MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Rosen Kaptiev,
Appellant-Respondent,

v.

Silviya Boycheva (formerly Kaptiev),
Appellee-Petitioner.

December 27, 2022

Court of Appeals Case No. 22A-DC-667

Appeal from the Johnson Superior Court

The Honorable Marla K. Clark, Judge

Trial Court Cause No. 41D02-1802-DC-76

Weissmann, Judge.

[1] After a five-year marriage, Silviya Boycheva (Wife) filed for divorce from Rosen Kaptiev (Husband). The trial court ultimately entered a final judgment that valued and divided the couple's property, awarded custody of their two children to Wife, ordered Husband to pay child support, declined to hold Wife in contempt for selling the marital home, and rejected Husband's request that Wife pay his attorney fees. Husband appeals, challenging nearly all aspects of the trial court's judgment. Finding the trial court did not abuse its discretion, we affirm.

Facts

[2] Wife filed for divorce in 2018. She and Husband have two children together and used to live together in Greenwood, Indiana. Husband now lives in Illinois while Wife remains with the children in Indiana. Both are Bulgarian immigrants, with family and marital property still located in Bulgaria. When they married in 2013, Husband was a professional soccer player in Bulgaria and Wife owned a beauty salon, European Style, where she worked.

[3] More than three years after Wife filed for divorce, the trial court issued the final dissolution order. After this, Husband filed a motion to correct errors challenging: (1) valuation of the marital estate; (2) division of the marital estate; (3) child support order; (4) child custody order; and (5) attorneys' fees and contempt findings. The trial court denied the motion in full. Husband now raises these same issues in this appeal.

Discussion and Decision

[4] Where, as here, a trial court sua sponte issues findings of fact and conclusions of law, our standard of review is as follows:

> Sua sponte findings control only as to the issues they cover, and a general judgment standard will control as to the issues upon which there are no findings. We will affirm a general judgment entered with findings if it can be sustained on any legal theory supported by the evidence. When a court has made special findings of fact, we review sufficiency of the evidence using a two-step process. First, we must determine whether the evidence supports the trial court's findings of fact. Second, we must determine whether those findings of fact support the trial court's judgment. We may look both to other findings and beyond the findings to the evidence of record to determine if the result is against the facts and circumstances before the court.

Hecht v. Hecht, 142 N.E.3d 1022, 1029 (Ind. Ct. App. 2020) (internal quotations and citations omitted).

I. Valuation of the Marital Estate

[5] Husband disputes the trial court's valuation of four pieces of marital property: (1) Husband's Bulgarian apartment; (2) a car Husband sold to a family member; (3) Wife's salon, Fiore; and (4) marital credit card debt. We find no error.

[6] Trial courts have "broad discretion" in determining the value of the marital estate. *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). No abuse of this discretion occurs when there is "sufficient evidence and reasonable inferences therefrom to support the result." *Id.* The trial court relies on the parties to

provide evidence of the property's value and does not err when its result falls within a range supported by the evidence. *Sanjari v. Sanjari*, 755 N.E.2d 1186, 1191-92 (Ind. Ct. App. 2001). Husband fails to rebut the trial court's discretion.

[7] First, the trial court did not err in valuing Husband's Bulgarian apartment. Husband argues that—as the owner of the apartment—his proposed valuation should have been adopted by the trial court. But Husband cites no authority, and we are aware of none, for the proposition that a trial court must adopt a property owner's valuation.[1] The trial court heard testimony from both parties on the apartment's valuation and found Wife's evidence more credible. We will not reweigh this evidence. *Quillen*, 671 N.E.2d at 102.

[8] Second, the trial court did not err by including the car in the marital estate. Husband alleges that the vehicle should have been excluded from the marital estate because he had gifted it to a family member well before Wife filed for divorce and thus retained no value in the vehicle. The record reveals the car was sold—not gifted—about one month before the divorce proceedings commenced. Tr. Vol. III, pp. 10-11. Contrary to what Husband would have us believe, Wife testified the vehicle was not given as a "gift," but that Husband's

[1] The lone case to which Husband cites, *Harper v. Goodin*, 409 N.E.2d 1129 (Ind. Ct. App. 1980), recognizes that "[a] landowner may testify as to the value of his land." *Id.* at 1134. But the trial court in that case considered evidence from both sides and declined to adopt the property owner's valuation. *Id.* (awarding lower compensatory damages than requested by property owner on breach of contract claim).

relatives had retained it for "safekeeping." *Id.* This evidence demonstrates a sufficient basis for inclusion of the vehicle in the marital estate.

[9] Next, the trial court did not err in its valuation of Wife's second beauty salon, Fiore. The trial court assigned zero value to Fiore "because it had not yet started to do business" when Wife filed for divorce. Appellant's App. Vol. II, p. 9. Although Husband acknowledges that trial courts have the discretion to pick "any date between the date of filing the dissolution petition and the date of the hearing" for valuation of marital assets, *Quillen*, 671 N.E.2d at 102, he contends Fiore was business ready when Wife filed for divorce. The trial court, however, saw it differently, and its decision finds support in the record.

[10] Wife testified that Fiore's "grand opening" happened eight months after she filed for divorce. Tr. Vol. III, pp. 15-16. Construction was ongoing, furniture was still being moved in, and there were no employees besides Wife when the divorce proceedings began. *Id.* The trial court reasonably relied on Wife's testimony in assigning no value to Fiore. *See Alifimoff v. Stuart*, 192 N.E.3d 987, 999-1000 (Ind. Ct. App. 2022) (declining to include "remote and speculative" assets in the marital estate).

[11] Lastly, there was no error in including the debt from three credit cards as part of the marital estate. Husband argues that this debt should not have been included because it related to the business expenses of Wife's salons, Fiore and European Style. At the hearings, however, Wife testified that these credits cards were largely used for marital expenses. The intermingling of business and family

expenses that Husband referenced resulted from transferring balances between credit cards to avoid interest payments. Tr. Vol. IV, pp. 41-42. Based on this testimony, the trial court acted within its discretion in categorizing the debt as part of the marital estate. *Cf. Bringle v. Bringle*, 150 N.E.3d 1060, 1071-72 (Ind. Ct. App. 2020) (affirming the trial court's finding that business debt be excluded from the marital estate). Husband's arguments to the contrary are simply another request for us to reweigh the evidence, which we will not do. *Id.*

II. Division of the Marital Estate

[12] Husband next asks us to reject the court's 55%-45% division of the marital estate in Wife's favor. He argues the trial court erred in finding Wife rebutted the statutory presumption of an equal split. We disagree.

[13] Just like the valuation of marital assets, a trial court's division of marital property is reviewed for an abuse of discretion. *Roetter v. Roetter*, 182 N.E.3d 221, 225 (Ind. 2022). There is no abuse of this discretion when there is "sufficient evidence and reasonable inferences therefrom to support the result." *Id.* 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).

[14] Indiana has a two-step process for dividing marital property. First, the trial court identifies the property to include in the marital estate. *Roetter*, 182 N.E.3d at 226-27. Second, it distributes this property in a "just and reasonable

manner." *Id.* at 227 (citing Ind. Code § 31-15-7-5). While there is a presumption that the marital property be divided equally between the parties, either party may rebut this presumption with relevant evidence showing "that an equal division would not be just and reasonable." Ind. Code § 31-15-7-5. Such evidence may include:

> (1) each spouse's contribution to the property's acquisition, regardless of whether the contribution produced any income;
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> (2) the extent to which a spouse acquired property, either before the marriage or through inheritance or gift;
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> (3) each spouse's economic circumstances at the time of divorce;
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> (4) the parties' conduct during the marriage, as it related to the disposal or dissipation of assets; and
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> (5) the parties' respective earnings or earning ability.

Roetter, 182 N.E.3d at 227 (describing Ind. Code § 31-15-7-5(1)-(5)). No single factor compels a specific result, and this statutory list of factors is non-exhaustive. *Id.* There is a "strong presumption that" the trial court correctly applied the relevant statutory framework for dividing marital assets. When ordering an unequal division of marital assets, the trial court "must consider *all* relevant factors." *Id.*

[15] The trial court did not err in dividing the marital estate as it relied on a sufficient basis in the record to award Wife a 55% share of the marital estate. In its findings, the trial court observed that Wife entered the marriage with significantly more property than Husband, including the would-be marital

home and her first beauty salon, European Style. Appellant's App. Vol. II, p. 45. Wife was also the primary income-earner during their marriage. While Husband, in contrast, "declined a position in his profession that would have permitted him to contribute to the household expenses." *Id.* In light of this evidence, we cannot say the trial court abused its discretion in awarding Wife a larger share of the marital estate.

[16] Husband also challenges the division of real property as unjust because it left him with only his Bulgarian apartment valued at $90,000. Appellant's Br., p. 21. Courts do not review the division of marital assets "item by item" and, instead, review the division of the marital estate "as a whole." *Fobar v. Vonderahe*, 771 N.E.2d 57, 58 (Ind. 2002). In this case, Husband received 45% of the marital estate. Accordingly, we decline to reweigh the trial court's assignment of the marital property.[2]

III. Child Support

[17] Next, we turn to the trial court's child support calculations. Husband argues that the trial court erred in determining Wife's income and that the amount of child support ordered by the court leaves him without the means to support

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[2] We note that Husband also requests us to remand this case back to the trial court for it to order Wife to remove his name from the commercial leases of Wife's salons, European Style and Fiore. Appellant's Br., pp. 18-19. Instead, the trial court unambiguously assigned all interests in the salons to Wife and declared that each party has "sole responsibility for any debt or obligation . . . [that] encumbers any property awarded to him or her" and "shall indemnify, defend, and save the other absolutely harmless from any debt or obligation." Appellant's App. Vol. II, pp. 46, 49. As this was an acceptable resolution to Husband's concerns, there is no need to remand on this issue.

himself. "Reversal of a trial court's child support order is merited only where the award is clearly erroneous, meaning that the determination is clearly against the logic and effect of the facts and circumstances before the court." *R.B. v. K.S.*, 25 N.E.3d 232, 234 (Ind. Ct. App. 2015). We find no error.

[18] Husband first contends that Wife's income was undervalued in the child support calculation and that the trial court "provided no basis for why [it] settled on the number it did." Appellant's Br., p. 23. But the trial court expressly adopted Wife's gross weekly income as proposed in her last two child support worksheets. Appellant's App. Vol. II, pp. 41-42; Exhs. Vol. I, pp. 226, 228. The trial court relied on Wife's latest tax return in approving the amount. Appellant's App. Vol. II, p. 105; Exhs. Vol. I, pp. 154-168. Yet Husband notes that Wife submitted "no less than five different calculations of her income" over the course of the divorce proceedings. Appellant's Br., p. 23. Because of this, Husband argues, the trial court should have calculated Wife's income by adopting the average of her five weekly income calculations.

[19] The trial court found Wife's multiple income calculations were justified by the parties' changing circumstances. It noted that "the parties' incomes and expenses have all fluctuated in this transition phase and because of issues related to the pandemic and childcare, but the changes were temporary and now seem to have stabilized" as evidenced by the parties' tax returns. Appellant's App. Vol. II, p. 41. Husband's argument is merely an invitation to reweigh the evidence and unjustifiably intrude upon the trial court's discretion in setting the amount of child support. *Young v. Young*, 891 N.E.2d 1045, 1047

(Ind. 2008) ("A trial court's calculation of child support is presumptively valid.").

[20] Husband also argues the child support order will leave him unable to support himself. The Indiana Child Support Guidelines require that any payment be set so that the "obligor is not denied a means of self-support at a subsistence level." *McGill v. McGill*, 801 N.E.2d 1249, 1251 (Ind. Ct. App. 2004) (citing Ind. Child Support Guideline 2). The trial court ordered Husband to pay $179 per week in child support out of his weekly gross income of $655. Appellant's App. Vol. II, p. 49. In setting this amount, the trial court applied the Indiana Child Support Guidelines and adopted its recommendation. *Id.* at 42; *see* Commentary to Child Supp. G. 1 ("There shall be a rebuttable presumption, in any judicial . . . proceeding for the award of child support, that the amount of award which would result from the application of such guidelines is the correct amount of child support to be awarded."). While the trial court did order Husband to pay an additional $75 per week to cover an arrearage he accumulated during the divorce proceedings, the trial court is within its discretion to set the terms of child support arrears payments. *See Meade v. Levett*, 671 N.E.2d 1172, 1179 (Ind. Ct. App. 1996) (upholding additional weekly arrears payment). And contrary to Husband's claims that the amount of his child support payments will leave him destitute, his share of the marital estate and ability to support himself through work leaves him far from supporting himself at a subsistence level. *See McGill*, 801 N.E.2d at 1252-53 (reversing child support payments as too high where Husband's income consisted solely of government disability benefits).

[21] Husband's last challenge to the trial court's child support order alleges that the trial court erred in finding Husband in contempt and assigning a suspended jail sentence for his failure to pay child support. This was the second time the court held Husband in contempt for failing to pay child support. Appellee's App. Vol. II, pp. 12, 47. Husband argues this second contempt order violates his procedural due process rights by threatening to jail him, without a hearing, for "potential prospective acts." Appellant's Br., p. 27. Husband also claims the order is punitive, rather than remedial, in nature. These arguments lack merit.

[22] While it is true, of course, that contempt orders must comply with the requirements of due process, *see* Ind. Code § 34-47-3-1 (listing procedural rights), Husband received this process when the trial court held hearings on the contempt issue. Appellant's App. Vol. II, pp. 15, 17. Husband presented evidence and argument on why he should not be in contempt and was clearly on notice for what behavior led to the court's finding. *Id.* At 114. Husband's three-day suspended sentence is also not unduly punitive. *See Flash v. Holtsclaw*, 789 N.E.2d 955, 959 (Ind. Ct. App. 2003) (upholding sixty-day suspended sentence for civil contempt violation). Thus, the trial court acted within its discretion in holding Husband in contempt for failing to pay child support, and his suspended sentence is not punitive nor a violation of his procedural due process rights.

IV. Custody

[23] Husband alleges the trial court erred in awarding sole custody of the children to Wife. He argues that insufficient evidence supports the trial court's decision and that joint custody, or even his sole custody, is the appropriate result. We disagree.

[24] Courts determining child custody are directed by statute to determine the best interests of the children through consideration of the factors below:

> (1) the age and sex of the children; (2) the wishes of the children's parent or parents; (3) the wishes of the children, with more consideration given if the children are at least fourteen years of age; (4) the interaction and interrelationship of the children with their parents, sibling, and any other person who may significantly affect their best interests; (5) the children's adjustment to their home, school, and community; (6) the mental and physical health of all individuals involved; (7) evidence of a pattern of domestic or family violence by either parent; (8) evidence that the children have been cared for by de facto custodian; (9) and a designation in a power of attorney of the children's parent or de facto custodian.

Anselm v. Anselm, 146 N.E.3d 1042, 1046-47 (Ind. Ct. App. 2020) (listing the requirements of Ind. Code § 31-17-2-8). The trial court need not enter a finding on every factor. *Id.* Rather, the trial court's findings must only be detailed enough to "to provide the parties and the reviewing court with the theory upon which the trial judge decided the case." *Id.* (quoting *In re Paternity of S.A.M.*, 85 N.E.3d 879, 885 (Ind. Ct. App. 2017)).

[25] In this case, the trial court's findings satisfactorily explain its result. *See* Appellant's App. Vol. II, pp. 37-41. The court found the children, the oldest of whom attends school in Wife's neighborhood, to be well-adjusted to living with Wife and well-adapted to her community. The court also determined joint custody to be unsuitable given the parents' history of poor and inappropriate communications. And contrary to Husband's testimony, the court declined to view Husband as the children's primary caregiver during the marriage, finding instead that both parents provided childcare. *Id.* at 40.

[26] To the extent that Husband asks us to ignore or reweigh the trial court's factual findings underlying its decision, we decline to do so. *Hecht v. Hecht*, 142 N.E.3d 1022, 1029 (Ind. Ct. App. 2020). As the evidence supports the trial court's custody determination, we find no error.

V. Contempt Orders and Attorneys' Fees

[27] Husband objects to the trial court's decisions not to hold Wife in contempt as well as its decision to have the parties pay their own attorney's fees. Finding the trial court did not abuse its discretion in either case, we affirm the trial court's judgment on these issues.

[28] We review contempt findings under an abuse of discretion standard. *Reynolds v. Reynolds*, 64 N.E.3d 829, 832 (Ind. 2016). We will reverse the trial court's determination "only if there is no evidence or inference therefrom to support the finding." *Id.* (quoting *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016)). According deference to a trial court's contempt findings respects its "inherent

power to 'maintain its dignity, secure obedience to its process and rules, rebuke interference with the conduct of business, and punish unseemly behavior.'" *Id.*

[29] The trial court did not abuse its discretion in declining to find Wife in contempt for selling marital assets. After the parties divorced, Wife sold the marital home and family vehicle and used the proceeds to buy another house and vehicle. This violated the trial court's preliminary order, which prevented the parties from disposing or divesting themselves of any marital property. Appellant's App. Vol. II, p. 56. But Wife testified she believed the court's order allowed each party to dispose of property that was solely owned by the party. Tr. Vol. II, p. 241. Based on that testimony, the trial court declined to hold Wife in contempt, reasoning that she did not "willfully violate" the court's order. Appellant's App. Vol. II, p. 47. Accordingly, we affirm the judgment of the trial court.

[30] Lastly, Husband challenges the trial court's decision to make each party pay their own attorneys' fees.[3] Husband argues that he was entitled to Wife's payment of his attorney fees, given Wife's higher income and future earning potential. He also claims her allegedly vexatious behavior during the divorce proceedings increased his attorney costs. Trial courts, however, have "broad discretion in awarding attorney's fees." *Bessolo v. Rosario*, 966 N.E.2d 725, 733

[3] Although Husband was ordered to pay $1,000 towards Wife's attorney's fees in conjunction with this contempt finding, this payment was offset by the court also requiring Wife to pay $1,000 towards Husband's attorney's fees for violating the court ordered parenting time schedule. *Id.*

(Ind. Ct. App. 2012). Indeed, the trial court is not even required to "give its reasons for its decision to award attorney's fees." *Thompson v. Thompson*, 811 N.E.2d 888, 928 (Ind. Ct. App. 2004). Given the wide latitude trial courts have in resolving attorney fee requests, we cannot say the court erred.

[31] Finding the trial court committed no errors, we affirm the trial court's judgment.

May, J., and Crone, J., concur.