## MEMORANDUM DECISION





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IN THE

# COURT OF APPEALS OF INDIANA

Parimala Kumaresan,
*Appellant-Respondent,*

v.

Arul Anthony George,
*Appellee-Petitioner.*

January 4, 2024

Court of Appeals Case No. 23A-DC-1304

Appeal from the Bartholomew Superior Court

The Honorable Jonathan L. Rohde, Judge

Trial Court Cause No. 03D02-2206-DC-2840

**Memorandum Decision by Judge Bradford**
Judges Vaidik and Brown concur.

**Bradford, Judge.**

# Case Summary

[1] Parimala Kumaresan ("Mother") and Arul Anthony George ("Father") (collectively, "Parents") were married in 2012 and had two children together before Father petitioned for dissolution of the marriage in 2022. In its dissolution order, the trial court, *inter alia*, awarded Parents joint legal custody of the Children and ordered an equal division of the martial estate, both of which decisions Mother challenges as abuses of discretion. We affirm.

# Facts and Procedural History

[2] Parents were married in May of 2012, and A.A., born in November of 2014, and S.A., born in August of 2020 (collectively, "the Children"), were born of the marriage. On June 8, 2022, Father petitioned for dissolution of the marriage and moved for a provisional order and temporary restraining order regarding finances. On April 25, 2023, the trial court conducted a final hearing on Father's dissolution petition. The trial court heard evidence that Parents had both worked full-time during the marriage, with Mother making approximately $155,000.00 per year and Father making approximately $125,000.00 per year. Father's usual work hours were roughly 8:00 a.m. to 5:00 p.m. Monday through Friday. Mother was required to work forty hours per week but did not have a specific work schedule, which had allowed her to take the Children to doctor's visits and other necessary appointments during the day.

[3] The trial court heard evidence that, during the course of the marriage, despite earning less than Mother, Father had been primarily responsible for the household expenses. Specifically, Father had been responsible for making

home-loan payments and had paid all expenses for the marital residence (including gas, electric, other utilities, and all maintenance), S.A.'s childcare, groceries, meals, internet and cable television service, medical expenses and clothing for the Children, telephones for both parties, gasoline, insurance, and maintenance, as well as part of the Children's extracurricular activities, totaling roughly $6788.00 per month.

[4] Evidence was presented regarding the assets Mother had accumulated during the marriage. Among these assets was a bank account with SBI in India ("the SBI Account") containing $14,540.00, which was solely in Mother's name. Another one of these assets was a 25% interest in a company ("the Texas LLC") that had been acquired by Mother, an interest worth $325,000.00. Father's payment of all household expenses had allowed Mother to accumulate the funds to purchase her interest in the Texas LLC.

[5] The trial court heard testimony that Parents had been able to effectively communicate regarding the Children's education and healthcare during the dissolution proceedings. Parents have had difficulties communicating about their marital relationship, but communication regarding the Children's well-being had not been problematic. According to Father, "when it comes to [the Children] we are talking today. [… W]hen it comes to [the Children] we have collaborated so far." Tr. Vol. II p. 85. Moreover, Parents had resided together the entire pendency of the divorce. On May 10, 2023, the trial court issued its dissolution decree, which provides, in part as follows:

8. The parties shall have joint legal custody of the minor children. [….]
9. Wife shall have primary physical custody of the minor children, subject to Husband's parenting time.

[….]

17. The Court finds that an equal division of the marital property is just and reasonable pursuant to Ind. Code §31-15-7-5.
18. Marital assets and debts shall be divided in accordance with the Court's attached Exhibit B. Both parties, where necessary, shall sign all documents required to transfer the assets and/or debts to the other party's sole name. In addition, both parties shall indemnify and hold harmless the other for any debt assumed as a result of this provision. Each party shall comply with this provision within 30 days.
    a. Specifically, Wife is awarded the marital residence, her bank accounts (Bank of America, Union Savings Bank, and SBI), her retirement accounts (LHP 401k, AAM 401k), the jewelry and valuables at home and in the Centra safety deposit box (with the exception of items 6367 and 6359), her interest in the Texas LLC, and the 2021 Jeep Cherokee. Wife shall assume the debts on the marital residence, the Texas LLC, and the 2021 Jeep Cherokee, as well as the loans at Bank of America and Chase.
    b. Husband is awarded his bank accounts (Bank of America, Centra, Union Savings Bank), his Health Equity Trust account, his retirement accounts (RSP 401k, pension savings, and ESOP), the 2012 Honda Civic, and jewelry items 6367 and 6359.

[….]

20. Wife shall pay husband a cash equalization payment in the amount of $83,300.00 by July 3, 2023.
21. Each party shall assume financial responsibility for the asset/debt and any associated expenses awarded pursuant to Exhibit B immediately. Specifically, Wife is immediately responsible for the debt and expenses at the marital

residence; Husband shall contribute to incidental expenses during the month before he vacates the residence.

22. Personal property shall be divided by agreement of the parties. If the Parties are unable to reach an agreement, or to the extent there are items in dispute, ownership of such items will be resolved by the parties alternating choosing an item, with Wife making the first selection.
23. The 529 college accounts held by each party shall be consolidated into one 529 account that both parties have informational access to with [A.A.] named as the beneficiary at this time. Subject to the limitations imposed on 529 accounts for payment of K-l2 expenses, and unless and until the parties agree otherwise in writing, such funds shall be used to pay her tuition at St. Bartholomew Catholic School. Neither party may transfer or remove funds from this account for any other purpose without an agreement to do so in writing. Both parties are entitled to information about this account.
24. If the parties agree to pay for [A.A.]'s St. Bartholomew tuition separately, or in the event limitations on the 529 account prevent full payment of [A.A.]'s school, that educational expense shall be paid Fifty-Six Percent (56%) by Wife and Forty-Four Percent (44%) by Husband.
25. The marriage of the parties is hereby dissolved.

SO ORDERED

Appellant's App. Vol. II pp. 10, 12–14.

# Discussion and Decision

## I. Joint Legal Custody

[6] Mother contends that the trial court abused its discretion in awarding her and Father joint legal custody of the Children. A trial court "may award legal custody of a child jointly if the court finds that an award of joint legal custody would be in the best interest of the child." Ind. Code § 31-17-2-13.

> In determining whether an award of joint legal custody […] would be in the best interest of the child, the court shall consider it a matter of primary, but not determinative, importance that the persons awarded joint custody have agreed to an award of joint legal custody. The court shall also consider:
>
> (1) the fitness and suitability of each of the persons awarded joint custody;
>
> (2) whether the persons awarded joint custody are willing and able to communicate and cooperate in advancing the child's welfare;
>
> (3) the wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age;
>
> (4) whether the child has established a close and beneficial relationship with both of the persons awarded joint custody;
>
> (5) whether the persons awarded joint custody:
>
> (A) live in close proximity to each other; and
>
> (B) plan to continue to do so; and
>
> (6) the nature of the physical and emotional environment in the home of each of the persons awarded joint custody.

Ind. Code § 31-17-2-15. "'Joint legal custody' […] means that the persons awarded joint custody will share authority and responsibility for the major decisions concerning the child's upbringing, including the child's education, health care, and religious training." Ind. Code § 31-9-2-67.

[7] > We review custody modifications for abuse of discretion, with a "preference for granting latitude and deference to our trial judges in family law matters." *In re Marriage of Richardson*, 622 N.E.2d 178, 178 (Ind. 1993) (affirming trial court judgment shifting primary custody of children to father). We set aside judgments only when they are clearly erroneous, and will not substitute our own judgment if any evidence or legitimate inferences support the trial court's judgment. *Id*. at 179 (citing Ind. Trial Rule 52(A)).
> […]

> Therefore, "[o]n 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." *Id*. (citations omitted).

*Kirk v. Kirk*, 770 N.E.2d 304, 307 (Ind. 2002) (footnote omitted). "[O]n review, we will not reweigh the evidence, judge the credibility of witnesses or substitute our judgment for that of the trial court." *Kondamuri v. Kondamuri*, 852 N.E.2d 939, 946 (Ind. Ct. App. 2006).

[8] Indiana courts have concluded that the second factor of Indiana Code section 31-17-2-15, whether the persons awarded joint legal custody are willing and able to communicate and cooperate in advancing the child's welfare, "is of particular importance in making legal custody determinations." *Rasheed v. Rasheed*, 142 N.E.3d 1017, 1022 (Ind. Ct. App. 2020), *trans. denied*. "Where the parties have made childrearing a battleground, joint [legal] custody is not appropriate." *Id.* "The primary concern of the courts with respect to legal custody is the welfare of the children and not the wishes of the parents." *Id.*

[9] Mother's argument in this regard is that that the evidence establishes that she and Father are unable to communicate in the best interests of the Children. As mentioned, however, Father testified that, although communication between Parents had been difficult in general, they had effectively communicated regarding the Children's health and education and that they had "collaborated" on issues regarding the Children during the dissolution process. Tr. Vol. II p. 85. Father also testified that both he and Mother were active in the Children's lives, with him "equally involved" in parenting. Tr. Vol. II p. 19. Father

testified that he took A.A. to and retrieved her from school every day. Father also indicated that he and Mother were "both involved" in taking A.A. to her five or six extracurricular classes each week while one of them stays home with S.A., who happens to have special needs. Tr. Vol. II p. 20. Father's testimony regarding his and Mother's ability to communicate effectively and to share and coordinate parental duties establishes Parents' willingness and ability to continue doing so.

[10] Mother points to evidence tending to show that Father is less involved in some aspects of the Children's healthcare than she is and that her relationship with Father is contentious and, on occasion, physically abusive, something Father denies. The trial court, however, was in the best position to evaluate this evidence for credibility and weight, and we will not second-guess its determinations in this regard. *See Kirk*, 770 N.E.2d at 307; *Kondamuri*, 852 N.E.2d at 946 ("[O]n review, we will not reweigh the evidence, judge the credibility of witnesses or substitute our judgment for that of the trial court."). Mother also relies on our decision in *Rasheed*, 142 N.E.3d at 1017, to support her argument. *Rasheed*, however, does not help Mother; in that case, we reversed the trial court's award of joint legal custody based on the parents' contentious relationship, which included an order for protection against the father, "and in light of the parties' history of non-cooperation[.]" *Id*. at 1022. Here, there is conflicting evidence regarding physical abuse and ample evidence that Parents can communicate and cooperate on parenting matters. The trial

court did not abuse its discretion in awarding joint legal custody of the Children to Parents.

# II. Valuation and Division of the Marital Estate

[11] Ind. Code § 31-15-7-4 provides:

> In an action for dissolution of marriage […], the court shall divide the property of the parties, whether:
> (1) owned by either spouse before the marriage;
> (2) acquired by either spouse in his or her own right:
> (A) after the marriage; and
> (B) before final separation of the parties; or
> (3) acquired by their joint efforts.

[12] "The division of marital assets, including a determination as to whether an asset is a marital asset, is within the trial court's discretion." *Harrison v. Harrison*, 88 N.E.3d 232, 234 (Ind. Ct. App. 2017), *trans. denied*. We "will reverse the determination of a trial court only if that discretion is abused." *Id*. A trial court has abused its discretion "when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court." *Id*. We "will not reweigh the evidence or judge the credibility of witnesses, and we consider only the evidence most favorable to the decision of the trial court." *Id.* "[T]he party challenging the trial court's property division must overcome a strong presumption that the court complied with the statutory guidelines." *Id*. "This presumption is one of the strongest presumptions on appeal." *Id.*

## A. The SBI Account

[13] "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." *Id*. "The systematic exclusion of any marital asset from the marital pot is erroneous." *Id.* "Whether a right to a present or future benefit constitutes an asset that should be included in marital property depends mainly on whether it has vested by the time of dissolution." *Bingley v. Bingley*, 935 N.E.2d 152, 155 (Ind. 2010). "There are two ways in which a right to a benefit can vest: (1) vesting in possession or (2) vesting in interest[.] Vesting in possession connotes an immediate[ly] existing right of present enjoyment […w]hereas vesting in interest implies a presently fixed right to future enjoyment." *Ford v. Ford*, 953 N.E.2d 1137, 1142 (Ind. Ct. App. 2011) (citations and quotation marks omitted; second set of brackets in original).

[14] Mother contends that the trial court abused its discretion in including the SBI Account in the marital estate because it is not a vested asset. Specifically, Mother points to her testimony that the account was controlled and owned by her mother and that she had no access to it. The SBI Account, however, was solely in Mother's name, information regarding this account was sent to her, and she knew roughly how much money it contained. The trial court was under no obligation to credit Mother's assertions regarding her lack of access to and control of the SBI Account and did not. *See, e.g.*, *Harrison*, 88 N.E.3d at 234 (stating that we will not reweigh the evidence).

[15] Mother also alleges that the SBI Account should not have been included in the marital estate because Parents had not used any money from the SBI Account, made deposits or withdrawals, or benefitted from the account before or during the marriage. Vesting, however, occurs when a party has a *right* to a present

enjoyment of an asset, not when a party actually enjoys the asset. Even if true, it is of no moment that Mother had never withdrawn any funds from the SBI Account so long as she had had the right to, an inference that we have already determined was reasonable.

[16] Finally, Mother argues that the trial abused its discretion in valuing the SBI Account because it is, at the very least, a joint account held with her mother. A "joint account" is defined as "an account payable on request to one (1) or more of two (2) or more parties whether or not mention is made of any right of survivorship." Ind. Code § 32-17-11-4. Indiana defines "party" as "a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple party account." Ind. Code § 32-17-11-7. "Unless there is clear and convincing evidence of a different intent, during the lifetime of all parties, a joint account belongs to the parties in proportion to the net contributions by each party to the sums on deposit." Ind. Code § 32-17-11-17(a).

[17] Mother has failed to establish that the trial court abused its discretion in assigning value to the SBI Account. As mentioned, the SBI Account is solely in Mother's name, and she did not introduce any documentation to suggest that any other person had had a present right to draw from the account. Mother testified that her mother had had access to and control over the account, but the trial court, again, was under no obligation to credit this testimony and did not. The trial court did not abuse its discretion in finding the SBI bank account to be

a vested interest or in valuing Mother's interest in the account as the full value of the account.

## B. Equal Division

[18] The division of marital property is within the sound discretion of the trial court and we should not reverse a trial court's division unless it is determined that an abuse of that discretion occurred. *Hartley v. Hartley*, 862 N.E.2d 274, 285 (Ind. Ct. App. 2007). An abuse of discretion occurs if (1) the trial court's decision is clearly against the logic and effect of the facts and circumstances before the trial court; (2) the trial court has misinterpreted the law; or (3) the trial court has disregarded evidence of factors listed in the controlling statute. *Hatten v. Hatten*, 825 N.E.2d 791, 794 (Ind. Ct. App. 2005), *trans denied*. We will not reweigh evidence, reassess witness credibility, or substitute our judgment for that of the trial court unless its decision is clearly against the logic and effect of the facts and circumstances before it. *Wortkoetter v. Wortkoette*r, 971 N.E.2d 685, 688 (Ind. Ct. App. 2012)

[19] In reviewing a claim that the trial court did not properly divide the marital property, we consider "only the evidence most favorable to the trial court's disposition of the property without reweighing evidence or assessing witness credibility." *In re Marriage of Marek*, 47 N.E.3d 1283, 1288 (Ind. Ct. App. 2016), *trans. denied*.

[20] In dividing the marital estate, a trial court "shall presume that an equal division of the marital property between the parties is just and reasonable." Ind. Code § 31-15-7-5. This presumption may be rebutted by presenting evidence showing

that an equal split would not be just and reasonable. *Id*. The court will consider the following factors in determining whether an equal division would not be just and reasonable:

> (1) The contribution of each spouse to the acquisition of the property, regardless of whether
> the contribution was income producing.
> (2) The extent to which the property was acquired by each spouse:
> (A)before the marriage; or
> (B) through inheritance or gift.
> (3) The economic circumstances of each spouse at the time the disposition of the property is
> to become effective, including the desirability of awarding the family residence or the right
> to dwell in the family residence for such periods as the court considers just to the spouse
> having custody of any children.
> (4) The conduct of the parties during the marriage as related to the disposition or dissipation
> of their property.
> (5) The earnings or earning ability of the parties as related to:
> (A) the final division of property; and
> (B) a final determination of the property rights of the parties.

*Id*. All the factors listed above are to be considered together, "with no one factor alone necessarily proving or requiring an unequal division." *Marek*, 47 N.E.3d at 1291. "[A] party challenging the trial court's decision on appeal must overcome a strong presumption that the trial court acted correctly in applying the statute." *Id*. at 1288. "Even if some items meet the statutory criteria that may support an unequal division of the overall pot, the law does not require an unequal division if overall considerations render the total

resolution just and equitable." *Fobar v. Vonderahe*, 771 N.E.2d 57, 61 (Ind. 2002).

[21] In this case, the trial court was well within its discretion when it determined that an equal division was just and reasonable. Among other things, the trial court awarded Mother the 25% interest in the Texas LLC, an interest valued at $325,000.00. Mother claims that "Father [had] made no contribution, financially, or otherwise, towards the acquisition and maintenance of Mother's interest in the Texas LLC." Appellant's Br. p. 23. While this may be technically true, the record indicates that Mother was only able to purchase an ownership interest in the Texas LLC because Father had assumed responsibility for the mortgage and other bills. Specifically, Father's monthly expenses of around $6800.00 included the house payment, all expenses for the marital residence (including utilities and all maintenance); S.A.'s childcare; groceries; meals; internet and cable service; Children's medical expenses and clothing; telephones for both Parents; gasoline, insurance, and maintenance for motor vehicles; and the Children's Taekwondo lessons. Indeed, Father testified that he had been running a personal deficit of $1400.00 per month. In contrast, there is evidence in the record that Mother's monthly expenses were only $2484.00 per month. The record supports a finding that, had Father had not been handling the majority of the household expenses and living "paycheck to paycheck," Mother would not have been able to afford her interest in the Texas LLC. Tr. Vol. II p. 187.

[22] Mother relies on our decision in *Marek*, a case in which we reversed the trial court's equal division of the martial estate, to support her argument. *Marek*, 47 N.E.3d at 1292. In concluding that an unequal division was warranted, we considered all of the following evidence in conjunction: Husband had made no contributions to the maintenance or accumulation of an inheritance account owned by wife, wife's earnings had been substantially less than husband's earnings, wife's earning ability would not have been significantly greater in the future, wife had earned no retirement benefits of her own, and husband had been awarded the marital residence. *Id*. (emphasis added). All of this evidence together supported a conclusion that "nearly all the statutory factors listed favor an unequal distribution of the marital estate." *Id*.

[23] *Marek* is readily distinguishable and consequently does not help Mother. First, the property in this case was acquired during the marriage, and not by inheritance or gift, unlike in *Marek*, where the property at issue was an inheritance account. 47 N.E.3d at 1291. Moreover, there was a strong economic disparity between the parties in *Marek*, which would have made an equal division unfair to wife. 47 N.E.3d at 1292. No such economic disparity exists in this case; in fact, Mother earns more than Father. Finally, unlike in *Marek*, Mother was awarded the marital residence. *Marek*, 47 N.E.3d at 1292. The facts in *Marek* diverge from those in this case to the extent that we need not reach the same result. In the end, Mother can only point to the fact that she solely contributed to her interest in the Texas LLC as supporting an unequal division of the marital estate. That fact, however, is essentially nullified by

Father's shouldering of the vast majority of household expenses during the marriage, which allowed Mother to afford her interest in the Texas LLC and supports the trial court's equal division of the martial estate.

[24] The judgment of the trial court is affirmed.

Vaidik, J., and Brown, J., concur.