

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

David Willard Becht, Jr.,
Appellant-Petitioner,

v.

Debra White f/k/a Becht,
Appellee-Respondent

January 30, 2024

Court of Appeals Case No.
23A-DN-1238

Appeal from the
Vanderburgh Superior Court

The Honorable
Thomas A. Massey, Judge

Trial Court Cause No.
82D07-2205-DN-534

Memorandum Decision by Judge Vaidik
Judges Bradford and Brown concur.

Vaidik, Judge.

Case Summary

- [1] In dissolving the marriage between David W. Becht, Jr. (“Husband”) and Debra White f/k/a Becht (“Wife”), the trial court awarded Wife 75% of the marital estate and Husband 25%. Husband now appeals, arguing the trial court abused its discretion in finding that an unequal division of the marital estate was just and reasonable. Finding no abuse of discretion, we affirm the trial court.

Facts and Procedural History

- [2] Wife and Husband were married in 1985 and have two adult children. Wife has worked in the banking industry for the past twenty-five-plus years (with the last ten years as an executive) and makes approximately \$290,000 per year plus bonuses. Husband has been unemployed by choice since 2005 even though Wife “begged” him to get a job. Tr. Vol. II p. 37. Since 2005, Wife has been “100%” responsible for the family’s financial obligations. *Id.*
- [3] In February 2022, Husband was charged with twenty-four counts of Level 1 felony child molesting and twelve counts of Level 5 felony incest for molesting two of the parties’ grandchildren. In February 2023, Husband pled guilty to two counts of Level 4 felony child molesting and two counts of Level 5 felony incest and was sentenced to an aggregate term of ten years in prison.

[4] Wife filed for divorce in March 2023,¹ alleging there was an irretrievable breakdown in the marriage and that Husband admitted guilt to a felony. *See* Ind. Code § 31-15-2-3 (setting forth four grounds for divorce). The final dissolution hearing was held in April. At the time of the hearing, Husband, who was sixty-three years old, had about seven years and three months left to serve of his ten-year sentence. Tr. Vol. II p. 45. Wife, who was also sixty-three, testified that she was struggling to continue in her role as a banking executive due to the anxiety and panic attacks caused by the molestations and that she planned to retire in fourteen months when she turned sixty-five. Wife explained that she had incurred mental-health expenses for her and her grandchildren and would continue to do so.

[5] The trial court issued a dissolution decree later that month. The court found that “significant deviation from the presumptive equal division was just and reasonable given the unique facts of this case.” Appellant’s App. Vol. II p. 11. The court relied on several factors: (1) “Wife’s employment was the major contributor to acquisition of marital property”; (2) Husband has been “physically able to work for the past 17 years, yet he chose not to do so” and thus made “negligible contribution to acquisition of marital property”; (3) Wife has incurred and will continue to incur mental-health expenses due to Husband’s actions and “may not be able to continue her banking career”; and (4) “For at least the next 7 1/2 years as a convicted/incarcerated felon,”

¹ Husband had filed for legal separation in May 2022.

Husband will have no living expenses. *Id.* at 13, 14. Accordingly, the trial court awarded Wife 75% of the marital estate (\$961,418.25) and Husband 25% (\$320,472.75).

[6] Husband now appeals.

Discussion and Decision

[7] Husband contends the trial court erred in unequally dividing the marital property. We review a trial court’s division of marital property for an abuse of discretion. *Roetter v. Roetter*, 182 N.E.3d 221, 225 (Ind. 2022). The party challenging the trial court’s division of marital property “must overcome a strong presumption that the court considered and complied with the applicable statute.” *Id.*

[8] The division of marital property in Indiana involves a two-step process. *Id.* at 226. First, the trial court must identify the property to include in the marital estate. *Id.* at 226-27. “This consists of both assets and liabilities and encompasses ‘all marital property,’ whether acquired by a spouse before the marriage or during the marriage or procured by the parties jointly.” *Id.* at 227 (citations omitted).

[9] Once the trial court identifies the marital estate, it must then distribute the property in a “just and reasonable” manner. *Id.* Indiana Code section 31-15-7-5 “calls for a presumptive equal division between the parties.” *Id.* A party, however, may rebut this presumption with “relevant evidence” showing “that

an equal division would not be just and reasonable.” *Id.* This evidence may include

- each spouse’s contribution to the property’s acquisition, regardless of whether the contribution produced any income;
- the extent to which a spouse acquired property, either before the marriage or through inheritance or gift;
- each spouse’s economic circumstances at the time of divorce;
- the parties’ conduct during the marriage, as it related to the disposal or dissipation of assets; and
- the parties’ respective earnings or earning ability.

Id. (citing I.C. § 31-15-7-5(1)-(5)). This statutory list is nonexclusive, and no single factor controls the division of property. *Id.*

[10] We first note that Husband acknowledges on appeal that “some degree of deviation” from a 50-50 split was warranted because Wife was the major contributor to the acquisition of the marital property while Husband has been unemployed by choice since 2005. Appellant’s Br. p. 11. Indeed, this was a proper consideration under Section 31-15-7-5(1).

[11] Nevertheless, Husband claims the most significant factor the trial court relied on in awarding Wife such a “lopsided” portion of the marital estate was an improper one—his criminal conduct. *Id.* In support of his argument, Husband cites the general rule that fault is not relevant in dissolution proceedings except

as it relates to the disposition or dissipation of marital assets. *See Johnson v. Johnson*, 181 N.E.3d 364, 376 (Ind. Ct. App. 2021); *see also In re Marriage of Coomer*, 622 N.E.2d 1315, 1319 (Ind. Ct. App. 1993) (“[W]hile a party’s conduct or fault in the breakup of the marriage is not a proper ground for an unequal division of the marital property, a party’s conduct during the marriage as related to the disposition or dissipation of their property is.” (quotations omitted)). The court acknowledged this rule in the dissolution decree:

24. The Court is cognizant of the general rule that fault is not relevant in dissolution proceedings except as related to the disposition or dissipation of marital assets. *Johnson v. Johnson*, 181 N.E.3d 364, 376 (Ind. Ct. App. 2021). However, by establishing conviction of a felony by a party as statutory grounds for a dissolution of marriage under Ind. Code § 31-15-2-3(2), logic dictates that the circumstances of the felony and any damage proximately caused by the felony must fall within the “nonexclusive” factors within the meaning of Ind. Code § 31-15-7-5. *See Roetter v. Roetter*, 182 N.E.3d 221, 227 (Ind. 2022). Paragraph 7 of Wife’s March 23, 2023 Verified Petition for Dissolution raised this statutory ground by stating in part that “. . . Husband has admitted guilt to a felony.”

Appellant’s App. Vol. II p. 12.

[12] Although the trial court considered Husband’s criminal convictions, it did not unequally divide the marital property **because of** them. Instead, the court considered Husband’s criminal convictions as they related to the parties’

economic circumstances, which Section 31-15-7-5(3) authorizes.² As the court found, Wife has incurred and will continue to incur mental-health expenses and “may not be able to continue her banking career.” *See Coomer*, 622 N.E.2d at 1320 (“The trial court recognized that the wife’s standard of living after the marriage will be lessened as a consequence of the husband’s [physical abuse] during the marriage in that a good share of her income will be devoted to her medical care and effectuated an unequal division of the marital assets. Upon this record, we cannot say that to do so was an abuse of discretion.”).

Moreover, the court found that Husband will have no living expenses for the next seven-plus years while he’s in prison, which it found to be “a significant economic circumstance for Husband within the meaning of Ind. Code § 31-15-7-5(3).” Appellant’s App. Vol. II p. 13. Considering all the factors with no single factor controlling, the trial court did not abuse its broad discretion in awarding Wife 75% of the marital estate.

[13] Affirmed.

Bradford, J., and Brown, J., concur.

² Husband says the trial court should have made a finding that his criminal convictions resulted in a disposition or dissipation of marital assets. It’s clear from all the court’s findings that it was considering the effect of Husband’s convictions on the economic circumstances of the parties at the time of the divorce, not on disposition or dissipation of assets during the parties’ marriage.