MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jami Blankenhorn,
Appellant-Petitioner,

v.

John Blankenhorn,
Appellee-Respondent.

February 20, 2023

Court of Appeals Case No. 22A-DN-1287

Appeal from the Marion Superior Court

The Honorable Diana J. Burleson, Magistrate

Trial Court Cause No. 49D16-2102-DN-661

Memorandum Decision by Judge Bailey
Judges Brown and Weissmann concur.

Bailey, Judge.

Case Summary

[1] Jami Blankenhorn ("Wife") appeals the trial court's division of the marital property, specifically, the division of: a Roth IRA account;[1] a life insurance policy; and a pension. John Blankenhorn ("Husband") cross-appeals the trial court's division of the marital property, specifically, the Texas real estate Husband owns jointly with his prior ex-wife.

[2] We affirm in part, reverse in part, and remand with instructions.

Issues

[3] The parties raise the following restated issues:

I. Whether the trial court erred when it included in the marital property only the appreciation value of the Roth IRA and life insurance policy.

II. Whether the trial court erred when it failed to include Husband's pension in the marital property.

III. Whether the trial court erred when it included all equity in the Texas real estate in the marital property.

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[1] Husband had two UBS accounts, an "RMA" account and a Roth IRA account. Throughout her briefs, Wife mistakenly refers to the UBS RMA account—which had been liquidated in 2018 and had a $0 balance—when she is actually challenging the distribution of the Roth IRA account.

IV. Whether the trial court failed to equally distribute the full marital property.

Facts and Procedural History

[4] Wife and Husband began a relationship in 2012 and were married on February 14, 2017. Wife filed for dissolution of marriage on February 23, 2021. On September 15, 2021, the parties filed a Stipulation which stated, in relevant part, as follows:

> 5. The parties stipulate to the following values on the date of filing for divorce:
>
> …
>
> e. Value of Texas property on date of filing: $204,635.
>
> f. Debt on Texas property on date of filing: $141,635 as of the date of filing [sic].
>
> g. The parties disagree on the equity in the Texas property and what part is applicable to the marriage.
>
> h. Husband shall be awarded the Texas property.[2]

[2] Although the parties stipulated that Husband would be awarded the Texas property, the parties do not dispute on appeal that the equity in the property that is included in the marital property should be divided evenly.

…

j. There is [sic] a UBS and [P]rudential account and the parties do not agree on the values.

k. Husband's whole life insurance policy value is $27,473 as of the date of filing[;] the portion applicable to the marriage is in dispute.

…

dd. Each party shall be the owner of his/her own life insurance policies.[3]

Appellant's App. at 17-19.

[5] The trial court held hearings on the dissolution of marriage on September 16 and December 10, 2021, and issued a Decree of Dissolution ("the Decree") on April 29, 2022. The Decree stated, in relevant part:

> 11. Husband inherited an account from his grandfather in 1998. Upon advice Husband split the account into a Roth IRA and an RMA account. Both accounts were with UBS. The RMA [account] was designed to provide more liquidity and it was used for emergencies and other things[,] including paying for their wedding and honeymoon. He withdrew funds during the marriage to pay for expenses during the marriage, including $5500 which was used for the purchase of a vehicle in March 2021. Statements show the value of the account was $78,490 on

[3] The parties do not dispute on appeal that the value of Husband's life insurance policy (whether the total value or the appreciation value only) should be divided equally between the parties.

the date of marriage and $86,880 at the time of filing. The marital property is $8390.

12. The UBS RMA account was liquidated in 2018 and has a balance of $0.

…

16. [Husband] has a whole life insurance policy through New York Life Insurance Company, policy ending in 6337. The net cash value of the policy in 2016, when the parties were married, was $20,104.26. The parties stipulate that the value of the policy at filing was $27,473 but dispute the portion applicable to the marriage. The Court values the marital property at $7373.

17. When the parties married, Husband had [an] interest in property at 219 Scarlet Lane, Harker Heights, Texas, (hereinafter "Texas property"). The Texas property was the subject of Husband's June 19, 2015[,] South Dakota divorce decree under cause number 50DIV13-00013. Husband in the current Marion County case is the Plaintiff in the South Dakota case. The language from the decree is:

> Plaintiff and Defendant agree that the real property in Texas will be sold and the net proceeds will be divided equally between the parties. Both parties agree to cooperate in getting the house sold and signing whatever documentation is required to accomplish the sale of the real property. Plaintiff will continue to pay the difference between the rental amount received on the Texas property and the house payment until the house is sold.

The Texas property has not been sold and there is not a sale pending. The parties stipulate that the value of the Texas

property at the date of filing was $204,635, and the debt at the date of filing was $141,635. The parties disagree on the equity in the Texas property and what part is applicable to the marriage. The difference in the value and debt at the date of filing is $63,000. By the Respondent's actions and words he assumed sole responsibility for the upkeep of the Texas property. Rent from that property was deposited into the parties' joint account ending in 725.

…

19. There are 5 bank accounts in the marriage:

…

c. 0725 joint checking balance is $27.98.

20. Husband receives money from a DFAS pension. There was no documentary evidence regarding the specifics of the pension. There was an order in Husband's divorce decree from his previous wife that awards 50% of the pension to the ex-wife. In his answers to interrogatories Husband responds under Question 10 that his (1) military retirement base is $3360.50 (less 50% per previous divorce decree) = $1680.25; (2) disability retirement is $396.67; and that his net retirement per month is $2076.92. Since there is no documentation regarding the DFAS pension, the Court does not include it in the marital pot.

…

25. The Court does not find that [the] presumption of equal division of the marital property has been rebutted.

Appealed Order at 1-4.

[6] The trial court valued and distributed the marital property, in relevant part, as follows:

- The value of the appreciation of the Roth IRA was $8390 and was split equally.

- The value of the appreciation in Husband's life insurance policy was $7373 and was split equally.

- The value of the bank account ending in 725 was $27.98 and was awarded to Wife.

- The equity in the Texas real estate was $63,000 and was split equally.

Id. at 3-4. This appeal and cross-appeal ensued.

Discussion and Decision

Standard of Review

[7] Our standard of review of a trial court's decision regarding distribution of marital property is well-settled:

> The division of marital property is within the sound discretion of the trial court, and we will reverse only for an abuse of discretion. *Hartley v. Hartley*, 862 N.E.2d 274, 285 (Ind. Ct. App. 2007). An abuse of discretion occurs if the trial court's decision "is clearly against the logic and effect of the facts and circumstances before the court, or if the trial court has misinterpreted the law or disregards evidence of factors listed in the controlling statute." *Hatten v. Hatten*, 825 N.E.2d 791, 794 (Ind. Ct. App. 2005), *trans.*

> *denied*. When we review a claim that the trial court improperly divided marital property, we must consider only the evidence most favorable to the trial 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*.

Love v. Love, 10 N.E.3d 1005, 1012 (Ind. Ct. App. 2014); *see also Campbell v. Campbell*, 993 N.E.2d 205, 212 (Ind. Ct. App. 2013) (quoting *Fobar v. Vonderahe*, 771 N.E.2d 57, 59 (Ind. 2002)) (noting we "will not weigh evidence, but will consider the evidence in a light most favorable to the judgment"), *trans. denied*. "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, and that presumption is one of the strongest presumptions applicable to our consideration on appeal." *Goodman v. Goodman*, 94 N.E.3d 733, 742 (Ind. Ct. App. 2018) (quotation and citation omitted), *trans. denied*.

[8] The trial court issued findings of fact and conclusions thereon.

> Where a trial court has made findings of fact, we apply the following two-tier standard of review: whether the evidence supports the findings of fact, and whether the findings of fact support the conclusions thereon. Findings will be set aside if they are clearly erroneous. Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference. A judgment is clearly erroneous if it applies the wrong legal standard to properly found facts. To determine that a finding or conclusion is clearly erroneous, our review of the evidence must leave us with the firm conviction that a mistake has been made. A general judgment entered with findings will be

> affirmed if it can be sustained on any legal theory supported by the evidence. As we conduct our review, we presume the trial court followed the law. 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.

Campbell v. Campbell, 993 N.E.2d 205, 209 (Ind. Ct. App. 2013), *trans. denied*.

Division of Marital Property

[9] The division of marital property in dissolution actions is governed by Indiana Code Section 31-15-7-4, which states what property must be included in the "marital pot" and how such property may be divided. *Falatovics v. Falatovics*, 15 N.E.3d 108, 110 (Ind. Ct. App. 2014). The marital pot includes property: owned by either spouse prior to the marriage; acquired by either spouse after the marriage but before final separation; or acquired by the spouses jointly. Ind. Code § 31-15-7-4(a). The "one pot" theory "prohibits the exclusion of any marital asset in which a party has a vested interest from the scope of the trial court's power to divide and award." *Baglan v. Baglan*, 137 N.E.3d 271, 276 (Ind. Ct. App. 2019) (quotation and citation omitted). "The requirement that all marital assets be placed in the marital pot is meant to [e]nsure that the trial court first determines that value before endeavoring to divide property." *Id*.

[10] All marital property must be divided in a "just and reasonable manner." I.C. § 31-15-7-4(b). "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. That presumption may be overcome if a party presents evidence that an equal

distribution would not be just and reasonable. *Id*. Such evidence may include evidence of the following factors: the contribution of each spouse to the acquisition of the property; the extent to which the property was acquired by each spouse before the marriage or through inheritance or gift; the economic circumstances of each spouse at the time the disposition of the property is to become effective; 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. *Id*. If a trial court deviates from an equal division of the marital property, it must state a rational basis for doing so. *E.g.*, *Campbell*, 993 N.E.2d at 215. While a trial court must consider all of the statutory factors regarding reasonableness, "it is not required to explicitly address all of the factors in every case." *Israel v. Israel*, 189 N.E.3d 170, 176 (Ind. Ct. App. 2022) (quotation and citation omitted), *trans. denied*.

[11] In sum, the division of marital property in a dissolution action is a two-step process: first, the trial court must ascertain what property is to be included in the marital estate, and second, the trial court must fashion a just and reasonable division of the marital estate. *Goodman*, 94 N.E.3d at 742. However, before a court can divide the marital property, "it must, at a minimum, be sufficiently apprised of the approximate gross value of the marital estate." *Hernandez-Velazquez v. Hernandez*, App.2019, 136 N.E.3d 1130, 1136-37 (Ind. Ct. App. 2019); *see also Connor v. Connor*, 666 N.E.2d 921, 926 (Ind. Ct. App. 1996) ("Since the marital property must be disposed of at one time, the trial court must have before it a fixed, presently ascertainable value of the assets."). The

burden of proving the existence and value of each asset in the marital pot is on the parties and their attorneys. *E.g.*, *Isreal*, 189 N.E.3d at 177; *Connor*, 666 N.E.2d at 926. "The trial court is not obligated to complete the complex task of valuing assets without such evidence." *In re Marriage of Coyle*, 671 N.E.2d 938, 945 (Ind. Ct. App. 1996). Therefore, we have declined to address arguments that the trial court failed to evenly divide a marital asset where the party failed to provide any evidence as to the value of that asset. *See, e.g.*, *Campbell*, 993 N.E.2d at 215 (declining to address alleged unequal distribution of household goods where parties failed to present any evidence as to the value of those items); *Coyle*, 671 N.E.2d at 945 (holding former wife could not complain on appeal that trial court failed to include pension items in its calculations of marital assets for purposes of dividing marital property, where neither party had established such values); *see also Quillen v. Quillen*, 1996, 671 N.E.2d 98 (citation omitted) ("Where the parties failed to present evidence as to the value of assets, it will be presumed that the trial court's decision is proper.").

[12] The only marital assets at issue in the instant case are: the Roth IRA account; Husband's life insurance benefits; Husband's pension; and the real estate in Texas. We first address the value of those assets, and then address the distribution.

Value of Assets

1. Roth IRA and Life Insurance Policy.

[13] The trial court found that the Roth IRA and Husband's life insurance policy were marital assets, and the parties do not contend otherwise. The trial court found that the value of the Roth IRA account was $78,490 on the date of marriage and $86,880 at the time of filing of the dissolution action, and, again, the parties do not dispute that finding. However, instead of concluding that the entire present amount of the account constituted the marital property, the trial court found that only the appreciation on the funds in the account from the time of marriage to the time of the dissolution, i.e., $8,390, was included in the marital pot. Similarly, the trial court found that the cash value of Husband's life insurance policy was $20,000 at the time of the marriage and $27,473 at the time of dissolution, and the parties do not contest those values. However, the court again determined that only the appreciation on the life insurance cash value that accrued during the marriage, i.e., $7,473, was part of the marital property.

[14] Wife asserts that the trial court erred in valuing the Roth IRA account and life insurance policy at their appreciation values rather than their full values at the time of dissolution. We agree. The trial court must include in the marital pot all marital assets in which a party has a vested interest. *See Baglan*, 137 N.E.3d at 276. "In adhering to the 'one-pot' method of dividing marital property, the trial court should consider the entire value of the asset—not simply the asset's appreciation or depreciation over the course of the marriage." *Pitcavage v. Pitcavage*, 11 N.E.3d 547, 568 (Ind. Ct. App. 2014).

[15] Here, the parties had a vested interest in the full amount of both the IRA account and life insurance policies; the parties do not contend otherwise. Therefore, the trial court must include the full amount of those assets in the marital pot. *See Swadner v. Swadner*, 897 N.E.2d 966, (Ind. Ct. App. 2008) (holding total value of investment account was subject to equal distribution upon dissolution where there was no stipulation indicating that the parties agreed to include only the increase in value of that asset during the marriage); *O'Connell v. O'Connell*, 889 N.E.2d 1, 11-12 (Ind. Ct. App. 2008) (holding the trial court erroneously failed to adhere to the "one-pot" theory in dividing the marital estate by looking exclusively at the assets' appreciation or depreciation over the course of the marriage). The trial court erred by failing to include the full value of the IRA account and life insurance policy in the marital pot.

2. Pension.

[16] Wife maintains that the trial court erred when it failed to include Husband's pension in the marital pot. We agree. As a panel of this court noted in *Hill v. Hill*, a present right to payments from a pension plan is statutorily defined as property to be included as a marital asset. 863 N.E.2d 456, 460 (Ind. Ct. App. 2007) (citing I.C. § 31-9-2-98(b)[4]). The trial court found that Husband "receives money from a DFAS pension." Appealed Order at 3. Therefore, the trial court

[4] I.C. § 31-9-2-98(b) states in relevant part: "'Property', [sic] for purposes of IC 31-15 [dissolution],… means all the assets of either party or both parties, including: (1) a present right to withdraw pension or retirement benefits."

was required to include that pension plan in the marital pot, and it erred when it failed to do so.[5]

3. Texas Real Estate.

[17] Husband asserts that the trial court erred when it included in the marital pot the full amount of equity in the Texas real estate that he owns jointly with his ex-wife. Husband has a vested interest in only fifty percent of the equity in the Texas real estate, with his ex-wife owning the other fifty percent. *See* Appealed Order at 2 (finding Husband's dissolution order from his prior marriage provides that the net proceeds from the future sale of the Texas property must be divided equally between Husband and his ex-wife). "[A]n equitable interest in real property, titled in a third party, although claimed by one or both of the divorcing parties, should not be included in the marital estate." *Henderson v. Henderson*, 139 N.E.3d 227, 233 (Ind. Ct. App. 2019) (quoting *In re Marriage of Dall*, 681 N.E.2d 718, 722 (Ind. Ct. App. 1997)); *see also Vadas v. Vadas*, 762 N.E.2d 1234, 1235-36 (Ind. 2002) (same). Because Husband has a vested interest in only half of the $63,000 in equity in the Texas property, the trial court erred when it included the entire $63,000 in equity in the marital pot; rather, the marital pot should include only Husband's half of the equity, i.e., $31,500.

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[5] As the trial court noted, there is no evidence of the value of the pension. Nevertheless, the pension must be included in the marital pot, even if it is ultimately valued at $0.00. *See* I.C. § 31-9-2-98(b); *Hill*, 863 N.E.2d at 460.

Distribution of Assets

[18] The trial court specifically found that neither party had rebutted the statutorily-required presumptive equal distribution of the marital property. That finding is entitled to substantial deference and was supported by the evidence. We will not reweigh the evidence or substitute our judgment for that of the trial court. *See Love*, 10 N.E.3d at 1012; *Campbell*, 993 N.E.2d at 212.

[19] Despite the trial court's clear holding regarding equal distribution, Husband asserts that the trial court actually found an unequal distribution to be fair and reasonable. Husband points to no evidence in support of that claim. Rather, Husband notes that the court did not, in fact, equally distribute the marital pot because it failed to include the full value of the Roth IRA, life insurance policy, and pension benefits. However, as noted above, the trial court's error regarding the IRA and life insurance was one of valuation, not equal distribution; that is, the court did equally divide what it erroneously believed to be the value of those assets.

[20] Regarding Husband's pension, as noted previously, the trial court erred when it failed to include the pension—regardless of its precise value—in the marital pot. The failure to include the pension, in effect, resulted in Husband retaining the entire pension, a result that Wife now contests on appeal. However, Wife

failed to carry her burden of proving the value of the pension.[6] "[A]ny party who fails to introduce evidence as to the specific value of the marital property at a dissolution hearing is estopped from appealing the distribution" of that property based on the absence of evidence. *Galloway v. Galloway*, 855 N.E.2d 302, 306 (Ind. Ct. App. 2006). Wife has waived her claim regarding the pension.[7]

Conclusion

[21] Regarding the value of the marital property, the trial court erred when it included only the appreciation value of the Roth IRA account and life insurance benefits in the marital pot, rather than the full value of those assets at the time of the dissolution action. The trial court also erred when it failed to include Husband's pension in the marital pot and when it included in the marital pot the full amount of equity on the Texas property rather than Husband's half of that equity.

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[6] Wife does not assert that she provided a value for the pension. Rather, she asserts in her Reply Brief that "[t]he lack of a valuation does not prevent its division." Reply Br. at 8. Wife does not cite any authority for that assertion, as required by the Appellate Rules. Appellate Rule 46(A)(8).

[7] Wife's claim that the court should have applied the coverture fraction to distribute the pension fails for several reasons: 1) Wife waived her appeal regarding the pension by failing to provide any evidence of its value; 2) Wife waives the argument by raising it for the first time in her reply brief, *see, e.g.*, *Monroe Guar. Ins. Co. v. Magwerks Corp.*, 829 N.E.2d 968, 977 (Ind. 2005); and 3) because Wife presented no evidence regarding the value of the pension, we have no way of determining the effect that the application of a coverture fraction formula might have on the marital estate.

[22] Regarding distribution of the marital property, the trial court did not err when it found that the marital pot should be distributed equally between the parties. On remand, the trial court must reassess the value of the marital property in accordance with this decision. However, regardless of the ultimate value—if any—found regarding the pension, Wife has waived her appeal regarding the pension by failing to provide evidence of its value.

[23] We affirm in part, reverse in part, and remand with instructions for the trial court to recalculate the division of the marital property in conformity with this decision.

Brown, J., and Weissmann, J., concur.