

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Michael Hudson,
Appellant-Petitioner,

v.

Kathy Hudson,
Appellee-Respondent.

July 21, 2021

Court of Appeals Case No.
20A-DN-1897

Appeal from the Fayette Superior
Court

The Hon. Paul L. Freed, Judge

Trial Court Cause No.
21D01-1704-DN-300

Bradford, Chief Judge.

Case Summary

[1] Michael Hudson (“Husband”) and Kathy Hudson (“Wife”) married in 1990, and Husband filed for dissolution of the marriage in 2017. Both parties brought real estate into the marriage, and more was acquired during it, with the total marital real estate consisting of approximately 700 acres at the time Husband petitioned for dissolution. The marital real estate contained approximately 211 acres of tillable acreage, standing timber, and a marital residence. In the trial court’s dissolution order, it, *inter alia*, (1) divided the marital estate equally; (2) ordered the harvesting and sale of the mature timber in the event the parties could not negotiate a division of its value, with the proceeds to be divided equally; and (3) ordered Husband to pay Wife half of the fair market rent for the tillable acreage for the year 2020. Husband contends that the trial court abused its discretion in all three respects. Because we disagree, we affirm.

Facts and Procedural History

[2] Husband and Wife were married on January 19, 1990, when Husband was forty years-old and Wife was thirty-eight. During the marriage, Husband was primarily employed as a farmer, but also ran an excavating business with his brother for several years. Wife was employed at the Stant factory for the majority of the marriage. Prior to the marriage, Husband owned three separate tracts of land in Fayette County totaling approximately 403 acres. Coming into the marriage, Wife owned a home in Fayette County and eventually sold it, netting approximately \$30,000.00. During the marriage, Husband inherited and was gifted approximately 196 acres of land from his parents. Finally,

during the marriage, Husband contracted to purchase eighty-seven acres and the marital home from his parents.

- [3] On April 19, 2017, Husband petitioned for the dissolution of his marriage to Wife. On February 24 and 25, 2020, the trial court held a final hearing on the division of the marital estate. On October 2, 2020, the trial court entered its order, in which it made the following findings and conclusions:

FINDINGS OF FACT–DIVISION OF MARITAL ESTATE

[....]

3. During their twenty-seven year marriage, the parties had no children of their own but the parties worked together to help raise, care for and provide for the children each had from prior marriages. Husband’s son, Mitch[,] and Wife’s daughter, Natalee, were each 11 years of age when the parties married and both lived with the parties from the date of marriage until each of the children were 18 or 19 years of age.
4. Husband was 41 years of age when the parties married in 1990 and 70 years of age at the time of the final hearing in 2020. Wife was 38 years of age when the parties married in 1990 and 68 years of age at the time of the final hearing in 2020.

REAL ESTATE:

5. The majority of the marital estate consists of real estate. The marital real estate consists of approximately 700 acres, including the marital residence, a second smaller residence, outbuildings, standing timber, and other improvements.
6. Husband owned the following pieces of real estate in Fayette County, Indiana prior to the marriage:

- a. A 90-acre tract of land located in Fayette County, Indiana (formerly known as the Thomas place), which Husband purchased for \$13,399 in 1971. Husband owed no money on this real estate as of the date of marriage.
- b. A 239.639-acre tract of land (which consists of an 89.735-acre and a 149.904-acre tract) that Husband began purchasing on land contract from John Bunzendahl. In 1986, Husband took ownership of the Bunzendahl real estate after taking out a \$64,000 loan and mortgage in favor of Central State Bank with an interest rate of 12 1/2 %, thereby paying the remainder of the purchase price to Mr. Bunzendahl's estate. The parties made semi-annual payments of \$4,202.81 for a total of approximately \$21,000 paid on said loan and mortgage from the date of marriage in January 1990 until the debt was refinanced in April of 1992.

In April of 1992, Husband combined the balance of the \$64,000 debt, along with sums owed by Husband to his parents for the purchase of the marital residence and 87 acres, as well as debt Husband's parents owed on a[n] approximately 196-acre tract of land (which was later purchased by the parties from Husband's family after the death of Husband's [mother]). The combination of these obligations resulted in a new mortgage and loan in the amount of \$180,000.00 on April 24, 1992. At the time of the refinancing in April of 1992, the balance of the \$64,000 loan taken out by Husband in 1986 was \$61,991.

Husband, Wife, and Husband's parents were all liable on the April 24, 1992, \$180,000 note, which included a lower annual interest rate of 8.875%, and required annual payments of \$22,182.03. The parties made payments totaling \$199,638 on the \$180,000 note from its inception in April of 1992 through February 27, 2002, at which time the \$180,000 debt was down to

\$100,105.63 and was refinanced into two new loans/mortgages for the amounts of \$185,000 and \$25,000 respectively. The parties paid on both of these notes/mortgages until November 24, 2004, when these debts were refinanced into a \$240,000.00 loan and mortgage, which was taken out at the same time that Husband purchased the approximately 196-acre tract of real estate from his family. The parties made payments totaling \$324,507 on the \$240,000 note until it was paid in full on April 24, 2015.

- c. A 73.099-acre tract of land which Husband purchased for \$22,000 on February 1, 1989, less than a year prior to the parties' marriage. This real estate was later deeded to Husband and Wife at the same time that the parties received a \$40,000 loan to pay off a co-op farm bill. The \$40,000 was paid and the lien released in 2013.
 - d. The fair market value of these three pieces of real estate, totaling 402.738 acres, as of the date of the parties' marriage in January of 1990 was \$201,500.00. The value of this same real estate, as of the parties' date of legal separation in April of 2019, was \$950,000.00.
7. Husband acquired two more pieces of real estate in his name during the parties' marriage, those being specifically described as follows:
- a. Husband obtained the marital residence and 87 acres (also referred to as the Perkins place), which he contracted to purchase from his parents in March of 1975 for the purchase price of \$91,350. The contract also required Husband to pay the balance of what Husband's parents owed on the approximately 196-acre tract that they later deeded to Husband. As such, Husband agreed to pay, to his parents, the sum of \$124,000.00, payable at an annual rate of \$10,639.61 until paid in full. On April 24, 1992, Husband's

parents deeded him the house and 87 acres. This occurred on the same day that Husband, Wife and Husband's parents all took out a note for the sum of \$180,000.00. The history of that note is set forth in paragraph 4(b) above.

- b. Husband also acquired approximately 196 acres after his mother's death in 2001. Husband's mother owned a 1/2 interest in the 196 acres at the time of her death, which she left 1/2 each to Husband and his brother, Earl. Husband purchased Earl's 1/4 interest for the sum of \$75,000 in November of 2004. At that same time Husband's father deeded Husband his 1/2 interest, thereby resulting in Husband obtaining sole title to said acreage.

The court finds that the 1/4 interest that Husband received from his [mother] after her death and the 1/2 interest that Husband received from his father in 2004 were in the form of inheritance and gifts from Husband's family and shall [be] considered as such by the Court in this matter.

- c. The fair market value of the 87 acres and marital residence, as of the date of the parties' marriage, was \$124,000.
 - d. The fair market value of the approximately 196 acres, as of October of 2001, was \$300,000.00.
 - e. The combined fair market value of both of these pieces of real estate, totaling approximately 286 acres, as of the date of legal separation is \$1,100,000.00.
8. Wife owned a home and real estate, also in Fayette County prior to the marriage, which was also encumbered by a mortgage. Wife rented the real estate out and received rental income in an amount sufficient to pay the monthly mortgage payments, insurance and real estate taxes for that real estate. After the parties were married approximately six years, Wife sold the real

estate in 1996; thereby receiving approximately \$30,000 profit from the sale. The sum of \$10,000, derived from those profits, was used to pay the farm debt and the remaining \$20,000 was invested into the marital estate.

9. While there was no debt encumbering the marital real estate as of the date of legal separation, there were two open lines of credit encumbering 149.904 acres of the 239.639-acre tract. Per records of FCN Bank dated November 2019, there remained open a \$50,000 line of credit through FCN Bank with a \$0 balance and also a \$70,000 line of credit through FCN Bank with a \$30,000 balance. Husband confirmed that he borrowed the \$30,000 after the date of legal separation and that that amount was owed as of the date of the hearing.
10. By stipulation, memorialized in the October 2017 Provisional Order, Husband has had temporary, exclusive possession of the farmland, farm equipment and farm tools, farm buildings, and farm vehicles.
11. By Provisional Order, Husband received temporary exclusive possession of the farm house and marital residence on January 6, 2018.
12. Following the February 24 and 25th hearing and this court's preliminary ruling that the marital estate would be divided equally, Wife filed a Petition requesting that Husband be ordered to pay her for 50% of the fair market rental value of the tillable marital real estate for 2020.
13. The parties stipulated that the marital real estate has value, in addition to the appraised value, by virtue of its standing timber which the parties stipulated had no less value than \$60,000.00. Husband had the timber on the real estate harvested in 1988–1989, just prior to the parties' marriage, and received approximately \$140,000 for the timber at that time. Wife testified that Husband said it would be ready to timber again in 20–25 years and

that harvesting it at that time would provide a nice nest egg in the approximate amount of \$280,000.

14. Wife requested that the real estate be timbered before any sale of the real estate to maximize the value of the marital estate.
15. There is a family cemetery located on the marital real estate in which Wife's mother is buried.

[....]

BANK ACCOUNTS

20. The FCN farm account, which is in Husband's sole name, had a balance of \$34,621.50 as of the date of legal separation. All income from the farming and septic/excavating endeavors was deposited into this account, which was primarily used to pay the farming and septic/excavating business expenses, as well as monthly payments on the various loans and mortgages and any other assets that could be depreciated under these businesses.
21. During the marriage, the parties discussed from which account certain expenses would be paid prior to doing so.
22. The parties had a joint bank account through Union Savings and Loan which had a balance of \$1,700.38 as of the date of legal separation. Wife was the only party to contribute to this account during the marriage, with said contributions derived from her income from Stant, her side jobs, and her retirement monies. This account was primarily used for the non-business and non-tax deductible related marital expenses, including improvements to the home, utilities for the home, groceries, maintenance on the home, clothing and personal items for the parties and their children, fuel, and expenses and gifts for both parties' children and grandchildren.

RETIREMENT

23. Wife cashed in \$136,093.35 of her 401(k) retirement during the marriage, leaving her with a 401(k) valued at \$133 as of the date of legal separation.
24. Wife began receiving a monthly pension from her lifetime employer, Stant, on July 2, 2011, in the amount of \$345.14. Wife is eligible to receive this sum for the duration of her life.

DEBTS

25. The parties owed no debts as of the date of legal separation other than the debt on the RAV4 that has since been paid by [W]ife.
26. Two lines of credit remain open at FCN bank, with neither having a balance on the date of legal separation. However, Husband borrowed against one of the lines of credit during the pendency of these proceedings, with said debt having a November 2019 balance of \$30,000.
27. Wife worked full time at the Stant factory for over ten years prior to the marriage and throughout the 27-year marriage. In addition, Wife worked several part-time jobs at various times during the marriage, worked on the parties' farm throughout the marriage and also helped with the septic and excavating company that Husband and his brother owned for approximately 12-13 years of the marriage.
28. Wife would also volunteer to be laid off from her employment at Stant during summer and harvest times when she was needed to help with the septic and excavating work as well as the farm work.
29. Husband has farmed the majority of his life and also worked a full time job at D&M (later known as Frigidaire) from 1971 until shortly after the parties married. After leaving his factory job, Husband continued farming and also owned and operated a

septic/excavating business with his brother for approximately 12 years of the marriage.

30. Husband took time to eat out for breakfast and lunch every day.
31. Husband received approximately \$32,205 of W-2, cattle and retirement income during the marriage.
32. The farm incurred a net loss of over \$275,000 over the 27 year marriage.
33. The parties received approximately \$68,500 profit from the septic/excavating business over the 12 years.
34. Wife received approximately \$646,000 of W-2 income during the marriage.
35. Wife cashed in approximately \$136,100 of her retirement during the marriage.
36. Wife received approximately \$35,500 in unemployment income during the marriage.

CONTRIBUTION TO THE MARITAL ESATATE and FAMILY

37. The parties held two bank accounts during the marriage. The FCN account was Husband's account prior to the marriage and remained in Husband's sole name throughout the marriage. The Union Savings and Loan (USL) account was [W]ife's account prior to the marriage, but became a joint account during the marriage.
38. The FCN account was known as the business account and all income from the farm and the septic/excavating business was deposited into this account. Most, if not all, business-related expenses, mortgage payments, real estate taxes and homeowners and business-related insurance was paid out of the business account as well as other items that could be depreciated or deducted for income tax purposes.

39. All of Wife's income from her employment, side jobs, and retirement was deposited into the joint USL account.
40. The parties divided the income tax refund equally between the FCN account and the Union and Savings Loan account most years.
41. During the marriage, [W]ife paid the utilities, water softener, phone, groceries, cleaning supplies, toiletries, household expenses, furniture, and every day necessities out of the USL account. Wife also paid the children's lunch money and school/extra-curricular expenses out of the USL account. Wife purchased the family's clothing, shoes, gifts and the day-to-day necessities with the funds from the USL account. The gas and insurance for the vehicles, other than the farm truck, were also paid with the funds from the USL account. The majority of all of the families' Christmas, Easter, and birthday gifts were paid with funds from the USL account.
42. The furniture, curtains, appliances and household items were mostly, if not entirely, paid with funds from the USL account.
43. Wife made substantial improvements to the marital residence during the marriage. The cost of the majority of the improvements to the marital residence was paid from the USL account. These improvements included replacing the roof, siding, windows, dry wall, ceilings, flooring, doors, along with repainting the entire house and purchasing a com stove to save on utilities.
44. The parties discussed and agreed to pay approximately \$10,000 for Mitch's attorney fees and approximately \$10,000 for Natalee to attend rehabilitation for an eating disorder out of the marital bank accounts.
45. Wife maintained health insurance on Husband and the family through her employment at Stant for the duration of the marriage, premiums for which were withheld from her Stant income.

46. Husband was primarily responsible for the farm work during the marriage. However, Wife assisted in the farm tasks when she was not working her other jobs by cleaning the farrowing house and caring for the sows and piglets. Wife also helped unload grain while Husband harvested the grain, and Wife and her family were involved in growing and/or harvesting the tobacco and hay during the marriage.
47. Wife was primarily responsible for the cleaning, cooking, laundry, gardening and upkeep of the marital residence, as well as caring for and transporting the parties' minor children, Mitch and Natalee, to and from activities. Husband assisted in these tasks at times.
48. Wife also assisted with the septic/excavating business both by working onsite and running errands for the business.

POST LEGAL SEPARATION INCOME VERSUS EXPENSES

49. Husband began collecting social security off of Wife's earnings during the marriage and continued collecting until he turned 70 in February of 2019. This permitted Husband to collect income from Wife's efforts, while waiting and maximizing his own social security benefits. At the time of the 2020 hearing, Husband was receiving approximately \$ 1,900/month in social security income.
50. Wife continued to work full time at Stant throughout the pendency of these proceedings bringing home between \$200 and \$500 per week.
51. Wife continued to receive pension payments in the amount of \$345.15 per month from the date of legal separation with said payments totaling \$14,496.30 from April, 2017 to October, 2020. Husband is entitled to 50% or \$7,248 of said amount.

[...]

CONCLUSIONS OF LAW

[...]

60. The court recognizes and considers the assets that each party owned and brought into the marriage and takes the same into consideration.
61. The court recognizes and considers that the approximately 196 acres that was deeded to Husband by his [mother]'s estate, his brother and his Husband were only partially purchased by the parties during the marriage and that the rest was in the form of a gift and inheritance from Husband's parents.
62. The court recognizes and considers that the parties were married for twenty-seven years and during that time assisted in raising each other's children.
63. The court recognizes and considers the debt that each party brought into the marriage as well as the means and process by which each debt was satisfied during the marriage. The court takes into consideration the amount that was paid toward these debts during the marriage, including the portion of those payments that went toward interest throughout the marriage.
64. The court takes into consideration Husband's testimony that he was the only one who made deposits into the FCN account in his sole name through proceeds from the farm and the septic/excavating businesses and that all payments toward the farm debts and real estate taxes were paid by him out of the FCN account.
65. The court takes into consideration Wife's testimony that she also made some payments toward the farm debt and real estate taxes out of the joint account during the marriage. In addition, the court takes into consideration testimony that Wife used the funds from the joint USL account, which contained only income acquired by her through her multiple means of employment/work and by

cashing in her retirement, to pay the utilities for the marital residence, the groceries, health insurance premiums, clothing, toiletries and other essential items for the entire family, including Husband and his son who lived with the parties during the marriage.

66. The court takes into consideration that income from Wife's retirement was used to make substantial improvements to the marital residence during the marriage.
67. The court takes into consideration the information provided by the parties' tax returns for the duration of the 27 year marriage, including the financial income that each of the parties contributed during the course of the marriage.
68. The court takes into consideration Wife's age and her continued work at a local factory well past normal retirement age.
69. The court considers that Wife would have had substantial retirement assets but for her cashing in over \$136,000 of Stant retirement during the parties' 27 year marriage, leaving a 401(k) worth less than \$400 and a pension of only \$345/month at the time Husband filed for divorce.
70. The court considers that, prior to the parties' marriage, Husband had worked full time outside of the home, while also performing his farming duties but that Husband left his full time employment approximately one year after the parties were married.
71. After considering all evidence, the court finds that no factors presented are sufficient to warrant a deviation of the presumed 50/50 division of the marital estate. As such, the court marital estate shall be divided equally between the parties.

72. The court orders the parties to cooperate to have the mature timber on all of the marital real estate harvested and the proceeds therefrom divided equally, unless the parties are able to negotiate a fair division of the timber values without harvesting.
73. Other than the mature timber which is to be harvested as set forth above, Husband shall be granted sole and exclusive ownership and possession of the marital residence and 87 acres located at 1694 W. Columbia Road, Connersville, Indiana, as well as the approximately 196 acres that he received from his family in 2004. The court further finds the value of this real estate to be \$1,100,000.00 as of the date of legal separation, as stipulated at trial.
74. Other than the mature timber which is to be harvested as set forth above, Wife shall be granted sole and exclusive ownership and possession of the rest of the marital real estate, which consists of the 90-acre, 238.639-acre and 73.099-acre tracts of land. Husband is ordered to remove any encumbrances, including lines of credit, loans, mortgages etc., from this land within fifteen (15) days of this Order. The court finds the fair market value of this real estate to be \$950,000.00 as of the date of legal separation, as stipulated at trial. Husband is further ordered to execute and deliver to counsel for Wife, within fifteen (15) days of this Order, deeds conveying all of his interest in said real estate to Wife. This is to be done prior to any hearing or agreement on the cultivation of the timber on all marital real estate.

[...]

82. Husband shall pay to Wife the sum of \$128,187.19 to equalize the division of the marital estate within sixty (60) days of this Order. [...] This amount shall constitute a judgment against Husband and all real estate and assets

in his name and shall accrue interest at the statutory rate of 8% per annum from the date of this Order.

[....]

85. The court grant[s] Wife's request that Husband be required to pay her 1/2 of the fair market rental value of the 211.34 tillable acres contained within the marital estate after adjusting for 2020 real estate taxes and insurance owed and/or paid on the tillable acreage. The court finds that the 2020 fair market [rental] value of the tillable real estate is \$41,150.05.

Appellant's App. pp. 15–21, 23–26.

Discussion and Decision

[4] Indiana Code section 31-15-7-5 provides as follows:

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:

- (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.

[5] “Subject to the statutory presumption that an equal distribution of marital property is just and reasonable, the disposition of marital assets is committed to the sound discretion of the trial court.” *Augspurger v. Hudson*, 802 N.E.2d 503, 512 (Ind. Ct. App. 2004).

An abuse of discretion occurs if the trial court’s decision is clearly against the logic and effect of the facts and circumstances, or the reasonable, probable, and actual deductions to be drawn therefrom. An abuse of discretion also occurs when the trial court misinterprets the law or disregards evidence of factors listed in the controlling statute. The presumption that a dissolution court correctly followed the law and made all the proper considerations in crafting its property distribution is one of the strongest presumptions applicable to our consideration on appeal. Thus, we will reverse a property distribution only if there is no rational basis for the award and, although the circumstances may have justified a different property distribution, we may not substitute our judgment for that of the dissolution court.

Id. (cleaned up).

[6] Finally, because Husband had the burden to establish that an unequal division was warranted, he appeals from a negative judgment.

A judgment entered against a party who bore the burden of proof at trial is a negative judgment. On appeal, we will not reverse a negative judgment unless it is contrary to law. To determine whether a judgment is contrary to law, we consider the evidence in the light most favorable to the appellee, together with all the reasonable inferences to be drawn therefrom. A party appealing from a negative judgment must show that the evidence points

unerringly to a conclusion different than that reached by the trial court.

Smith v. Dermatology Assocs. of Fort Wayne, P.C., 977 N.E.2d 1, 4 (Ind. Ct. App. 2012) (citations omitted). Husband contends that the trial court abused its discretion in ordering an equal division of the marital estate, ordering the parties to harvest the mature lumber on the marital property, and awarding Wife half of the fair market rental value of tillable acreage for the 2020 farming season.

I. Equal Division of the Marital Estate

[7] With one exception we will identify, Husband does not challenge any of the trial court's findings, arguing that the findings do not support its conclusion regarding an equal division of the marital estate. Husband argues that the statutory factors compel a conclusion that he is entitled to more than half of the marital estate because (1) Wife essentially made no contribution to the acquisition of the approximately 700 acres of marital real estate, (2) he brought approximately 403 acres of land into the marriage, (3) his financial situation will be dire following an equal division, (4) Wife dissipated assets during the marriage, and (5) his earning potential is substantially lower than Wife's.

[8] As for Husband's assertion that Wife essentially made no contribution to the acquisition of marital real estate, there is ample evidence to support a conclusion that her other contributions to the welfare of the family made up for any lack of contribution to the real estate. First, the trial court's findings, which Husband does not challenge on this point, support a conclusion that Wife did contribute at least some to the acquisition of the real estate in question: the trial

court found that “the parties” paid for most of the real estate in the marital estate, including approximately 240 acres from Bunzendahl, eighty-seven acres from Husband’s parents, and an approximately seventy-three acre tract, for approximately 400 acres in all. Appellant’s App. Vol. II pp. 15–16.

[9] In addition, even if we assume that Wife made no contributions toward acquiring the real estate, there is evidence that she made many other contributions over the years, financial and otherwise. The trial court found that Wife worked full-time throughout the twenty-seven-year marriage, had several part-time jobs, and contributed labor to Husband’s farming and excavating businesses. The trial court found that, during the marriage, Wife earned approximately \$646,000 in W-2 income, cashed in approximately \$136,100.00 in retirement savings, and received approximately \$35,500.00 in unemployment benefits. In contrast, the trial court found that Husband’s farming lost over \$275,000.00 during the marriage, while the excavating business generated \$68,500.00 in profit.

[10] Moreover, Wife deposited all of her income into a joint account from which bills for utilities, the water softener, telephone, groceries, cleaning supplies, toiletries, household expenses, and other necessities were paid. The children’s lunch money and extra-curricular expenses; the family’s clothing, shoes, and day-to-day necessities; the gas and insurance for personal vehicles; the majority of all the family’s Christmas, Easter, and birthday gifts; the furniture, curtains, appliances and household items were mostly, if not entirely, paid for with funds from the joint account. Wife also made substantial improvements to the

marital residence during the marriage, including replacing the roof, siding, windows, dry wall, ceilings, flooring, and doors, along with repainting the entire house and purchasing a corn stove to save on utilities, all of which were financed by the joint account. Wife provided the family with health insurance throughout the marriage. Finally, Wife made substantial non-monetary contributions, as she was primarily responsible for cleaning, cooking, laundry, gardening and upkeep of the marital residence, as well as caring for and transporting the parties' minor children to and from activities. In the end, even if we assume that Husband purchased the real estate in question without financial help from Wife, her other contributions during the marriage more than made up for that.

[11] Husband also contends that the amount of real estate he brought into the marriage and was given during the marriage indicates that an unequal division is warranted. As mentioned, however, the record supports findings that Wife assisted in at least partially paying for most of the land Husband brought into the marriage, in addition to all of her other contributions to the household. It was within the trial court's discretion to conclude that Wife's contributions balanced out the 196 acres Husband received from his parents during the marriage.

[12] Husband also argues that his economic circumstances will be dire as a result of the unequal division. Husband notes that Wife is receiving approximately \$1,100,000.00 in real estate and an equalization payment while continuing to collect a paycheck. Husband claims in his brief—without citing to anything in

the record—that he will have to liquidate some of his real estate and/or personal property in order to make the equalization payment. First, assertions in the brief are not evidence. Second, Husband’s argument fails to take into account that the estate was divided evenly, with him receiving at least \$1,100,000.00 in real property, as well as personal property and cash totaling approximately \$132,000.00. Even if Husband will need to sell off some of the real estate or personal property in order to raise the money for the equalization payment, we are not prepared to say that his economic circumstances, without more than he brings forward, can fairly be described as dire.

[13] Husband also characterizes Wife’s withdrawal of approximately \$136,000.00 of her retirement savings, beginning in 2008 and ending at some point before 2015, as dissipation, pointing to the following passages of testimony:

ANNE SANDERS: [A]nd that first uh withdrawal in 2008, do you[—]you don’t recall how much it was, or do you approximately?

KATHY REVALEE: [A]pproximately \$80,000.

ANNE SANDERS: [S]o in 2008 you purchased \$80,000 in appliances and furniture?

KATHY REVALEE: [N]o I paid the mustang off. That was about \$24,000.

ANNE SANDERS: [O]k and what happened to the other \$56,000?

KATHY REVALEE: [T]hat long ago, I do not remember.

Tr. Vol. VII p. 202.

[14] Regarding a later withdrawal of approximately \$56,000.00, the following exchange occurred:

ANNE SANDERS: [S]o other than maybe buying some used cars you do not know where the remainder of that \$40,000 or approximately \$56,000 was specifically used?

KATHY REVALEE: [N]o because a lot of it was just taken out maybe \$1,500 of it, you know a little bit at a time. So it was just, it's expensive to raise kids.

ANNE SANDERS: [B]ut at this point in your marriage your kids were adults[.]

KATHY REVALEE: [Y]es but you always help your children.

Tr. Vol. VII p. 205.

[15] Despite the above, the record as a whole does not establish that the trial court abused its discretion in failing to find that Wife engaged in dissipation of marital assets. First, Wife testified that the withdrawn money “went into the marriage. Into the farm, the house[.]” and that “it had to go into the marriage because I don’t blow a lot of money. I don’t. I didn’t stash it back. I don’t take elaborate vacations.” Tr. Vol. VII pp. 202, 203. Moreover, when asked about the later withdrawal of approximately \$56,000.00, Wife testified that around \$10,000.00 went to new siding and that the rest could have been used to buy a vehicle, was used for other home improvements, and was given to the children and that her largest extravagance was an annual vacation that cost her approximately \$1000.00 each year. Finally, when asked if she had any money stashed anywhere, Wife testified, “[N]o. [A]bsolutely not.” Tr. Vol. VII p. 225. The record supports the trial court’s conclusion that no dissipation occurred.

[16] Finally, Husband contends that Wife’s greater earning potential weighs in favor of an unequal division. Husband claims that the trial court’s division of the

marital estate will affect his ability to earn money farming and points out that Wife is working and collecting a pension. As for Husband's claim that the trial court's division of the marital real estate will deprive him of tillable land, he points to no testimony supporting this or shedding any light on how much of the tillable land might be on the parcel awarded to Wife. While it is true that Wife continues to work while also drawing a pension of \$345.15 per month, the trial court awarded Husband half of that pension, and Husband neglects to mention that he is receiving approximately \$1900.00 per month in Social Security benefits. Given the trial court's finding that Wife is bringing home between \$200.00 and \$500.00 per week from her job, it is entirely possible that Husband will be taking in more money than Wife in most months. Husband has failed to establish that a disparity in earning potential favors an unequal division of the marital estate. Keeping in mind our very deferential standard of review in such matters, Husband has failed to establish that the trial court abused its discretion in ordering an equal division of the marital estate.

II. Harvest of Timber

[17] Husband contends that the trial court abused its discretion in ordering that the timber on the marital real estate be harvested, with the proceeds divided equally between the parties, claiming that it will result in an unequal division of the marital estate. Indiana Code section 31-15-7-4(b)(3) provides that in a dissolution case, the trial court shall divide the property in a just a reasonable manner by, *inter alia*, "ordering the sale of the property under such conditions as the court prescribes and dividing the proceeds of the sale[.]" At the outset, it

should be recalled that such a sale will not take place in this case if “the parties are able to negotiate a fair division of the timber values without harvesting.”

Appellant’s App. Vol. II p. 24. Even if we assume for the sake of this analysis that the parties are unable to negotiate a fair division of the timber,¹ we are unpersuaded by Husband’s argument.

[18] Husband contends that ordering the harvest and sale of mature timber on the marital real estate is an improper “transformation of real property” not allowed by Indiana Code section 31-15-7-4 and that the trial court abused its discretion in failing to consider what the value of the real estate would be after harvesting. Appellant’s Br. p. 21. Both of Husband’s arguments, however, are premised on the notion that the trial court’s valuation of the marital real estate includes the value of the timber, and, as Wife points out, the parties stipulated below that the harvestable timber on the marital real estate had its own value separate from that of the land. Because the timber was valued separately, the order to harvest and sell it neither “transforms” the real estate nor indicates that the trial court valued the real estate without regard to the effect that such a sale would have on its value. Husband has failed to establish an abuse of discretion in this regard.

¹ It stands to reason that the party whose land has the least timber has a financial incentive to force a sale by preventing negotiations from succeeding, perhaps a strong incentive if the disparity is large. Husband, however, points to no evidence that the land awarded to him contains more timber than Wife’s. In fact, Husband testified that most of the timber was on “probably the 73 acres[,]” which was a parcel the trial court awarded to Wife, seemingly giving *Husband* the incentive to prevent negotiations from succeeding and forcing a sale. Tr. Vol. VII p. 87.

III. Rent for Tillable Land

[19] Husband contends that the trial court abused its discretion in ordering him to pay Wife half of the fair-market rent for the 211.34 acres tillable land on the marital estate for the year 2020, or \$20,575.03. Put another way, Husband argues that all of the income produced by the farm for that year should go to him, but that he should not have to pay rent for the half of the tillable acreage that belonged to Wife at the time. It should be noted that this case is different from the seemingly more common cases in which marital real estate produces income from rental to a third party. *See, e.g., Fobar v. Vonderahe*, 771 N.E.2d 57, 60 (Ind. 2002) (treating rental income as marital property); *see also Smith v. Smith*, 854 N.E.2d 1, 6 (Ind. Ct. App. 2006) (concluding that income from rental of marital real estate was marital property to be divided). Consequently, those cases are of limited help to us. Here, the real estate produced income in 2020 entirely through one party's efforts and investment without the other's participation, so it hardly seems appropriate to divide the income evenly, and, indeed, Wife does not argue that she is entitled to any of the proceeds of Husband's farming. On the other hand, it seems just as inappropriate to allow Husband the use of Wife's share of the tillable acreage for free, when it is undisputed that it would have earned her almost \$21,000.00 had it been rented to a third party. Under the circumstances, allowing Husband to keep all of the proceeds of his farming operations in 2020 while paying Wife fair market rent for the use of her half of the farmland seems to be a just and reasonable solution. We conclude that the trial court did not abuse its discretion in this regard.

[20] The judgment of the trial court is affirmed.

Brown, J., and Tavitas, J., concur.