MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Juan C. Bravo,
Appellant-Respondent

v.

Heather N. Bravo,
Appellee-Petitioner

February 28, 2024

Court of Appeals Case No.
23A-DC-1115

Appeal from the Marion Superior Court

The Honorable Marie L. Kern, Magistrate

Trial Court Cause No.
49D16-2103-DC-002366

Memorandum Decision by Judge Felix
Judges Bailey and May concur.

Felix, Judge.

Statement of the Case

[1] Heather ("Wife") and Juan ("Husband") Bravo were married for eight years before Wife filed for divorce. During the marriage they had two children and accumulated assets and debts. They started a local restaurant, Don Juan's Taqueria (the "Restaurant"). They agreed to the valuation and disposition of most of the marital estate except the Restaurant. After a final hearing, the trial court dissolved the marriage; determined custody, parenting time, child support; and valued and divided the marital property. Husband presents one issue on appeal, which we restate as follows: Whether the trial court abused its discretion in its valuation of the Restaurant.

[2] We affirm.

Facts and Procedural History

[3] On March 9, 2013, Husband and Wife married, and they lived together in Indianapolis, Indiana. In 2018, Husband and Wife opened the Restaurant. On March 29, 2021, Wife filed a Petition for the Dissolution of Marriage.

[4] The trial court conducted a two-day hearing on Wife's petition on August 25, 2022, and December 19, 2022. During the hearing, Husband offered into evidence an email, dated September 28, 2021, from Michael Gaby. Gaby had been the accountant for the Restaurant since it opened, and the email provided multiple metrics for valuation. Based on these metrics, he concluded that the

value of the Restaurant was "somewhere between $65,000 and $70,000." Ex. Vol. II at 123. At the hearing, Gaby served as Husband's expert witness and testified that he still agreed with this valuation of the Restaurant.

[5] During Husband's testimony, Wife offered the Restaurant's 2020 Schedule K-1 tax document into evidence. The Schedule K-1 indicated Husband was the 100% shareholder in the business and that the Restaurant owed, at the beginning of the year, a shareholder's loan in the amount of $99,619. The Schedule K-1 also indicated that at the end of the year the Restaurant still owed $59,233 on the loan. At the hearing, Husband stated the document had been prepared by Gaby; however, he disputed much of the information in the Schedule K-1. Husband did not agree that (1) he was the 100% shareholder, (2) $40,386 had been repaid on the loan, and (3) he was still owed $59,233 from the Restaurant.

[6] Husband claimed he sold the Restaurant in either late 2020 or early 2021. At the hearing, Husband testified that he sold the Restaurant to his mother in August of 2020. However, Wife testified that Husband had presented himself as the Restaurant's owner up until February 2021, and the Restaurant's liquor license showed Husband as the manger/president of the Restaurant through March 2021. Regardless, Husband failed to provide any documentary evidence showing a sale or transfer of the Restaurant at all. Additionally, from May 2021 to June 2022, Husband used the Restaurant's business account to pay for $5,665 worth of personal expenses including "auto insurance, gas, cell phone

[bills], child support payments and personal travel." Appellant's App. Vol. II at 27–28.

[7] On April 21, 2023, the trial court entered a Decree of Dissolution. The trial court issued findings sua sponte, and the relevant findings and conclusions are as follows:

> 65. [Husband] presented no evidence of a unit purchase agreement, assignment, corporate resolution, or any other evidence showing that he sold, transferred, or assigned his interest in [the Restaurant] to his parents or anyone else.
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> 66. [Husband] did not submit his 2021 federal or state tax return and claims he has not filed his 2021 taxes.
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> 67. The Court does not find [Husband] credible regarding the transfer or sale of his interest in [the Restaurant].
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> 68. The Court finds [Husband] owned 100% of [the Restaurant] during the marriage and does not find credible evidence to demonstrate any transfer of interest occurred prior to the filing of the dissolution, and if there was a transfer on or around March 1, 2021, the transfer is considered to be a fraudulent transfer, done for the purposes of avoiding the inclusion of the asset in the marital estate.
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> 69. [Husband's] CPA, Michael Gaby, presented evidence regarding the value of [the Restaurant]. Based upon that evidence, the Court determines a reasonable value to attribute to the business to be $68,000.
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> 70. The Court orders the value of [the Restaurant] is a marital asset and shall be included in the marital estate.

> 71. [Husband] is found to have an outstanding shareholder's loan to [the Restaurant] in the amount of $59,233.00, which shall also be considered an asset in the marital estate.
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> * * *
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> 82. [Husband] is awarded sole and exclusive ownership of any interest he may have currently or had during the marriage of [the Restaurant] or any other property associated with the business. This includes any outstanding shareholder's loan made by [Husband] or by the parties to the business.

Appellant's App. Vol. II at 33–36. The trial court ordered a 52/48 split of the marital property in favor of Wife, which included a $1,398.84 equalization payment to Husband. Husband now appeals.

Discussion and Decision

[8] Husband argues that the trial court abused its discretion in its valuation of the Restaurant.

> When reviewing valuation decisions of trial courts in dissolution actions, [our] standard of review [is as follows]: that the trial court has broad discretion in ascertaining the value of property in a dissolution action, and its valuation will not be disturbed absent an abuse of that discretion. The trial court does not abuse its discretion if there is sufficient evidence and reasonable inferences therefrom to support the result. In other words, we will not reverse the trial court unless the decision is clearly against the logic and effect of the facts and circumstances before it. A reviewing court will not weigh evidence, but will consider the evidence in a light most favorable to the judgment.

Nix v. Nix, 205 N.E.3d 1010, 1012 (Ind. Ct. App. 2023) (internal citations omitted) (quoting *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996)), *trans not. sought*. "Generally, a trial court does not abuse its discretion if the court's chosen valuation is within the range of values supported by the evidence." *Henderson v. Henderson*, 139 N.E.3d 227, 235 (Ind. Ct. App. 2019) (citing *Crider v. Crider*, 15 N.E.3d 1042, 1056 (Ind. Ct. App. 2014), *trans. denied*). The parties have the burden of producing evidence as to the value of the property. *Id.* (quoting *Galloway v. Galloway*, 855 N.E.2d 302, 306 (Ind. Ct. App. 2006)). "[A] valuation submitted by one of the parties is competent evidence of the value of property . . . and may alone support the trial court's determination in that regard." *Nix*, 205 N.E.3d at 1012 (quoting *Alexander v. Alexander*, 927 N.E.2d 926, 935 (Ind. Ct. App. 2010)).

[9] Husband argues that the trial court failed to incorporate the debt from the shareholder loan into its valuation of the Restaurant, and he is seeking an increased equalization payment.[1] The trial court relied on Gaby's testimony and email to value the Restaurant. There is nothing on the record that indicates Gaby failed to include the shareholder's loan debt in his valuations. Neither Husband nor Wife questioned Gaby about the Restaurant's debt or about the relevant factors he considered in his valuations. Gaby's testimony only provided his agreement with the valuation in the September 28, 2021, email.

[1] We note that, in his briefs, Husband provides two different amounts for his proposed equalization payment. In his initial brief, Husband claims the trial court should have awarded him $37,250, whereas in his reply brief, he claims this amount should be $32,200.

Gaby both prepared the Schedule K-1, which stated that the Restaurant owed $59,233 at the end of 2020, and provided a range for the 2021 value of the Restaurant. Gaby estimated the value of the Restaurant to be between $65,000 and $70,000. Therefore, the evidence supports the reasonable inference that Gaby accounted for the Restaurant's debt when he determined the value of the Restaurant. The trial court did not abuse its discretion in valuing the Restaurant.[2]

[10] Affirmed.

Bailey, J., and May, J., concur.

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[2] In his reply brief, Husband raises new arguments about the valuation of the Restaurant. Appellant's Reply Br. at 4–7. Wife has filed a Motion to Strike these newly presented arguments. Wife's Mot. Strike at 2–7. It is well-settled that arguments raised for the first time in a reply brief are waived. *Lockerbie Glove Co. Town Home Owner's Ass'n, Inc. v. Indianapolis Historic Pres. Comm'n*, 194 N.E.3d 1175, 1184 n.7 (Ind. Ct. App. 2022) (quoting *Kirchgessner v. Kirchgessner*, 103 N.E.3d 676, 682 (Ind. Ct. App. 2018)). Because we do not consider Husband's new arguments, we issue contemporaneously with this decision an order denying as moot Wife's Motion to Strike. *See Wireman v. Laporte Hosp. Co., LLC*, 205 N.E.3d 1041, 1046 n.2 (Ind. Ct. App. 2023).