MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Bobby Joe Depoy, Jr.,
Appellant-Respondent,

v.

Rachel Ann Richter,
Appellee-Petitioner.

April 6, 2022

Court of Appeals Case No. 21A-DN-1777

Appeal from the Miami Circuit Court

The Honorable Timothy P. Spahr, Judge

Trial Court Cause No. 52C01-2010-DN-838

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Respondent, Bobby Joe Depoy, Jr. (Husband), appeals the trial court's dissolution of his marriage to Appellee-Petitioner, Rachel Ann Richter (Wife).

[2] We affirm.

ISSUES

[3] Husband presents this court with two issues on appeal, which we restate as:

(1) Whether the trial court abused its discretion in ordering an unequal division of the marital estate in Wife's favor; and
(2) Whether the trial court abused its discretion in denying Husband's request for spousal maintenance.

FACTS AND PROCEDURAL HISTORY

[4] Husband and Wife were married on February 6, 1993 and they separated on September 26, 2020. No children were born during the marriage. On October 15, 2020, Wife filed her verified petition for dissolution of marriage.

[5] Prior to filing her dissolution petition, Wife graduated from college with a nursing degree in 2020. Upon her graduation, Wife's parents bought her real estate property located at 24 East Second Street, in Peru, Indiana (24 East Property) as a gift. Wife's parents paid the entire purchase price of the 24 East Property and neither Husband nor Wife contributed towards the purchase. Wife obtained possession of the 24 East Property approximately three weeks

prior to filing the petition for dissolution of the marriage. Husband's name was not included on the purchase agreement for the 24 East Property, nor did he hold title to the real estate.

[6] Prior to the dissolution, Wife also held a joint tenancy interest in real property located at 3487 East Mississinewa Road, in Peru, Indiana (Nash Property), which she obtained as a result of a quitclaim deed executed by her uncle. Neither Wife nor Husband contributed any money or maintenance help towards the Nash Property.

[7] After three hearings on respectively April 16, May 21, and June 4, 2021, the trial court entered its Decree of Dissolution of Marriage on June 13, 2021, awarding Wife approximately sixty percent of the marital estate and concluding, in pertinent part, that:

> The presumption that an equal division of the marital property between the parties is just and reasonable has been rebutted. Very shortly before the filing of this marriage dissolution action, Wife received the real estate located at 24 East Second Street, Peru, Indiana, by gift from her parents. Husband never has held title to said real estate. Also, Wife holds joint tenancy interest in the real estate located at 3487 East Mississinewa Road, Peru, Indiana, by virtue of Quitclaim Deed executed by her uncle. Husband has never held title to said real estate, and neither Husband nor Wife has ever contributed any money toward the ownership or maintenance of that real estate. Those factors cut in favor of Wife receiving a significantly greater share of the marital assets. That is partially offset, though, by the fact that it is anticipated that Husband will receive a lower level of income than Wife in the future. Weighing all of the factors against each other, the [c]ourt concludes that it is most appropriate for Wife to

> make a settlement payment in the amount of $25,000.00 to Husband no later than Friday, July 30, 2021. Should Wife fail to pay Husband said amount in full by said deadline, then the unpaid amount shall be reduced to judgment in favor of Husband and against Wife, bearing interest thereon at the statutory rate of 8% per annum, beginning on Friday, July 30, 2021.

(Appellant's App. Vol. II, p. 38). Upon Husband's motion to correct error, filed on July 6, 2021, the trial court amended the Dissolution of Marriage Decree on July 26, 2021 by adding the following provision, in pertinent part:

> In the event that Wife fails to pay the $25,000.00 settlement payment and the $2,000.00 in attorney fees in their entirety on or before Friday, July 30, 2021, Wife shall also be required to promptly list the real estate located at 24 East [Second] Street, Peru, Indiana for sale; diligently pursue the sale of said real estate; and utilize the proceeds from the sale of said real estate to pay the remainder of the amount owed (both principal and interest) under the judgment, as well as any and all attorney fees still owed by Wife pursuant to the Decree of Dissolution of Marriage.

(Appellant's App. Vol. II, p. 64).

[8] Husband now appeals. Additional facts will be provided if necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

[9] An abuse-of-discretion standard of review applies to a trial court's decision on a maintenance award and division of marital assets. *Luttrell v. Luttrell,* 994 N.E.2d 298, 304-05 (Ind. Ct. App. 2013); *Smith v. Smith*, 136 N.E.3d 275, 281

(Ind. Ct. App. 2019). 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. *Mitchell v. Mitchell*, 875 N.E.2d 320, 323 (Ind. Ct. App. 2007). When, like here, the trial court enters findings of fact and conclusions of law, an appellate court may set aside the trial court's judgment only when "clearly erroneous." *Dunson v. Dunson*, 769 N.E.2d 1120, 1123 (Ind. 2002). 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). The same strong presumption applies to a trial court's decision with respect to a maintenance award. *Luttrell*, 994 N.E.2d at 305.

II. *Division of Marital Estate*

[10] Husband contends that the trial court abused its discretion in deviating from the presumptive equal division of the marital assets and by awarding Wife a greater than fifty percent share of the marital estate.

[11] The division of marital property in Indiana involves a two-step process. First, the trial court must identify the property to include in the marital estate. *O'Connell v. O'Connell*, 889 N.E.2d 1, 10 (Ind. Ct. App. 2008). This consists of both assets and liabilities, and encompasses "all marital property," whether acquired by a spouse before the marriage, during the marriage, or procured by the parties jointly. *Miller v. Miller*, 763 N.E.2d 1009, 1012 (Ind. Ct. App. 2002).

Once the court identifies the marital estate, it must then distribute the property in a "just and reasonable" manner. *O'Connell*, 889 N.E.2d at 10 (citing Ind. Code § 31-15-7-5). Indiana Code section 31-15-7-5 (the Division of Property Statute) calls for a presumptive equal division between the parties. A party, however, may rebut this presumption with "relevant evidence" showing "that an equal division would not be just and reasonable." I.C. § 31-15-7-5. This relevant evidence may include each spouse's contribution to the property's acquisition, regardless of whether the contribution produced any income; the extent to which a spouse acquired property, either before the marriage or through inheritance or gift; each spouse's economic circumstances at the time of divorce; the parties' conduct during the marriage, as it related to the disposal or dissipation of assets; and the parties' respective earnings or earning ability. I.C. §§ 31-15-7-5(1)-(5). This statutory list is nonexclusive, and no single factor controls the division of property. *See* I.C. § 31-15-7-5, *McBride v. McBride*, 427 N.E.2d 1148, 1151 (Ind. Ct. App. 1981). Still, "when ordering an unequal division" of marital assets, the trial court must consider all relevant factors under the Division of Property Statute. *Wallace v. Wallace*, 714 N.E.2d 774, 780 (Ind. Ct. App. 1999). Otherwise, the "trial court runs the risk of dividing a marital estate in an unreasonable manner." *Id.* Nonetheless, in the end, a trial court's judgment is "tested by its substance rather than by its form." *Shafer v. Shafer*, 37 N.E.2d 69, 72 (Ind. 1941). "So long as it expressly considers all assets and liabilities, and so long as it offers sufficient findings to rebut the presumptive equal division, a trial court need not follow a rigid, technical

formula in dividing the marital estate and we will assume that it applied the law correctly." *Roetter v. Roetter*, --- N.E.3d – (Ind. March 10, 2022).

[12] Here, after including all marital assets in the marital estate, as evidenced by Exhibit 1 attached to the Dissolution Order, and considering "the evidence in light of the provisions of [I.C. §] 31-15-7-4 and 31-15-7-5," the trial court determined that the presumption of an equal division of the marital estate had been rebutted in favor of Wife. (Appellant's App. Vol. II, p. 38). Specifically, the trial court considered the statutory factors of Wife having acquired property through an inheritance and gift and found that "[t]hose factors cut in favor of Wife receiving a significantly greater share of the marital estate." (Appellant's App. Vol. II, p. 38). However, in weighing these factors, the trial court also determined that Wife's greater share was "partially offset, though, by the fact that it is anticipated that Husband will receive a lower level of income than Wife in the future." (Appellant's App. Vol. II, p. 38).

[13] Husband now contends that the trial court abused its discretion by not including the 24 East Property into the division of the marital property and instead offsetting it to Wife based on it being a gift from Wife's Parents acquired shortly before the filing of the Decree and Husband not holding title to the Property. Husband maintains that "[n]ot only did Husband assist in paying for the property with the use of marital funds, he also created improvements on the property, increasing the value." (Appellant's Br. p. 18). The record reflects that Wife's Parents testified that they provided the full funds necessary to purchase the Property and acquired it as a gift for Wife, deeding the Property in

her sole name, with Wife taking possession of the Property approximately three weeks before the filing of the Dissolution Decree. No evidence was presented indicating that marital funds were used in the acquisition of the Property. Husband's claim of having performed substantial maintenance on the Property is only supported by his own testimony and essentially amounts to nothing more than a request to reweigh the evidence, which we are not allowed to do. *See Goodman v. Goodman*, 94 N.E.3d 733, 742 (Ind. Ct. App. 2018) ("on review, we will neither reweigh the evidence nor assess the credibility of witnesses, and we will consider only the evidence most favorable to the trial court's disposition of the marital property"). The trial court included the 24 East Property in the marital pot, but based on the statutory factor of its acquisition through a gift shortly before the dissolution petition, the trial court found the presumption of an equal division rebutted and awarded the Property to Wife. *See Maxwell v. Maxwell*, 850 N.E.2d 969, 974 (Ind. Ct. App. 2006) (affirming the trial court's unequal division of the marital estate where husband was in possession of an inheritance only a few months during the parties' marriage that lasted over thirty years, the inheritance was not commingled with any marital assets, and Wife had contributed nothing to its acquisition). Accordingly, we cannot find clear error in the trial court's division. *Dunson*, 769 N.E.2d at 1123; *see also Gaskell v. Gaskell*, 900 N.E.2d 13, 19 (Ind. Ct. App. 2009) ("[a]lthough the trial court must include all assets in the marital pot, it may decide to award an asset solely to one spouse as part of its just and reasonable property distribution").

[14] A similar analysis can be used for the Nash Property, which, although included in the marital assets, was awarded to Wife based on her holding a joint tenancy by virtue of a quitclaim deed, and resulted in an unequal division of the estate. Evidence was presented and found credible by the trial court that the Property was intended to be an inheritance to Wife, Wife and Husband never contributed any money towards the ownership or maintenance of the Property, and Husband never held title to the real estate.

[15] Finally, Husband claims error in the trial court's division based on its valuation of the personal property. The parties' personal property at their marital residence, located at 20 East Second Street, in Peru, Indiana was professionally appraised at $59,310.00. In addition, Wife submitted evidence in the form of a videotape that Husband had removed the most valuable items from the marital residence prior to the appraisal. She testified that when Husband removed the items, the back of his extended pickup truck was "completely full. The passenger side was full. The floorboard, um, the bed of the truck was full. [] It was heaped." (Transcript Vol. II, p. 146). She stated that the approximate value of the removed items amounted to about $10,000. Accordingly, the trial court valued the personal property at $71,894. Solely pointing to his own testimony, Husband now denies removing any property from the marital residence and challenges the valuation of the removed property. Again, Husband's claim is a request to reweigh the evidence, which we decline. *See Goodman*, 94 N.E.3d at 742. We find that the trial court's valuation of the

personal property is supported by sufficient evidence and reasonable inferences and is therefore not clearly erroneous. *Dunson*, 769 N.E.2d at 1123.

[16] We conclude that the trial court did not abuse its discretion in determining that the presumptive equal division of the marital estate had been rebutted and by ordering an unequal distribution in favor of Wife, while taking into account Husband's anticipated future income. The trial court properly considered the statutory factors, specifically identified those that supported its decision, and provided a rational basis in arriving at its decision. Therefore, we affirm the trial court's division of the marital estate.

III. *Spousal Maintenance*

[17] Husband contends that the trial court abused its discretion by denying his request for spousal maintenance. Statutorily, the trial court may award spousal maintenance upon finding that a spouse is incapacitated and his or her ability to support himself or herself is materially affected. I.C. § 31-15-7-2(1). Findings are required by statute to support an award of incapacity maintenance, but there is no corresponding requirement that findings be entered when incapacity maintenance is denied. *See* I.C. § 31-15-7-1.

[18] There are two ways in which a party to a divorce may be obligated to make spousal maintenance payments: either the parties agree to maintenance in a negotiated settlement agreement or the court may order maintenance payments in limited circumstances. *Palmby v. Palmby*, 10 N.E.3d 580, 583 (Ind. Ct. App. 2014). One of these circumstances occurs when the trial court finds "a spouse

to be physically or mentally incapacitated to the extent that the ability of the incapacitated spouse to support himself or herself is materially affected[.]" I.C. § 31-15-7-2(1). If the trial court makes that finding, it may order maintenance. *Id*. Because such an award is designed to help provide for the incapacitated spouse's sustenance and support, the essential inquiry is whether the spouse can support himself or herself. *Alexander v. Alexander*, 980 N.E.2d 878, 881 (Ind. Ct. App. 2012). An award of incapacity maintenance is within the trial court's discretion. *Barton v. Barton*, 47 N.E.3d 368, 375 (Ind. Ct. App. 2015).

[19] Husband suffers from fibromyalgia, has had both hips and a shoulder replaced, and has fusions in his neck and back. During the proceeding, Husband testified that although he used to operate an auto shop out of his garage, he had not done so for years, and the extent of his current work was helping friends with very basic and simple jobs free of charge. He presented evidence that he was awarded disability in 2015 and his maximum income was approximately $1,900.00 per month. The record reflects that Wife recently graduated from college with a degree in nursing, had continued earning potential, and Husband had helped pay the bills while she was in school. In its Dissolution Decree, the trial court concluded that "[h]aving considered all of the evidence that has been presented[,] the [c]ourt concludes that no award of incapacity maintenance under [I.C. §] 31-15-7-2(1) is merited." (Appellant's App. Vol. II, p. 39).

[20] We remind Husband that the award of spousal maintenance is within the trial court's discretion. The statute does not enumerate factors that must be considered or facts that must be weighed as the trial court exercises its

discretion in this matter. Here, the trial court considered the evidence before it and made a careful judgment that Husband can support himself and maintenance is not warranted in this case. Husband's argument to the contrary is little more than a request that we reweigh the evidence, which is not within our purview as an appellate court, and therefore, we find no abuse of discretion.

CONCLUSION

[21] Based on the foregoing, we conclude that the trial court did not abuse its discretion in dividing the marital estate and denying Husband's request for spousal maintenance.

[22] We affirm.

[23] Robb, J. and Molter, J. concur