

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Jack L. Carpenter,  
*Appellant-Respondent,*

v.

Lisa R. Carpenter (n/k/a Ball),  
*Appellee-Petitioner.*

April 15, 2021

Court of Appeals Case No.  
20A-DN-2239

Appeal from the Marshall Circuit  
Court

The Honorable Curtis D. Palmer,  
Judge

Trial Court Cause No.  
50C01-1805-DN-80

**Baker, Senior Judge.**

### Statement of the Case

- [1] Jack L. Carpenter (Carpenter) appeals from the trial court's order after remand, challenging the court's equal division of the marital estate. We affirm.

## Issue

- [2] Carpenter raises one issue for our review, which we restate as the following question: Did the trial court misapply this Court's instructions on remand when it entered its order providing for an equal distribution of the marital estate including the marital home?

## Facts and Procedural History

- [3] The factual background leading up to the present appeal was set forth in detail in our original opinion affirming in part and reversing and remanding the matter to the trial court for recalculation of the division of the marital property. *See Carpenter v. Carpenter*, No. 19A-DN-2512, 2020 WL 1808051 at \*1-2 (Ind. Ct. App. April 9, 2020), *trans. denied*. Briefly summarizing, Carpenter sought damages after his first wife was tragically killed in an automobile accident. *Id.* at \*1. He received a \$4.6 million settlement from the wrongful death action after his marriage to Lisa R. Carpenter, n/k/a Lisa R. Ball (Ball), and roughly half of the money was placed in trust for his two sons. *Id.* He used about \$1 million of the settlement proceeds to build a new marital home and other amenities on an eight-acre parcel gifted to the couple from Ball's parents. *Id.* The remainder of the settlement funds, \$345,080, was placed in an account he kept separate from other marital property. *Id.* Although there was a distinct division of responsibility for payment of various expenses, he and Ball lived in the home as a couple raising a blended family for eighteen years. *Id.* She was

mostly responsible for the chores inside the home, while Carpenter was largely responsible for the chores outdoors. Appellant's App. Vol. 2, p. 15.

- [4] In prior proceedings related to the dissolution petition filed by Ball, the trial court treated the \$345,080 in settlement funds as Carpenter's individual property not to be included in the marital pot; found that the presumption of an equal distribution of the assets in the marital pot had been rebutted by Carpenter; and, awarded eighty percent of those identified marital assets in the marital pot, including the marital home, to Carpenter with the remaining twenty percent going to Ball. *See Carpenter*, 2020 WL 1808051, at \*2.
- [5] On appeal from that order, and as it pertains to the issue in the current appeal, this Court concluded that the trial court (1) abused its discretion in its division of the marital property by applying the concept of traceability to settlement funds used to build the marital home, resulting in an uneven distribution of marital property and (2) used an improper method of setting off Carpenter's remaining settlement funds from the marital pot. *Id.* at \*5-6. Ball made no claim to the \$345,080 of settlement funds held separately, but argued that it should have been included in the marital pot first and then set off to Carpenter in the division of property; and, that the trial court had abused its discretion by awarding Carpenter the majority of the value of the marital home. *Id.* at \*5.
- [6] This Court's opinion concluded with the following instruction on remand to the trial court:

Based on the forgoing, we conclude that the settlement funds Carpenter used to pay for construction of the marital residence lost their identity as settlement funds and became commingled marital property. Our conclusion in this regard negates the trial court's justification for awarding its unequal distribution of marital assets, especially where Carpenter received settlement funds in addition to eighty percent of the other marital assets, including the marital home. Aside from improperly tracing Carpenter's settlement funds to the marital residence, there is no other justification for awarding Carpenter eighty percent of the home's value. In sum, we hold that the disparity in the distribution of marital property is clearly against the logic and effect of the facts and circumstances before the court. *We remand to the trial court to recalculate division of marital property in accordance with this decision.*

*Id.* at \*6 (emphasis added).

[7] On remand, Ball requested the trial court set the matter for a hearing. A hearing date was set by a senior judge handling matters filed during her period of service, but the date was later vacated by the regular judge. Instead, the regular judge, who had issued the original order and decree, entered an amended decree of dissolution, which, in pertinent part, made an equal division of the marital home.<sup>1</sup> The relevant changes to, and amendment of, the court's order follow:

~~31. The court finds the wrongful death settlement funds paid to the Husband to be similar in kind to property obtained by one~~

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<sup>1</sup> The amended spreadsheet reflects that the marital home was awarded to Carpenter. Appellant's App. Vol. 2, p. 19. The spreadsheet also shows that Carpenter owed Ball \$322,488.50 to equalize the various awards of marital property to accomplish a 50/50 split. *Id.*

~~spouse through inheritance or gift as referred to in IC § 31-15-7-5(2)(B).~~

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34. After consideration of all of the factors listed in I.C. § 31-15-7-5, and consideration of the Court of Appeals decision in this matter, the Court finds no evidence to rebut the presumption of equal property division and therefore determines that the marital estate should be divided 50% to the Husband and 50% to the Wife. (After the set-off for the Merrill Lynch accounts of the boys and the Trake loan.)

35. A full recapitulation of all divided assets is shown on the amended spreadsheet attached as Exhibit 1, which is hereby made a part of this Amended Decree. The equalization amount of \$322,488.50 shown on the attached amended spreadsheet owed from the Husband to the Wife is hereby made a judgment to be satisfied by the payment of \$322,488.50 in cash within ninety (90) days of the date of this Amended Decree. Interest at the statutory rate shall begin to accrue after sixty (60) days from the date of original Decree.

Appellant's App. Vol. 2, pp. 16-17.

- [8] Carpenter filed a motion to correct error in which he asked the trial court to vacate its amended order and set the matter for hearing. After briefing had concluded, the trial court denied the motion. Carpenter now appeals.

## Discussion and Decision

- [9] The gist of Carpenter's argument is that the trial court misunderstood and misapplied this Court's remand order because it (1) reached its decision without holding a hearing, and (2) entered an order evenly dividing the marital estate. Carpenter argues that the trial court's 50/50 split of the marital home is

evidence that the trial court felt compelled to reach this decision by language in our opinion, without the benefit of argument of counsel, and without considering the record anew to reach its calculations. We disagree.

[10] Carpenter says that the trial court misapplied the law on remand and suggests that our review is de novo. *See* Appellant’s Br. p. 9 (citing *Deal v. Gittings*, 144 N.E.3d 716, 723 (Ind. Ct. App. 2020)). However, Carpenter argues that evidence of the court’s misapplication of the law is found in its decision calling for an equal division of the property where the evidence did not support that finding. This suggests an evidentiary challenge.

[11] The trial court issued an amended decree of dissolution with findings to support its orders and decree. Appellant’s App. Vol. 2, pp. 11-18. Indiana Trial Rule 52(A) prohibits this Court from setting aside the findings “unless clearly erroneous[.]” “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997) (quotations omitted). “A judgment is clearly erroneous if it applies the wrong legal standard to properly found facts.” *Id.* We address the contentions accordingly.

[12] Carpenter states,

Mr. Carpenter is not asking for a new trial or to submit new evidence. He asks to be heard on the issues left open after *Carpenter I* and to have the trial court determine the proper distribution of the marital estate under the statutory factors applicable under Ind. Code § 31-15-7-5. In accordance with the remand, any argument on these factors would be based on the

existing record before the trial court and would consist of the very hearing the trial court originally scheduled on Ms. Ball's motion.

Appellant's Br. p. 13, n.1. Carpenter argues that the trial court's silence on facts he offered to overcome the presumption of an equal distribution should lead us to the conclusion that the trial court failed to consider those facts.

[13] The record before us reflects that we instructed the trial court to "recalculate division of the marital property" in accordance with our decision, which eliminated the concept of traceability from that calculation. *See Carpenter*, 2020 WL 1808051, at \*6. As for the trial court's failure to hold a hearing and to allow the parties to brief the matter in light of our decision, it was within the trial court's prerogative to handle the matter as it saw fit. We merely ordered the trial court to conduct a recalculation.

[14] Ball says that the Court's opinion mandates the result the trial court reached, but also argues in the alternative that the result is appropriate without the mandate. *See Appellee's Br.* pp. 11, 15. We disagree that our opinion mandated the outcome. The language from the order—"Aside from improperly tracing Carpenter's settlement funds to the marital residence, there is no other justification for awarding Carpenter eighty percent of the home's value," *see Carpenter*, 2020 WL 1808051, at \*6—does not compel a 50/50 split. It merely stated that an 80/20 split was not supported absent the concept of tracing. Something other than a 50/50 split might have been supported by the evidence, but that was for the trial court to decide on remand.

- [15] Although Carpenter complains the trial court did not consider the evidence, it is equally plausible that the trial court determined, as its order states, that the evidence did not make a 50/50 split unreasonable. Even though something other than a 50/50 split could have been justified, the trial court concluded that the evidence did not compel it.
- [16] Further, Indiana Code section 31-15-7-5 (1997) informs trial courts that they “shall presume that an equal division of the marital property between the parties is just and reasonable.” The fact that the trial court entered an order calling for an equal distribution does not establish that the trial court failed to consider the statutory elements considered when a party attempts to rebut the presumption. This is especially true here where the trial court explicitly stated that it had considered the statutory factors.
- [17] In paragraph 10 of the court’s order, the court found that the settlement funds became marital property but were never commingled with Ball’s funds. Appellant’s App. Vol. 2, p. 14. The court further found that although the contributions of each spouse to the “acquisition and improvement of the real estate” were not equal, Carpenter “retain[ed] the marital real estate and the vast majority of the personal property. [Ball] had to move and obtain and furnish a new place to live.” *Id.* at 17.
- [18] The order reflects that the court considered the statutory factors and this Court’s opinion and concluded that an equal division was warranted. *Id.* at 17. The court referenced an amended spreadsheet, spelling out the division of marital

property including the marital home. *Id.* This record leads us to the conclusion that the trial court did exactly what Carpenter asks. It considered the statutory factors and our opinion. However, it came to the reasoned determination that because Carpenter's rebuttal evidence could not overcome the statutory presumption, an equal distribution was reasonable.

[19] We find that the trial court's judgment is not clearly erroneous.

## Conclusion

[20] For the foregoing reasons, we affirm the trial court's judgment.

[21] Affirmed.

Kirsch, J., and Vaidik, J., concur.