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IN THE
COURT OF APPEALS OF INDIANA

Eddie L. Kearney,
Appellant-Respondent,

v.

Annetta L. Claywell,
Appellee-Petitioner.

December 2, 2021

Court of Appeals Case No.
21A-DN-1086

Appeal from the Decatur Circuit
Court

The Honorable Timothy B. Day,
Judge

Trial Court Cause No.
16C01-1904-DN-238

Tavitas, Judge.

Case Summary

- [1] Eddie Kearney (“Husband”) appeals the trial court’s division of marital property in his dissolution of marriage from Annetta Claywell (“Wife”). Husband contends that the trial court erred by dividing the marital property sixty percent to Husband and forty percent to Wife. Finding that the trial court did not abuse its discretion in dividing the marital property, we affirm.

Issue

- [2] Husband raises one issue, which we restate as whether the trial court abused its discretion in dividing the marital property.

Facts

- [3] Husband and Wife were married in October 2016. Both Husband and Wife were previously married to others and entered their marriage with significant assets. Husband had assets of \$841,361.48, and Wife had assets of \$394,951.60. The parties did not commingle their assets after the marriage. When they married, Wife sold her residence in Tennessee, quit her job in administrative nursing, and moved to Indiana. Husband wanted to stay in Indiana because he had worked for the same company for twenty years, and he was closer to retirement than Wife. Husband told Wife that she “didn’t have to work,” and Wife allowed her Tennessee nursing license to lapse. Tr. Vol. II p. 26. According to Husband, he paid the majority of their living expenses during the marriage. At some point during the marriage, Wife obtained an Indiana nursing license and attempted, unsuccessfully, to find employment.
- [4] Wife filed a petition for dissolution of marriage in April 2019. After filing the petition, Wife lived with her sister and a friend for “a year and a half” before purchasing a home in Tennessee. *Id.* at 29. Wife used the funds from the earlier sale of her house to purchase the new home but incurred \$20,000.00 in debt on the new home. Wife regained her Tennessee nursing license but struggled to find employment comparable to her previous employment. She

eventually obtained employment as a surveyor for nursing homes, but she earned a salary less than at her previous employment. At the time of dissolution, Wife was fifty-nine years old, and Husband was sixty-one years old.

- [5] A final dissolution hearing was held in January 2021, and the trial court entered a decree of dissolution of marriage in March 2021. In its findings of fact and conclusions thereon, the trial court found:

Annetta Lynn Claywell did sell her premarital residence in the State of Tennessee in order to reside with Eddie Lane Kearney after the marriage. She also left long term employment following the marriage and did not work during the 30 month marriage. She utilized the proceeds from the premarital residence to purchase another residence when the parties separated and she has resumed employment as a registered nurse as she had prior to the marriage. These instances are believed to have had some negative financial consequences for Annetta Lynn Claywell.

Appellant's App. Vol. II p. 25.

- [6] The trial court then found that Husband contributed 68% to the "marital pot through premarital assets"; Wife contributed 32% to the "marital pot through premarital assets"; the parties did not commingle their premarital assets; neither party has dissipated the marital estate; and the parties have a similar earning ability. *Id.* at 25. The trial court found that the parties did not acquire any other assets besides the premarital assets during their three-year marriage. Additionally:

The Court finds that Annetta Lynn Claywell has/will suffer more financially from the dissolution of the parties' marriage than will Eddie Lane Kearney such that it would not be equitable for the Court to attempt to divide the marital estate in proportion to each parties' premarital contribution toward the same. An equal division of the marital estate which consists almost entirely of each parties' premarital contribution would also not be equitable for such a brief marriage as the same would result in a considerable windfall for Annetta Lynn Caldwell to the detriment of Eddie Lane Kearney. Given the findings herein, an equitable division of the assets/liabilities of the marriage would be an award of 40% to Annetta Lynn Kearney and 60% to Eddie Lane Kearney.

Id. at 26-27. Husband filed a motion to correct error, and after a hearing, the trial court denied the motion to correct error. Husband now appeals.

Analysis

[7] Husband argues the trial court abused its discretion by awarding a division of the marital estate that does not mirror the premarital assets each party brought into the marriage. The trial court issued findings of fact and conclusions thereon pursuant to a request under Indiana Trial Rule 52(A). Accordingly, we apply a two-tiered review. *Wysocki v. Johnson*, 18 N.E.3d 600, 603 (Ind. 2014). We “affirm when the evidence supports the findings, and when the findings support the judgment.” *Id.* We do not “set aside the findings or judgment unless [they are] clearly erroneous,” and we must give “due regard . . . to the opportunity of the trial court to judge the credibility of the witnesses.” *Id.* (citing Ind. Trial Rule 52(A)). “Findings of fact are clearly erroneous only when they have no factual support in the record.” *Id.* “[A] judgment is clearly

erroneous if it applies the wrong legal standard to properly found facts.” *Id.* at 604.

[8] “The division of marital assets is within the trial court’s discretion, and we will reverse a trial court’s decision only for an abuse of discretion.” *Smith v. Smith*, 136 N.E.3d 275, 281 (Ind. Ct. App. 2019). The party challenging the trial court’s division of marital property must overcome a strong presumption that the trial court considered and complied with the applicable statute. *Id.* This presumption is “one of the strongest presumptions applicable to our consideration on appeal.” *Id.* On review, we neither reweigh evidence nor assess the credibility of witnesses, and “we will consider only the evidence most favorable to the trial court’s disposition of the marital property.” *Id.*

[9] The division of marital property is a two-step process: (1) the trial court must ascertain the property to be included in the marital estate; and (2) the trial court must fashion a “just and reasonable” division of the marital estate. *Id.*; *see also* Ind. Code § 31-15-7-4(b) (requiring the trial court to divide the property of the parties “in a just and reasonable manner”). “The court shall presume that an equal division of the marital property between the parties is just and reasonable.” I.C. § 31-15-7-5. This presumption, however, “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.

Id.

[10] “The statutory factors are to be considered together in determining what is just and reasonable; any one factor is not entitled to special weight.” *Smith*, 136 N.E.3d at 282. “The party seeking to rebut the presumption of equal division bears the burden of proof of doing so, and a party challenging the trial court’s decision on appeal must overcome a strong presumption that the trial court acted correctly in applying the statute[.]” *Id.*

[11] The trial court here determined that the presumption of an equal division of marital property was rebutted. The trial court then awarded sixty percent of the assets to Husband and forty percent of the assets to Wife. In doing so, the trial court noted that sixty-eight percent of the assets were acquired by Husband prior to the marriage, and thirty-two percent of the assets were acquired by Wife prior to the marriage. During their short marriage, the parties did not commingle their assets. The earning ability of the parties was similar, and neither party dissipated assets. The trial court, however, in considering the parties' "economic circumstances" at the time of the final hearing, determined that Wife was financially disadvantaged by the dissolution of marriage.

[12] Fifty-nine-year-old Wife presented evidence that, at the time of the marriage, Wife uprooted her life in Tennessee, resulting in economic loss to Wife. She left her employment in Tennessee, sold her house in Tennessee, and allowed her Tennessee nursing license to expire. After filing the petition for dissolution of marriage, Wife was unemployed for a period of time and lived with her sister and a friend for "a year and a half" before purchasing a home in Tennessee. Tr. Vol. II p. 29. She incurred \$20,000.00 in debt in order to purchase the home. Her previous Tennessee home had no mortgage. Although Wife regained her Tennessee nursing license, she struggled to find employment comparable to her previous employment. She eventually obtained employment at a lower salary. Husband, on the other hand, remained in his residence in Indiana and continued working for his same employer.

[13] Under these circumstances, the trial court’s findings regarding Wife’s economic circumstances are supported by the evidence. Husband contends that Wife was “far from economically harmed,” but this argument is merely a request that we reweigh the evidence and judge the credibility of the witnesses, which we cannot do. Appellant’s Br. p. 19.

[14] Husband, in essence, asks this Court to only consider the percentage of premarital assets and divide the marital pot by the same percentage. Although Husband did rebut the presumption of an equal division of the marital property, Husband’s request asks us to ignore the other statutory factors in Indiana Code Section 31-15-7-5 that the trial court was required to consider. Once the trial court finds that the presumption of an equal division of the marital pot is rebutted, the court has broad discretion to determine a “just and reasonable” division. The trial court’s division of marital property, which awarded sixty percent of the marital property to Husband and forty percent of the marital property to Wife, is not an abuse of discretion.

Conclusion

[15] The trial court did not abuse its discretion when it divided the marital property. Accordingly, we affirm.

[16] Affirmed.

Mathias, J., and Weissman, J., concur.