

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE  
**Court of Appeals of Indiana**

William Bogner,  
*Appellant-Respondent*

v.

Rebecca Bogner,  
*Appellee-Petitioner*



---

March 12, 2024

Court of Appeals Case No.  
23A-DN-2419

Appeal from the Fulton Superior Court  
The Honorable Gregory L. Heller, Judge

Trial Court Cause No.  
25D01-2108-DN-453

---

**Memorandum Decision by Judge Bradford**  
Chief Judge Altice and Judge Felix concur.

## **Bradford, Judge.**

### **Case Summary**

- [1] In 2021, Rebecca (“Wife”) and William (“Husband”) Bogner petitioned to dissolve their marriage. During the marriage, Husband had received from his mother a remainder interest in real estate (“the Remainder Interest”). In its dissolution order, the trial court, pursuant to the statutory presumption, split the marital estate evenly despite Husband’s having argued against the presumption, and averaged the parties’ estimates of a lawnmower to determine its value. Husband argues that the trial court abused its discretion in dividing the marital estate evenly and in valuing the parties’ lawnmower. We affirm.

### **Facts and Procedural History**

- [2] In 2012, Husband and Wife were married. During the marriage, Husband’s mother transferred the Remainder Interest in 136 acres of farmland in Whitley County, Indiana, to Husband and his two siblings while reserving a life estate for herself. The appraised value of this acreage was \$683,000.00, with Husband’s Remainder Interest valued at \$143,435.00. The parties did not pay for this property, spend money improving or maintaining it, title it in Wife’s name, or receive income from the use of it.
- [3] In 2020, Wife retired after receiving shoulder surgery. Following her retirement, Wife’s income consisted of social-security benefits and disability income. Wife’s disability income ended in July of 2022, at which point Wife’s

only income was \$1095.00 per month in social-security benefits. At the time, Husband was still employed, making \$39,000.00 a year.

[4] On August 17, 2022, Wife petitioned the trial court for a dissolution of marriage. The trial court conducted a dissolution hearing on June 8, 2023, at which Husband and Wife appeared and testified. The parties agreed on the distribution and valuation of most assets, except for two items: the Remainder Interest and a lawnmower.

[5] Wife testified that she felt the Remainder Interest should be included in the marital estate and its value awarded to Husband. Husband, on the other hand, testified that its value should not be divided between them. When it comes to the lawnmower, Husband valued it at \$2500.00 because he had sold one “exactly like” it for that amount the year before. Tr. Vol. II p. 80. Wife estimated the lawnmower to be “[p]robably four” years old and worth \$6000.00. Tr. Vol. II p. 27.

[6] Moreover, Wife testified that, during the marriage, the parties substantially depleted her 401(k) account to maintain their house. Wife indicated that she had had nearly \$75,000.00 in her retirement account at one point but that by the time of the parties’ separation the balance had been reduced to \$15,960.00. Husband’s retirement accounts totaled over \$57,000.00 at the time of the parties’ separation. At the time of this hearing, Wife was sixty-eight years old and Husband was sixty.

[7] On August 17, 2023, the trial court issued a dissolution decree, in which it applied the statutory presumption of equal division. As part of that division, Husband received the appraised value of the Remainder Interest. The trial court averaged the difference between Husband’s and Wife’s valuations of the lawnmower, which established its value at \$4250.00. One month later, Husband moved to correct error, which motion the trial court denied.

## Discussion and Decision

### I. Equal-Distribution Presumption

[8] We review a trial court’s division of marital assets for an abuse of discretion. *Roetter v. Roetter*, 182 N.E.3d 221, 225 (Ind. 2022). “A trial court abuses its discretion if its decision stands clearly against the logic and effect of the facts or reasonable inferences, if it misinterprets the law, or if it overlooks evidence of applicable statutory factors.” *Id.* The party challenging the “trial court’s division of marital property must overcome a strong presumption that the court considered and complied with the applicable statute.” *Wanner v. Hutchcroft*, 888 N.E.2d 260, 263 (Ind. Ct. App. 2008). When reviewing distributions, we will neither reweigh evidence nor judge witness credibility; instead, we consider only the evidence most favorable to the trial court’s decision. *Scott v. Scott*, 668 N.E.2d 691, 705–06 (Ind. Ct. App. 1996).

[9] Our case law establishes 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.” *Falatovics v. Falatovics*, 15 N.E.3d 108, 110 (Ind. Ct. App. 2014). While we presume that an equal division of marital property is appropriate, a party may rebut that presumption by presenting relevant evidence of the following factors that 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 of 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 the property; and
  - (B) a final determination of the property rights of the parties.

Ind. Code § 31-15-7-5.

[10] Husband argues that the trial court abused its discretion when it rejected his argument that he had overcome the equal-division presumption. In support of

his argument, Husband cites *Castaneda v. Castaneda*, 615 N.E.2d 467 (Ind. Ct. App. 1993), claiming that the Remainder Interest was similar to the wife’s future inheritance interest in certain property. However, a balancing of the Indiana Code section 31-15-7-5 factors here suggests that the trial court did not abuse its discretion in adhering to the presumption. For example, at the time of the dissolution hearing, Wife’s monthly income was \$1095.00 in social-security benefits and \$790.00 in disability benefits, which ended the month after the hearing. Husband was still employed, making \$39,000.00 a year. Moreover, the parties had “substantially depleted” Wife’s retirement savings to maintain their home, leaving her with not even \$16,000.00 at the time of their separation, while Husband maintained \$57,000.00 in his retirement accounts. Tr. Vol. II p. 21. Given our deference to the trial court, the parties’ relative economic circumstances and earning abilities, and the depletion of Wife’s retirement savings, we cannot say that the trial court abused its discretion by applying the statutory presumption. *See Wanner*, 888 N.E.2d at 263 (concluding that husband had not overcome the presumption for equal division where the evidence had shown that he had greater earning potential than wife, his retirement was not imminent, he had dissipated marital assets, and wife had been unemployed for two years due to medical treatment).

## II. Valuation of the Lawnmower

[11] “In a dissolution action, the trial court has broad discretion in determining the value of property, and its valuation will only be disturbed for an abuse of discretion.” *Bertholet v. Bertholet*, 725 N.E.2d 487, 497 (Ind. Ct. App. 2000). If

sufficient evidence supports the trial courts' decision, no such abuse occurred. *Id.* In other words, "a trial court does not abuse its discretion where its valuation of property falls within the range of values supported by the evidence." *Trabucco v. Trabucco*, 944 N.E.2d 544, 563 (Ind. Ct. App. 2011), *trans. denied*.

[12] Here, Husband testified that he had valued the lawnmower at \$2500.00 because he had sold one "exactly like" it for that amount the year before. Tr. Vol. II p. 80. Wife testified that she believed its value to be \$6000.00. Husband attempts to cast doubt on Wife's valuation by claiming that Wife vacillated between \$6000.00 and "[p]robably four"; however, it is clear from the context of that statement that it refers to the lawnmower's age, not its value. Tr. Vol. II p. 27. We cannot say that the trial court abused its discretion in valuing lawnmower at \$4250.00, which falls between the values supported by the evidence. *See Trabucco*, 944 N.E.2d at 563.

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

Altice, C.J., and Felix, J. concur.

ATTORNEY FOR APPELLANT

Erik H. Carter  
Carter Legal Services LLC  
Noblesville, Indiana

ATTORNEY FOR APPELLEE

Kristina L. Lynn  
Lynn Law Office, P.C.  
Wabash, Indiana