parenting time during the pendency of this matter and there have been no[] incidents of concern with regard to Husband's time with the [C]hildren.
>
> 3. The parties shall have joint legal custody of the [C]hildren with Wife to have primary physical custody. Husband's parenting time with the [C]hildren shall take place on his days off. . . . It is the Court's order that the parties shall have substantially equal[] parenting time . . . .

Appellant's App. Vol. 2 at 13-14. The dissolution court then divided the marital estate equally between Husband and Wife. This appeal ensued.

Discussion and Decision

Standard of Review

[8] Wife appeals the dissolution court's final decree dissolving her marriage to Husband. As our Supreme Court has explained:

> [T]here is a well-established preference in Indiana for granting latitude and deference to our trial judges in family law matters. Appellate courts are in a poor position to look at a cold transcript of the record, and conclude that the trial judge, who saw the witnesses, observed their demeanor, and scrutinized their testimony as it came from the witness stand, did not properly understand the significance of the evidence. On appeal, it is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by appellant before there is a basis for reversal. Appellate judges are not to reweigh the evidence nor reassess witness credibility, and the evidence should be viewed most favorably to the judgment.

Steele-Giri v. Steele, 51 N.E.3d 119, 124 (Ind. 2016) (quotation marks and citations omitted). Further, where, as here, the dissolution court *sua sponte* enters findings and conclusions, "the appellate court reviews issues covered by the findings with a two-tiered standard of review that asks whether the evidence supports the findings, and whether the findings support the judgment." *Id*. at 123. "Any issue not covered by the findings is reviewed under the general judgment standard, meaning a reviewing court should affirm based on any legal theory supported by the evidence." *Id*. at 123-24.

Issue One: Findings of Fact

[9] Wife first contends that the dissolution court clearly erred when it entered its dissolution decree because three portions of finding number 2 are not supported by the evidence. We address each contention in turn.

Evidence of Substantiation

[10] On this issue, Wife first challenges the portion of finding number 2 in which the court found "no evidence as to substantiation that Husband intentionally or negligently caused the injury" to D.H. in 2009. Appellant's App. Vol. 2 at 13. Specifically, Wife asserts that, in "making such a conclusion, the trial court blatantly disregarded the family case manager's testimony in which she indicated that the allegations of abuse were substantiated[.]" Appellant's Br. at 9. We must agree. The only evidence presented at the hearing on this question demonstrates that DCS did substantiate the claim. Specifically, FCM Pearson testified that DCS had "substantiated" the allegation against Husband for the

incident with D.H. Tr. Vol. 2 at 48. Further, when asked if DCS had substantiated that case, Husband responded: "I guess." *Id*. at 17. And Wife testified that the case had been substantiated. *See id*. at 107-08.

[11] However, while the evidence demonstrates that DCS substantiated a claim against Husband, the undisputed evidence also demonstrates that the incident that led to the substantiation occurred in January 2009, more than twelve years prior to the hearing on Wife's petition for dissolution. And, here, Mother makes no argument to explain why a claim from more than twelve years ago is relevant to a custody determination today. Nor does Mother acknowledge FCM Pearson's testimony that Husband is not "any kind of danger" to the Children and that the Children had both "reported feeling safe with [Husband] alone." *Id*. at 52. Given that Mother does not explain the relevance of the twelve-year-old case, especially in light of the FCM's testimony that the Children are currently safe with Husband, we hold that Mother has not met her burden to demonstrate that any error in the court's finding amounts to reversible error. Thus, we hold that, to the extent the court erred when it found that the DCS allegation had not been substantiated, any error was harmless.

Steps to Prevent Husband from Caring for Children

[12] Mother next challenges the portion of finding number 2 in which the court found that, following the incident with D.H., "Wife did not take any steps to prevent Husband from caring for the [C]hildren o[r] being alone with them." Appellant's App. Vol. 2 at 13. Wife asserts that "the evidence is clear" that she

took steps, including "requesting that the Husband also take the lie detector test," which he refused. Appellant's Br. at 9.

[13] At the hearing on her petition, Wife testified that Husband had refused her request to take a lie detector test. But Wife does not make any argument on appeal to explain how that request constitutes a step toward preventing Husband from caring for or being with the Children. Rather, the evidence demonstrates that, following the incident, Wife married Husband, allowed Husband to adopt D.H., and had another child with Husband. The court was free to infer from that evidence that Wife did not take any steps to prevent Husband from being alone with the Children. As such, that portion of finding number 2 is supported by the evidence.

Domestic Violence

[14] Finally, Mother contends that the court erred when it found that, at or around the time of separation, "the parties were involved in a domestic violence episode where[]in [W]ife admitted to hitting Husband several times in anger after which Husband pushed [W]ife and held her down more than once causing bruising." Appellant's App. Vol. 2 at 13. Wife asserts that the evidence demonstrates that she "did not admit to hitting [Husband] out of anger" but that "she hit him because she felt that it was the only way to make him leave her alone and that she felt unsafe in the situation." Appellant's Br. at 9-10.

[15] However, Wife does not dispute that she hit Husband, nor does she dispute that she hit Husband several times. Further, while she testified that she had hit

Husband out of fear, Husband testified: "All that happened was . . . I was punched in the mouth and I shoved [Wife] away and she went to fall and I caught her and we both went down." Tr. Vol. 2 at 27. And Husband testified that he had acted in "self-defense" after Wife "tried to swing at" him." *Id*. at 35. The court was free to conclude from that evidence that Wife was the aggressor and that she had hit Husband out of anger. Wife's arguments simply seek to have this Court give more weight to her testimony, which we cannot do. That portion of finding number 2 is supported by the evidence.

[16] In sum, the dissolution court's statements in finding number 2 are either supported by the evidence or constitute harmless error.

Issue Two: Parenting Time

Liberal Parenting Time

[17] Wife next contends that the dissolution court abused its discretion when it awarded Husband "liberal" parenting time. Appellant's Br. at 11. Specifically, Mother asserts that the court "failed to fully consider all of the factors set forth in" Indiana Code Section 31-17-2-8 when it entered its custody order and granted Husband "what essentially amounts to joint physical custody." Appellant's Br. at 11. That statute provides that the court "shall determine custody and enter a custody order in accordance with the best interests of the child. In determining the best interests of the child, there is no presumption favoring either parent. The court shall consider all relevant factors," including eight enumerated factors. Ind. Code § 31-17-2-8 (2021).

[18] On appeal, Wife first asserts that the court's custody order was not in the best interests of the Children because the court failed to consider Husband's "prior felony conviction for domestic violence in which both of the minor children were witnesses[.]" Appellant's Br. at 11. But contrary to Wife's assertions, the dissolution court clearly considered Husband's prior felony conviction. Indeed, in its dissolution decree, the court found that "Husband ultimately pleaded guilty to Domestic Battery in the presence of a child as a felony conviction." Appellant's App. Vol. 2 at 13. However, the court also considered the fact that Husband "has had substantial parenting time during the pendency of this matter and there have been no[] incidents of concern with regard to Husband's time with the [C]hildren." *Id*. at 14. Thus, it is clear that the court considered Husband's prior felony conviction but nonetheless still considered it to be in the best interests of the Children to have equal parenting time with Husband.

[19] Next, Wife contends that the court "failed to consider" Husband's prior substantiation for child abuse with regards to" D.H. Appellant's Br. at 11. As discussed above, Wife is correct that the only evidence presented at the hearing demonstrates that DCS substantiated the claim against Husband following the incident with D.H. in 2009. But, again, Wife makes no argument to explain why a twelve-year-old case has any relevance to a current custody determination. Further, the court found that Wife "did not take any steps to prevent Husband from caring for or being alone with" the Children following the incident. Appellant's App. Vol. 2 at 13. And, again, the court found that "Husband has had substantial parenting time" with the Children since Wife

filed her dissolution petition and that "there have been no[] incidents of concern." *Id*. at 14. Based on Husband's interactions with the Children in the twelve years since the incident with D.H. and during the pendency of the proceedings below, we cannot say that the court abused its discretion when it ultimately considered that it was in the Children's best interests to have liberal parenting time with Husband despite a prior substantiated claim against him.

[20] Wife also claims that the court did not "mention or account[] for" Husband's "belittling and name calling" of the Children or Husband's "views on women." Appellant's Br. at 10. And Wife maintains it "was not in the best interests of the [C]hildren to have liberal visitation with a person who constantly demeans women[] and forces his children out of therapy despite their obvious need for it." *Id*. at 11. But Wife's request is, again, a request that we reweigh the evidence. Husband testified that he "absolutely" does not believe women to be beneath him, and he has never made any "derogatory" statements to the Children. Tr. Vol. 2 at 28, 191-92. In addition, Husband testified that it would be "fine" for D.H. to see a therapist as long as it was D.H.'s choice. *Id*. at 193. Thus, the dissolution court did not abuse its discretion when it awarded Husband liberal parenting time despite those allegations by Wife.

[21] In sum, the court did not abuse its discretion when it awarded Husband liberal parenting time.

Unsupervised Parenting Time

[22] Wife next asserts that the court erred when it did not order Husband's parenting time to be supervised. Indiana Code Section 31-17-2-8.3 provides that, if the noncustodial parent has been convicted of a crime involving domestic or family violence that was witnessed or heard by the noncustodial parent's child, there is "a rebuttable presumption that the court shall order that the noncustodial parent's parenting time with the child must be supervised" for a certain period of time. Based on that statute, Wife contends that Husband "should have been required to rebut the presumption that his parenting time must be supervised." Appellant's Br. at 12. However, we hold that Wife has invited any error in the court's order regarding Husband's visitation with the Children.

[23] The invited error doctrine forbids a party from taking advantage of an error that she commits, invites, or which is the natural consequence of her own neglect or misconduct. *See Brewington v. State*, 7 N.E.3d 946, 974 (Ind. 2014). Here, there is no dispute that Husband pleaded guilty to domestic battery in the presence of the Children. However, at a hearing on an outstanding motion, which occurred after the dissolution hearing but before the court issued its decree of dissolution, Wife specifically informed the court that she was "not asking for supervised visits." Tr. Vol. 2 at 227. And later in the hearing Wife again stated: "It's discretionary, Judge. It's up to you to make that determination on whether he's supervised, but we're not asking for supervised." *Id*. at 232. Because Wife twice affirmatively stated to the court that she was not asking for Husband's

visits with the Children to be supervised, Wife has invited error, if any, in the court's decision not to order that Husband's parenting time be supervised.[1]

Issue Three: Division of Marital Estate

[24] Finally, Wife contends that the court abused its discretion when it divided the marital assets equally. When dividing marital property, the court "shall presume that an equal division of the marital property between the parties is just and reasonable." I.C. § 31-15-7-5. However,

> this presumption may be rebutted by a party who presents relevant evidence, including evidence concerning the following factors, that an equal division would not be just and reasonable:
>
> (1) The contribution of each spouse to the acquisition of the property, regardless of whether the contribution was income producing.
>
> (2) The extent to which the property was acquired by each spouse:
>
> (A) before the marriage; or
>
> (B) through inheritance or gift.
>
> (3) The economic circumstances of each spouse at the time the disposition of the property is to become effective, including the

[1] In her Statement of the Issues, Wife purports to challenge the court's award of joint legal custody over the Children. *See* Appellant's Br. at 4. However, the only argument Wife makes in her Argument is that the court erred when it granted Husband parenting time. Thus, Wife has waived any purported argument regarding the dissolution court's award of legal custody.

> desirability of awarding the family residence or the right to dwell in the family residence for such periods as the court considers just to the spouse having custody of any children.
>
> (4) The conduct of the parties during the marriage as related to the disposition or dissipation of their property.
>
> (5) The earnings or earning ability of the parties related to:
>
> > (A) a final division of the property; and
> >
> > (B) a final determination of the property rights of the parties.

Id.

[25] The disposition of marital assets is within the dissolution court's sound discretion, and we will reverse only for an abuse of that discretion. *Eye v. Eye*, 849 N.E.2d 698, 701 (Ind. Ct. App. 2006). "The party challenging the trial court's division of marital property must overcome a strong presumption that the trial court considered and complied with the applicable statute." *Kearney v. Claywell*, 181 N.E.3d 336, 339 (Ind. Ct. App. 2021). "This presumption is 'one of the strongest presumptions applicable to our consideration on appeal.'" *Id*. (quoting *Smith v. Smith*, 136 N.E.3d 217, 281 (Ind. Ct. App. 2019)). We consider only the evidence most favorable to the dissolution court's decision, without reweighing the evidence or assessing the credibility of witnesses. *In re Marriage of Marek*, 47 N.E.3d 1283, 1288 (Ind. Ct. App. 2016). Although the facts and reasonable inferences might allow for a conclusion different from that

reached by the trial court, we will not substitute our judgment for that of the trial court. *Id*.

[26] On appeal, Wife contends that the court abused its discretion when it did not divide the marital estate unequally in her favor because "there was evidence that the husband spent his time with other women, and presumably spent money on them, thus dissipating the marital funds." Appellant's Br. at 13. And Wife contends that she "earns approximately half of that which the husband earns due to her being the primary caretaker of the [C]hildren." *Id*.

[27] To support her assertion, Wife relies on this Court's opinion in *In re Marriage of Bartley*, 712 N.E.2d 537 (Ind. Ct. App. 1999). In that case, the trial court awarded the wife more than half of the marital estate because she had resigned from her full-time employment at the husband's request to care for the children; the husband had significant income but dissipated marital assets and failed to pay and provide for household and living expenses because of his gambling, which resulted in debt of the parties; and the wife earned far less than the husband. *Id*. at 542. On appeal, this Court found that the evidence that the wife had quit her job to relocate with the husband and care for the children supported an unequal division. *Id*. at 543. Further, this Court held that the court did not abuse its discretion when it considered the manner in which the husband had spent his income and its impact on the wife to justify an unequal division of the assets. *Id*. at 544.

[28] Here, Wife asserts that this case "has many of the same facts as the *Bartley* case." Appellant's Br. at 13. We cannot agree. While Wife earns less than Husband, there is no evidence that Wife left a higher-paying job at the request of Husband in order to care for the Children. Further, as to Wife's assertion that Husband dissipated the marital assets, Wife did not present any evidence to demonstrate that Husband spent money on other women. Indeed, Wife's own argument on appeal appears to acknowledge that she simply "presum[ed]" that Husband had spent their money on other women. *Id*. As such, unlike in *Bartley*, Wife did not present any evidence to demonstrate that Husband dissipated marital funds.[2] Wife's reliance on *Bartley* is misplaced.

[29] Still, Wife is correct that she earns less than Husband. But Wife has not directed us to any case law to demonstrate that earning less, alone, is sufficient to overcome the presumption that an equal division of the marital estate is just and reasonable. Further, the statutory factors "are to be considered together in determining what is fair and reasonable; any one factor is not entitled to special weight." *Kearney*, 181 N.E.3d at 340. But other than her argument that Husband dissipated the marital assets, which argument we have already rejected, Wife does not make any argument regarding the other factors that would overcome the presumption of an equal division. As such, Wife has not

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[2] In her Statement of the Facts and Conclusion, Wife states that Husband dissipated the marital estate when he permitted his mother to remove Wife's name from a real estate sales contract and sell the property to another person. Appellant's Br. at 7, 13. However, Wife does not make any argument in her Argument Section and has, thus, waived this purported issue for our review.

demonstrated that the dissolution court abused its discretion when it divided the marital estate equally.

Conclusion

[30] In sum, the dissolution court's findings are either supported by the record or constitute harmless error. In addition, the court did not err when it awarded Husband liberal, unsupervised parenting time. And the court did not abuse its discretion when it divided the marital estate equally between the parties. We therefore affirm the dissolution court's dissolution decree.

[31] Affirmed.

Bradford, C.J., and Bailey, J., concur.