MEMORANDUM DECISION

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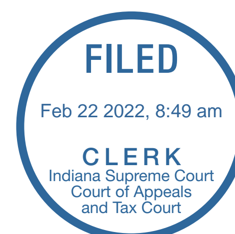

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IN THE
COURT OF APPEALS OF INDIANA

Renee Robertson-Hood,
Appellant-Petitioner,

v.

Chad Hood,
Appellee-Respondent.

February 22, 2022

Court of Appeals Case No. 21A-DC-1734

Appeal from the Jasper Circuit Court

The Honorable Robert W. Thacker, Senior Judge

Trial Court Cause No. 37C01-1712-DC-1128

Najam, Judge.

Statement of the Case

[1] Renee Robertson-Hood ("Wife") appeals the trial court's decree of dissolution of her marriage to Chad Hood ("Husband"). Wife raises four issues for our review, namely:

1. Whether the trial court erred when it deviated from the presumption of an equal division of the marital assets without issuing findings to justify the deviation.

2. Whether the court erred when it classified two items as personal property instead of fixtures and awarded them to Husband.

3. Whether the court erred when it failed to include rental income in its calculation of Husband's weekly gross income.

4. Whether the court erred when it failed to rule on an outstanding issue of retroactive child support.

[2] We affirm in part, reverse in part, and remand with instructions.

Facts and Procedural History

[3] Husband and Wife married on September 6, 2008. During the marriage, the parties adopted two minor children, Ty.H., born in 2007, and Tr.H., born in 2008 ("the Children"). On December 28, 2017, Wife filed a petition for dissolution of the marriage.

[4] In February 2018, the parties tendered their Agreed Partial Provision Orders, which provided for shared physical custody of the Children and a parenting

time schedule, which the court approved. Thereafter, the court modified its previous orders and granted Wife primary physical custody of the Children. In October 2019, Wife filed both a Verified Petition to Modify Provisional Orders and a Verified Motion for Provisional Child Support. In the second motion, Wife asserted that, since the court's most recent modification of its provisional orders, she had had primary physical custody of the Children and that "no one could have suspected that this divorce would still be pending a year and four (4) months later without contribution from [Husband] toward child support." Appellant's App. Vol. 2 at 95. Wife asserted that Husband had "failed and/or refused to contribute to regular and on-going expenses" for the parties' minor children and that she was "entitled to retroactive child support." *Id*. at 95-96. Following a hearing, the court ordered Father to pay $177 per week in child support beginning on December 25, but the court "deferred" the issue of retroactive child support until the final hearing. *Id*. at 98.

[5] In April 2021, the court held a final hearing on Wife's petition for dissolution. During the hearing, Wife testified concerning the deferred issue of retroactive child support. Specifically, Wife asserted that she had had primary physical custody of the Children since the court modified the agreed provisional orders but that Husband had not made any financial contributions during that time. And Wife contended that Husband owed retroactive child support in the amount of $16,983.

[6] The parties then testified about their real property. In particular, Husband presented as evidence the testimony of Brenda Long, a real estate appraiser.

Long testified that the marital residence has some "special features," including "a wood furnace." Tr. Vol. 2 at 246. And Wife introduced as evidence an appraisal report of the marital home by Steve Whited.[1] In his report, Whited specifically identified the "wood stove" as an "[a]dditional feature." Ex. Vol. 5 at 21. Wife then stated that the marital residence "is heated by wood." Tr. Vol. 3 at 10.

[7] Husband also testified about a duplex that the parties had purchased. Husband stated that he resides in one apartment of the duplex and that the other apartment is currently being rented for $850 per month. Husband further testified that he pays $947 per month for the mortgage on the duplex, $100 per month for insurance, and $111 per month for sewer and gas. *See id*. at 198-99. Husband testified that he does not earn enough money from the renter to cover the mortgage and expenses. *Id*. at 236. However, Husband acknowledged that, when both apartments were rented, the rental income paid for all of the expenses "[a]nd then some." *Id*. at 239.

[8] The parties then presented extensive testimony and evidence regarding items of personal property, including several vehicles, household items, and numerous tools. Among other things, Wife testified that there was a "hardwire [sic] air compressor" at the marital residence. *Id*. at 22. Then, during his testimony,

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[1] In her brief on appeal, Wife purports to cite to Long's appraisal report. *See* Appellant's Br. at 22-23. However, the report to which Wife refers is Whited's report. *See* Ex. Vol. 5 at 19-34.

Husband specifically requested that the air compressor be awarded to him. *See id*. at 189.

[9] Following the hearing, the trial court entered its decree of dissolution and found and concluded in relevant part as follows:

> 7. The Petitioner/Wife worked at Ford Motor Company at the time of the marriage and continues to work there. The Wife earned approximately $101,126.76 in 2020. The Respondent/Husband worked at NIPSCO at the time of marriage and continues to work there. The Husband earned approximately $96,806.35 in 2020. A review of the testimony and exhibits demonstrates that each party has an annual average gross income of approximately $100,000 per year from their respective employment. . . .
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> * * *
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> 12. Based upon the evidence presented, the Court FINDS and ORDERS that it is in the best interests of the parties' minor children to be in the joint legal custody of the parties, with the Petitioner/Wife having the primary physical care and custody of the parties' minor children . . . and the Respondent/Husband having access to and parenting time with the parties' minor children pursuant to the Indiana Parenting Time Guidelines and otherwise by agreement of the parties. . . .
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> 13. Based upon the financial circumstances of the parties and the needs of the parties' children, the Respondent/Husband shall pay child support in the sum of $102.00 per week, beginning Friday, July 23, 2021 . . . .
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> * * *

16. *Based upon the evidence presented, including all prior Provisional Orders and determinations herein, the Court FINDS and ORDERS that there is [a] child support arrearage owed pende[n]te lite by the [Husband] to the [Wife] in the sum of $708.00[.]*

17. The parties own [a] certain marital residence . . . . The Court FINDS and ORDERS that such residence shall be set over to the Petitioner/Wife as her sole and separate property. . . . The fair market value of such residential real estate is approximately $335,000.00. . . . Subject to the Antenuptial Agreement, the Wife's equity position in the marital real estate has increased during the marriage in the approximate amount of $41,000.00 more or less.

18. The parties jointly own real estate, being a commercial Duplex . . . . During the separation and pending dissolution, the Husband has temporarily resided in one duplex apartment with the other duplex apartment being rented. The Husband has individually managed the duplex real estate and rental during the pending dissolution. The Court finds that such real estate should and shall be set over the Respondent/Husband as his sole and separate property . . . . The relative equity in the duplex is estimated to be approximately $97,000.00. The Court finds the division of real estate herein with the Wife to receive the residence and the Husband to receive the duplex real estate is a fair, reasonable, and equitable division of the real estate herein based upon the overall division of the marital property including the significant amount of tangible and intangible personal property also divided herein, as well as the application and impact of the Antenuptial Agreement.

19. Based upon the testimony and evidence presented at the Bench Trial regarding the value of tangible personal property, the Court finds that the parties did not present credible and reliable evidence as to estimated fair market value for most items of tangible personal property about which the parties are in such

disagreement herein. Therefore, the Court discounts such testimony and evidence other than as a general statement by each party of her or his point of view as to the value of such tangible personal property to the Wife or the Husband, and not a good indicator of fair market value for the Court. The Court has endeavored to determine a division of such tangible personal property in a fair, reasonable, and equitable manner generally equally given each parties' expressed preferences for certain specified items of tangible personal property.

20. The Petitioner/Wife shall receive the following vehicles as her sole and separate property . . . : the 2012 Ford Escape with an estimated fair market value of $6,000.00; the 1973 Utility Trailer; and the Honda Rambler ATV.

21. The Respondent/Husband shall receive the following vehicles as his sole and separate property . . . : the 1998 Harley Davidson Motorcycle; the 2010 Harley Davidson Motorcycle; the 1993 Ford Ranger; the 1996 Ford Super F; the 1986 Ford F-150; the 1996 SLR 2 axle corn hauler; and the 2006 F159, with a total estimated fair market value for all cycles and vehicles of $20,000.

* * *

27. The Respondent/Husband shall receive as his sole and separate property the Demotte State Bank checking account with account #***7100 for the rental property with an approximate fair market value of $5,000.00. The Petitioner/Wife shall have no further interest therein.

28. The parties shall divide the Demotte State Bank savings account #**47205 in the approximate amount of $50,000.00, with the Petitioner/Wife to receive 80% of such account and the Respondent/Husband to receive 20% of such account. . . .

Appellant's App. Vol. 2 at 28-34 (emphasis added).

[10] The court also divided the numerous items of personal property. Among other items, the court awarded Wife "all household goods and furnishings at the marital residence." *Id*. at 32. And the court awarded Husband "an 80-gallon air compressor" and a "wood-burning stove." *Id*. This appeal ensued.

Discussion and Decision

Standard of Review

[11] Wife appeals the trial court's final decree dissolving her marriage to Husband. As our Supreme Court has explained:

> [T]here is a well-established preference in Indiana for granting latitude and deference to our trial judges in family law matters. Appellate courts are in a poor position to look at a cold transcript of the record, and conclude that the trial judge, who saw the witnesses, observed their demeanor, and scrutinized their testimony as it came from the witness stand, did not properly understand the significance of the evidence. On appeal, it is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by appellant before there is a basis for reversal. Appellate judges are not to reweigh the evidence nor reassess witness credibility, and the evidence should be viewed most favorably to the judgment.

Steele-Giri v. Steele, 51 N.E.3d 119, 124 (Ind. 2016) (quotation marks and citations omitted). Further, where, as here, the dissolution court enters findings and conclusions, "the appellate court reviews issues covered by the findings

with a two-tiered standard of review that asks whether the evidence supports the findings, and whether the findings support the judgment." *Id*. at 123.

Issue One: Findings to Support Unequal Division of Estate

[12] Wife first asserts that the trial court erred when it deviated from the presumption of an equal division of the marital estate without entering findings to support that deviation. The disposition of marital assets is within the dissolution court's sound discretion, and we will reverse only for an abuse of that discretion. *Eye v. Eye*, 849 N.E.2d 698, 701 (Ind. Ct. App. 2006). We consider only the evidence most favorable to the dissolution court's decision, without reweighing the evidence or assessing the credibility of witnesses. Although the facts and reasonable inferences might allow for a conclusion different from that reached by the trial court, we will not substitute our judgment for that of the trial court. *In re Marriage of Marek*, 47 N.E.3d 1283, 1288 (Ind. Ct. App. 2016).

[13] When a trial court divides marital assets and liabilities, it "shall presume that an equal division of the marital property between the parties is just and reasonable." Ind. Code § 31-15-7-5 (2021). If the court deviates from that presumption, it "must enter findings explaining why it awarded an unequal division of property." *Lulay v. Lulay*, 591 N.E.2d 154, 155-56 (Ind. Ct. App. 1992).

[14] Here, Wife contends that the trial court deviated from the statutory presumption of an equal division of the assets. We first note that the marital

estate consists of real property and an extensive list of personal property items. For certain items of personal property, such as the bank accounts and some vehicles, the court assigned a specific monetary value. However, the court did not place a value on the vast majority of the personal property items. Wife concedes, at least for the sake of argument, that the court equally divided those items. *See* Appellant's Br. at 19. Thus, Wife focuses her argument on the court's division of the real property and the personal property to which the court assigned a monetary value.

[15] In its dissolution decree, the court awarded the following items to Husband: the duplex, which had approximately $97,000 in equity; $20,000 in vehicles; $10,000 from a joint bank account; and another bank account that had a value of $5,000. And the court awarded Wife the marital residence, which, pursuant to the antenuptial agreement, had equity in the amount of $41,000; a vehicle valued at $6,000; and $40,000 from the joint account. Wife asserts that the court awarded Husband 61.3% and Wife 38.7% of the marital estate based entirely upon her compilation of assets and liabilities identified by the court but that the court failed to enter any findings to justify its unequal division.[2] *See* Appellant's Br. at 19.

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[2] In his Brief, Husband contends that the bank account with $5,000 "should not be included in the property distribution calculation as said funds were placed into the account after the parties filed their dissolution of marriage action[.]" Appellee's Br. at 12. And Husband contends that Wife removed $3,000 from a bank account for improvements to the marital residence. However, we agree with Wife that, even if those figures were not included in the marital pot, the trial court's division of property was still unequal.

[16] We agree with Wife that, on this record, it appears that the court determined Husband was entitled to a greater share of the marital estate, divided the marital estate unequally in Husband's favor, and failed to enter findings to explain or justify that unequal division.

[17] We acknowledge that, in its findings, the court found that its division of real estate was "a fair, reasonable, and equitable division of the real estate" based on "the overall division of the marital property including the significant amount of tangible and intangible personal property also divided herein, as well as the application and impact of the Antenuptial Agreement." Appellant's App. Vol. 2 at 30-31. And in its distribution of the personal property, the court found that it had divided those items "in a fair, reasonable, and just manner" given "each parties' expressed preferences for certain specific items." *Id*. at 31.

[18] However, those general statements do not acknowledge or explain the disparity in the overall division of the marital estate. In other words, the court's reference to the "overall division of the marital property" is inadequate. If a trial court determines that a party is entitled to a greater share of the marital estate, which appears to be the case here, it is required to explain its reasons for having made that determination. *See Hurst v. Hurst*, 676 N.E.2d 413, 415 (Ind. Ct. App. 1997). The court did not do that here.

[19] We may not speculate as to the trial court's reasoning for dividing the estate the way it did. *Chase v. Chase*, 690 N.E.2d 753, 756 (Ind. Ct. App. 1993). Likewise, we are prohibited from reweighing the evidence in this case. *Id*. We must

therefore remand with instructions for the court either to enter findings to justify its unequal division or to divide the marital estate equally.[3]

Issue Two: Classification of Items as Personal Property

[20] Wife next contends that the trial court erred when it classified the air compressor and wood-burning stove as personal property and awarded them to Husband. Wife maintains that those items were not personal property but were, instead, "fixtures" at the marital residence, which was the "sole and separate property of [Wife] pursuant to the parties ante-nuptial agreement[.]" Appellant's Br. at 22. In other words, Wife maintains that, because she was awarded the marital residence, which included all fixtures thereto, she was entitled to the air compressor and the wood-burning stove.

[21] To determine whether a particular article has become a fixture,

> Indiana courts utilize a three-part test. This test considers: 1) actual or constructive annexation of the article to the realty, 2) adaptation to the use or purpose of that part of the realty with which it is connected, and 3) the intention of the party making the annexation to make the article a permanent accession to the freehold. The third part of the test—the intent—is controlling. Intention may be determined by the nature of the article, relation and situation of the parties making the annexation, and the

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[3] In her brief on appeal, Wife assumes arguendo that the personal property has been evenly divided and takes issue only with the award of the wood burning stove and the air compressor to Husband. On remand, the court is not required to give any more consideration to the valuation of the items of personal property to which it did not assign a monetary value, but it may consider whether the other factors identified by Husband should be taken into account. *See* Appellee's Br. at 12-14.

> structure, use, and mode of annexation. *If there is doubt as to intent, the property should be regarded as personal.*

11438 Highway 50, LLC v. Luttrell, 81 N.E.3d 261, 265 (Ind. Ct. App. 2017) (internal quotation marks and citations omitted) (emphasis added).

<u>Air Compressor</u>

[22] On this issue, Wife first contends that the court erred when it classified the air compressor as personal property. Wife's entire argument regarding this issue is: "The undisputed evidence presented at Trial is that the air compressor was 'hard wired' into the home. By hard wiring the air compressor into the home, it was the intention of the parties that it be annexed [to] the property and to become a fixture of the residence." Appellant's Br. at 22 (internal citations omitted).

[23] However, the only testimony regarding the nature of the air compressor was Wife's testimony that it is "a hardwire [sic] air compressor." Tr. Vol. 3 at 22. That testimony does not indicate whether the air compressor was actually hardwired into the home or whether it was simply capable of being hardwired. Even if Wife's testimony meant that the air compressor was physically attached to the home, that would not necessarily mean that the parties intended for it to be a permanent attachment, that the air compressor had lost its character as personal property, or that it could not easily be removed.

[24] Further, Husband specifically requested the air compressor, which indicates either that it was not attached or was capable of being removed. And Wife did

not make any argument to the court that the air compressor was a fixture to the residence, nor did she request that the court award her the air compressor. Contrary to Wife's assertions on appeal, the evidence presented at trial leaves in doubt whether the parties intended for the air compressor to remain with the home. Because there is doubt as to the parties' intent, the air compressor should be regarded as personal property. *Luttrell*, 81 N.E.3d at 265. The court therefore did not err when it classified the air compressor as personal property and awarded it to Husband.

<u>Wood-Burning Stove</u>

[25] Wife next contends that the court erred when it classified the wood-burning stove as personal property and awarded it to Husband. Specifically, Wife asserts that, "not only was the item annexed and necessary into the structure (it is the residence's sole source of heat in the winter), but the appraised value of the home includes the value of the furnace." Appellant's Br. at 22. We must agree.

[26] During the hearing, Wife testified that the marital residence "is heated by wood." Tr. Vol. 3 at 10. The fact that the parties used the wood-burning stove to heat the home indicates that they intended for it to become a fixture at the residence. Further, Long testified that one of the residence's "special features" was the "wood furnace." Tr. Vol. 2 at 246. And Whited noted in his report that the wood-burning stove was an "[a]dditional feature" of the home. Ex. Vol. 5 at 21. In other words, both real estate appraisers considered the wood-

burning stove to be a feature of the house and, thus, a fixture rather than personal property.

[27] Because the wood-burning stove was used to heat the home, we conclude that it was the intent of the parties for the stove to be a fixture and not personal property. That conclusion is supported by the fact that both real estate appraisers considered the stove to be a feature of the house. We therefore hold that the trial court erred when it classified the wood-burning stove as personal property and awarded it to Husband.

Issue Three: Rental Income

[28] Wife also contends that the court erred when it calculated Husband's income for child support purposes. A trial court's "child support calculation is presumptively valid and will be upheld unless the court has abused its discretion, that is, 'when its decision is clearly against the logic and effect of the facts and circumstances before the court or if the court has misinterpreted the law.'" *Faulk v. Faulk*, 166 N.E. 3d 939, 944 (Ind. Ct. App. 2021) (quoting *Martinez v. Deeter*, 968 N.E.2d 799, 805 (Ind. Ct. App. 2012)).

[29] When fashioning a child support order, the trial court's first task is to determine the weekly gross income of each parent. *Ratliff v. Ratliff*, 804 N.E.2d 237, 245 (Ind. Ct. App. 2004). Weekly gross income is broadly defined to include not only actual income from employment but also potential income and imputed income from in-kind benefits. *Id.*

[30] Here, in the dissolution decree, the trial court described the duplex as "commercial" real estate but did not account for either the $850 in monthly rental income Husband receives or the expenses associated with the real estate. Appellant's Br. at 30. The court determined that Husband's weekly gross income is $1,923.08 based on its finding that Husband earns $100,000 from his job at NIPSCO. *See* Appellant's App. Vol. 2 at 24. Thus, we conclude that the court did not include rental income from the duplex in its calculation of Husband's weekly gross income.

[31] On appeal, the parties dispute whether the court should have added any or all of the rent Husband receives to his weekly gross income. Wife initially asserts that the court failed to include Husband's rental income from the duplex in its computation of income and that this Court should remand and instruct the trial court to recalculate Husband's child support obligation to include the entire $850 per month in rental income in that computation. *See* Appellant's Br. at 15. Alternatively, Wife contends that the court should have attributed a "portion" of the rent to Husband as income because Husband's "personal living expenses are offset by his renters." Reply Br. at 12. Husband contends that the court properly excluded the entire amount because his monthly expenses are greater than the rent he receives.

[32] The Child Support Guidelines define weekly gross income as "actual weekly gross income of the parent if employed to full capacity, potential income if unemployed or underemployed, and the value of 'in-kind' benefits received by the parent." Ind. Child Support Guideline 3(A)(1). Weekly gross income

includes rent, which is defined as "gross receipts minus ordinary and necessary expenses." Child. Supp. G. 3(A)(2). Calculating weekly gross income for those who receive rent "presents unique problems, and calls for careful review of expenses." Child. Supp. G. 3 cmt. 2(a). "The principle involved is that actual expenses be deducted, and benefits that reduce living expenses (i.e. company cars, free lodging, reimbursed meals, etc.) should be included in whole or in part." *Id.*

[33] Here, the undisputed evidence demonstrates that Husband pays $947 per month for the mortgage on the duplex, $100 per month for insurance, and $111 per month for trash and sewer services. That equates to a total monthly expenditure of $1,158, not including real estate taxes.[4] Further, the undisputed evidence shows that Husband receives $850 per month in rental income. Thus, Husband pays more every month in expenses than he receives in rent.

[34] But Husband occupies one-half of the duplex. As such, Husband's mortgage payment and other monthly expenses are for the whole duplex, including both the apartment where he lives and the apartment he rents out. The property does not produce business income net of expenses and, thus, has a negative cash flow. With monthly rent of $850 and a mortgage and other expenses of $1,158, Husband is responsible as the owner of the duplex to pay a net monthly

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[4] The parties did not present any evidence at the final hearing regarding the amount of real estate taxes on the duplex.

shortfall of $308. But, as a tenant, Husband enjoys the use and benefit of an apartment with a fair rental value of $850 per month.

[35] Thus, we agree with Wife's alternative argument that a "portion" of the rent Husband receives "offset[s]" his personal living expenses. Reply Br. at 12. In other words, Husband's personal residence is subsidized. When calculating Husband's weekly gross income, Husband is chargeable with a $542 per month rent subsidy and in-kind benefit, representing the difference between the $850 fair market value of his apartment and the $308 per month he is obligated to pay for the shortfall in expenses for the duplex. As such, we hold that the court erred when it did not include Husband's rent subsidy in its calculation of Husband's weekly gross income. *See* Child. Supp. G. 3 cmt 2(a). We therefore remand to the trial court with instructions for the court to add $542 per month to Husband's gross income and to recalculate Husband's weekly gross income for child support purposes.

Issue Four: Retroactive Child Support

[36] Finally, Wife asserts that the court failed to rule on her request for retroactive child support. The record shows that, on October 16, 2020, Wife filed a motion for provisional child support with the trial court. In that motion, Wife requested that the court order Husband to pay child support "retroactive to the date she began having primary physical custody[.]" *Id*. at 96. Following a hearing on December 29, the trial court ordered Husband to pay $177 per week beginning on December 25. However, the court "deferred" the question of the retroactive child support order until the final hearing. *Id*. at 98.

[37] At the beginning of the fact-finding hearing on Wife's petition for dissolution of the marriage, Wife reminded the trial court that it had deferred the issue of retroactive child support, and Wife testified that she had had primary physical custody of the Children since the court modified the agreed provisional orders but that Husband had not made any financial contributions during that time. Wife then argued that Husband owed retroactive child support in the amount of $16,983. However, in its dissolution decree, the court found that Husband only owed a child support arrearage in the amount of $708.

[38] On appeal, Wife contends that that ruling by the court "only takes into consideration [Husband's] arrears from the date the Court issued the amended provisional order in December 2020," but that it "failed to rule" on the issue of retroactive application. Appellant's Br. at 27. Wife continues that "this is not a factual dispute" over "*whether* or *not* there should be any retroactive application of the child support obligation" but "a legal dispute as to whether or not the trial court disposed of all issued pending before it." *Id*. at 28 (emphasis added).

[39] In its findings regarding child support, the court expressly stated that it had considered the "evidence presented, including all prior Provisional Orders and determinations herein." Appellant's App. Vol. 2 at 29. As such, the court considered the provisional order in which it had previously deferred the question of retroactive child support as well as Wife's detailed testimony regarding the child support she believed Husband owed to her. After having considered that evidence, the court nonetheless concluded that Husband only owed $708 in child support. Thus, while the court did not use the term

"retroactive child support," it is clear from the record that the court considered Wife's motion and, in effect, determined that she was not entitled to retroactive child support.

Conclusion

[40] In sum, the trial court did not adequately explain in its findings why it deviated from an equal division of the marital estate. And the court did not err when it awarded Husband the air compressor because the court properly considered it to be personal property. But the court erred when it awarded the wood-burning stove to Husband as it was a fixture at the marital residence. Further, the court erred when it failed to consider a portion of Husband's rental income in its calculation of Husband's child support obligation. Finally, while the court did not explicitly rule on Wife's request for retroactive child support, the court implicitly denied that request in its dissolution decree after considering the prior orders and the evidence presented at the hearing. We therefore affirm the trial court in part, reverse in part, and remand with instructions for the court to: either enter findings to justify its unequal division or to divide the marital estate equally; award the wood-burning stove to Wife; and to add $542 per month to Husband's gross income and to recalculate Husband's weekly gross income for child support purposes.

[41] Affirmed in part, reversed in part, and remanded with instructions.

Vaidik, J., and Weissmann, J., concur.