

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jeannine Lake,
Appellant-Petitioner,

v.

Aaron Lake,
Appellee-Respondent

July 31, 2023

Court of Appeals Case No.
22A-DC-2753

Appeal from the
Marion Superior Court

The Honorable
Alicia Gooden, Judge

Trial Court Cause No.
49D14-2007-DC-21763

Memorandum Decision by Judge Vaidik
Judges Mathias and Pyle concur.

Vaidik, Judge.

Case Summary

- [1] Jeannine Lake (“Wife”) appeals several aspects of the trial court’s final decree in the dissolution of her marriage to Aaron Lake (“Husband”). We affirm in part, reverse in part, and remand.

Facts and Procedural History

- [2] The parties married in 1996. In July 2020, Wife filed a petition to dissolve the marriage. While the case was pending, both parties filed “numerous contempt petitions,” accusing each other of “lying, destroying property and violating court orders.” Appellant’s App. Vol. II p. 37. The trial court issued its decree of dissolution in August 2022. The decree addressed many issues, but only three are relevant to this appeal: Wife’s student loans, the equalization payment to be paid by Husband to Wife, and attorney’s fees.
- [3] In dividing the marital estate, the trial court assigned to Wife her student-loan debt. The court acknowledged that Wife has a loan balance of \$280,759.96 after earning a Bachelor of Science degree from Ball State in 1992 and taking undergraduate and graduate courses at the school between 1996 and 2008. However, the court could not “glean, or separate out, whether any portion of the current loan balances existed prior to marriage, based on the evidence submitted,” and found it “astonishing that Wife has incurred over \$280,000 in student debt, seemingly without earning any degree to show for it, beyond her

Bachelor's in 1992." *Id.* at 36. The court concluded that "a fair and reasonable amount to assign to this debt is \$100,000.00." *Id.* at 37.

[4] An equalization payment was necessary because the trial court found that an equal division of property is just and reasonable but awarded most of the marital assets, including the marital residence, to Husband. The court calculated a payment amount of \$275,094 and ordered: "Therefore, a payment of \$275,094.00, plus gains or losses on that amount from the date of this Order to the date of transfer, shall be paid from Husband's Indiana Teachers Pension via Qualified Domestic Relations Order to be prepared by Wife's counsel." *Id.* at 39.

[5] And on the issue of attorney's fees, the court concluded:

[E]ach party has filed several Motions for Rule to Show Cause. The Court has reviewed the pleadings, attachments, testimony and exhibits as to these motions. Both parties have failed to comply with various orders of the Court on a repeated basis. Both parties have contributed to making this dissolution an arduous and contemptuous process. The Court finds that neither party is incredibly credible and views much of their respective testimony with a suspicious eye. The Court could find both in contempt or neither – the result is the same. The Court orders each party to pay their own attorney fees.

Id. at 40.

[6] Wife filed a motion to correct error regarding the equalization payment. She had learned that a qualified domestic relations order cannot be used with a Teachers' Retirement Fund pension, meaning that the trial court's plan for the

equalization payment could not be implemented. After a hearing, the court granted Wife's motion and entered the following order for the payment of the \$275,094 equalization payment:

3. The Court orders Husband to immediately apply for a refinance of the mortgage on the residence. Husband, via counsel, shall keep Wife apprised of all steps and status of the refinance process.
4. Assuming Husband is approved, the Court orders the sum of \$50,000.00 to be transferred to Wife in partial payment of the equalization payment. If Husband is not approved for that amount, he shall transfer to Wife the maximum amount that he is approved and shall provide verification to Wife thereof.
5. The balance of the equalization payment shall be made as a percentage of Husband's pension at the time of payout. For example, if Wife receives the sum of \$50,000.00 from the refinance, the remaining balance due to her is \$225,094.00; this amount is 70% of the value of the pension at the time of filing (\$320,169.00). Wife would then receive 70% of each monthly payment until she has received the sum of \$225,094.00.
6. Payments shall be made directly from the Plan to Wife. Husband shall notify Wife as soon as he is eligible to receive his payout.

Id. at 124-25.

[7] Wife now appeals.

Discussion and Decision

[8] Wife appeals the trial court’s handling of her student-loan debt and the equalization payment and the court’s decision not to award her any attorney’s fees. Husband has not filed a brief. When an appellee does not respond to an appeal, we will not undertake the burden of developing an argument on their behalf. *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065, 1068 (Ind. 2006). Rather, we will reverse the trial court’s judgment if the appellant’s brief presents a case of prima facie error. *Id.* In this context, “prima facie error” means error “at first sight, on first appearance, or on the face of it.” *Id.*

I. Wife’s Student Loans

[9] Wife argues the trial court erred by assigning her student-loan debt a value of \$100,000. We agree. There is no dispute that the actual balance on the date of separation was \$280,759.96. All marital property—which includes both the assets and liabilities of the spouses, whether acquired during or before the marriage—goes into the marital pot for division. Ind. Code § 31-15-7-4; *Crider v. Crider*, 26 N.E.3d 1045, 1049 (Ind. Ct. App. 2015). In valuing Wife’s student-loan debt at \$100,000, the trial court noted that it is not clear “whether any portion of the current loan balances existed prior to marriage” and found it “astonishing that Wife has incurred over \$280,000.00 in student debt, seemingly without earning any degree to show for it, beyond her Bachelor’s in 1992.” These factors can certainly be considered in deciding how to divide the marital pot, *see* I.C. § 31-15-7-5, but the full date-of-separation debt must go into

the pot to start. Therefore, we reverse the trial court's property division and remand for reconsideration using the actual loan balance of \$280,759.96.

II. Equalization Payment

[10] Wife also contends the trial court erred in its directions for the equalization payment. Again, we agree. And while this issue might go away with the new property division on remand, it might not, so we will address it.

[11] The court awarded Wife an equalization payment of \$275,094, with up to \$50,000 to be paid out of the proceeds of the refinancing of the marital residence and the balance to paid "as a percentage of Husband's pension at the time of payout." As Wife notes, the court's order doesn't provide that the payout of the equalization payment survives the death of either party, and it doesn't require Husband to make Wife the survivor beneficiary of his pension. Therefore, there is a real chance Wife (or her estate, if she dies first) ultimately would not receive the entire equalization payment. *See Smith v. Smith*, 194 N.E.3d 63, 78 (Ind. Ct. App. 2022) (holding that "the trial court erred by failing to award either survivor's benefits or protection of Wife's portion of the Pension benefits through another means, such as life insurance"). In addition, the court's order doesn't call for interest even though it will be years before Husband retires and Wife receives any payments (Husband and Wife were both born in 1969). This means Wife would not receive the full present value of the equalization payment. If on remand the trial court again orders an equalization payment linked to Husband's pension, it must account for these issues.

III. Attorney's Fees

[12] Finally, Wife contends that the trial court should have ordered Husband to pay some or all of her attorney's fees. She first asserts that "Husband made the dissolution process arduous and acrimonious at every turn." Appellant's Br. p. 23. But in declining to award attorney's fees, the trial court found that **both** parties "failed to comply with various orders of the Court on a repeated basis" and "contributed to making this dissolution an arduous and contemptuous process." Wife doesn't acknowledge these findings, let alone explain why they are erroneous. She also claims that "it is obvious that Husband's earning capacity significantly exceeds that of Wife's," Appellant's Br. pp. 24-25, but she doesn't direct us to any evidence of the parties' actual incomes or earning capacities. Wife has not shown prima facie error on the issue of attorney's fees, so we affirm that part of the trial court's decree.

[13] Affirmed in part, reversed in part, and remanded.

Mathias, J., and Pyle, J., concur.