MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Kevin C.M. Peggs,
Appellant,

v.

Hollee P. Peggs,
Appellee.

April 26, 2022

Court of Appeals Case No. 21A-DC-2430

Appeal from the Rush Circuit Court

The Honorable Matthew D. Bailey, Special Judge

Trial Court Cause No. 70C01-1806-DC-208

Bailey, Judge.

Case Summary

[1] Kevin Peggs ("Husband") appeals the denial of his motion to correct error, which challenged the property division in the dissolution of his marriage to Hollee Peggs ("Wife"). Husband presents the sole issue of whether the trial court abused its discretion by dividing the marital pot without deviation from the statutory presumptive fifty-fifty split. We affirm.

Facts and Procedural History

[2] The parties were married on March 23, 2013. Two children were born of the marriage. On June 25, 2018, Husband petitioned for dissolution of the marriage. On November 23, 2020, the trial court entered an order dissolving the marriage and reserving for hearing matters of property distribution, child custody, and parenting time. The trial court conducted a bifurcated hearing on May 6 and May 7, 2021.

[3] On August 5, 2021, the trial court entered its post-dissolution order, granting Husband primary legal and physical custody of the parties' children, awarding Wife parenting time in excess of that afforded by the Indiana Parenting Time Guidelines, ordering Husband to pay $88.00 weekly in child support, and dividing the marital pot equally. Husband was ordered to make an equalization payment to Wife in the amount of $81,347.06. He now appeals.

Discussion and Decision

Standard of Review

[4] The division of marital assets lies within the sound discretion of the trial court. *Bloodgood v. Bloodgood*, 679 N.E.2d 953, 956 (Ind.Ct.App.1997). Here, the trial court issued specific findings upon a timely written request from Wife, pursuant to Indiana Trial Rule 52(A). Our standard of review for specific findings entered after a party has requested them is two-tiered. *Id.* First, we determine whether the evidence supports the findings, and then whether the findings support the judgment. *Id.* We will reverse the judgment only when it is clearly erroneous. *Id.* Findings are clearly erroneous when the record lacks any evidence to support them. *Id.* In conducting our review, we will neither reweigh the evidence nor assess witness credibility. *Id.*

[5] Additionally, there is a longstanding policy that appellate courts should defer to the determination of trial courts in family law matters. *Gold v. Weather*, 14 N.E.3d 836, 841 (Ind. Ct. App. 2014), *trans. denied.* We accord this deference because the trial court, who saw and interacted with the witnesses, is in the best position to assess credibility and character. *Id.*

Property Division

[6] Indiana Code Section 31-15-7-5 provides:

> The court shall presume that an equal division of the marital property between the parties is just and reasonable. However, this presumption may be rebutted by a party who presents relevant evidence, including evidence concerning 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 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 earnings ability of the parties as related to:
>
> (A) a final division of property; and
>
> (B) a final determination of the property rights of the parties.

[7] "If the court deviates from the presumptive equal division, it must state its reasons for that deviation in its findings and judgment." *Bock v. Bock*, 116 N.E.3d 1124, 1130 (Ind. Ct. App. 2018). A party challenging the trial court's division of the marital estate on appeal must overcome a strong presumption that the trial court

considered and complied with the applicable statute. *Eye v. Eye*, 849 N.E.2d 698, 701 (Ind. Ct. App. 2006). Although the facts and reasonable inferences might allow for a different conclusion, we will not substitute our judgment for that of the trial court. *Akers v. Akers*, 729 N.E.2d 1029, 1032 (Ind. Ct. App. 2000).

[8] Here, Wife requested that all property in the marital pot be divided between the parties while Husband requested that all property he acquired before the marriage be set aside to him. The trial court declined to set aside any property to Husband before dividing the marital pot, and then divided the marital pot on a fifty-fifty basis. Husband argues that the trial court "erroneously included" assets Husband held prior to the marriage and failed to properly consider the factors of Indiana Code Section 31-15-7-5, ultimately abusing its discretion by awarding Wife half the marital pot. Appellant's Brief at 10.

[9] At the outset, we observe that the trial court did not err in including Husband's premarital property in the marital pot.

> It is well settled that in a dissolution action, 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. . . . "The requirement that all marital assets be placed in the marital pot is meant to insure [sic] that the trial court first determines that value before endeavoring to divide property." *Montgomery v. Faust*, 910 N.E.2d 234, 238 (Ind. Ct. App. 2009). "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." *Wanner v. Hutchcroft*, 888 N.E.2d 260, 263 (Ind. Ct. App. 2008). While the trial court may decide to award a particular asset solely

> to one spouse as part of its just and reasonable property division, it must first include the asset in its consideration of the marital estate to be divided. *Hill v. Hill*, 863 N.E.2d 456, 460 (Ind. Ct. App. 2007). The systematic exclusion of any marital asset from the marital pot is erroneous. *Wilson v. Wilson*, 409 N.E.2d 1169, 1173 (Ind. Ct. App. 1980).

Falatovics v. Falatovics, 15 N.E.3d 108, 110 (Ind. Ct. App. 2014).

[10] Relative to the decision to split the marital pot on a fifty-fifty basis, the trial court found that Husband had greater earnings capacity than Wife. Husband earns in excess of $100,000.00 per year by farming and operating excavating equipment. Wife earns $14.00 per hour as a hospital technician.

[11] Husband argues that the trial court focused solely upon the disparate earnings and ignored other relevant factors of Indiana Code Section 31-15-7-5. Husband emphasizes the fact that the marriage was of five years' duration. He considers it to be a marriage of "short duration" in which pre-marital assets were not "commingled." Appellant's Brief at 14. The trial court's order recites the dates of marriage and separation; thus, the trial court was aware of the duration of the marriage. The trial court's order, with detailed attachments, also acknowledges that, during the marriage, two children were born, the excavating business was formed, and the value of the couple's assets increased. The trial court determined that, upon termination of the personal and professional partnership, a fifty-fifty split was just and reasonable. Husband's arguments present a request for reweighing of evidence, an invitation that we decline. *See Bloodgood*, 679 N.E.2d at 956.

Conclusion

[12] Husband has failed to demonstrate an abuse of the trial court's discretion in its decision to retain all assets, however acquired, within the marital pot, and then divide those assets equally.

[13] Affirmed.

Najam, J., and Bradford, C.J, concur.