

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

James Bertrand,
Appellant-Petitioner,

v.

Michelle Gordon,
Appellee-Respondent

August 16, 2023

Court of Appeals Case No.
22A-DN-2698

Appeal from the Lake Superior
Court

The Honorable Thomas P. Hallett,
Judge
The Honorable Alexis Vazquez-
Dedelow, Magistrate

Trial Court Cause No.
45D03-2011-DN-737

Memorandum Decision by Judge May
Judges Mathias and Bradford concur.

May, Judge.

[1] James Bertrand (“Husband”) appeals following the trial court’s order dissolving his marriage to Michelle Gordon (“Wife”) and dividing the marital estate. Husband raises one issue on appeal, which we revise and restate as whether the trial court abused its discretion when it equally divided the equity in the marital residence between Husband and Wife. We affirm.

Facts and Procedural History

[2] Husband and his first wife acquired a waterfront house near Lake Michigan on Miller Beach (“Miller House”) in 2006. Husband divorced his first wife in 2012, and Husband received the Miller House in the divorce. Husband and Wife began dating shortly thereafter, and at some point, Wife moved into the Miller House with Husband. During the relationship, Husband owned and operated a landscaping business. The assets of the business included vehicles and real estate in Monee, Illinois. Wife worked as an artist and owned her own art studio. Her paintings were displayed in galleries in the Chicago metropolitan area and in France, and when Wife sold a painting, she deposited the proceeds from the sale into the bank account for Husband’s business. In 2014, Husband and Wife purchased a condominium in Pompano Beach, Florida. Wife paid \$30,000 toward the down payment on the condo, and Husband’s parents paid \$120,000.

[3] On July 3, 2014, Husband and Wife participated in a commitment ceremony at the Illinois home of Husband’s parents. Husband and Wife legally married on December 9, 2019, at the courthouse in Crown Point, Indiana. Husband and

Wife sold the Florida condominium in October 2020, and their net proceeds from the sale were \$525,822.97. Prior to filing for divorce, Husband used \$142,722.37 of the proceeds from the sale of the Florida condominium to pay his business payroll, vehicle loans, and personal expenses. On November 10, 2020, Husband filed a verified petition for dissolution of marriage. No children were born of the marriage.

[4] The parties were not able to reach an agreement through mediation regarding the division of property, and the trial court set the matter for an evidentiary hearing. In anticipation of trial, the couple retained Thomas Bochnowski of the Bochnowski Appraisal Company to issue an appraisal report with respect to the Miller House. Bochnowski estimated the value of the Miller House to be \$410,000 on July 3, 2014. Bochnowski also estimated the value of the Miller House to be \$475,000 on the date Husband and Wife married and \$600,000 on the date Husband filed for divorce.

[5] Husband and Wife had \$383,100 in proceeds from the sale of the Florida condominium remaining on the date Husband filed his verified petition for dissolution of marriage. While the divorce petition was pending, Husband used proceeds from the sale of the Florida condominium to pay his mother the \$120,000 his parents lent toward the down payment on the condominium. He also used proceeds from the sale to pay business debts, personal debts, and other personal expenses. The couple deposited \$172,947.63 of the proceeds from the sale of the Florida condominium in the trust account of Wife's attorney. Wife used some of these funds to pay her attorney, and she withdrew

\$25,000 to use for personal expenses while the divorce proceeding was pending. On the date of the final hearing, \$138,007.13 of the proceeds remained in the attorney's trust account.

[6] On July 5, 2022, Wife filed a motion asking the trial court to issue an order with findings of fact and conclusions of law following the parties' evidentiary hearing. The trial court then held a three-day evidentiary hearing from July 6, 2022, to July 8, 2022. At trial, Wife testified that at the time of the July 3, 2014, ceremony, she believed she was legally marrying Husband, but about five months later, she found out she was not legally married to Husband. Husband testified that even though he and Wife had planned to legally marry on July 3, 2014, Wife came to him a couple of days before the ceremony and stated that she did not want to legally marry him, but she still wanted to go through with the ceremony. The parties did not apply for or file a marriage license in 2014.

[7] In lieu of closing arguments, the parties submitted proposed findings of fact and conclusions of law. Husband suggested the trial court should consider the value of the Miller House's equity subject to division to be \$50,000, which represented the appreciation in value of the Miller House between the date Husband and Wife were married (\$475,000) and when Husband filed for divorce (\$600,000), minus the amount of outstanding mortgage debt when the

petition for dissolution of marriage was filed.¹ Husband also asked the trial court to divide the marital estate 52% to 48% in his favor.

[8] Wife suggested the trial court value the equity of the Miller House subject to division to be \$120,000, which represented the appreciation in value of the Miller House between the date of the commitment ceremony (\$410,000) and when Husband filed for divorce (\$600,000), minus the value of the outstanding mortgage debt on the date the petition for dissolution of marriage was filed. She asked the trial court to divide the marital estate equally with each party receiving 50%, and she proposed that the trial court order Husband to pay Wife \$322,088.57 to effectuate the property division.

[9] On October 19, 2022, the trial court issued a decree of dissolution of marriage. In its decree, the trial court found:

FINDINGS OF FACT

6. The marriage is irretrievably broken and should be dissolved.

* * * * *

¹ The parties disagreed about the amount of outstanding mortgage debt on the Miller House at the time Husband filed the petition for dissolution of marriage. Husband valued the outstanding mortgage debt at \$75,000, whereas Wife valued the debt at \$70,000.

11. In 2014, Wife moved into Husband’s residence located at [****] Lake Shore Drive, Gary, Indiana (the “marital residence”).

* * * * *

14. Aside from some very brief separations, the parties cohabitated consecutively and consistently in the marital residence from 2014 until their physical separation in late 2020.

* * * * *

21. The marital residence had a value of \$600,000.00 and a mortgage in the amount of \$75,000.00 on the date the Petition was filed; therefore, the equity in the marital residence as of the date of filing is \$525,000.00[.]

* * * * *

CONCLUSIONS OF LAW

* * * * *

10. Neither party submitted sufficient evidence to rebut the statutory presumption that an equal division of the marital estate is fair and reasonable.

* * * * *

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Verified Petition for Dissolution of Marriage is granted, the marriage is hereby dissolved, and the parties are restored to the status of unmarried persons.

(Appellant’s App. Vol. II at 15-21.)

[10] The trial court then listed the value of the marital assets and debts as of the date Husband filed the petition for dissolution of marriage:

<u>ASSET</u>	<u>VALUE</u>
Lake Shore Drive, Gary Residence (Equity)	\$ 525,000.00
Bertrand Landscape:	385,000.00
Michelle Gordon Studio	308,400.00
Florida Condominium (net proceeds)	383,100.00
1980 Chevy	4,500.00
2007 Chrysler	1,500.00
2008 golf cart	2,000.00
1994 Harley Davidson	6,000.00
1995 Harley Davidson	<u>6,000.00</u>
TOTAL ASSETS	\$1,621,500.00
 <u>DEBTS</u>	
Northwest Hospital Phys.	1,049.00
Pamela Bertrand	<u>120,000.00</u>
TOTAL DEBTS	(-) 121,049.00
TOTAL NET ASSETS	\$1,500,451.00

3. Monies distributed to the parties from the Florida Condominium proceeds after date of filing and prior to the final hearing as follows:

<u>WIFE</u>	<u>HUSBAND</u>
12,000.00	43,663.25
25,000.00	6,111.05
10,000.00	9,765.92
	1,609.79
	2,215.01
	<u>15,000.00</u>
\$ 47,000.00	\$78,365.02

4. Debt paid in full to Pamela Bertrand as of final hearing: \$120,000.00.
5. Monies held in attorney trust as of final hearing: \$138,007.13.
6. The marital property and debts shall be divided as follows:

<u>ASSET</u>	<u>VALUE</u>	<u>WIFE'S SHARE</u>	<u>HUSBAND'S SHARE</u>
Marital Residence Gary, IN (Equity)	\$525,000.00	262,500.00	262,500.00
Bertrand Landscape:	385,000.00		385,000.00
Michelle Gordon Studio	308,400.00	308,400.00	
1980 Chevy	4,500.00		4,500.00
2007 Chrysler	1,500.00	1,500.00	
2008 golf cart	2,000.00		2,000.00
1994 Harley Davidson	6,000.00		6,000.00
1995 Harley Davidson	6,000.00		6,000.00
 Monies distributed to Parties after DOF:		 12,000.00	 43,663.25
		25,000.00	6,111.05
		10,000.00	9,765.92
			1,609.79
			2,215.01
			15,000.00
Monies in Atty Trust:	\$138,007.13	132,010.63	5,996.50
 <u>DEBTS</u>			
Northwest Hospital Phys. (-)	1,049.00	<u>(-) 1,049.00</u>	_____
		\$750,361.63	\$750,361.52
 % SHARE OF NET ESTATE		 0.50 %	 0.50 %

(*Id.* at 21-23.)

[11] With respect to the marital residence, the trial court decreed:

Husband is awarded as his sole and exclusive property, the marital residence located at [****] Lake Shore Drive, Gary, Indiana. Husband shall refinance said residence within ninety (90) days of the entry of this Decree. Husband shall pay Wife

\$262,500.00 from said refinancing for her portion of the equity in said property.

(*Id.* at 23.)

Discussion and Decision

[12] The only portion of the divorce decree Husband challenges is the trial court’s decision to split the value of the marital residence equally between the parties. We review a trial court’s division of marital assets for an abuse of discretion. *Roetter v. Roetter*, 182 N.E.3d 221, 225 (Ind. 2022). “A trial court abuses its discretion if its decision stands clearly against the logic and effect of the facts or reasonable inferences, if it misinterprets the law, or if it overlooks evidence of applicable statutory factors.” *Id.* “The party challenging the ‘trial court’s division of marital property must overcome a strong presumption that the court considered and complied with the applicable statute.’” *Id.* (quoting *Wanner v. Hutchcroft*, 888 N.E.2d 260, 263 (Ind. Ct. App. 2008)). “[W]e focus on what the trial court did and not what it could have done.” *Alifimoff v. Stuart*, 192 N.E.3d 987, 998 (Ind. Ct. App. 2022), *trans. denied*. We do not reweigh the evidence or judge the credibility of the witnesses, and we consider the evidence in the light most favorable to the trial court’s decision. *Id.*

[13] Here, Wife requested that the trial court issue an order with findings of fact and conclusions of law pursuant to Trial Rule 52(A). “When a trial court enters findings of fact and conclusions of law pursuant to Trial Rule 52, we apply the following two-tiered standard of review: (1) whether the evidence supports the

findings; and (2) whether the findings support the judgment.” *Id.* We will only set aside the trial court’s findings and conclusions, “if they are clearly erroneous, that is, if the record contains no facts or inferences supporting the judgment. A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made.” *Id.* (internal citation omitted).

[14] The division of marital property following dissolution of marriage is a two-step process. *Goodman v. Goodman*, 94 N.E.3d 733, 742 (Ind. Ct. App. 2018), *reh’g denied, trans. denied*. “First, the trial court must ascertain what property is to be included in the marital estate; second, the trial court must fashion a just and reasonable division of the marital estate.” *Id.* Indiana Code section 31-15-7-4(a) states:

In an action for dissolution of marriage under IC 31-15-2-2, the court shall divide the property of the parties, whether:

(1) owned by either spouse before the marriage;

(2) acquired by either spouse in his or her own right:

(A) after the marriage; and

(B) before final separation of the parties; or

(3) acquired by their joint efforts.

Thus, the marital estate included the Miller House because Husband owned the house prior to his marriage to Wife and brought the asset into the marriage.

[15] Indiana Code section 31-15-7-5 provides in relevant part:

The court shall presume that an equal division of the marital property between the parties is just and reasonable. 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:

(2) The extent to which the property was acquired by each spouse:

(A) before the marriage; or

(B) through inheritance or gift[.]

If the trial court chooses to deviate from the statutory presumption of an equal division of the marital property, then it must state why such a deviation is necessary. *Galloway v. Galloway*, 855 N.E.2d 302, 305 (Ind. Ct. App. 2006).

However, the trial court is not required to make specific findings on the statutory factors listed in Indiana Code section 31-15-7-5 when the trial court chooses not to deviate from the presumption of an equal property division.

Hyde v. Hyde, 751 N.E.2d 761, 766 (Ind. Ct. App. 2001).

[16] Husband contends the trial court should have rendered special findings regarding his premarital equity in the Miller House. He asserts that

the trial court failed to render any findings as to the Husband's substantial premarital equity in this asset; failed to mention in its findings that the Husband owned this asset premaritally and that it had been awarded to the Husband in the first divorce; failed to note in its findings the short duration of the parties' marriage and/or relationship; failed to acknowledge that the Wife was never added to the deed and that the asset was never commingled; and failed to deviate from the statutory presumption not setting aside any portion of the premarital equity to the Husband, despite the arguments of both parties requesting same.

(Appellant's Br. at 23-24.)

[17] However, despite Husband's protestations to the contrary, the trial court did recognize that Husband owned the Miller House prior to the parties' cohabitation. In Finding of Fact 11, the trial court found: "In 2014, Wife moved into Husband's residence located at [****] Lake Shore Drive, Gary, Indiana (the 'marital residence')." (Appellant's App. Vol. II at 15.) The trial court also found in Finding of Fact 14 that "[a]side from some very brief separations, the parties cohabitated consecutively and consistently in the marital residence from 2014 until their physical separation in late 2020." (*Id.* at 16.) It follows from these findings that the trial court took note of the length of the parties' relationship and the parties' joint contributions toward the Miller House. Wife described the Miller House as "a shack" when she first moved

into it, and she and Husband made substantial improvements to it while she lived there. (Tr. Vol. III at 139.)

[18] The trial court is not required to “follow a rigid, technical formula in dividing the marital estate and we . . . assume that it applied the law correctly.” *Roetter*, 182 N.E.3d at 229. The trial court found the Miller House represented \$525,000 worth of the couple’s \$1,500,451 net marital estate, and the trial court’s valuation of the Miller House included the \$120,000 increase in value that occurred during the couple’s period of cohabitation. When the couple bought a condominium in Pompano Beach, Florida, Wife used assets she acquired before her relationship with Husband toward the down payment, and the trial court included in the marital estate the net proceeds the couple realized from the sale of that condominium. Wife’s art studio also added \$308,400 to the marital estate. Thus, Wife’s efforts substantially contributed to the marital estate. Husband notes the parties’ respective proposed findings disagreed about the amount of the appreciation in the Miller House’s value that should be considered a marital asset. However, the trial court was not bound to follow either spouse’s proposal. *See Roy A. Miller & Sons, Inc. v. Indus. Hardwoods Corp.*, 775 N.E.2d 1168, 1172 (Ind. Ct. App. 2002) (“Although proposed findings may assist a trial court, it is the responsibility of the trial court to make the findings and conclusions.”). It was the trial court’s duty to make its own findings and draw its own conclusions. The trial court concluded that neither party rebutted the statutory presumption favoring an equal division of the marital estate, and the trial court’s findings regarding each spouse’s substantial contributions to the

marital estate and the substantial increases in the parties' joint assets over the course of their cohabitation support that conclusion. Rather than set aside some portion of the Miller House's equity exclusively for Husband, the trial court decided to equally split the value of the asset as part of its larger division of the marital estate. Therefore, we cannot say the trial court abused its discretion.² See *Larkins v. Larkins*, 685 N.E.2d 88, 91 (Ind. Ct. App. 1997) (holding the trial court did not abuse its discretion when it awarded each divorcing spouse half the value of the marital residence even though one spouse bought the residence before the marriage).

Conclusion

[19] Even though Husband owned the Miller House before Wife moved into the house, the trial court did not abuse its discretion in equally dividing the Miller House's equity between the parties. Each spouse substantially contributed to the marital estate, and the trial court's division of the equity in the marital house was part of its larger, equal division of the marital estate between the spouses. Therefore, we affirm the trial court.

² Husband also asserts that Finding of Fact 21 "is incomplete, overlooks significant facts argued by both parties, and fails to disclose a sufficient justification for rejecting the arguments of both parties." (Appellant's Br. at 26.) Husband argues the finding therefore "is not supported by the evidence and is clearly erroneous." (*Id.*) However, Husband's argument is simply a reassertion of his position that the trial court erred in equally dividing the value of the Miller House. He does not challenge the trial court's finding regarding the Miller House's market value or the trial court's calculation of the value of equity in the Miller House. He merely contests the trial court's division of the asset. Thus, Husband's argument challenging Finding of Fact 21 fails for the same reasons as his argument challenging the trial court's division of the equity in the Miller House.

[20] **Affirmed.**

Mathias, J., and Bradford, J., concur.