

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEY FOR APPELLANT

Thomas F. Hinde
Fort Wayne, Indiana

ATTORNEY FOR APPELLEE

Caryn E. Wallace
Fort Wayne, Indiana

IN THE COURT OF APPEALS OF INDIANA

Lewis J. Roberts,
Appellant-Petitioner,

v.

Catherine S. Roberts,
Appellee-Respondent.

August 31, 2023

Court of Appeals Case No.
22A-DC-2978

Appeal from the Allen Superior
Court

The Honorable Lori K. Morgan,
Judge

The Honorable Sherri Hartzler,
Magistrate

Trial Court Cause No.
02D08-1904-DC-399

Memorandum Decision by Chief Judge Altice
Judges May and Foley concur.

Altice, Chief Judge.

Case Summary

[1] Lewis J. Roberts (Husband) appeals the trial court's decree dissolving his marriage to Catherine S. Roberts (Wife) (collectively, the Parties), claiming that the trial court erred in valuing the marital residence and Husband's business and awarding Wife one hundred percent of the marital estate. Husband further contends that the trial court improperly calculated the amount of child support he owed, that it abused its discretion in awarding sole legal custody of the Parties' two minor children to Wife, and that it erred in ordering him to pay a portion of the Parties' oldest daughter's college expenses. Husband also maintains that the trial court erred in finding him in contempt for nonpayment of child support and that it abused its discretion in ordering him to pay a portion of Wife's attorney's fees. Finally, Husband contends that the trial court improperly denied his motion for genetic testing.

[2] We affirm.

Facts and Procedural History

[3] The Parties were married on November 2, 2002, and separated on January 21, 2019. Three daughters (Children) were born to the marriage: A.R., born March 1, 2003; B.R., born January 7, 2006; and I.R., born August 1, 2009. On April 2, 2019, Husband petitioned to dissolve the marriage.

[4] On July 16, 2021, Husband filed a motion requesting that Children and several nonparties undergo genetic testing. Following a hearing, the trial court denied

Husband's request and issued findings of fact and conclusions of law on August 27, 2021 concluding that

5. The Court finds that through the duration of these proceedings, the Petitioner has stated under oath, in numerous verified pleadings, that he is indeed the father of the parties' three children. He has participated in contested evidentiary proceedings in which the support and care of the children was at issue. Now, Petitioner asserts that he is not the Father of these children and seeks to compel genetic testing of the parties, the children and other third parties.

6. Pursuant to I.C. 31-14-7-1 and strong public policy, there is a strong presumption that children born during the marriage are children of the marriage. This presumption is only rebutted by direct, clear and convincing evidence. *Fairrow v. Fairrow*, 559 N.E.2d 597, 599 (Ind.1990); *see also, Sheetz v. Sheetz*, 63 N.E.3d 1077 (Ind. Ct. App. 2016) (holding that Husband was estopped from seeking to rebut the presumption of paternity).

7. Further, "Judicial admissions . . . are voluntary and knowing concessions of fact by a party or a party's attorney occurring at any point in a judicial proceeding." *Stewart v. Alunday*, 53 N.E.3d 562, 568 (Ind. Ct. App. 2016). . . . "Judicial admissions may be contained in stipulations, current pleadings in the case being tried, admissions made in open court, and admissions made pursuant to requests to admit." *Id.*, citing 32 C.J.S., *supra*, § 624.

8. The Motion for Genetic testing is denied and ordered stricken.

Appellant's Appendix Vol. II at 46-47.

- [5] During the final hearing that commenced on June 3, 2022, Husband testified that he was the sole owner of Strategic Marketing Partners, Inc. (Strategic Marketing). Strategic Marketing had no employees, and the company “functions as a marketing company.” *Transcript Vol. II* at 66. Although Husband claimed that he did not receive a salary from Strategic Marketing, he occasionally drew funds from the business. Husband stated that Strategic Marketing operated on loans, and in April 2020, he loaned the business \$36,000 from a family inheritance. Husband further testified that the total debt of the business amounted to \$184,355.35.
- [6] Husband’s 2019 tax return included a profit and loss statement that reflected a loss of “-\$13,995.” *Id.* at 94. While Husband indicated that Strategic Marketing did not sell any products, the profit and loss statement listed a cost of goods sold at \$122,311. Also, Husband could not produce evidence of a \$14,500 vehicle and truck expense, but he assumed that “it’s probably miles.” *Id.* at 107-08.
- [7] The evidence further showed that Husband drives a Porsche automobile valued at \$23,443 at the time of filing. While Husband surmised that the monthly payment of \$599 on the car was made with cash from the business, he was not sure because he “just hands everything to his CPA.” *Id.* at 109-10. Additionally, although a meal deduction of \$14,879 for the business was also listed, Husband was not able to provide proof as to what was included in that expense. Husband insisted, however, that the deduction did not include personal meals.

- [8] Husband claimed that he received \$15,899 from Strategic Marketing in 2020 and based upon that amount, he requested that \$305 per week be imputed as his weekly gross income for child support purposes. However, Husband's 2020 business tax return reflected a list of gross receipts in the amount of \$215,952, and a cost of goods at \$118,883, for a net difference of \$98,499. Notwithstanding these amounts, Husband listed no income on the financial declaration form that he submitted to the trial court.
- [9] Husband detailed additional business losses in his 2020 tax return, but much like 2019, he could not explain the losses. More particularly, Husband listed \$11,832 in attorney's fees, but he could not explain what fees were incurred by Strategic Marketing. Husband also listed \$13,954 in travel expenses and testified that they "could" have been from hotels and business trips, but he could not provide proof of those expenses. *Id.* at 120.
- [10] Husband testified that in 2020, the payments on his Porsche were made with cash from an unidentified source. Meal expenses in 2020 were listed as \$14,610, and without any supporting documents, Husband claimed that those expenses were for business meals. Husband did not have a business valuation, but he requested that the trial court assign zero value to Strategic Marketing.
- [11] Mark Swift appraised the parties' marital residence. As of the date of filing, Swift valued the residence at \$245,000, and as of April 4, 2022, he valued it at \$330,000. Husband requested that the trial court use the April 2022 appraisal to value the residence because of the increasing price of real estate and the

duration of the dissolution process. On the other hand, Wife requested that the residence be valued at \$245,000, and pointed out that the house needed a new roof at an estimated cost of \$21,000. It was also established that Wife's parents had contributed \$11,000 to the down payment of the marital residence, and Wife paid the rest. The mortgage on the marital residence was solely in Wife's name, and she made all the monthly payments.

[12] During the marriage, the Parties maintained separate bank accounts and filed separate tax returns. Wife's stock from First Merchants Corporation, valued at \$7,887.60, was a gift from her parents. She owned the stock prior to the marriage, and it was still listed in her maiden name. Wife incurred a debt in the amount of \$8,589.20 from Flagstar to help Husband get out of "a dust up with [a business] partner." *Id.* at 144-45. The evidence also showed that from April 2019 until December 2021, Wife provided Husband with health, dental, and vision insurance with no reimbursement from him.

[13] In 2005, Husband was prosecuted and convicted of federal bank fraud and conspiracy to commit fraud and was incarcerated for twenty-six months. Wife was not aware of the crimes until FBI agents arrived at their residence and arrested Husband. At the time of the arrest, the Parties had one child and Wife was pregnant with another. As a result of Husband's incarceration, he was not able to contribute to Children's care or to the maintenance of the residence. Hence, Wife obtained a loan in the amount of \$45,000 while Husband was in prison so she could "just try to keep things together." *Id.* at 188.

- [14] Sometime in 2005, Husband began paying \$50 to \$100 per month in restitution toward a \$129,251 Department of Justice debt (DOJ debt). At the final hearing, Husband testified that the balance of the DOJ Debt was \$75,292.22. He maintained that the DOJ Debt should be included in the marital pot and that the marital estate should be equally divided.
- [15] The evidence showed that Wife has been employed as a fulltime nurse practitioner for over twenty-one years. She provided all health insurance for the family from October of 2007 through the date of the decree. Husband's employment from 2007 until April 2019 was sporadic, and he had not been employed by any one employer for more than a year. None of Husband's employers provided retirement benefits during the marriage. Thus, Wife made the sole contributions to the Parties' single retirement account.
- [16] The evidence also showed that Husband traveled frequently and was gone most evenings during the marriage. He did not contribute to Children's care, take them to doctor's appointments, or pay for expenses related to the marital residence. At the final hearing, one of Children's counselors testified that the Roberts family "was one of the most dysfunctional" she had ever encountered. *Id.* at 19. While Husband requested joint legal custody of Children, the Guardian Ad Litem (GAL) recommended that Wife have sole legal and physical custody and that Husband should not have any extended parenting time until he completes a family counseling program.

[17] From the date of filing until the date of the decree, Husband had lived in six different places, including various moves to Florida. Husband did not keep Wife apprised of those locations. During the pendency of the divorce, Children expressed resistance to attending visits with Husband. At the final hearing, it was established that Husband had not had any overnights with Children for nearly a year and had not requested parenting time for the ten months prior to the final hearing. Children underwent counseling during the pendency of the dissolution, and at the time of the final hearing, the two oldest children remained in therapy. The middle daughter, B.R., was seeing a psychiatrist for behavioral issues.

[18] While Husband testified that he lacked funds to pay child support because he had income of only \$300 per week, Husband traveled to Florida on at least two occasions in December 2021. During those trips, Husband checked into the Ritz Carlton and posted on Facebook that he ate breakfast at a champagne bar. Husband also dined at other expensive restaurants and purchased alcohol for friends.

[19] On September 29, 2021, Wife filed a motion for contempt alleging that Husband willfully failed to pay child support and an arrearage that was due in violation of the trial court's July 16, 2021 order. Husband admitted that he had not been paying child support "exactly as ordered." *Id.* at 75-76, 151. While Husband admitted to a \$205 weekly child support order, he made no payments until Wife filed the rule to show cause. Husband further acknowledged a

substantial child support arrearage and over \$2000 in uninsured health care expenses for Children that he had not paid.

[20] At some point, Wife opened 529 college savings accounts in Children's names. She and her parents routinely deposited funds into those accounts, while Husband contributed nothing. Although Husband testified that he believed the parties' oldest daughter, A.R., could benefit from a college education, he would not agree to pay any of her college expenses. Wife requested that A.R.'s college expenses be split equally among Wife, Husband, and A.R.

[21] Wife further requested that Husband pay a portion of her attorney's fees because she had attempted to settle the dissolution matter multiple times with Husband prior to the final hearing. Wife maintained that Husband's false claims that he had no income required Wife to engage in extensive discovery and incur additional attorney's fees. Husband's motion for genetic testing also required Wife to pay attorney's fees.

[22] Following the final hearing, the trial court issued its initial decree of dissolution on August 31, 2022. Thereafter, both parties filed motions to correct error, and following a hearing, the trial court issued an amended decree of dissolution with extensive findings of fact and conclusions of law on November 14, 2022. The amended decree provides in relevant part that

Custody

10. The Court finds through the report and the evidence presented at the final hearing that the relationship with Husband

and children was strained due to dysfunction between Wife and Husband, resistance of the children, [and] the instability of Husband's residence.

11. The Court finds that [Children] have struggled mentally and emotionally over the course of these proceedings to the extent that [B.R.] is under the care of a psychiatrist and both [B.R.] and [I.R.] are receiving therapy. . . .

. . .

14. After the issuance of the GAL report, Husband ceased all parenting time with the children. Since July 17, 2021, Husband has not exercised a single overnight parenting time event with the children and has not exercised any parenting time with the children. He has also not maintained telephone contact with the children. The Court finds that while there has been some resistance from the children, . . . Husband has not helped his position by relocating to Florida and not maintaining contact with the children.

15. The Court further finds that Husband returned from Florida shortly prior to the final hearing and has been residing in his car. Upon his return he retrieved the children from school without telling Wife and drove them around for an hour. This has been the extent of contact with the children since July 2021 with the exception of some sporadic telephone contact.

16. Husband requests joint legal custody and that he be awarded [a] flexible parenting time schedule. Wife requests sole legal and physical custody and that Husband be awarded parenting time pursuant to the Indiana Parenting Time Guidelines after Husband and the minor children successfully participate in reunification therapy.

. . .

21. The Court having further considered all statutory factors concludes it is in the best interests of the [children] that Wife shall be granted primary physical custody of the parties' minor children. . . .

22. *The Court having considered all statutory factors concludes it is in the best interests of the [children] that Wife shall be awarded sole legal custody of the minor children.* The Court concludes that the parties are not able to communicate to advance the best interests of the children. The Court finds that there has been a significant amount of dysfunction in the household for which Wife and Husband blame one another. However, the reality is that these parents cannot communicate concerning the well-being of the minor children.

. . .

28. Given Husband's admission to his struggles with alcohol use, the Court orders that he not consume alcohol 12 hours prior to or during his parenting time.

Child Support

44. The Court finds that Husband owns a company, namely Strategic Marketing Partners LLC. This company does not produce a product and does not have any employees outside of Husband.

45. The Court finds through the 2020 U.S. Individual Income Tax Return for Husband that Strategic Marketing Partners has gross receipts of \$215,952 in 2020. Pursuant to the 2019 Profit and Loss Statement the gross receipts were \$187,418.46.

46. In both 2019 and 2020, a majority of the profit was represented as having been used in ‘costs of goods sold’ or ‘expenses’ as follows:

a. According to the 2019 Profit and Loss Statement and 2020 tax filing:

- i. Automobile expenses were \$14,562.00
- ii. Meals and entertainment for \$29,757.40
- iii. Travel Expense for \$8,678.31
- iv. Legal expenses for 2019 at \$2,334.89
- v. Legal expenses for 2020 at \$11,832.00
- vi. Cost of Goods sold/Contractors:

1. \$110,600 for 2019.
2. \$118,000 for 2020.

47. With respect to the expenses the Court finds that Husband owns a Porsche for which the monthly payment is \$599 per month totaling \$7,188 per year. Husband testified that he made payments from ‘proceeds’ and has taken cash out of the business to pay for the Porsche.

48. With respect to meals and entertainment the Court finds that Husband contends that [he] does [not] know what the expense[s] were for. Only that the expense includes groceries for him and that a lot of people buy food for him.

49. With respect to the “costs of goods,” Husband contends he had to pay \$118,000 to contractors to make a sale for the company although he admits he does not understand this and does not have documentation to support this contention.

50. With respect to the “legal fees” Husband did not know who he paid his legal fees to.

51. *The Court finds that in 2020 the gross income prior to deducting expenses was \$98,499.*

52. Ultimately, when Husband was questioned concerning the source of funds to pay expenses and support his lifestyle, Husband contended that characterizing the funds he uses to pay for his expenses as a “salary” is incorrect, [in that he] just hands everything to [his] CPA and let[s] him sort it out.”

53. The Court finds as well that Husband filed for and received “pandemic unemployment payments” during 2020 through an electronic “portal” and that he also received a “PPP” loan from the U.S. Government that is represented as a loan from PNC bank. Although he contends he was working, he applied for this assistance “because he could.” Husband was previously convicted of bank fraud and conspiracy to defraud the United States and served 26 months in a federal penitentiary in Terre Haute Indiana from 2005-2007.

54. *The Court does not find it credible that Husband has no income or income at \$305.00 per week.*

55. The Court concludes that Husband pays for all of his . . . personal and living expenses out of the business income. These expenses are not “ordinary and necessary expenses of the business. . . .” Husband does not make a cogent argument by which this Court can conclude that any of the expenses are legitimate business expenses.

56. *The Court concludes that Husband’s annual income for child support purposes is \$98,449.96.*

57. The Court finds that Wife is employed as a nurse practitioner and earns an annual income of \$115,709.88 for a weekly gross income of \$2,225.19.

...

60. The Court concludes that the recommended weekly child support obligation for Husband is \$261.00 per week for which Husband is ordered to pay for the support and benefit of the parties' minor children. (Exhibit 1).

61. On July 16, 2021, Husband was provisionally ordered to pay \$205 per week in child support effective April 8, 2020. Husband was also provisionally ordered to pay \$13,120 in a retroactive arrearage within thirty days.

62. The Court finds that Husband did not pay his weekly support obligation nor did he pay the arrearage amount as ordered. It was not until Wife filed an action for contempt on September 28, 2021 that he made a single payment. In 2021 Husband made four payments totaling \$9,000. In 2022 Husband has not made any child support payments. As of June 3, 2022, Husband was in arrears in the amount of \$14,575 pursuant to the Provisional Order.

63. The Court finds that Husband frequently traveled to Florida and resided in Florida for ten months during these proceedings. Although he contends these trips were for business, he is “checking in” at the Ritz Carlton; dines at champagne bars in Indianapolis in 2021; professes to have friends paying for meals at restaurants; purchases alcohol for friends; drives a Porsche; and has recently acquired an organic food company for which he is the vice president. The Court has also concluded that Husband earns at least \$98,000.

64. *The Court concludes that Husband has not met his burden to show his violation of the July 16, 2021 provisional order was not willful. Husband has had the means to support his lifestyle yet he has not paid his child support obligation. He is found in contempt of this Court's July 16, 2021 order for child support.*

65. Husband shall pay the sum of \$261.00 per week as support for the parties' minor children, [B.R.] and [I.R.] with the first payment due and payable on the date of this Decree. The parties' daughter [A.R.] shall be considered emancipated for child support purposes on March 14, 2022.

...

68. [T]he Court finds that Husband is in arrears in the amount of \$14,575 as of June 3, 2022. The Court also finds that Husband is in arrears as to his uninsured medical expenses order for the minor children in the amount \$110.30.

...

78. Wife shall have the exclusive right to claim the parties' children for federal income tax and state income tax dependency purposes each year.

...

81. The Court finds that Husband objects to contributing to [A.R.'s] education contending that "she should work with him at a successful company." He does agree that [A.R.] would benefit from a college education and does not dispute that she has the aptitude and the ability. *The Court does not find credible any assertion he cannot contribute financially.*

. . .

84. The Court orders that [A.R.] shall be responsible for her share covered by scholarships and grants. If there is any remaining portion of the scholarships, grants, and discounts this amount shall be applied to the parental share for each academic year. The remaining portion shall be allocated to Husband paying (33%) and Wife paying (33%).

Marital Estate

101. The Court has found that Husband uses the business to provide for his living and personal expenses. The Court further finds Husband received an inheritance in 2020 in the amount of \$36,000 that he then loaned to the business. The loan agreement has the company repaying Husband as the lender. Although the court does not consider this inheritance as marital property nor does this Court consider the value of the business as the potential income Husband may receive, *the Court does consider this as evidence of value. Husband has contended through this transaction that the business is at least worth a \$36,000 investment. . . . This Court attributes a value of \$36,000 to the business.*

102. The parties dispute the valuation of the marital residence. Husband contends this Court should use the April 4, 2022 value of \$330,000. Wife contends this Court should use the value from the April 1, 2019 appraisal of \$245,000 which represents the date of filing.

103. The Court concludes that while the value of the home did increase during the pendency of this action, this can be considered in the ultimate disposition of the marital estate as a consideration of Wife's economic circumstances, among other factors. I.C. 31-15-7-5 (3). The marital residence shall be valued at \$245,000.

...

105. The parties dispute the inclusion of Husband's debt owed to the Department of Justice in the amount of \$75,000. The Court finds that shortly after the parties married, Husband was arrested and later convicted of bank fraud and conspiracy to defraud the United States and served 26 months in a federal penitentiary in Terre Haute Indiana from 2005-2007. The debt is restitution for which Husband contends he pays \$50.00 a month. Wife contends that this amount should not be included in the marital estate and Husband contends that it should.

...

107. Although . . . the Court includes this debt in the marital estate, *the Court also concludes that this liability is a diminution of the marital estate. Wife was unaware of the Husband's crimes prior to her marriage and only learned about them when the FBI knocked on the front door of their home after they were married. The conviction of Husband resulted in a substantial debt that this Court is compelled to include in the marital estate, however, the Court also considers the diminution of the estate in deviating from an equal division.*

108. *This Court is not persuaded with Husband's arguments that the income he earned during his incarceration or his spotty employment record contributed to the acquisition of marital property such that this Court should equally divide the estate.* Further, Husband admits that he traveled frequently and left the care of the household and children to Wife during the marriage. *This travel resulted in a de minimis contribution to the household at best.*

109. The Court also considers the economic condition of Husband and Wife in the disposition of the marital estate. *This Court has already found that Husband uses his lucrative business to support his living expenses and lifestyle. During the pendency of this*

action, Husband has failed to consistently and substantially contribute to the care of his children and the household. The weight of the responsibility for the household and the care of the children has been primarily borne by Wife before and after the filing of the dissolution. Even though she is receiving a majority of the marital estate, she will continue to bear the entirety of the care of the children considering Husband's habitual patterns of conduct. Thus, Wife's economic condition is not favorable in comparison to Husband's.

...

113. The parties' marital estate has a net value of \$150,466.69.

114. *Wife has rebutted the presumption of an equal division of the parties' marital estate.*

115. *The Court having considered all factors pursuant to I.C. 31-15-7-5, awards Wife 100% of the marital estate.*

...

119. *The Court . . . finds that the debt owed to the Department of Justice, diminished the marital estate and thus constitutes dissipation/diminution supporting an award of 100% of the marital estate.*

...

Attorney Fees

129. The Court finds that both counsel's attorney fees are reasonable; however, a majority of the litigation stems from Husband's conduct and legal and procedural positions taken

during the course of these proceedings for which this Court has not found him credible.

130. Husband shall pay to Wife the sum of \$32,000.00 as reimbursement for attorney fees incurred by Wife with respect to this matter.

Appellant's Appendix Vol. II at 52-74 (emphases added).

[23] Husband now appeals. Additional facts will be provided below as needed.

Discussion and Decision

I. Valuation of the Marital Assets

[24] Husband contends that the trial court erred in calculating the value of Strategic Marketing and the marital residence. Husband claims that his business was worthless and that the trial court should have valued the marital residence at the appreciated value of \$330,000.

[25] A trial court has broad discretion in valuing marital assets, and its valuation will only be disturbed for an abuse of discretion. *Leonard v. Leonard*, 877 N.E.2d 896, 900 (Ind. Ct. App. 2007). A trial court does not abuse its discretion if sufficient evidence and reasonable inferences exist to support the valuation. *Id.* If the trial court's valuation is within the scope of the evidence, the result is not clearly against the logic and effect of the facts and reasonable inferences before the court. *See Skinner v. Skinner*, 644 N.E.2d 141, 144 (Ind. Ct. App. 1994). When determining the date upon which to value the marital assets, the trial court may select any date between the date of filing the dissolution petition

and the date of the final hearing. *Deckard v. Deckard*, 841 N.E.2d 194, 200 (Ind. Ct. App. 2006).

[26] Husband testified at the final hearing that at some point, he loaned a \$36,000 inheritance from his grandfather's estate to Strategic Marketing. While Husband claimed that the business was worth nothing, it was proper for the trial court to conclude that the value of the business was \$36,000 because Husband's transaction with the business confirmed that he believed Strategic Marketing was worth at least a \$36,000 investment. Thus, it was not an abuse of the trial court's discretion to place that value on Strategic Marketing because that amount was within the scope of the evidence presented. *See Skinner*, 644 N.E.2d at 144.

[27] Husband also argues that the trial court should have valued the marital residence at \$330,000 because of the increased prices of real estate and the length of the dissolution process. The evidence showed that Husband had not resided at the marital residence since October 2019, and he had made no financial contributions toward the residence since April 2019. Also, Wife's contention that the residence should be valued at \$245,000 was premised on the evidence establishing that the house needed a new roof at a cost of \$21,000. And from the date of filing until the date of dissolution, it was Wife who made the mortgage and was the sole contributor for the household expenses.

[28] In light of this evidence, it is apparent that the trial court properly considered the financial circumstances of both Husband and Wife when deciding to value

the marital residence at \$245,000. Husband's contention that the trial court should have valued the residence at \$330,000 is merely a request that we reweigh the evidence, which we will not do.

II. Property Division; Award of the Marital Estate

[29] Husband argues that the trial court erred in awarding Wife one hundred percent of the marital estate. Specifically, Husband maintains that the trial court failed to properly consider the economic circumstances and earning capabilities of the Parties in accordance with Ind. Code § 31-15-7-5 when dividing their property. Husband claims that an equal division of the marital estate was warranted in light of the Parties' respective financial circumstances.

[30] Pursuant to I.C. § 31-15-7-4 (b), the trial court "shall divide the property in a just and reasonable manner," and it is presumed that an equal division of the marital property between the parties is just and reasonable. *See* I.C. § 31-15-7-5. This presumption, however, 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 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 as related to:

(A) a final division of property; and

(B) a final determination of the property rights of the parties.

I.C. § 31-15-7-5.

[31] The trial court must state its reasons for deviating from the presumption of an equal division in its findings and judgment. *Eads v. Eads*, 114 N.E.3d 868, 874 (Ind. Ct. App. 2018). Also, the party challenging the trial court's property division bears the burden of proof. *Smith v. Smith*, 194 N.E.3d 63, 72 (Ind. Ct. App. 2022). That party must overcome a strong presumption that the court complied with the statute and considered the evidence on each of the statutory factors. *Id.*; *see also* I.C. § 31-15-7-5. The presumption that a dissolution court correctly followed the law and made all the proper considerations when dividing the property is one of the strongest presumptions applicable to our

consideration on appeal. *Smith*, 194 N.E.3d at 72. Thus, we will reverse a property distribution only if there is no rational basis for the award. *Id.*

[32] Here, the trial court specifically stated in its findings that it considered all relevant statutory factors when effecting the unequal division of the marital estate. The trial court mentioned Husband’s diminution of the marital estate when incurring the DOJ debt. As a result of his conviction and incarceration, Husband could not contribute to the marital estate during that time, Children’s care, or the maintenance of the residence. Wife had to obtain a loan for \$45,000 just to “keep things together.” *Transcript* at 128, 130.

[33] The trial court also considered the Parties’ economic conditions and determined that Husband used his lucrative business to support his lifestyle. Husband traveled to Naples, Florida, stayed at the Ritz Carlton, and toured Miami Beach. He dined at champagne bars and purchased alcohol for friends. Someone with virtually no income—as Husband claimed—would certainly not have the means to travel and engage in such a lavish lifestyle.

[34] Also, while Husband made sure that his Porsche payments were made, he abandoned his child support and health care expense responsibilities. At times, Wife alone financed Children’s private schooling. And after considering Husband’s pattern of non-support, it was proper for the trial court to determine that “Wife’s economic condition is not favorable in comparison to Husband’s.” *Appellant’s Appendix Vol. II* at 67-68. The trial court also considered the parties’ relative earning capacities in deciding how to divide the marital estate.

[35] Given the evidence along with the trial court’s thoughtful consideration of the statutory factors that supported the unequal division of the marital estate, we cannot say that the trial court’s award of one hundred percent of the marital estate to Wife was clearly erroneous. In short, we reject Husband’s claim that the trial court abused its discretion by not equally dividing the marital estate.

III. Child Support

[36] Husband claims that the trial court’s child support order was erroneous because the trial court “grossly overstated” his weekly income, and the decree does not support the trial court’s “careful review of . . . all child support issues.” *Appellant’s Brief* at 8, 18. Thus, Husband contends that this cause must be remanded to the trial court for a recalculation of child support.

[37] Trial courts maintain broad discretion in imputing income in child custody matters. *Thompson v. Thompson*, 868 N.E.2d 862, 869 (Ind. Ct. App. 2007). Further, this court has acknowledged that income, for child support purposes, is more inclusive than that reported for income tax purposes. *Id.* A trial court’s calculation of child support is presumptively valid and is subject to reversal on appeal only for clear error. *Bogner v. Bogner*, 29 N.E.3d 733, 738 (Ind. 2015). That is, we will reverse a support order, even if it deviates from the appropriate guideline amount, only where the trial court’s determination is clearly against the logic and effect of the facts and circumstances before it. *Id.* Our review is limited to the evidence and reasonable inferences favorable to the judgment. *Id.*

[38] When calculating a child support obligation, the trial court must first determine each parent’s weekly gross income. *Id.* Indiana Child Support Guideline 3(A) defines weekly gross income as follows:

1. *Definition of Weekly Gross Income.* For purposes of these Guidelines, ‘weekly gross income’ is defined as actual weekly gross income of the parent if employed to full capacity, potential income if unemployed or underemployed, and the value of “in-kind” benefits...

2. *Self-Employment, Business Expenses, In-Kind Payments and Related Issues.* Weekly Gross Income from self-employment [or] operation of a business . . . is defined as gross receipts minus ordinary and necessary expenses. In general, these types of income and expenses from self-employment or operation of a business should be carefully reviewed to restrict the deductions to reasonable out-of-pocket expenditures necessary to produce income. . . .

Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business should be counted as income if they are significant and reduce personal living expenses. Such payments might include a company car, free housing, or reimbursed meals.

Id.

[39] In this case, Husband’s 2020 business tax return showed gross receipts in the amount of \$215,952 and a cost of goods as \$118,883, for a net difference of \$98,499. As a result, this is the annual income amount that the trial court considered in determining Husband’s child support obligation. Based on that

figure, the trial court determined that Father's weekly gross income was \$1894.23, and his child support obligation in accordance with the Guidelines was \$261.05 per week.

[40] Notwithstanding the above, Husband claimed that he received only \$15,899 from his business in 2020, and based upon that amount, he requested that \$305 per week be imputed as his weekly gross income for child support purposes. In rejecting Husband's claim, the trial court found him not credible, noting the bank-related fraud convictions and his failure to explain the business expenses that he allegedly incurred. More particularly, Husband was equivocal when asked how the payments were made on the Porsche because he "just hand[ed] everything to [his] CPA." *Transcript* at 109-10. And while Husband claimed amounts for meal expenses, he could not account for those expenses.

[41] Husband also could not explain his alleged business losses in 2019 and 2020. While he listed an attorney's fee expense of \$11,832, he could not provide any explanation as to what, if any, attorney's fees were incurred by Strategic Marketing. Travel expenses were listed at nearly \$14,000, and Husband testified that those expenses "could" have been from hotels and business trips, but he was not sure. *Id.* at 115, 120.

[42] In sum, the evidence supported the trial court's conclusion that Husband paid his personal and living expenses from Strategic Marketing's income and that those amounts were not "ordinary and necessary expenses of the business." *Appellant's Appendix Vol. 2* at 60. Thus, it was proper for the trial court to

include those amounts when calculating Husband's gross income for child support purposes, and we decline to disturb the trial court's calculation of Husband's gross income.

IV. College Expenses

[43] Husband argues that the trial court abused its discretion in ordering him to pay a portion of A.R.'s college expenses. Husband claims that because "[he] did not attend college . . . it does not follow that he is willing or able to pay for it." *Appellant's Brief* at 19.

[44] There is no absolute legal duty on parents to contribute financially to their children's college education. *Neudecker v. Neudecker*, 577 N.E.2d 960, 962 (Ind. 1991). Trial courts are, however, permitted to order either or both parents to pay sums toward their children's post-secondary education. *Id.* When ordering the payment of college expenses, the trial court should consider "to what extent the parents, if still married, would have contributed to the child's college expenses." *Id.*

[45] Here, the evidence showed that Wife—with no assistance from Husband—opened college 529 savings accounts in Children's names. Wife and her parents contributed exclusively to those accounts. Husband testified at the final hearing that he believed A.R. could benefit from a college education, but stated he was "unsure" whether he could—or would—contribute to her college expenses. *Transcript* at 160-61, 174. Wife asked that A.R.'s college expenses be split equally among Wife, Husband, and A.R.

[46] When A.R. began attending college, the Parties were still married. Thus, it seems probable that they would have continued to financially support A.R.'s college education had they remained married. Although Husband claims that the trial court abused its discretion in ordering him to pay a portion of A.R.'s education expenses because he lacked the funds to do so, it remains that Husband presented no credible evidence to support his claim that he was not able to contribute. We therefore decline to find that the trial court abused its discretion in ordering Husband to pay a portion of A.R.'s college expenses.

V. Tax Exemptions

[47] Husband contends that the trial court erred in granting Wife the exclusive right to claim the Parties' three minor children as dependents for state and federal income tax purposes each year. He claims that "the trial court should have split the tax benefits equally" because "it is common practice in northeast Indiana to share equally in the child deductions/exemptions for tax purposes." *Appellant's Brief* at 19.

[48] When assigning the child tax dependency exemption, the courts should be "guided primarily by the goal of making the maximum amount of support available for the child." *Lamon v. Lamon*, 611 N.E.2d 154, 159 (Ind. Ct. App. 1993). The factors that the trial court should consider are: 1) who will be paying the majority of the support; 2) the relative incomes of the parties; and 3) the tax consequence of divesting the custodial parent of the exemption. *Id.*

[49] In this case, the trial court noted throughout its findings that Wife contributed substantially more than did Husband for Children’s support. The evidence demonstrated that Wife uses her funds to support Children, while Husband uses his income to guarantee his standard of living. Given these circumstances, we cannot say that the trial court abused its discretion in granting Wife the exclusive right to claim Children as dependents for state and federal tax purposes each year.

VI. Legal Custody

[50] Husband argues that the trial court abused its discretion in awarding Wife sole legal custody of Children. Specifically, Husband contends that the ruling was erroneous because the evidence established that Children required counseling as a result of Wife’s alienation of them from Husband. Husband maintains that joint legal custody would “give [him] more co-parenting . . . opportunities.” *Appellant’s Brief* at 23.

[51] We review custody determinations for an abuse of discretion. *In re Paternity of A.R.S.*, 198 N.E.3d 423, 430 (Ind. Ct. App. 2022). We accord deference to the trial court’s family law determinations due to its “unique, direct interactions with the parties face-to-face, often over an extended period of time,” which provides the court with the opportunity to assess credibility, ascertain information, and apply common sense to determine what is in the best interests of the child involved. *Best v. Best*, 941 N.E.2d 499, 502 (Ind. 2011). We will not reverse unless the trial court’s decision is against the logic and effect of the facts

and circumstances before it or the reasonable inferences drawn therefrom. *Truelove v. Truelove*, 855 N.E.2d 311, 314 (Ind. Ct. App. 2006).

[52] Under Ind. Code § 31-17-2-8, the trial court shall determine custody and enter a custody order in accordance with the best interests of the child. This statute further provides that there is no presumption favoring either parent. I.C. § 31-17-2-8. Joint legal custody provides that the persons who are awarded joint custody of a child will share authority and responsibility for the major decisions concerning the child’s upbringing, including the child’s education, health care and religious training. Ind. Code § 31-9-2-67. The trial court may award legal custody of a child jointly if it finds that such an award would be in the best interests of the child. I.C. § 31-17-2-13. One of the key factors to consider when determining whether joint legal custody is appropriate is “whether the persons awarded joint custody are willing and able to communicate and cooperate in advancing the child’s welfare.” I.C. § 31-17-2-15(2). If the parties have made child-rearing a battleground, then joint custody is not appropriate. *Carmichael v. Siegel*, 754 N.E.2d 619, 635 (Ind. Ct. App. 2001).

[53] Here, the Parties agree that they did not communicate well during their marriage or at any time after the petition for dissolution was filed. One of Children’s counselors testified that this was one of the most dysfunctional families she had encountered. And the GAL recommended that Wife be awarded sole legal custody. In short, the evidence supported the trial court’s determination that “parents could not communicate as to Children’s well-being.” *Appellant’s Appendix Vol. 2* at 55. Husband’s claims that he should be

awarded joint legal custody of Children because of Wife’s “verbal abuse on Husband,” “excessive parental alienation,” and her “complete control and oversight of the children,” are mere requests that we reweigh the evidence and judge witness credibility, which we will not do. *Appellant’s brief* at 21. Hence, we cannot say that the trial court abused its discretion in awarding Wife sole legal custody of Children.

VII. Limited Parenting Time

[54] Husband argues that the trial court abused its discretion in limiting his parenting time with Children and in ordering him to participate in a family reunification program. Husband maintains that he should be afforded “more co-parenting opportunities” with unrestricted parenting time because of Wife’s “parental alienation.” *Appellant’s Brief* at 23.

[55] A parent’s right to visit his children is “a sacred and precious privilege” which should be enjoyed by a non-custodial parent. *Stewart v. Stewart*, 521 N.E.2d 956, 960 (Ind. Ct. App. 1988), *trans. denied*. Ind. Code § 31-14-14-1 provides that “[a] noncustodial parent is entitled to reasonable parenting time rights unless the court finds, after a hearing, that parenting time might: (1) endanger the child’s physical health and well-being; or (2) significantly impair the child’s emotional development.” A parent’s right to reasonable visitation is subordinated to the best interests of the child. *Hanson v. Spolnik*, 685 N.E.2d 71, 79 (Ind. Ct. App. 1997), *trans. denied*.

- [56] In this case, the evidence established that since the date of filing, Husband had moved six times, including relocations from Fort Wayne to Florida and Indianapolis. Husband failed to keep Wife apprised of where he was living. Additionally, Children expressed resistance to visiting with Husband during the pendency of the dissolution proceedings.
- [57] On July 11, 2021, the GAL recommended that Husband not have any extended parenting time until he completed a family counseling program. As of the final hearing, Husband had not participated in therapy, and had not had any overnights with Children since July 17, 2021. Husband had also not requested parenting time during the ten months prior to the dissolution hearing. And Children have undergone extensive counseling and therapy because of the dissolution.
- [58] In light of this evidence, Husband has failed to show that the trial court abused its discretion in determining that unrestricted parenting time would significantly impair Children's emotional development. We further conclude that the trial court properly exercised its discretion in determining that Husband and Children should be reunited through a family therapy program.

VIII. Contempt

- [59] Husband claims that the trial court erred when it found him in contempt for nonpayment of child support. Husband contends that the contempt order must be set aside because the evidence failed to establish that he willingly failed to

pay. Rather, Husband maintains that the evidence showed that he was “financially unable to pay.” *Appellant’s Brief* at 27.

[60] The trial court has authority to use its contempt power only when the parent has the ability to pay the support due and his failure to do so was willful. *Marks v. Tolliver*, 839 N.E.2d 703, 706 (Ind. Ct. App. 2005). We review the trial court’s finding of contempt for an abuse of discretion. *J.M. v. D.A.*, 935 N.E.2d 1235, 1243 (Ind. Ct. App. 2010). When we review a contempt order, we neither reweigh the evidence nor judge the credibility of the witnesses. *Marks*, 839 N.E.2d at 707.

[61] Here, Husband admitted that he had not paid support “exactly as ordered.” *Transcript* at 75-76, 151. Husband was aware of a weekly \$205 child support order and an arrearage in the amount of \$13,120 as of July 26, 2021. Husband further acknowledged that the July 16, 2021 provisional order obligated him to pay over \$2,000 towards uninsured health care expenses and he had not done so.

[62] Notwithstanding Husband’s claim that he was not able to pay child support, the trial court determined that his gross income in 2020 was nearly \$99,000. Husband ignored the trial court’s child support orders and traveled to Florida in December 2021 and stayed at a luxury hotel. Husband also went to Miami Beach later that month and at some point, he posted on Facebook that he ate at champagne bars. Husband also frequently dined with friends and purchased alcohol for them.

[63] In light of this evidence, it was reasonable for the trial court to conclude that Husband had the ability to pay the support due and that his failure to do so was willful. Thus, we decline to set aside the contempt finding.

IX. DNA Testing

[64] Husband claims that the trial court abused its discretion in refusing to order DNA testing because he suspected that he was not Children's father. There is a strong presumption that children born during the marriage are children of the marriage. *See* I.C. § 31-14-7-1. And this presumption is only rebutted by direct, clear, and convincing evidence. *Fairrow*, 559 N.E.2d at 599. The types of evidence used to rebut the marriage presumption for paternity include that the husband was impotent or sterile, the husband was absent during the entire time that the child must have been conceived, and DNA testing. *Myers v. Myers*, 13 N.E.3d 478, 482 (Ind. Ct. App. 2014).

[65] In this case, Husband speculates that he is not Children's father while nonetheless requesting unrestricted parenting time with Children and joint legal custody. Husband has consistently stated under oath that he is Children's father. As our Supreme Court decided in *Fairrow*, "one who comes into court to challenge a support order on the basis of non-paternity *without externally obtained clear medical proof* should be rejected as outside the equitable discretion of the trial court." 559 N.E.2d at 600 (emphasis added). These are the circumstances here, and we thus affirm the trial court's denial of Husband's motion for genetic testing.

X. Attorney's Fees

- [66] Husband argues that the trial court abused its discretion in ordering him to pay a portion of Wife's attorney's fees. He claims that Wife's "superior financial position" and income and his inadequate earnings "support Wife paying Husband's attorney fees instead of the opposite." *Appellant's Brief* at 29.
- [67] Ind. Code § 31-15-10-1 authorizes a trial court to order a party to pay the other party's costs and attorney's fees in a dissolution proceeding. *Ahls v. Ahls*, 52 N.E.3d 797, 803 (Ind. Ct. App. 2016). The trial court has broad discretion in granting or denying a request for such costs and fees. *See Barton v. Barton*, 47 N.E.3d 368, 377 (Ind. Ct. App. 2015), *trans. denied*. We will reverse a trial court's decision regarding the payment of attorney's fees only where the award is clearly against the logic and effect of the facts and circumstances before the court. *Id.*
- [68] In determining whether to order a party to pay some or all of the other party's attorney's fees, the trial court should consider "the parties' resources, economic condition, ability to engage in gainful employment and earn income, and other factors bearing on the reasonableness of the award." *Ahls*, 52 N.E.3d at 803. When one party is in a superior position to pay fees over the other party, an award of attorney fees is proper. *A.G.R. ex rel. Conflenti v. Huff*, 815 N.E.2d 120, 128 (Ind. Ct. App. 2004), *trans. denied*. Such award may also be appropriate when one party's misconduct results in additional litigation expense for the other party. *Hanson*, 685 N.E.2d at 80.

[69] Here, the evidence established that Wife made several attempts prior to the final hearing to settle the matter with Husband. Additionally, Husband's disingenuous contention that he had no income compelled Wife to engage in extensive discovery and incur attorney's fees. Husband's motion for genetic testing also forced Wife to incur attorney's fees.

[70] As set forth in the findings, the trial court properly considered the parties' economic resources along with their conduct during the course of the dissolution proceedings in evaluating the Wife's request for attorney's fees. The evidence supported the award to Wife, and we therefore conclude that the trial court did not abuse its discretion in ordering Husband to pay a portion of those fees.

Conclusion

[71] In light of our discussion above, we conclude that the trial court did not abuse its discretion in valuing the marital assets, and that it properly awarded Wife one hundred percent of the marital estate. The trial court's child support order was appropriate, and it was not an abuse of discretion to award sole legal custody of the parties' two minor children to Wife. We further conclude that the trial court did not abuse its discretion in ordering Husband to pay a portion of A.R.'s college expenses and permitting Wife to claim Children as exemptions for tax purposes.

[72] Additionally, the evidence supported the trial court's finding of contempt against Husband for violating the provisional child support order and his willful

nonpayment of Children's healthcare expenses. Finally, we affirm the trial court's denial of Husband's motion for genetic testing and conclude that the trial court did not abuse its discretion in ordering Husband to pay a portion of Wife's attorney's fees.

[73] Judgment affirmed.

May, J. and Foley, J., concur.