MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Edward J. Calderaro
Merrillville, Indiana

ATTORNEY FOR APPELLEE

Emily S. Waddle
DeMotte, Indiana

IN THE COURT OF APPEALS OF INDIANA

Anthony Brahimsha,
Appellant-Petitioner,

v.

Mariana Vallejo,
Appellee-Respondent.

June 16, 2022

Court of Appeals Case No. 21A-DC-2812

Appeal from the Jasper Circuit Court

The Honorable Daniel J. Molter, Special Judge

Trial Court Cause No. 37C01-2009-DC-708

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Respondent, Anthony Brahimsha (Husband), appeals the trial court's division of the marital estate arising from the dissolution of his marriage to Appellee-Petitioner, Mariana Vellejo (Wife).

[2] We affirm.

ISSUES

[3] Husband presents this court with four issues on appeal, which we consolidate and restate as the following two issues:

(1) Whether the trial court erred in valuing the marital estate; and

(2) Whether the trial court erred in concluding that Wife had rebutted the presumption of an equal division of the martial estate.

FACTS AND PROCEDURAL HISTORY[1]

[4] In 2014, prior to the marriage, Wife's parents (Wife's Parents) gifted Wife $350,000, and she purchased a condo in Rhode Island (Rhode Island Property). Husband and Wife began dating in 2015, married on June 21, 2017, and had

[1] Because Husband failed to file an appendix as required under Indiana Appellate Rule 49 (A), we take our facts and procedural history from the transcript, exhibits, and the decree.

one child, L.C. (Child) in August 2018.[2] In December 2016, Wife's father (Wife's Father), who owned an apartment in Chicago (Chicago Property), began the process of transferring the Chicago Property to Wife, and by "coincidence" the transfer was concluded two weeks before the wedding. (Transcript Vol. II, p. 12). According to Wife's Father, the Chicago Property was not intended to be a wedding gift. At the time of the transfer, the Chicago Property was valued at $295,000.[3]

[5] The parties initially resided in Rhode Island when they were dating, but in 2016, they move into Wife's brother's apartment in Chicago, and they lived there rent-free. The purpose of the move was to enable Husband to establish his startup company, Prommus, in Chicago.

[6] In summer of 2019, the parties were overwhelmed with their spiraling credit card debt. Wife's Father loaned Wife $65,000 to enable the parties to pay off their debts. Wife transferred the money to the parties' joint account and utilized it to pay off two of her credit cards with balances under $10,000. While Husband did not pay off his credit cards, he lowered some of his credit card balances. In the course of the marriage, Wife made partial payments toward

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[2] Although this dissolution action involves Child, the issues on appeal pertain only to the division of property. We will therefore limit our recitation of the facts to those pertaining to the marital property and its division.

[3] Wife's Father also gifted Wife's brother an apartment in the same building as the Chicago Property.

the loan given by Wife's Father. The unpaid balance at the time she filed for divorce was $52,659.

[7] In May 2019, the parties decided that they needed a larger apartment because of Child. Wife believed that the rental income from the Rhode Island and Chicago Properties should go toward the rent for a bigger apartment. The parties subsequently moved from Wife's brother's rent-free apartment to an apartment in Lincoln Park, Chicago. Wife put some of her personal property that was worth $20,000 in storage after they moved into the Lincoln Park apartment. Rent for the Lincoln Park apartment was $4,200 per month. There were many times, despite their lowered debt amount, that their rent was late. At times they would borrow from Wife's Parents, or Husband would pay rent with his credit cards.

[8] Prior to their marriage, Husband worked in a finance and management company, and Wife worked for a designer handbag company in Rhode Island. In 2016, Wife began working for Prommus, a for-profit company established by Husband in 2015. Before halting its operations in 2021, Prommus was a consumer-packaged-goods corporation instituted to nationally distribute hummus in grocery stores with proceeds intended for Syrian refugees. To assist Prommus, in 2017, Wife's Father invested $90,000 on behalf of Wife, and again in 2019, Wife's Father invested $85,000 for Wife. In early 2020, Prommus was

valued at $6.6 million[4], and the company was on the brink of enormous success as it was set to enter into a partnership with a multinational food conglomerate, Mars Food Corporation (Mars Food), which would have elevated the company's worth to about $70 million. Prommus' future ended when the COVID-19 Pandemic began and the deal with Mars Food fell through. Around that same time, Prommus experienced serious cash flow problems. Wife lost her job with Prommus and began collecting unemployment benefits from the City of Chicago. Husband received zero income from Prommus and also began collecting unemployment benefits.

[9] Due to financial struggles, a failing business, and unaffordable rent, the parties agreed that it was in their family's best interests to move out of the Lincoln Park apartment. In April 2020, Wife separated from Husband, and she and Child relocated to her brother's house in Wheatfield, Indiana. Husband continued to stay in the Lincoln Park apartment to focus on Prommus and would visit Wife and Child during the weekend. Around that time, and at the height of the COVID-19 Pandemic, Husband established another company, FirstFog, an "electrostatic disinfection company" that intended to disinfect schools within the city of Chicago. (Tr. Vol. II, p. 100). Husband expected that the new company would bring in a cash flow that would assist Prommus' operations.

[4] This value was based on Husband's testimony and no actual values were submitted in the form of exhibits.

Husband used funds from the parties' joint account to buy the initial startup equipment for FirstFog.

[10] In August 2020, the parties broke the lease for the Lincoln Park apartment and Husband began living rent-free in a house owned by one of Prommus' main investors[5], Dr. Mike McCloskey (Dr. McCloskey), in Fair Oaks, Indiana. Husband also received a monthly stipend of $4,000 from Dr. McCloskey between September 2020 and January 2021. Husband used some of the personal property from the parties' storage unit to furnish that house.

[11] On September 17, 2020, Wife filed her Verified Petition for Dissolution of Marriage, and a Motion for a Provisional Hearing. While Husband at first challenged Indiana's personal jurisdiction, he later consented. On October 4, 2021, the trial court conducted a final hearing. At the start of the hearing, the parties stipulated to the amount of their debt. Husband's debt was as follows: American Express Blue ($17,171), American Express Platinum ($ 13,197), Chase Sapphire ($15,521), Bank of America ($9,153), Citi Bank ($8,756), dental bill ($237), and Northwestern ($669). Wife's debt was as follows: Insight ($815), Bank of America ($5,425), and two different American Express Everyday accounts: one for $7,203 and one for $819. The parties agreed that there was an outstanding debt of $52,659 owed to Wife's Father, and $70,000

[5] At the final hearing, Dr. McCloskey testified that without Wife's knowledge, he loaned $70,000 to Husband to help fund Prommus' operations

owed to Dr. McCloskey, and they both agreed that those debts were part of the marital estate.

[12] The undisputed evidence showed that the Rhode Island Property and Chicago Properties were in Wife's name, and the parties never resided together in those properties. At the time of the hearing, the Rhode Island Property had increased in value and was valued at $436,000. The Chicago Property, however, had decreased in value and was valued at $250,000. Wife testified that she never changed title or ownership of either property. Wife testified that rental income for the Rhode Island Property was initially deposited into her personal checking account between 2017 and 2018, but in 2019, that income was deposited in their joint account for a short period of time. Wife stated that she was stunned to see Husband had signed an extended lease for the Rhode Island Property as a lessor despite not being the owner, but she stated that she did not oppose his action. Wife testified that she mainly paid the condo fees for the Rhode Island Property, however, Husband had paid the fees "approximately three times." (Tr. Vol. II, p. 43). When asked how much "sweat equity" Husband had contributed toward the Rhode Island Property, Wife stated that Husband had assisted with painting the exterior in 2020, and while he held the office of president of the homeowner's association of the Rhode Island Property, Wife clarified that it was "Unit 2-which was my unit- was the president for the association," thereby indicating that she was equally a president. (Tr. Vol. II, pp. 43, 44).

[13] The parties thereafter submitted proposed findings and conclusions based on Wife's request. On November 24, 2021, the trial court entered a final Order, dissolving the parties' marriage. The trial court entered the following pertinent findings and conclusions of law:

> **Assets**
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> 11. Rhode Island Property
>
> a. [Wife] purchased Unit at 38 Transit Street, Providence, Rhode Island, hereinafter "Rhode Island Property," on December 18, 2014, with money given to her by her parents, for the sum of $350,000.00.
>
> b. [Wife] lived in the Rhode Island Property exclusively, including times when she was either dating, engaged to, or married to [Husband]. [Husband] lived with his parents until the parties relocated from Providence to Chicago, at which time the parties began residing rent and utility payment free in [Wife's] brother's apartment.
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> c. At the time of the Parties' relocation from Providence to Chicago to present day, [Wife] has managed the Rhode Island Property.
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> i. [Wife] took responsibility for the renting of the property and effecting necessary repairs.
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> ii. The income generated from the rental of the Rhode Island Property has been and is used to cover all maintenance, home management company, tax, and insurance costs associated with the Rhode Island Property with the exception of [Husband] using

his credit card to pay Real Estate Taxes on the Rhode Island Property in the sum of $1,522.84, in addition to marital expenses.

iii. [Husband] is entitled to full reimbursement from [Wife] for the aforementioned Real Estate Taxes paid on the Rhode Island Property.

d. [Wife] never changed title or ownership of the Rhode Island Property into joint name, nor did she add [Husband] to the title of the Rhode Island Property when they married.

e. [Husband] obtained an appraisal of the Rhode Island Property in July of 2021, at which time the market value reflected therein was $436,000.00.

f. [Wife] has met her burden to deviate from an equal division of the martial estate as it pertains to the Rhode Island Property. Therefore, [Wife] should be awarded exclusive ownership of the Rhode Island Property.

12. Chicago Property

a. [Wife] was gifted Unit 18-H at 33 West Delaware Place, Chicago, Illinois 60610, hereinafter "Chicago Property," by her parents on May 27, 2017. Also on this day, [Wife's] brother was gifted [a] unit in the same building.

b. The Chicago Property was valued at $295,000.00 at the time it was gifted to [Wife].

c. [Wife] never changed title or ownership of the Chicago Property into joint [a] name, nor did she add [Husband] to the title of the Chicago Property when they married.

d. The Parties obtained an appraisal of the Chicago Property on September 6, 2021, at which time the market value reflected therein was $250,000.00.

e. [Wife] has met her burden to deviate from an equal division of the martial estate as it pertains to the Chicago Property. Therefore, [Wife] should be awarded exclusive ownership of the Chicago Property.

13. Volkswagen Passat

a. [Husband] should be awarded exclusive ownership of the Volkswagen Passat valued at $10,000.00.

14. Personal Bank Accounts

a. The Parties should be awarded exclusive ownership of any checking or savings accounts accumulated in their own names and individual capacities.

15. Joint Bank Accounts

a. The Parties' joint checking and savings accounts at Bank of America should be evenly divided between the Parties after the Parties' tax liabilities, if any, are satisfied.

* * * *

17. Prommus Business/Stock

a. When the Parties married, [Husband] informed [Wife] that he was beginning a start-up business named Prommus, LLC, hereinafter "Prommus." The Parties discussed the inherent risks

of starting and securing funding to start their own company. The Parties understood and agreed, and both worked exclusively for Prommus during their marriage.

b. Prommus was start[ed] using investment capital in the sum of $175,000.00 from [Wife's] Father. At times, [Husband] would have to make himself personally liable for debts relating to the operations of Prommus.

c. [Husband] built Prommus to be a $6.6 million company in less than five (5) years. Prommus was on the verge of massive success, as it was set to become partners with the multinational food conglomerate, Mars Food Corporation. The future of Prommus ended when the COVID-19 [P]andemic began and the deal with Mars Food Corporation dissolved.

d. The Parties' joint shares of Prommus should be evenly divided between the Parties.

18. [FirstFog] Business

a. [Husband] should be awarded exclusive ownership of the business [FirstFog].

* * * *

20. Personal Effects in Storage Locker

a. The Parties should be awarded exclusive ownership of any personal effects accumulated in their individual capacities.

DEBTS

21. Credit Cards

a. [Wife] should be solely responsible for the payment of the balances of the following credit cards held in her name and in the sums of:

i. American Express Everyday - $7,203.00

ii. American Express Everyday - $819.00

iii. Insight - $815.00

iv. Bank of America - $5,425.00

b. [Husband] should be solely responsible for the payment of the balances of the following credit cards held in his name and in the sums of:

i. American Express Blue - $17,171.00

ii. American Express Platinum - $13,197.00

iii. Chase Sapphire - $15,521.00

iv. Bank of America - $9,153.00

v. Citi - $8,756.00

22. Debt to [Wife's Father]

a. [Wife] should be solely responsible for the payment of the balance of the debt owed to her father in the sum of $52,659.00.

23. Dental Bill

a. [Husband] should be solely responsible for the payment of the balance of the dental bill in his name in the sum of $237.00.

24. Northwestern Bill

a. [Husband] should be solely responsible for the payment of the balance of the Northwestern bill in his name in the sum of $669.00.

25. Debt to Dr. [] McCloskey

a. Dr. [] McCloskey loaned the sum of $70,000.00 to the Parties to invigorate the operations of Prommus.

b. The Parties should be equally responsible for this debt.

* * * *

CONCLUSIONS OF LAW

ASSETS

1. Rhode Island Property

a. [Wife] should be awarded exclusive ownership of the Rhode Island Property.

2. Chicago Property

a. [Wife] should be awarded exclusive ownership of the Chicago Property.

3. Volkswagen Passat

a. [Husband] should be awarded exclusive ownership of the Volkswagen Passat.

4. Personal Bank Accounts

c. The Parties should be awarded exclusive ownership of any checking or savings accounts accumulated in their own names and individual capacities.

5. Joint Bank Accounts

a. The Parties' joint checking and savings accounts at Bank of America should be evenly divided between the Parties after the Parties' tax liabilities, if any, are satisfied.

6. Prommus Business/Stock

a. The Parties' joint shares of Prommus should be evenly divided between the Parties.

7. [FirstFog] Business

a. [Husband] should be awarded exclusive ownership of the business [FirstFog].

8. Personal Effects in Storage Locker

a. The Parties should be awarded exclusive ownership of any personal effects accumulated in their individual capacities. located in the storage locker in DeMotte, Indiana.

DEBTS

9. Credit Cards

a. [Wife] should be solely responsible for the payment of the balances of the following credit cards held in her name: two (2) American Express Everyday, Insight, and Bank of America.

b. [Husband] should be solely responsible for the payment of the balance of the following credit cards held in his name: American Express Blue, American, Express Platinum, Chase Sapphire, Bank of America, and Citi.

10. Debt to [Wife's Father]

a. [Wife] should be solely responsible for the payment of the balance of the debt owed to her father.

11. Dental Bill

a. [Husband] should be solely responsible for the payment of the balance of the dental bill in his name.

12. Northwestern Bill

a. [Husband] should be solely responsible for the payment of the balance of the Northwestern bill in his name.

13. Debt to Dr. [] McCloskey

a. The Parties should be equally responsible for the debt owed to Dr. [] McCloskey.

(Appealed Order at pp. 2-9).

[14] Husband now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

[15] Husband challenges the portions of the decree dividing the marital estate. The trial court's judgment here included specific findings of fact and conclusions at the request of Wife. We review conclusions of law *de novo*. *Johnson v. Johnson*, 999 N.E.2d 56, 59 (Ind. 2013). But pursuant to Trial Rule 52(A), we "shall not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Findings of fact are clearly erroneous when the record contains no facts to support them, and a judgment is clearly erroneous if no evidence supports the findings, the findings fail to support the judgment, or if the trial court applies an incorrect legal standard. *In re B.J.R.*, 984 N.E.2d 687, 697 (Ind. Ct. App. 2013).

[16] As noted, Husband did not file an appellate appendix. Indiana Appellate Rule 49(A) states that "[t]he appellant shall file its Appendix on or before the date on which the appellant's brief is filed." Indiana Appellate Rule 50(A)(1) reads,

"The purpose of an Appendix in civil appeals . . . is to present the Court with copies of only those parts of the Record on Appeal that are necessary for the Court to decide the issues presented." In addition to the chronological case summary, appealed order, pleadings, and various other documents, Appellate Rule 50(A)(2) requires that the appendix include "other documents from the Clerk's Record in chronological order that are necessary for resolution of the issues raised on appeal[.]" Failure to file an appendix could result in dismissal. *Yoquelet v. Marshall Cnty.*, 811 N.E.2d 826, 830 n. 5 (Ind. Ct. App. 2004) (citing *Hughes v. King*, 808 N.E.2d 146, 148 (Ind. Ct. App. 2004)). However, at least in the context of criminal cases, "the failure to file an Appendix is not necessarily automatic cause for dismissal." *Johnson v. State*, 756 N.E.2d 965, 967 (Ind. 2001). Although Husband did not include the appendix, among other things, we do have in the record before us the trial transcript and accompanying exhibits, and the decree. Therefore, even though Husband's failure to file an appendix hindered our review, we will address the merits of Husband's appeal.

II. *Marital Estate*

[17] In dissolution actions, it is well-settled that all marital property goes into the marital pot for division, whether it was owned by either spouse before the marriage, acquired by either spouse after the marriage and before final separation of the parties, or acquired by their joint efforts. Ind. Code § 31-15-7-4(a); *Beard v. Beard*, 758 N.E.2d 1019, 1025 (Ind. Ct. App. 2001), *trans. denied*. For purposes of dissolution, property means "all the assets of either party or both parties." I.C. § 31-9-2-98. "The requirement that all marital assets be

placed in the marital pot is meant to insure that the trial court first determines that value before endeavoring to divide property." *Montgomery v. Faust*, 910 N.E.2d 234, 238 (Ind. Ct. App. 2009). "Indiana's 'one pot' theory prohibits the exclusion of any asset in which a party has a vested interest from the scope of the trial court's power to divide and award." *Wanner v. Hutchcroft*, 888 N.E.2d 260, 263 (Ind. Ct. App. 2008). While the trial court may decide to award a particular asset solely to one spouse as part of its just and reasonable property division, it must first include the asset in its consideration of the marital estate to be divided. *Hill v. Hill*, 863 N.E.2d 456, 460 (Ind. Ct. App. 2007). The systematic exclusion of any marital asset from the marital pot is erroneous. *Falatovics v. Falatovics*, 15 N.E.3d 108, 110 (Ind. Ct. App. 2014).

[18] Husband argues that the trial court erred in valuing the marital pot. In particular, he contends that the trial court erred by including the $70,000 loan granted by Dr. McCloskey, by failing to consider the value of personal property, and by awarding him the Volkswagen Passat, a company-owned vehicle. We will address each issue in turn.

A. *$70,000 Loan*

[19] Husband contends that the trial court erred when it equally split the $70,000 loan by Dr. McCloskey between the parties. He claims that the money was a personal loan to him and not intended for Prommus. We disagree. At the start of the final hearing, Husband stipulated that the loan was a marital debt. Further, Dr. McCloskey testified that he loaned the money to Husband

"during, you know, the development of the business that he was starting up, which was Prommus." (Tr. Vol. II, p. 35). Based on the evidence, the trial court determined that Dr. McCloskey "loaned the sum of $70,000 to the Parties to invigorate the operations of Prommus." (Appealed Order at p. 6). Contrary to Husband's claim, the evidence supports the trial court's finding that the loan was marital debt and was properly included as an asset. Accordingly, we find no error in the trial court's inclusion of the debt in the marital pot.

B. *Personal Property*

[20] In its decree, the trial court ordered that the "Parties should be awarded exclusive ownership of any personal effects accumulated in their individual capacities. located in the storage locker in DeMotte, Indiana." (Appealed Order p. 8). Husband argues that the trial court failed to "consider the value of the personal property [Wife] took from the storage unit." (Appellant's Br. p. 23). In short, Husband's argument boils down to whether the trial court abused its discretion by failing to include the value of personal property in the marital pot.

[21] We begin by noting that "[a] valuation submitted by one of the parties is competent evidence of the value of property in a dissolution action and may alone support the trial court's determination in that regard." *Alexander v. Alexander*, 927 N.E.2d 926, 935 (Ind. Ct. App. 2010), *trans. denied*). Further, as noted above, the inclusion of all of the assets in the marital pot is important because it allows the trial court to determine the value of the marital pot before

endeavoring to divide it. *See Quinn v. Quinn*, 62 N.E.3d 1212, 1223 (Ind. Ct. App. 2016).

[22] At the final hearing, Wife presented evidence that the value of the personal property stored in a storage unit was initially worth $20,000 but had depreciated in value. Husband did not dispute Wife's valuation, nor did he provide an item-by-item valuation of the personal property in the storage unit. Wife stated the bulk of the personal items she put in storage was from her apartment in Rhode Island which were obtained prior to their marriage. Wife stated that the parties also stored other personal property accumulated during the marriage in the storage unit. Wife claimed that, at some point, Husband accessed the storage unit and used some furniture to "furnish an apartment that was lent to him by [Dr.] McCloskey." (Tr. Vol. II, p. 30). Wife stated she equally removed some items from the storage unit and furnished her home. Wife claimed that she left behind items that belonged to Husband and Prommus, and Husband testified that only "family heirlooms" were left in the storage unit after Wife removed some items for her use. (Tr. Vol. II, p. 118). Even if we were to conclude, which we are not, that the trial court erred by failing to include the $20,000 being the value of the personal property in the marital pot, based on the evidence, it appears that nothing of value was left in the storage unit following the parties' extraction of the items. Accordingly, we find no error.

C. *Volkswagen Passat*

[23] Husband argues that the Volkswagen Passat (Passat) was owned by Prommus and was not a divisible marital asset. At the final hearing, Wife testified that although the Passat was owned by Husband, he sold it to Prommus for $10,000. Husband argues that "the parties already benefited from the receipt of [] $10,000 during the marriage and as they each own their share of stock in Prommus[,] this vehicle is already accounted for." (Appellant's Br. p. 25).

[24] Pursuant to Indiana Code section 31-15-7-4, a trial court must divide the property "of the parties" when dissolving a marriage. *See also England v. England*, 865 N.E.2d 644, 649 (Ind. Ct. App. 2007) (holding that a trial court may not distribute property not owned by the parties). Vehicles, however, are treated differently than real property in that we have held that a certificate of title is not itself proof of ownership or legal title to a vehicle. *Brackin v. Brackin*, 894 N.E.2d 206, 212 (Ind. Ct. App. 2008). Standing alone, a certificate of title raises a presumption of legal title in the holder, which is subject to challenge by other evidence. *Id*.

[25] The parties did not present any independent evidence of the value of the vehicle and the only evidence before the court was that Husband, who previously owned the Passat, sold it to Prommus for $10,000. Wife testified that regardless of that transfer, Husband personally used the vehicle. Based on the evidence, the trial court ultimately found the Passat to be an asset of the marriage due to Husband's personal use of the vehicle despite the transfer and awarded the

vehicle to Husband. Because there is evidence supporting the trial court's decision, its decision to include the vehicle in the division of martial property is not clearly erroneous.

II. *Unequal Distribution of Marital Property*

[26] Husband contends that the trial court abused its discretion in dividing the marital estate unequally. He argues that the trial court erred by failing to enter a finding as to Wife's dissipation of marital assets, and he takes issue with the trial court's alleged failure of deviating "from the presumption of an equal division of the marital estate as it relates to both the Rhode Island and Chicago properties ([p]rimarily the Rhode Island property)." (Appellant's Br. p. 8). We will address each issue in turn.

A. *Dissipation of Assets*

[27] Dissipation is a factor to be considered in the context of determining whether the trial court may deviate from the presumption in favor of equal distribution of marital property under Indiana Code section 31-15-7-5. Husband argues that the trial court failed to enter a finding regarding Wife's dissipation of marital assets.

[28] In his brief, Husband argues that Wife withdrew "$4,215.16 . . . [t]hirty six [] days prior to the filing of this dissolution." (Appellant's Br. p. 22). He claims that when Wife withdrew the money, they were separated, he was unaware of the transaction, and the money did not benefit him.

[29] "Waste and misuse are the hallmarks of dissipation. Our legislature intended that the term carry its common meaning denoting 'foolish' or 'aimless' spending. Dissipation has also been described as the frivolous, unjustified spending of marital assets. . . ." *Troyer v. Troyer*, 987 N.E.2d 1130, 1140 (Ind. Ct. App. 2013) (quoting *In re Marriage of Coyle*, 671 N.E.2d at 943), *trans. denied*. Dissipation does not include the use of marital property to meet routine financial obligations. *Hardebeck v. Hardebeck*, 917 N.E.2d 694, 700 (Ind. Ct. App. 2009).

[30] At the final hearing, and without objection, Husband submitted Exhibit F, showing that on August 21, 2020, Wife made an online banking transfer of $4,050 from the parties' joint account and transferred the money to her personal account. Husband did not claim that the money withdrawn was used for wasteful purposes. Although not addressing that given transaction, Wife testified that she was unemployed, but received rental income from her properties. She stated that the "$3,000" she received from the Rhode Island Property was deposited into the parties joint account, and not only did it go toward expenses associated with maintenance of that property but was expended toward the parties' "general household expenses." (Tr. Vol. II, p. 69). Husband did not contradict Wife's evidence.

[31] As noted, dissipation does not include the use of marital property to meet routine financial obligations. *Hardebeck*, 917 N.E.2d at 700. Wife testified that she primarily used the funds in the parties' joint account to cover household expenses. Other than that isolated withdrawal, none of the testimony offered at

the hearing identified a pattern by Wife to waste or misuse assets or that she engaged in frivolous and unjustified spending. In fact, Wife's testimony indicated a person who was paid attention to her finances. She was keen on lowering debt and cutting down costs when her financial situation got worse. Her isolated act of extracting money from the parties' joint account, which was mainly used for household expenses, standing alone, does not indicate intentional waste as Husband suggests, and it does not fall within the definition of dissipation. Thus, we hold that the trial court did not abuse its discretion in not finding Wife's cash withdrawal as dissipation of marital assets when dividing the marital estate.

B. *Rhode Island and Chicago Properties*

[32] Husband disputes the trial court's distribution of Wife's gifted premarital assets (the Rhode Island and Chicago Properties), which resulted in an uneven distribution of the total marital estate. In disposing of marital property, trial courts should consider factors such as:

> (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.

I.C. § 31-15-7-5. It is well established that in dividing the marital property, the trial court must consider all the statutory factors, but is not required to explicitly address each one in its order. *Del Priore v. Del Priore*, 65 N.E.3d 1065, 1078 (Ind. Ct. App. 2016), *trans. denied*. We presume the trial court considered all the factors, and the trial court need only state its reasons for deviating from an equal division. *Shumaker v. Shumaker*, 559 N.E.2d 315, 318 (Ind. Ct. App. 1990). Nonetheless, because the trial court may not rely on just one of the factors to support an unequal division of property, we must be able to infer from the trial court's findings that it did indeed consider all the factors in conjunction with each other. *Montgomery v. Faust*, 910 N.E.2d 234, 239 (Ind. Ct. App. 2009).

[33] The trial court found that Wife had rebutted the presumption of an equal division of the marital estate and awarded the Rhode Island and Chicago Properties to Wife. Husband argues that the trial court "erred in this ruling" as "it only looked at the way the properties were not commingled." (Appellant's Br. p. 12). We note that whether or not property was commingled is not an included component of the statutory analysis required to rebut the presumption of an equal distribution of marital assets, although relevant evidence might also indicate whether property was kept separate and distinct, or whether a type of *de facto* commingling occurred. *Eye v. Eye*, 849 N.E.2d 698, 703 (Ind. Ct. App. 2006). Therefore, the fact that Wife's properties were kept separate by Wife does not automatically indicate that the presumption was rebutted. *Id*.

[34] The gravamen of Husband's argument on appeal is that the trial court abused its discretion in dividing the marital property unequally because it exclusively relied on the fact that Wife contributed to and was gifted the Rhode Island and Chicago Properties and it did not take into consideration other factors in Indiana Code section 31-15-7-5. Specifically, he claims that the trial court failed to enter findings as to the parties' relative earning capacity and economic circumstances.

[35] In *Eye*, the trial court awarded most of the marital property to the husband. *Eye,* 849 N.E.2d at 701-02. In doing so, the trial court relied almost exclusively on the fact that the majority of the marital property had been inherited by or gifted to the husband. *Id*. On appeal, we were unable to infer from the trial court's findings that it had considered the other statutory factors, and we

therefore held that the trial court had abused its discretion in dividing the marital property. *Id*.

[36] Unlike *Eye*, and contrary to Husband's claim, there are findings and evidence in the record, indicating that the trial court considered the parties' economic circumstances and earning capabilities, in conjunction with other factors. *See Montgomery*, 910 N.E.2d at 239 (reversing the trial court after finding that nothing in the trial court's order "suggested that it considered the present economic circumstances of each spouse, the future earnings ability of each spouse, or the conduct of the parties during the marriage *as related* to the disposition or dissipation of their property") (emphasis added).

[37] Although it was in the context of establishing Husband's child support obligation, we conclude from the evidence that the trial court considered the parties' economic circumstances. The evidence submitted at the final hearing revealed that Husband and Wife worked for Prommus. In 2021, when Prommus halted its operations after a major deal fell through, Husband did not draw any income from Prommus, and he began collecting unemployment benefits from the City of Chicago. Wife, who was let go at around the same time, equally sought unemployment benefits. Wife stated that she was a stay-at-home parent and caregiver to Child. Wife testified that she and Child were residing in her brother's house, but her parents were in the process of buying her a house across the street from her brother's house. Husband stated that he was renting an apartment in Lincoln Park and was paying $2,700 per month. He testified that his family helped him with the rent, although he could not

recall by how much. Based on the parties' testimony and in conjunction with the worksheets[6] that the parties submitted, the trial court ordered Husband to pay $25 of weekly child support to Wife. Even if the trial court did not specifically state in its findings that it considered the parties' economic situation, we can infer from the child support order that the trial court extensively contemplated the parties' economic circumstances.

[38] In addition, there is at least a finding in the Order and evidence in the record indicating that the trial court considered the parties' earning abilities. At the final hearing, and prior to the establishment of Prommus, Wife worked for a designer handbag company, and Husband worked for a finance and management firm. In its foremost finding, the trial court stated that the parties are "both college-educated individuals that had successful careers prior to their marriage," and we can infer from that finding that the trial court considered the parties earning ability or potential as it related to the final division of the marital estate. (Appealed Order at p. 1).

[39] The party who seeks to rebut the presumption of an equal division of the marital estate "bears the burden of demonstrating that the statutory presumption should not apply," and a party challenging the trial court's decision on appeal must overcome a strong presumption that the trial court

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[6] At the beginning of the final hearing, the parties proposed submitting child support worksheets, but as we noted, Husband did not file an appendix and our review regarding the parties' income or even imputed income is limited.

acted correctly in applying the statute. *Beckley v. Beckley*, 822 N.E.2d 158, 163 (Ind. 2005); *Campbell v. Campbell*, 993 N.E.2d 205, 212-13 (Ind. Ct. App. 2013), *trans. denied*.

[40] Wife testified that she was gifted the Rhode Island and Chicago Properties prior to her marriage, and contrary to Husband's claim, Wife stated that she maintained those Properties mainly on her own. The trial court's consideration that Wife contributed and acquired these premarital assets are both valid statutory factors a trial court may consider supporting the unequal division of a marital estate. *See* I.C. § 31-15-7-5(1), (2)(A). To the extent that Husband argues that the trial court failed to enter findings regarding the parties' economic circumstances and earning abilities of the parties, as we noted, the trial court need not identify all factors, but we must be able to infer from the trial court's Order that that it considered the other statutory factors. We find that the trial court contemplated the parties' economic circumstances when it formulated the child support order, and it also considered the parties' earning abilities by considering their prior work history and noting that they were college educated. Husband's assertion that the trial court exclusively relied on the fact Wife contributed to and was gifted the Rhode Island and Chicago Properties and did not take into consideration other factors in Indiana Code section 31-15-7-5 as it related in the division of marital property, therefore fails.

[41] In sum, we find that Husband has failed on appeal to rebut the strong presumption that the trial court correctly applied the law and made all appropriate considerations when it divided the marital estate. Accordingly, we

conclude that the trial court did not err in deviating from the presumption of an equal division of the marital estate.

CONCLUSION

[42] Based on the foregoing, we conclude that the trial court did not abuse its discretion by including the $70,000 loan granted by Dr. McCloskey, and the Passat in the marital pot or by omitting the value of the parties' personal assets from the martial estate. We also conclude that the trial court did not err by not finding that Wife had dissipated marital assets. Finally, we conclude that the trial court did not err when it deviated from an equal division of the marital estate.

[43] Affirmed.

[44] May, J. and Tavitas, J. concur