

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Darin Jackson,
Appellant-Respondent,

v.

Brandee Jackson,
Appellee-Petitioner

October 10, 2023

Court of Appeals Case No.
23A-DC-289

Appeal from the Hendricks
Superior Court

The Honorable Robert W. Freese,
Judge

Trial Court Cause No.
32D01-2106-DC-431

Memorandum Decision by Judge Weissmann
Judges Riley and Bradford concur.

Weissmann, Judge.

- [1] Darin Jackson (Husband) and Brandee Jackson (Wife) agree that the trial court's property division order in their divorce action is internally conflicting and contains other errors. They disagree, however, as to Husband's other challenges to the dissolution court's judgment. We reverse in part, affirm in part, and remand.

Facts

- [2] In 2021, Wife petitioned to dissolve her 15-year marriage to Husband. The couple had three children together, and their marital estate was valued at close to \$900,000. The estate included a family home, several other properties, investment accounts, and Husband's pension.
- [3] After an evidentiary hearing, the trial court entered an order (Order) distributing the marital estate and requiring Husband to pay child support and 65 percent of Wife's attorney fees. Attached to the Order was Exhibit A, which purported to reflect the court's allocation of assets and debts in the Order. Husband appealed, claiming, among other things, that the Order and Exhibit A conflict in several ways.

Discussion and Decision

- [4] Husband and Wife agree that remand is necessary to correct conflicts and errors in the Order and Exhibit A as to a rental property, a sales contract, and Husband's 401K accounts. But Husband alone contests the propriety of the trial

court's valuations of other marital property and debt, deviation from the presumptive 50/50 split of marital property, calculations of child support, and awards of 2021 tax exemptions for the children and attorney fees to Wife. We affirm in part, reverse in part, and remand due to the conflicts between the Order and Exhibit A and inadequacies in the trial court's child support order.

- [5] We reverse a trial court's child support order if it is clearly erroneous or contrary to law. *Wilson v. Wilson*, 205 N.E.3d 238, 243 (Ind. Ct. App. 2023). We review a trial court's division of marital property and its award of attorney fees, however, for an abuse of discretion. *Id.* at 241 (marital estate division); *Barton v. Barton*, 47 N.E.3d 368, 377 (Ind. Ct. App. 2015) (attorney fees). "An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before it or if the court misinterprets the law." *Harris v. Harris*, 31 N.E.3d 991, 995 (Ind. Ct. App. 2015).

I. Undisputed Property Division Errors

- [6] Husband and Wife appear to agree the Order and Exhibit A contain three errors. First, the Order awards the parties' Upper Patton Park Road property to Husband without specifying a value. Exhibit A awards the same property to Wife with a value of \$25,000.
- [7] Second, Wife argues, and Husband does not dispute, that the Order and Exhibit A also conflict as to Husband's 401K accounts. The Order specifies that Wife

and Husband shall respectively receive 55% and 45% of Husband's 401K accounts as of December 19, 2022. But Exhibit A splits these accounts equally.¹

[8] Third, Husband and Wife agree that the trial court erroneously valued the parties' South Cates Road property, which they were selling on contract when the dissolution action began. The trial court valued the remaining contract payments at \$56,514.65. Husband and Wife agree that these remaining payments totaled \$55,980 as of the date of filing of the dissolution petition and could not have increased since then. As the record contains no evidence to support the \$56,514.65 figure, the trial court abused its discretion in entering that value.

[9] Given these three undisputed errors, we reverse the Order and Exhibit A and remand to the trial court for their correction.

II. Disputed Property Division Issues

[10] The remainder of Husband's property division claims are contested by Wife. Husband argues that the trial court improperly valued Wife's personal property and the debt associated with the parties' Chevrolet Traverse and Recreational Vehicle (RV). He also asserts the trial court erroneously omitted a \$2,500 preliminary distribution of the marital estate to Wife. In his final property

¹ Wife also appears to suggest that the trial court awarded her 55% of Husband's pension in its Order but distributed only 50% of the pension to her in Exhibit A. She is mistaken. The Order specifies that the pension "shall be equally divided," and Exhibit A distributes 50% of the pension value to Wife.

division challenge, Husband disputes the trial court's unequal distribution of the marital estate. We find no abuse of discretion in the trial court's disposition of personal property, vehicle debts, and preliminary distribution claims. And because on remand the court must redistribute assets, thereby triggering a change in the percentage distribution of the marital estate, we decline to address Husband's unequal distribution claim.

Personal Property

- [11] Husband first contends the record contains no evidence to support the trial court's valuation of his personal property at \$10,000 and Wife's personal property at zero. Husband suggests the court should have accepted the personal property valuations in Wife's financial disclosure: \$2,300 for her and \$1,900 for him.
- [12] But Husband ignores that Wife's financial exhibit admitted at the dissolution hearing reflected a \$10,000 valuation for Husband's personal property, which included furniture, a hot tub, and a pool table. Other evidence showed Wife retained only two pieces of property—a nightstand and a shelf—from the marital home when she moved out. This evidence supports the trial court's personal property valuations. *O'Connell v. O'Connell*, 889 N.E.2d 1, 10 (Ind. Ct. App. 2008) (ruling that when reviewing a trial court's division of marital assets, the reviewing court will not reweigh evidence or judge witness credibility and will consider only the evidence most favorable to the trial court's judgment).

Car Loan

[13] As to the Chevrolet Traverse debt, Husband argues that the vehicle was sold by the final hearing and should not have been included in the property division. Alternatively, Husband argues that the trial court should have valued the vehicle's debt at \$20,577.85, instead of \$23,825.86, based on Wife's financial declaration.

[14] But Husband's financial exhibits reflected he did not object to valuing the Traverse at \$12,500 and the loan on it at \$23,825.86 as part of the marital estate. Exhs., p. 121. Husband therefore invited any error. *See Webb v. Schleutker*, 891 N.E.2d 1144, 1155 (Ind. Ct. App. 2008) (ruling that the doctrine of invited error precludes a party on appeal from raising an error that the party invited). The trial court properly accepted those uncontested figures and incorporated them into Exhibit A.

RV Loan

[15] Husband next contends the trial court erred in omitting from the property division a \$10,000 loan on the RV. He suggests the loan was noted in his "Accounting" that was filed with the court before the final hearing. Yet that pleading is not among the exhibits admitted during the dissolution hearing. The transcript of the dissolution hearing also reflects no testimony about the RV loan. As the record before the trial court at the hearing contains no evidence of a \$10,000 loan, the trial court did not abuse its discretion in failing to include that alleged debt in the property division. *See Wood v. D.W. ex rel. Wood*, 47

N.E.3d 12, 16 (Ind. Ct. App. 2015) (“pleadings are not evidence”) (quoting *Ewing v. Timmons*, 193 N.E.2d 497, 499 (Ind. Ct. App. 1963)).

Preliminary Distribution

[16] Finally, Husband asserts that the trial court should have considered as part of the property distribution a preliminary \$2,500 distribution of the marital estate to Wife. But the trial court, in its preliminary order, awarded *both* parties an early distribution of \$2,500. Wife contends the trial court therefore properly omitted the preliminary distributions from the Order. We presume that the trial court followed the law and made all the proper considerations in rendering its decision. *Maxwell v. Maxwell*, 850 N.E.2d 969, 973 (Ind. Ct. App. 2006). Husband has not overcome that presumption or established any prejudice from the omission of the early distributions.

Unequal Distribution of Marital Estate

[17] Husband’s final property division complaint concerns the trial court’s distribution of a larger portion of the net marital estate to Wife. Indiana Code § 31-15-7-5 creates a rebuttable presumption that an equal division of marital property “is just and reasonable.” Without detailing its reasons, the trial court found Wife had “overcome the rebuttable presumption that an equal division of marital property is just and reasonable pursuant to I.C. § 31-15-7-5.” App. Vol. II, p. 15. On that basis, the court ordered the distribution specified in Exhibit A, which purports to award Wife 59% and Husband 41% of the marital estate.

[18] Given the agreed errors in the trial court’s judgment and our remand to correct them, the final property distribution percentages may very well change. We therefore need not address this unequal division now.²

III. Child Support Issues

[19] Both Husband and Wife seek remand for a recalculation of child support. Husband contends that the trial court improperly ordered him to pay retroactive child support for the period of June 28, 2021, through January 1, 2022. He first argues he owed no child support for the period of June 28, 2021, through July 9, 2021, because Wife remained in the marital home. Husband also asserts that the retroactive support figure is inaccurate because one of the children—Ja.J.—moved in with him in mid-July 2021. Husband therefore concludes that he owed only one week of retroactive child support for Ja.J. through January 1, 2022.

[20] Wife also disputes the child support order but on other grounds. She claims her child support worksheets reflect her income as including proceeds from rental property that she sought but that the trial court ultimately awarded to Husband.

² We are unclear whether Wife attempts to raise cross-error as to the trial court’s refusal to include in the marital estate “\$15,000 for Lending Bank-relocation/medical expense.” Appellee’s Br., p. 11. Wife offers no basis for finding the trial court abused its discretion in its handling of the \$15,000 debt, which she claims is marital debt. Therefore, if Wife intended to raise that issue as cross-error, she has waived it by failing to provide cogent argument. *See* Ind. Appellate Rule 46(A)(8)(a), (B).

[21] We cannot resolve these issues because the trial court did not explain its calculation of retroactive child support, either in the Order or through creation of a child support worksheet. We also cannot determine whether the trial court adopted Wife's worksheets. Given the court's lack of findings and any incorporated worksheet, the respective child support claims of Husband and Wife are incapable of appellate review. *See Anselm v. Anselm*, 146 N.E.3d 1042, 1047-48 (Ind. Ct. App. 2020) (noting that an appellate court cannot review a support order to determine whether it complies with the Indiana Child Support Guidelines unless the trial court incorporates a child support worksheet or enters findings on support). On remand, the trial court shall either enter specific findings on its existing or revised support order and/or incorporate a worksheet to document any support that it orders.

[22] Husband also disputes the trial court's decision to award the tax exemptions for the children to Wife for tax year 2022. Husband claims only that he should receive the 2022 tax exemption for Ja.J. because Ja.J. lived with him. Husband has waived this issue for appellate review by offering no citation to any supporting authority. *See App. R. 46(A)(8)(a)*.

IV. Attorney Fees Award

[23] Husband's final claim is that the trial court erroneously ordered him to pay 65% of Wife's attorney fees. The court offered two reasons for that award, which required Husband to pay about \$20,000 of Wife's fees. First, the court relied on the income disparity of Husband and Wife. Second, the court noted that it had found Husband in contempt for failing to forward part of the rental property

proceeds to Wife as ordered. Husband contests the court's reliance on the contempt finding. He also argues the attorney fees award is unjust in light of his payment of the marital debt while the divorce was pending. We conclude the trial court had discretion to order Husband to pay 65% of Wife's attorney fees even without the contempt finding.

[24] Indiana Code § 31-15-10-1(a) authorizes a trial court to order a party in a dissolution proceeding to pay a reasonable amount of the other party's attorney's fees. The court, in making such an award, may consider the parties' resources, economic conditions, abilities to engage in gainful employment and earning income, and other factors bearing on the reasonableness of the award. *Barton*, 47 N.E.3d at 377. The court also may consider misconduct that directly results in more litigation expenses. *Id.*

[25] The evidence showed Wife's weekly earnings are less than half of Husband's. She testified that some of her attorney fees were attributable to her third-party discovery requests prompted by Husband's discovery lapses. Wife also incurred substantial debt in creating a new home for herself and the children at the time of filing. Her financial circumstances were so challenging that she had been unable to pay most of her attorney fees as of the final hearing. Under these circumstances, the trial court did not abuse its discretion when it ordered Husband to pay 65% of her attorney fees. *See id.* at 377-78 (affirming court's order requiring Husband to pay all of Wife's \$24,000 in attorney fees when Husband's income was three times greater and Husband's discovery violations had increased expenses).

Conclusion

[26] The trial court abused its discretion in awarding the Upper Patton Park Road twice, splitting Husband's 401K accounts 55/45 in the Order and 50/50 in Exhibit A, and valuing the South Cates Road property contract. The trial court also erred in failing to enter specific findings or incorporate a child support worksheet explaining its child support order.

[27] We therefore remand for a new hearing after which the trial court shall enter property division and child support orders. The new property division order shall:

- correct the double award of the Upper Patton Park Road property.
- correct the percentage division to each party of Husband's 401(K) accounts so that the percentage is consistent in all parts of the property division order and any attachments.
- value the South Cates Road property contract consistent with the evidence before the court. This evidence includes both the evidence presented at the final hearing and any new evidence presented at the post-appeal hearing.
- in light of these adjustments, alter the property division as the court deems necessary to achieve an equitable distribution of the marital estate. If the court again deviates from the presumptive 50/50 split of the marital estate, the court shall specify its reasons.

The new child support order shall include:

- specific findings and/or child support worksheet(s) documenting the trial court's child support calculations. The trial court shall request child support worksheets from both parties pursuant to Indiana Child Support Guideline 3(B)(1).

[28] We affirm in part and reverse in part the trial court's judgment and remand for proceedings consistent with this opinion.

[29] Riley, J., and Bradford, J., concur.