

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.



ATTORNEY FOR APPELLANT

Caroline B. Briggs
Lafayette, Indiana

ATTORNEY FOR APPELLEE

Braden J. Dean
Hillis, Hillis, Rozzi & Dean
Logansport, Indiana

IN THE COURT OF APPEALS OF INDIANA

Todd L. Flora,
Appellant-Defendant,

v.

Marsha M. Flora,
Appellee-Plaintiff.

April 6, 2022

Court of Appeals Case No.
21A-DC-1611

Appeal from the Cass Circuit
Court

The Honorable Stephen Kitts,
Judge

Trial Court Cause No.
09C01-2001-DC-16

Bailey, Judge.

Case Summary

[1] Todd Flora (“Husband”) appeals the denial of his motion to correct error, which challenged an order dissolving his marriage to Marsha Flora (“Wife”), with respect to the property division, parenting time, and child support. We affirm in part, reverse in part, and remand with instructions.

Issues

[2] Husband presents the following restated issues for review:

- I. Whether the equalization order for the payment of \$21,418.00 is supported by sufficient factual findings;
- II. Whether the trial court abused its discretion by deviating from the presumptive fifty-fifty division of the marital pot;
- III. Whether the trial court abused its discretion by conditioning Husband’s exercise of overnight parenting time upon proof of access to a functional bathroom and adequate sleeping accommodations;
- IV. Whether the trial court abused its discretion by declining to allocate to Wife potential income for purposes of child support; and
- V. Whether the trial court abused its discretion by ordering that child tax exemptions or credits would be equally divided and that a 2020 tax refund would be split 60/40.

Facts and Procedural History

- [3] In 2003, a few months before marrying Husband, Wife adopted a disabled child. Wife ceased her employment as a registered nurse and her sole personal income consisted of adoption subsidy payments. Husband was employed at A. Raymond Tinnerman in Logansport, Indiana, where he is still employed. At the time of the marriage, Husband owned three houses. One house was occupied as the marital residence; one house was uninhabitable and used for storage; one house was occupied rent-free by Husband's brother.
- [4] Between 2006 and 2010, Husband and Wife had four children ("Children"). During the marriage, Husband controlled the family finances. He paid off consumer debt brought into the marriage by Wife and also satisfied the small mortgage on the marital residence. However, Husband refused to give Wife any funds for household expenses and insisted that she use her adoption subsidy payments to cover homeschooling and transportation expenses and to provide food and other necessities for the entire family.¹ He was willing to pay for some utility services but unwilling to replace a broken furnace or hot water heater. Eventually, Husband altered his tax withholding and stopped filing tax returns after Wife asked him to share any refunds.

¹ For example, when Wife obtained the services of a midwife for home births, Husband did not contribute any funds from his income.

[5] In January of 2020, Husband was arrested and charged with battering Wife. On January 31, 2020, Husband filed a petition for dissolution of the marriage. In a provisional order, Wife was given temporary possession of the marital residence and awarded \$250.00 weekly as child support. The trial court ordered that Husband install a functioning furnace and hot water heater at the marital residence. Over the next several months, the parties conducted discovery, attended depositions, reached agreements with respect to some items of personal property, and obtained professional accounting services for the filing of delinquent income tax returns.

[6] The trial court conducted a final hearing on October 30, 2020, and February 23, 2021. On April 27, 2021, the trial court entered its findings of fact, conclusions thereon, and decree dissolving the marriage. Consistent with the parties' agreement, they were to share joint legal custody of Children and Wife was to have primary physical custody. Husband, whose annual income was approximately \$48,000.00, was ordered to pay \$313.00 weekly as child support; no income was imputed to Wife. The majority of the personal property having been distributed by agreement of the parties, they were afforded sixty days to divide the remaining property or request a further hearing. With respect to the real property, the trial court's order stated that Wife's "calculations with respect to the division" had been adopted. (App. Vol. II, pg. 26.) Husband was ordered to pay Wife \$21,418.00. He now appeals.

Discussion and Decision

Standard of Review

- [7] Husband filed a timely written request for special findings pursuant to Indiana Trial Rule 52(A). When a trial court enters findings of fact pursuant to this rule, we review for clear error, employing a two-tiered standard of review. *In re the Paternity of M.G.S.*, 756 N.E.2d 990, 996 (Ind. Ct. App. 2001). First, we must determine whether the evidence supports the trial court’s findings of fact and second, we must determine whether those findings of fact support the trial court’s conclusions thereon. *Id.* Findings are clearly erroneous only when the record leaves us with a firm conviction that a mistake has been made. *Bowling v. Poole*, 756 N.E.2d 983, 988 (Ind. Ct. App. 2001). We do not reweigh the evidence but consider the evidence most favorable to the judgment with all reasonable inferences drawn in favor of the judgment. *Id.* A trial court clearly errs if it relies upon an incorrect legal standard. *Id.*
- [8] In conjunction with the Trial Rule 52 standard, 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 Equalization Order

- [9] 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.

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).

[10] Here, the dissolution order provides with respect to property division:

The Court assigns possession of [Husband]’s inherited coin collection to [Husband]. Otherwise, the parties have Sixty (60) days to agree upon the division of remaining personal property. If no agreement is reached, the parties may return to court for further litigation.

The cost of storing [Wife]’s belongings is assigned to [Wife].

The Court otherwise adopts the values and calculations offered by [Wife] with respect to the division of personal property, including but not limited to the acquisition of the lawn mower ... and the wood burning stove discussed at hearing.

For the reasons stated above, the Court adopts [Wife]’s calculations with respect to the division of the real estate held by the parties.

The Court hereby enters judgment in favor of [Wife] in the amount of \$21,418, subject to statutory interest in the amount of Eight (8)% per annum.

(App. Vol. II, pg. 26.)

[11] Husband contends that the dissolution order is clearly erroneous in that it lacks factual findings specifying which party should receive which parcel of real property and also factual findings supporting the equalization order. Wife responds that the trial court adopted her Exhibit LL. Wife proposed that she

receive the marital residence, with an agreed-upon valuation of \$110,750.00, and that Husband receive the two other real estate properties, with an agreed-upon aggregate valuation of \$46,000.00. The trial court may have intended this disposition of the real estate. However, although the trial court may have intended to mirror Wife's Exhibit LL in this regard, the corresponding values do not facially support the equalization award. Nor are there findings of fact explaining the calculation. We thus remand for a detailed property distribution order.

Deviation from Presumptive 50/50 Split

[12] Wife requested that all property in the marital pot be divided between the parties while Husband requested that inherited property and property 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. Wife asked that the marital pot be split 60/40 in her favor, and the trial court was persuaded that Wife had rebutted the equal division presumption of Indiana Code Section 31-15-7-5. Husband argues that the trial court abused its discretion in this regard.

[13] "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).

[14] Here, the trial court found that Husband had dissipated marital assets. In particular, the court found: “[Husband] refused to file taxes for years, resulting in the loss of tens of thousands of dollars in refunds.” (App. Vol. II, pg. 19.) Moreover, the trial court was persuaded that Husband had “denied [Wife] access to marital funds,” denied “[Wife] access to information about the funds,” and had not fully disclosed marital assets in the discovery process:

He has continued to hide thousands of dollars from [Wife] and repeatedly obstructed her attempts at discovery in this cause with respect to the hidden funds[.]

(*Id.* at 19-20.) The factual findings are supported by Wife’s testimony that Husband received tax forms from his employer and filled out income tax returns, which he then presented for her signature; however, after Wife asked to receive a portion of the tax refund, Husband refused to file income tax returns. Husband admitted that he had changed his tax withholding information on file with his employer and had ceased to file income tax returns. Husband admitted during his testimony at the hearing that he had disclosed less than all assets during his deposition; nonetheless, his in-court testimony was so evasive that the trial court admonished him: “It’s ridiculous! I haven’t had a straight answer to anything all afternoon.” (Tr. Vol. II, pg. 93.)

[15] The trial court also found – and Husband does not dispute – that Wife has traditionally been employed inside the home rather than outside the home by agreement of the parties. The joint decision to have Wife homeschool Children, while also caring for a disabled dependent, has impacted Wife’s

employment marketability. 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 to deviate from the presumptive equal split of marital assets.

Overnight Parenting Time

- [16] Husband requested parenting time in accordance with the Indiana Parenting Time Guidelines but was temporarily denied overnights. Husband was to have guideline-based parenting time once he satisfied the court that he had arranged “housing with appropriate facilities for overnight parenting time.” (App. Vol. II, pg. 24.)
- [17] Husband testified that, after the marital separation, he had been living with his disabled brother and his brother's girlfriend in one of the marital properties, a duplex. Husband had been exercising his parenting time with Children only in the upper level of the duplex, because his brother did not welcome having Children on the lower level. Husband and Wife disputed the suitability of the accommodations, with Wife testifying that her daughters were afforded no privacy or an opportunity to bathe. Husband testified that there was one bedroom – for the boys – and a functioning toilet. He further testified that there was a bathtub with running water. According to Father, Children could bathe there but had not done so. Father also testified that he had begun legal proceedings to have his brother evicted.

[18] The trial court observed that Husband had traditionally been reluctant to provide amenities for his family. In the opinion of the trial court, Husband had imposed “poverty” and a “pioneer lifestyle” upon his family. (*Id.* at 19, 22.) The trial court explained its decision to defer overnight parenting time until Husband provided assurances of the suitability of the accommodations:

[Husband]’s demonstrated attitude toward custody and parenting time is largely that of indignation at being denied access to chattel. His flatly stated position is that he can find no issues with requiring the children to spend an overnight on the second floor of 919 Wheatland Avenue, where he provides privacy for the boys, but not the girls, can provide a bed for the boys, but not the girls, and can provide a toilet (though there are apparently damaged floorboards), but not hot running water, let alone facilities for bathing. In no set of circumstances will the Court condemn any child, let alone an adolescent girl, to a weekend in a facility where she is unable to maintain her personal hygiene. At least this is consistent with his attitude toward the living conditions of the children in the marital home. His continued disdain for his obligation to provide shelter for his children, while claiming their assets as his, rebuts the presumption on which he may have relied.

(*Id.* at 21.)

[19] Husband argues that he did not subject Children to unduly harsh conditions and the trial court’s findings as to imposed poverty and Husband’s perceived shortcomings should be disregarded. Husband maintains that Wife last lived at the duplex several years earlier and was not privy to its current condition; accordingly, Husband’s testimony as to the amenities should have been credited by the trial court. Husband also asserts that the trial court should have credited

his testimony about initiating the eviction of his brother. In short, Husband asks that we reweigh the evidence and make credibility determinations. This we cannot do. *See Bowling*, 756 N.E.2d at 988. We will not reverse the parenting time order.

Calculation of Child Support - Potential Income

- [20] Husband argues that the trial court erred in calculating Wife's weekly gross income available for child support purposes as zero. Specifically, he contends that the trial court should have allocated to Wife potential income because she is a registered nurse and holds a master's degree in pastoral counseling.
- [21] Child support calculations are made utilizing the income shares model set forth in the Indiana Child Support Guidelines. *Sandlin v. Sandlin*, 972 N.E.2d 371, 374 (Ind. Ct. App. 2012). The guideline approach is promulgated in Indiana Code section 31-16-6-1, which considers, among other things, the standard of living the child would have enjoyed if the marriage had not been dissolved and the financial resources and needs of the noncustodial parent. *Nikolayev v. Nikolayev*, 985 N.E.2d 29, 33 (Ind. Ct. App. 2013), *trans. denied*. The trial court is vested with broad discretion in making child support determinations. *Sandlin*, 972 N.E.2d at 374. A trial court's calculation of child support under the Guidelines is presumptively valid. *Morgal-Henrich v. Henrich*, 970 N.E.2d 207, 212 (Ind. Ct. App. 2012).
- [22] Indiana Child Support Guideline 3(A)(1) defines "weekly gross income" as:

[A]ctual weekly gross income of the parent if employed to full capacity, potential income if unemployed or underemployed, and the value of in-kind benefits received by the parent.

“But the Guidelines do not require or encourage parents to make career decisions based strictly upon the size of potential paychecks, nor do the Guidelines require that parents work to their full economic potential.” *Sandlin*, 972 N.E.2d at 375. “Obviously, a great deal of discretion will have to be used in this determination.” Ind. Child Support Guideline 3(A), cmt 2c.

[23] Here, with regard to the calculation of Wife’s income available for child support, the dissolution decree stated:

The Court declines to impute minimum wage on [Wife] in these circumstances, as it is the Court’s position that [Wife] being employed would result in childcare costs that would not be financially advantageous to either party.

(App. Vol. II, pg. 24.) The finding of fact that childcare costs would be incurred if Wife were employed outside the home is not supported by any testimony or evidentiary exhibit of record. On remand, the trial court is to calculate respective child support obligations in accordance with the Indiana Child Support Guidelines and provide, if applicable, a reason for any deviation that is consistent with the evidentiary record.

Income Taxes

[24] As of the final hearing date, the parties had obtained accounting advice and assistance in preparing delinquent tax returns. It was anticipated that some tax

refunds had been forfeited but some were recoverable. The trial court ordered that monies recovered in the process of late filing, if any, would be split with 60% to Wife and 40% to Husband. With regard to any refund from tax year 2020, the trial court ordered the same division. Husband notes, correctly, that this is contrary to the parties' agreement as to the 2020 tax refund. Wife proposed that the 2020 tax refund would be split equally, Husband agreed, and the trial court adopted the agreement and made a corresponding entry into the Chronological Case Summary. Thus, on remand, the trial court is to divide any 2020 tax refund equally.

[25] However, Husband disputes the equal allocation of child tax exemptions between himself and Wife. According to Father, it is not "logical" that an unemployed parent should be allocated an exemption and "there is no value to mother in assigning her the tax dependency for the children at this time." Appellant's Brief at 39. Husband acknowledges that child tax credits follow exemptions and have economic value but he does not develop an argument as to whether the value is contingent upon employment.

[26] Simply, Husband recites Indiana Code Section 31-16-6-1.5, which sets forth the considerations for claiming a child for tax purposes and argues that it is logical to allocate to him all exemptions and credits. However, Husband presented no calculation at the hearing to support his claim that Wife could not benefit from an allocation of child exemptions; nor does he develop a detailed argument on appeal. Husband's bald assertion that the trial court acted illogically does not demonstrate a disregard of statutory authority or other abuse of discretion.

Conclusion

[27] The dissolution decree does not include findings of fact to support the equalization order. The deviation from the presumptive fifty-fifty split of the marital pot is supported by sufficient factual findings, and the findings are supported by the evidence of record. Husband has not demonstrated an abuse of the trial court's discretion with respect to the requirement that Husband provide appropriate accommodations as a condition of overnight parenting time, or with regard to the allocation of child tax exemptions and credits. The stated reason for deviation from an Indiana Child Support Guideline calculation of parental income lacks evidentiary support. Finally, the order that the parties split the 2020 tax refund unequally is contrary to their agreement. Accordingly, on remand, the trial court is to split any 2020 tax refund equally and issue Trial Rule 52 findings of fact and conclusions thereon relative to the property distribution and child support award.

[28] Affirmed in part, reversed in part, and remanded with instructions.

Mathias, J., and Altice, J., concur.