

# MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

Mark F. James  
Anderson, Agostino & Keller, P.C.  
South Bend, Indiana

ATTORNEY FOR APPELLEE

George T. Catanzarite  
Stipp Law, LLC  
South Bend, Indiana

## IN THE COURT OF APPEALS OF INDIANA

Chris Jones,  
*Appellant-Respondent,*

v.

Karen Shortt,  
*Appellee-Petitioner.*

September 16, 2021

Court of Appeals Case No.  
21A-DN-263

Appeal from the St. Joseph  
Superior Court

The Hon. Margot F. Reagan,  
Judge

Trial Court Cause No.  
71D04-1810-DN-937

**Bradford, Chief Judge.**

## Case Summary

[1] Chris Jones (“Husband”) and Karen Shortt (“Wife”) married in 2013 and separated in October of 2018, when Wife petitioned for dissolution. After a hearing, the trial court ordered an equal division of the marital estate. Husband contends that the trial court abused its discretion in failing to properly account for his financial contributions during the marriage or allocate certain property he brought into the marriage. Because we disagree, we affirm.

## Facts and Procedural History

[2] Husband and Wife were married on July 31, 2013, and separated on October 29, 2018, on which date Wife petitioned for dissolution. Before the marriage, Wife had purchased a home in Granger, Indiana, for \$240,000.00 and has made all of the loan payments since. An evidentiary hearing regarding division of the marital estate was held on August 17, August 26, and September 9, 2020. On January 25, 2021, the trial court issued its final order, which provides, in part, as follows:

7. Wife is the owner of a residence located at 51092 Placid Pointe Court, Granger, IN 46530.
8. Wife put \$12,087.34 down on the residence prior to marriage when it was purchased on July 8, 2013 for \$240,000.00.
9. Wife has made all of the mortgage payments for the residence since its purchase.
10. No significant renovations of the residence have been made since purchase, with the exception of replacing the roof, a remodel of the kitchen island and some minor repairs.

11. Appraiser Christopher Michaels testified for Wife that the value of the residence was \$285,000.00.
12. Appraiser Scott Ezell testified for Husband that the value of the residence is \$367,000.00. Given all the evidence produced, this opinion is not supported by such evidence.
13. The Court rejects Appraiser Ezell's "averaging approach" [and] his failure to consider the position of the home relative to a golf course. His method did not take into consideration the actual condition of the residence.
14. Realtor Laurie LaDow testified she viewed the home on March 9, 2020 for [the] purpose of listing the property for sale.
15. Laurie LaDow has extensive experience in the listing and selling of homes in St. Joseph County, Indiana.
16. Unlike Appraiser Michaels and Appraiser Ezell, Laurie LaDow did not know that she was viewing the house and making a valuation estimation in the context of a divorce proceeding.
17. Laurie LaDow testified that the home would likely sell in its current condition ("As Is") for \$225,000.00-\$240,000.00. The Court finds that this real estate broker is most likely to have an opinion that is more helpful than [Appraiser] Michael[s's] opinion in order to determine the ultimate sale proceeds.
18. Considering all of the evidence, the Court finds the value of the marital residence to be \$250,000.00 based upon the condition of the house compared to similar houses in the same subdivision and the state of the market in March of 2020.

[...]

[T]he Court finds that the presumption of an equal division of marital property is just and reasonable here.

The marital estate is divided as follows:

Wife Assets

Home	250,000.00
Jewelry-making	1,400.00
Personal property	3,175.00
LMCU Accounts (10-29-18)	38,468.00
Chemical Bank (10-11-18)	25,166.00
Retirement (10-11-18)	72,831.00
Ring	4,000.00
Dog	400.00
Nissan	8,000.00
<b>403,440.00</b>	

Husband Assets

BM[W]	5,400.00
Highlander	4,500.00
Personal Property	32,440.00
NDFCU (10-29-18)	734.00
Proceeds from Hunting Ridge Sale	73,590.00
TCU accounts (10-29-18)	1,478.00
Fidelity	93,424.00
Mossberg	42,009.00
Rollover IRA	10,357.00
<b>263,932.00</b>	

Wife Debts

Mortgage	<u>(201,585.00)</u>
	201,855.00

Husband Debts

Am. Express	<u>(5,152.00)</u>
	258,780.00

Total Estate

460,365.00

Wife's Share

	201,855.00
	+28,462.50
<u>(Cash to equalize estate)</u>	
	\$230,317.50

Husband's Share

	258,780.00
	-28,462.50
<u>(Cash to [W]ife to equalize estate)</u>	
	\$230,317.50

Order pp. 1-3, 11-12.

## Discussion and Decision

[3] Husband contends that the trial court abused its discretion in ordering an equal division of the marital estate. 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.

[4] “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).

[5] 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).

[6] Husband contends that the trial court abused its discretion in failing to properly acknowledge his financial contributions during his marriage to Wife and in failing to properly allocate assets brought into the marriage. As for Husband's financial contributions during his marriage to Wife, he points to his testimony that he paid all of the utility bills throughout the marriage, purchased a new roof for the house, remodeled the kitchen, redid the landscaping, and provided college tuition benefits to Wife's daughter and the daughter he and Wife adopted. Even if we assume that all of the above is accurate, it is undisputed that Wife made all of the payments against the home loan, and Husband agreed that Wife's overall share of the expenses was greater than his.<sup>1</sup> Moreover, Husband points to nothing specific in the record to support his claim that the trial court failed to properly weigh his financial contributions. In our view, the record supports a conclusion that the parties' contributions to the household were essentially equivalent, even if one factors in Husband's "sweat equity." In light of the evidence regarding the parties' respective contributions during the marriage, Husband has failed to establish that this factor warrants an unequal division of the marital estate.

[7] Husband also contends that the trial court abused its discretion in including assets he acquired prior to the marriage in the marital estate, specifically a 403(b) plan, a profit-sharing plan through a previous employer, a BMW

---

<sup>1</sup> At the hearing, Husband did disagree with the assertion that the difference was \$400 a month, claiming that it was less.

automobile, and the proceeds from the sale of real property that he owned prior to the marriage. Husband's argument seems to be that when one party brings an asset into a marriage, the Indiana Supreme Court's holding in *Fobar v. Vonderahe*, 771 N.E.2d 57 (Ind. 2002), requires the trial court to exclude that asset from the marital estate. To the extent that Husband makes this argument, *Fobar* does not stand for such a proposition. In rejecting a claim similar to Husband's, *Fobar* merely recognizes that statutory and prior case law "permits the trial court, in its discretion, to choose to distribute the marital property unequally in favor of one spouse based on statutorily identified considerations, one of which is inherited property. Whether to do so is a matter of trial court discretion in light of all other relevant factors." *Id.* at 59 (citing *Castaneda v. Castaneda*, 615 N.E.2d 467 (Ind. Ct. App. 1993)). Moreover, Husband seems to be focusing on these assets in isolation, making no attempt to explain why their inclusion in the marital estate—when viewed in the context of the entire estate—amounts to an abuse of discretion. As the Indiana Supreme Court has made clear, "[t]he trial court's disposition is to be considered as a whole, not item by item." *Id.* Husband has failed to establish that the trial court abused its discretion in failing to deviate from an equal division of the marital estate based on property brought into the marriage by each party.

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

Robb, J., and Altice, J., concur.