MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Theodore D. Takacy,
Appellant-Petitioner,

v.

Beth Ann Milliner,
Appellee-Respondent.

January 22, 2024

Court of Appeals Case No. 23A-DN-919

Appeal from the Clark Circuit Court

The Honorable Joni L. Grayson, Magistrate

Trial Court Cause No. 10C04-2008-DN-348

Memorandum Decision by Judge Brown
Judges Vaidik and Bradford concur.

Brown, Judge.

[1] Theodore D. Takacy ("Husband") appeals the trial court's decree of dissolution and argues the court erred in dividing the marital property. We affirm.

Facts and Procedural History

[2] Husband and Beth Ann Milliner ("Wife") were married in June 2018. On August 7, 2020, Husband filed a petition for dissolution of marriage. The court held a final hearing over two days in January and February 2023. The court admitted financial statements related to the parties' bank and retirement accounts, a valuation of Husband's pension, and evidence related to other marital assets and the parties' incomes. Wife's financial advisor testified regarding Wife's accounts and her payments in 2020 related to back taxes.

[3] Wife testified that she and Husband started dating in 2013 and stated: "[W]hen we moved up here I put the down payment on the house and then we paid for the wedding and that completely depleted my savings account." Transcript Volume II at 42. She testified that the parties purchased the marital residence for $490,000, she contributed $65,000 to the down payment, Husband contributed $15,000 to the down payment, and the mortgage was in her name. She indicated that the parties never had any joint accounts or joint debts and that for the most part she pays off her credit cards every month. She testified that, every month, she transferred approximately $10,000 and sometimes as much as $15,000 from her Schwab account to her Chase checking account to pay her credit cards.

[4] Husband testified that he received approximately $85,000 from the sale of a home which he had owned and paid for prior to the marriage. He testified regarding the work he performed on the marital property, and when asked "out of your pocket you spen[t] in excess of $80,000," he replied "[c]orrect." *Id*. at 93-94. He also indicated he did "[a] lot of" the household chores and shopping and "[a]ll of the maintenance." *Id*. at 94-95. He stated he was "[p]retty sure" he contributed $17,000 toward the down payment. *Id*. at 95. Husband requested that the court award him fifty percent of the marital property, and Wife requested that the court award her eighty percent of the marital property.

[5] On March 27, 2023, the trial court issued a decree of dissolution. The court found that both parties accumulated assets prior to the marriage, there were no joint accounts, Husband is a government employee, and Wife is a physician. The court found that "[e]ach party has pre-tax retirement accounts" which included a "Pension" and "TSP" for Husband and a "Schwab IRA" and "Schwab investment" for Wife. Appellant's Appendix Volume II at 72-73. The court examined the factors in Ind. Code § 31-15-7-5. It found that Wife "contributed substantially more toward the downpayment of the marital residence," she "also will carry the mortgage balance, and a vehicle loan balance," "[i]t is also uncontroverted that Wife brought more assets to the marriage, although both parties contributed to living expenses during their time together," and "[t]hese factors weigh in favor of [W]ife." *Id*. at 75. It found that Wife's gross income exceeds Husband's income, she is self-employed and her tax liability includes payment of self-employment taxes, and Husband has a

pension benefit, and it found "[t]his factor is neutral." *Id*. It noted that neither party claimed asset dissipation and that, while Wife's earning ability may be superior to Husband's, he receives substantial employee benefits and he is leaving the marriage with no debt and substantial assets, and it found these factors to be neutral. The court concluded that sufficient evidence was presented to rebut the presumption of an equal division and that a division in which Wife receives sixty percent of the marital property and Husband receives forty percent is just and reasonable.

[6] The court ordered that each party shall receive the assets and associated debt as outlined in an attached schedule. The attached schedule shows the court awarded Husband his bank accounts valued at $37,000, a "Govt Pension" valued at $124,235, "TSP" funds valued at $106,083, and vehicles. *Id*. at 78. It awarded Wife the "Marital Residence Equity" valued at $177,540, a "Schwab IRA" valued at $286,224, "Schwab Investment" funds valued at $14,674, "Securian Life Ins" valued at $57,863, bank accounts valued at $22,805, and vehicles and other property. *Id*. According to the schedule, the total value of the assets assigned to Husband was $283,418 and the total value of the assets assigned to Wife was $643,606. The court ordered that Wife pay Husband $87,392, that "[s]aid amount shall be transferred via QDRO (if required) from Wife's IRA," and that the parties "may choose to make such payment in another fashion, by agreement." *Id*. at 76.

Discussion

[7] Husband asserts that Wife "failed to submit sufficient evidence to overcome the presumption of an equal division." Appellant's Brief at 13. He argues that, "[a]s [he] testified that he brought $85,000 from a prior home as well as a pension and a TSP account, and [Wife] testified that she had 'depleted' her savings account, it is not clear that [she] did in fact bring more assets to the marriage." *Id*. He also claims the court abused its discretion by disregarding tax implications in dividing the assets.

[8] Wife maintains the trial court considered the factors in Ind. Code § 31-15-7-5 in dividing the marital property and heard extensive testimony from her and her financial advisor regarding her finances prior to the marriage and her contributions to the marriage. She also argues that Husband did not present evidence regarding tax consequences at the final hearing and notes the court did not require Husband to withdraw any retirement funds.

[9] The division of marital property is within the sound discretion of the trial court. *Love v. Love*, 10 N.E.3d 1005, 1012 (Ind. Ct. App. 2014). We consider only the evidence most favorable to the court's disposition of the property. *Id.* Although the facts and reasonable inferences might allow for a different conclusion, we will not substitute our judgment for that of the trial court. *Id.* The court must divide the marital property in a just and reasonable manner, and an equal division is presumed just and reasonable. *McGrath v. McGrath*, 948 N.E.2d 1185, 1187-1188 (Ind. Ct. App. 2011) (citing Ind. Code § 31-15-7-5). The presumption may be rebutted by evidence of certain factors including the

contribution of each spouse to the acquisition of the property; the extent to which the property was acquired before the marriage or through inheritance or gift; the economic circumstances of each spouse at the time of the disposition; the conduct of the parties during the marriage as related to the disposition or dissipation of their property; and the earnings or earning ability of the parties. Ind. Code § 31-15-7-5. The party challenging the court's division must overcome a strong presumption that it considered and complied with the applicable statute. *McGrath*, 948 N.E.2d at 1188. The disposition of the marital property is to be considered as a whole, not item by item. *Id.*

[10] The record reveals the parties were married in June 2018 and Husband filed for divorce in August 2020. The court admitted financial statements related to the parties' bank, investment, and retirement accounts over the period of their marriage and evidence of the value of Husband's pension, the marital residence, and the parties' other assets. It further admitted the parties' tax returns and evidence regarding their incomes during the marriage as well as their financial and nonfinancial contributions toward purchasing, improving, and maintaining the marital residence. While Wife indicated her savings account was depleted after making the down payment on the marital residence and paying for the wedding and Husband received approximately $85,000 from the sale of his prior home, the record reveals that both parties had retirement accounts and Wife indicated the majority of her retirement savings occurred prior to the marriage, Wife contributed significantly more to the down payment on the

marital residence, her income was significantly higher than Husband's income during the marriage, and she made significant monthly credit card payments.

[11] The trial court was able to weigh the evidence and testimony regarding the property, the parties' respective contributions in acquiring the property before and during the marriage, and their economic circumstances and earnings or earning abilities. We consider only the evidence most favorable to the court's disposition, and we cannot say that Husband has overcome the strong presumption that the court considered and complied with the applicable statute. We cannot say the trial court's division of the marital property was not just and reasonable. *See Luedke v. Luedke*, 487 N.E.2d 133, 135 (Ind. 1985) (observing it was apparent the trial court considered the source of the property and its future use and holding the court reached its conclusion in a fair and reasonable manner on the record and that reversal was not merited).

[12] To the extent Husband raises an argument on appeal related to tax consequences, he acknowledges that he did not present argument related to tax consequences to the trial court. Ind. Code § 31-15-7-7 provides the court, in determining what is just and reasonable in dividing property, "shall consider the tax consequences of the property disposition with respect to the present and future economic circumstances of each party." This Court addressed the predecessor to Ind. Code § 31-15-7-7 in *Harlan v. Harlan*, 544 N.E.2d 553 (Ind. Ct. App. 1989), *reh'g denied*, *summarily affirmed*, 560 N.E.2d 1246 (Ind. 1990). This Court held that "[t]he thrust of the Statute is to recognize that there may be in the plan of division of marital property certain tax consequences which

should be taken into account," "[t]he clear inference is that *only* tax consequences necessarily arising from the plan of distribution are to be taken into account, not speculative possibilities," and "[t]he Statute specifically limits the trial court to consider only the tax consequences '*of the property disposition*.'" *Harlan*, 544 N.E.2d at 555. The Indiana Supreme Court stated "[t]he Court of Appeals held that the statute requires the trial court to consider only the direct or inherent and necessarily incurred tax consequences 'of the property disposition'" and summarily affirmed this Court's opinion. *Harlan*, 560 N.E.2d at 1246. *See also Granger v. Granger*, 579 N.E.2d 1319, 1321 (Ind. Ct. App. 1991) (noting a "taxable event must occur as a direct result of a court-ordered disposition of the marital estate" for the tax consequences to be considered), *trans. denied*; *DeHaan v. DeHaan*, 572 N.E.2d 1315, 1327 (Ind. Ct. App. 1991) (holding "only the immediate tax consequences of the property disposition may be considered"), *reh'g denied*, *trans. denied*. The trial court did not order Husband to withdraw any portion of the funds which it ordered transferred to him from Wife's IRA or to take an action which would result in an immediate tax consequence. Husband has not established that the court's order resulted in direct or inherent and necessarily incurred tax consequences of the property disposition.

[13] Further, the record reveals that there are several marital assets, which the court's schedule indicates are valued at $927,024, and that both parties have fairly significant amounts in their retirement accounts. Husband was born in October 1979 and anticipates receiving a pension in retirement. Husband did

not present evidence regarding when he may make a withdrawal or distribution from the transferred retirement funds without incurring a penalty, or the difference, if any, given the parties' anticipated incomes in retirement, between his anticipated tax liability related to withdrawal of funds in the future compared to Wife's anticipated tax liability related to withdrawal of funds in the future. We also note that the parties' incomes and applicable tax rates in retirement would be, at this point, speculative. The evidence does not show that the court's order to transfer funds from Wife's IRA to Husband via a QDRO, in light of the value of the transferred funds relative to the value of the marital estate, will result in a tax consequence which significantly alters the trial court's intended 60/40 apportionment. We find no error.

[14] For the foregoing reasons, we affirm the trial court.

[15] Affirmed.

Vaidik, J., and Bradford, J., concur.