APPELLANT PRO SE

Vichitra Tyagi
Zionsville, Indiana

ATTORNEY FOR APPELLEE

Amanda Glowacki
Carmel, Indiana

IN THE COURT OF APPEALS OF INDIANA

Vichitra Tyagi,
Appellant-Respondent,

v.

Vinita Singh Tyagi,
Appellee-Petitioner.

February 24, 2022

Court of Appeals Case No. 21A-DC-1392

Appeal from the Boone Superior Court

The Honorable Matthew C. Kincaid, Judge

Trial Court Cause No. 06D01-1610-DR-428

Mathias, Judge.

[1] Vichitra Tyagi ("Husband") appeals the Boone Superior Court's dissolution of his marriage to Vinita Singh Tyagi ("Wife"). Husband raises four issues for our review, which we restate as follows:

I. Whether the trial court clearly erred when it included a note payable owed to Husband by a family business as an asset of Husband's.

II. Whether the trial court clearly erred when it set Husband's weekly income for child support purposes at $5,000.

III. Whether the trial court clearly erred when it relied on Wife's evidence of a conversion rate between United States Dollars and Indian Rupees.

IV. Whether Husband preserved his argument on appeal for an equal division of the marital estate.

[2] We affirm.

Facts and Procedural History

[3] The facts underlying the parties' marriage and dissolution were stated by this Court in a prior appeal:

> Husband and Wife married on September 21, 2007. Wife filed to dissolve the marriage in October 2016. In September 2017, Husband's parents, Sushma and Vijai, filed a motion to intervene in the dissolution proceedings on the grounds that Sushma owns [an Indiana company, Hoosier Broadband LLC ("HBB"),] and Vijai owns [a Zionsville residence (the "Real Estate")]. In the motion, Husband's parents argued that the dissolution proceedings may "impair or impede [their] ability to protect their interests in their property and their interest is not adequately represented by existing parties." The trial court granted the motion to intervene in October 2017.
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> Husband and Wife then jointly moved to bifurcate the dissolution proceedings and requested that the trial court determine, apart from the rest of the proceedings, whether HBB and the Real Estate should be included in the marital estate as marital assets. The trial court granted the bifurcation and held the

separate hearing in January 2019. At the hearing, the trial court heard testimony from Wife, Husband, Sushma, Vijai, and a former HBB employee.

Testimony at the hearing revealed that HBB was established in 2004 by Husband and two non-parties, Matt Campbell and James Hessman ("Hessman"). Husband prepared the LLC Agreement and was listed as the "President and Chief Executive Officer" and "Chief Financial Officer and Secretary[.]" In 2005, after suffering some financial difficulties and in an effort to avoid potential conflicts with his then-employer, Husband transferred his seventy-five percent (75%) ownership interest in HBB to Sushma. Sushma did not pay Husband to acquire his interest in HBB and there is no written agreement evidencing the transfer of ownership. Husband continued his employment at HBB in his previous roles, and he also became the Chief Technology Officer.

Around the time that Husband and Wife were married in 2007, Wife began helping Husband with HBB and eventually became HBB's Chief Operating Officer. As part of her duties, she assisted HBB in obtaining a line of credit from Chase Bank ("Chase LOC") in 2008. Wife testified that she first became aware that HBB was owned by Sushma while assisting with the Chase LOC. Wife explained that after she and Husband had met with a banker, prepared the necessary financial documents, and obtained approval for the loan, Husband informed her that Sushma's signature would be required because HBB "was technically under [his] mom's name." After HBB obtained the Chase LOC, Wife told Husband to ask his mother to have HBB's ownership transferred to reflect him as the owner. Husband complied, and Sushma refused Husband's request. Subsequent requests to transfer ownership were also denied, and Sushma testified that she never represented that she would ever transfer ownership to Husband. As a result, Husband and Wife began purchasing real estate in India in their names jointly.

Hessman left HBB in 2008 and later filed suit against the company in 2011, claiming an interest in HBB. Hessman's claim was settled in 2012 for $75,000. As a result of the settlement, Sushma acquired 100 percent (100%) of the ownership interest in HBB, as reflected in subsequent business documents and tax returns. Wife testified that she was aware of Hessman's litigation and that she gave a deposition in connection with the dispute.

Sushma acknowledged that she was not familiar with the financial affairs and that her son had taken the lead role in that area. She further explained that she has no control over Husband's salary stating that, "he just told me. He decide[s]." As a result, Husband and Wife have enjoyed all of the financial benefits of HBB. Their salaries varied from year-to-year depending on HBB's annual profitability. Sushma and Vijai have reaped no financial benefits and instead have an "emotional stake" in "seeing [Husband] succeed and seeing the business succeed as well[.]"

The testimony also revealed that in 2009, Vijai purchased the Real Estate on the advice of his son who was looking for a business location and residence. In order to fund the down payment, Vijai contributed $60,000 and borrowed another $60,000 from Husband. Vijai and Husband did not execute a note to evidence the contribution by Husband. In 2012, the Real Estate's mortgage was refinanced and Vijai contributed $11,000 and borrowed $11,000 from Husband to put towards the refinance. This second contribution by Husband was also not reduced to writing. Vijai is the only obligor on the mortgage loan, and the real estate taxes and homeowner insurance for the Real Estate are also in Vijai's name. Similar to the ownership of HBB, Wife desired to have the Real Estate transferred to reflect Husband as the owner. She made several requests to Husband, who in turn asked his father to convey the Real Estate to him. Vijai denied the requests and testified that he never represented to

> Husband or Wife that he would convey title to the Real Estate to the couple.

Tyagi v. Tyagi, 142 N.E.3d 960, 962–63 (Ind. Ct. App. 2020) (citations and footnotes omitted; some alterations in original), *trans. denied*. We further noted:

> the Real Estate was used primarily as a residence for Wife, Husband, and Husband's parents. HBB operated out of two rooms, and Vijai received rent from the company in the amount of $4,900 per month, which was sufficient to cover the mortgage, insurance, and taxes. There was no written lease agreement between Vijai and HBB regarding the use of space or the monthly payments.

Id. at 963 n.1. And we stated that "[t]he parties do not dispute that the payments made to Vijai to assist in the purchase and refinance of the Real Estate, totaling $71,000, were loans that remain unpaid and collectively are a marital asset." *Id.* at 963 n.2.

[4] In the first phase of the bifurcated proceedings, the trial court found that HBB and the Real Estate were not marital assets and, thus, were not within the marital estate. Wife appealed and argued that the evidence showed that Husband owned HBB and that HBB, in turn, owned the Real Estate. However, we held that the trial court's findings were supported by the evidence, and we affirmed the trial court's judgment. *Id.* at 965–66.

[5] Thereafter, the trial court held the second phase of the bifurcated proceedings. As relevant to this appeal, in the second phase, the trial court admitted HBB balance sheets that showed, beginning in 2005 and continuing for several years,

a note payable owed from HBB to Husband. *See* Ex. Vol. 5 p. 149; Tr. Vol. 2 pp. 73–75. According to Husband's own deposition in the Hessman litigation, the note payable represented his "personal[]," "additional investment" of "capital that was required to sustain the business . . . [o]ver a period of several years." Ex. Vol. 3 p. 103. HBB's final balance sheet entry on the note payable showed an outstanding debt owed by HBB to Husband in the amount of $183,031.38. Ex. Vol. 5 p. 149.

[6] The trial court also received evidence relevant to Husband's income for child support. At a preliminary hearing in 2018, Husband had verified to the court that he had income of $5,000 per week. Ex. Vol. 7 p. 62. Over the ensuing several years of the dissolution proceedings, however, Husband reported continuously decreasing income on his tax returns, culminating in a 2020 income of $99,499. Husband reported an average income between 2018 and 2020 of $136,811, and at the final hearing requested the court to set his weekly income for child support purposes at $2,413.14 based on the most recent three-year average of his reported income.

[7] However, Husband introduced no evidence that HBB had lost any profits over that same time frame. Further, he acknowledged that, while his reported income had decreased during the dissolution, he had not changed his lifestyle, and he had taken vacations to the Bahamas, Disney World, Alaska, and twice to Europe. Tr. Vol. 2 p. 237. And Wife introduced evidence that, as the CEO of HBB, Husband had the ability to manipulate his income and access additional funds simply by sending an e-mail. *See* Ex. Vol. 5 p. 6.

[8] Also at the final hearing, the parties agreed that, prior to filing the petition for dissolution, Wife had made numerous financial transfers to her brother in India using marital assets. However, the parties disputed the proper exchange rate to use in converting United States Dollars to Indian Rupees. Wife submitted evidence that, as of the date of the parties' separation, which was the date stipulated by the parties as the date for valuing all other marital assets, the conversion rate was 1 Indian Rupee per 0.014969 United States Dollars. *Id.* at 130. Husband opined that a different conversion rate should apply but offered no evidence in support of his opinion as to that conversion rate.

[9] Finally, Husband argued at the final hearing that the marital estate should be divided such that he received about 58% of the estate and Wife received the remaining 42%. Ex. Vol. 4 p. 93. Wife also argued for an unequal division of the marital estate, asserting that, based on the Husband's superior earning capabilities, HBB's continued profits, and his easy access to those profits, she should be awarded 55% of the marital estate with Husband receiving the remaining 45%.

[10] Following the final hearing, the court entered findings of fact and conclusions thereon and dissolved the parties' marriage. In its decree of dissolution, the court found in relevant part that HBB owed a debt to Husband on the note payable in the amount of $183,031.38, which the court identified as an asset to Husband in his share of the marital estate; the court found that Husband's weekly income for child support purposes should remain at $5,000 based on Husband's ability to manipulate his income for tax purposes and ease-of-access

to additional funds from HBB in his role as CEO and son of the owner; that Wife's evidence of the conversion rate from United States Dollars to Indian Rupees was to be used to determine the value of Wife's financial transfers to her brother in India; and that the marital estate was to be divided 55/45 in Wife's favor based on Wife's "equal if not greater economic and non-economic contributions to the acquisition of the marital estate during the marriage," the parties "work[ing] together to grow their marital estate," "Husband's current economic circumstances," which were "substantially greater than Wife's," and "Husband's current earning capabilities," which, particularly due to his title at HBB and relationship to its owner, was "substantially higher than Wife's." Appellant's App. Vol. 2 p. 39. This appeal ensued.

Standard of Review

[11] Husband appeals the trial court's decree of dissolution. Dissolution actions invoke the inherent equitable and discretionary authority of our trial courts, and, as such, we review their decisions with "substantial deference." *See, e.g.*, *R.W. v. M.D. (In re Visitation of L-A.D.W.)*, 38 N.E.3d 993, 998 (Ind. 2015). Here, the trial court supported its exercise of that authority with findings of fact and conclusions thereon following an evidentiary hearing. As our Supreme Court has stated:

> The trial court's findings were entered pursuant to Ind. Trial Rule 52(A) which prohibits a reviewing court on appeal from setting aside the trial court's judgment "unless clearly erroneous." The court on appeal is further required to give "due regard . . . to the opportunity of the trial court to judge the credibility of the

> witnesses." When a trial court has made special findings of fact, as it did in this case, its judgment is clearly erroneous only if (i) its findings of fact do not support its conclusions of law or (ii) its conclusions of law do not support its judgment. *Estate of Reasor v. Putnam County*, 635 N.E.2d 153, 158 (Ind. 1994). Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference. *Reasor*, 635 N.E.2d at 158.
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> When reviewing valuation decisions of trial courts in dissolution actions, a similar standard of review has been enunciated: that the trial court has broad discretion in ascertaining the value of property in a dissolution action, and its valuation will not be disturbed absent an abuse of that discretion. *Cleary v. Cleary*, 582 N.E.2d 851, 852 (Ind. Ct. App. 1991). The trial court does not abuse its discretion if there is sufficient evidence and reasonable inferences therefrom to support the result. *Id.* In other words, we will not reverse the trial court unless the decision is clearly against the logic and effect of the facts and circumstances before it. *Porter v. Porter*, 526 N.E.2d 219, 222 (Ind. Ct. App. 1988), *trans. denied*. A reviewing court will not weigh evidence, but [it] will consider the evidence in a light most favorable to the judgment. *Skinner v. Skinner*, 644 N.E.2d 141, 143 (Ind. Ct. App. 1994).

Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996). Similarly, the trial court's division of the marital property "is highly fact sensitive and is subject to an abuse of discretion standard" of review. *Fobar v. Vonderahe*, 771 N.E.2d 57, 59 (Ind. 2002). Under that standard, we consider only "the evidence in a light most favorable to the judgment." *Id.*

Issue One: Note Payable

[12] First, Husband asserts that the trial court clearly erred when it found that the note payable existed and allocated that note as an asset to Husband. Specifically, Husband argues that "[t]he record is devoid of any evidence that [he] ever loaned HBB money" that would result in a note payable owed to him. Appellant's Br. p. 8. In particular, he relies on a statement by Wife's counsel in which she stated to the trial court that "there is no note payable formal here" but "[w]e definitely have other documents." Tr. Vol. 2 p. 126.

[13] Husband misconstrues the stipulation of Wife's counsel. Wife only stipulated that there was no formal writing of the note payable owed by HBB to Husband but that there were other documents to prove the existence of the note payable. Indeed, Wife introduced into the record HBB's balance sheets, which showed the note payable, as well as Husband's deposition testimony in the Hessman litigation, in which Husband admitted to the existence of the note payable. Therefore, the trial court did not err when it found that the note payable existed and allocated it as an asset to Husband.[1]

[1] Husband also asserts that, because there is no evidence that the note payable existed, there is no evidence that it was a vested asset. As Husband's argument appears to be premised on whether there is evidence to show the existence of the note payable, we reject this argument for the same reasons we reject that premise. Further, Husband did not argue in the trial court that the note payable was not a vested asset. Thus, he has not preserved this argument for appellate review. *See, e.g.*, *Wilkes v. Celadon Grp., Inc.*, 177 N.E.3d 786, 794 (Ind. 2021).

Issue Two: Husband's Weekly Income for Child Support

[14] Husband next asserts that the trial court erred when it found his weekly income for child support to be $5,000. Husband stipulated to that amount in a 2018 preliminary hearing. At the final hearing, although Husband introduced evidence of his ensuing tax returns to show decreased income, Husband admitted that his lifestyle had not changed despite his decreased income. Further, Wife introduced evidence that demonstrated Husband's ability to manipulate his income in his role as the CEO of HBB and the son of its owner. She further introduced evidence of Husband's ease-of-access to HBB funds. In maintaining Husband's weekly income at $5,000, the trial court expressly relied on Wife's evidence.

[15] Husband's argument on this issue is that his tax returns should prevail over Wife's evidence and there is no evidence of in-kind benefits or other benefits he received from HBB or others to make up that difference. But Husband's argument is simply a request for this Court to reweigh the evidence and to give priority to his evidence over Wife's evidence. We will not do so. We cannot say the trial court erred when it found Husband's weekly income to be $5,000 for child support.

Issue Three: Dollar-to-Rupee Conversion Rate

[16] Third, Husband argues that the trial court used an erroneous conversion rate in valuing the transfer of funds from Wife to her brother in India.[2] In the trial court, Wife introduced evidence of the conversion rate at the time of the parties' separation. Husband alleged a different conversion rate should be applied but submitted no evidence in support of his preferred rate. The trial court relied on Wife's evidence. The trial court did not err.

Issue Four: Division of the Marital Estate

[17] Last, Husband contends that the trial court erred when it did not equally divide the marital estate. But Husband never argued in the trial court that the court should equally divide the marital estate. Instead, he argued that the court should award him 58% of the marital estate. A party may not raise an issue for the first time on appeal. *See, e.g.*, *Wilkes v. Celadon Grp., Inc.*, 177 N.E.3d 786, 794 (Ind. 2021). Further, "[i]t is well established that Appellants 'may not change their theory on appeal and argue an issue that was not properly presented to the trial court.'" *D.H. by A.M.J. v. Whipple*, 103 N.E.3d 1119, 1128 (Ind. Ct. App. 2018) (quoting *Pardue v. Smith*, 875 N.E.2d 285, 289–90 (Ind. Ct. App. 2007)) (internal brackets omitted), *trans. denied*. "Nor may a party raise a

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[2] Husband's argument on this issue is less than clear. Insofar as he appears to argue that the trial court did not properly include all of the transfers Husband sought to include in determining the total amount of these transfers, Wife testified that some transfers to India were for marital property in India. Tr. Vol. 2 at 56. Husband's argument on appeal does not address that evidence and, instead, simply asks this Court to reweigh the evidence, which we will not do. Further, Husband's assertion that Wife dissipated marital assets is not supported by cogent reasoning, and we do not consider it. *See* Ind. Appellate Rule 46(A)(8)(a).

new issue on appeal under the cloak of evidence relevant to a similar, yet distinct issue that was properly pled before the trial court." *Id.* at 1128–29. (quotation marks omitted).

[18] Again, Husband never placed the issue of equally dividing the marital estate before the trial court in this second appeal. Instead, Husband expressly argued that an unequal division of the marital estate was appropriate, though Husband's argument was that he should benefit from the unequal division. Husband cannot now argue, for the first time on appeal, that the trial court erred when it unequally divided the marital estate.[3] We affirm the trial court's division of the marital estate.

Conclusion

[19] In sum, we affirm the decree of dissolution in all respects.

[20] Affirmed.

Bailey, J., and Altice, J., concur.

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[3] To be sure, Husband's argument on this issue is inconsistent with our standard of review and simply seeks to have this Court reweigh the evidence, which we would not do.