

MEMORANDUM DECISION

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ATTORNEYS FOR APPELLANT

Rebecca M. Eimerman
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IN THE COURT OF APPEALS OF INDIANA

Anthony Wandel,
Appellant-Respondent,

v.

Marsanne Wandel,
Appellee-Petitioner.

February 3, 2023

Court of Appeals Case No.
22A-DC-1801

Appeal from the Madison Circuit
Court

The Honorable Andrew R.
Hopper, Judge

Trial Court Cause No.
48C03-1907-DC-363

Memorandum Decision by Judge Bailey
Judges Riley and Vaidik concur.

Bailey, Judge.

Case Summary

- [1] Anthony Wandel (“Husband”) appeals the property division in the dissolution of his marriage to Marsanne Wandel (“Wife”) and the order that he pay \$300 monthly as child support arrearage. We affirm.

Issues

- [2] Husband presents two issues for review:
- I. Whether the trial court failed to make a just and reasonable distribution of the marital estate; and
 - II. Whether Husband was deprived of self-support at a subsistence level.

Facts and Procedural History

- [3] The parties were married in 2004 and had two children, born in 2010 and 2012. In July of 2019, Husband committed acts of strangulation and battery upon Wife in the presence of their children. This resulted in a marital separation and Husband’s conviction of a Level 6 felony, for which he was sentenced to serve eighteen months in home detention. Husband was also convicted of a felony related to his forgery of Wife’s signature in order to obtain a credit card.
- [4] Pursuant to a provisional order entered in July of 2019, Husband was ordered to pay the mortgage on the marital residence, certain other expenses, and \$131 weekly in child support. Husband paid a portion of his child support but did

not make any other court-ordered payments. He refused to execute final documents for a mortgage modification program for which the couple had applied. Husband filed a 2019 tax return claiming both children as his dependents, resulting in his receipt of child tax credit and stimulus payments. On September 6, 2019, Husband filed a motion for modification of his child support obligation, which was not ruled upon prior to the final hearing.

[5] On November 29, 2021, the trial court conducted a final hearing. Wife testified that Husband owed a child support arrearage of \$11,713.95 (based upon the \$131 order), he had received \$9,035 from the Internal Revenue Service because of claiming the children as dependents, and he had made no payments toward marital liabilities as ordered in the provisional decree. She also testified that Husband had overdrawn their joint bank account during his incarceration by signing blank checks for his father to cash and that Husband had opened and used a credit card in Wife's name without her permission. She testified that Husband has previously earned around \$43,000 annually and she requested child support of \$166 per week.

[6] Husband testified that his health had deteriorated during his home incarceration and that he earned minimum wage delivering newspapers. He admitted that he had not complied with the provisional order but attributed the lack of compliance to his physical condition and poor job opportunities for a convicted felon. Husband asked that the trial court modify the provisional order, with respect to child support, to provide that Husband owed \$66 per week effective as of the date of his motion for modification.

[7] On June 29, 2022, the trial court entered a decree dissolving the marriage, dividing marital assets and debts, awarding Wife legal custody and primary physical custody of the children, and finding Husband's child support obligation to be \$66 per week, effective as of September 6, 2019. Husband was found in contempt of court and ordered to pay \$500 of Wife's attorney's fees. His child support arrearage was fixed at \$4,530.06 and he was ordered to pay \$300 per month on that arrearage.

[8] As to the principal marital asset, the marital residence, the trial court adopted Husband's valuation of \$182,000 as opposed to Wife's valuation of \$150,000. Wife was awarded the marital residence, encumbered by a mortgage of \$90,398 and an obligation to pay \$10,575 in deferred payments. Husband's "provisional obligations with the exception of child support and child related expenses" were considered to be "satisfied by [the] offset in equity to Wife," Appealed Order at 2, and thus Wife was not required to pay Husband an equalization payment. Husband was ordered to pay debts in his individual name as well as debts attributable to his conduct. Husband now appeals.

Discussion and Decision

Property Division

[9] Husband contends that the trial court abused its discretion by summarily allocating to Wife the primary marital asset. According to Husband, the trial court ignored his economic circumstances, a factor enumerated in Indiana Code Section 31-15-7-5(3). We initially observe that Wife has not filed an

appellee's brief. When an appellee does not file a brief, this Court will not undertake the burden of developing arguments on that party's behalf. *Thurman v. Thurman*, 777 N.E.2d 41, 42 (Ind. Ct. App. 2002). Rather, we apply "a less stringent standard of review" and may reverse the trial court if the appellant establishes prima facie error. *Id.* "Prima facie" means "at first sight, or on first appearance, or on the face of it." *Id.*

[10] 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 earning 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.

[11] Dissolution actions invoke the inherent equitable and discretionary authority of our trial courts, and thus we review their decisions with substantial deference. *Bringle v. Bringle*, 150 N.E.3d 1060, 1064 (Ind. Ct. App. 2020). The trial court does not abuse its discretion if there is sufficient evidence and reasonable inferences therefrom to support the result. *Id.* at 1065. We will not reverse the trial court unless the decision is clearly against the logic and effect of the facts and circumstances before it. *Id.* In conducting our review, we will not weigh evidence, but will consider the evidence in a light most favorable to the judgment. *Id.*

[12] Marital property includes both assets and liabilities. *Capelhart v. Capelhart*, 705 N.E.2d 533, 536 (Ind. Ct. App. 1999), *trans. denied*. Here, while Wife received the primary asset, Husband received an offset for his unpaid liabilities. The trial court's order reveals a roughly equal division of the marital estate, after a set aside to Wife of some gift equity.

[13] The primary marital asset was the marital residence. The parties had purchased it from Wife's mother for \$128,000, which was \$32,000 less than market value at that time. The trial court valued the property at \$182,000. Subtracting the mortgage of \$90,398, there was equity of \$91,602. However, Wife testified that she owed deferred payments, and that Husband owed her \$40,824.64. Wife requested that his equity be used to offset his liability under the provisional order. The trial court's order incorporated Wife's suggestion; after the offset, Husband was relieved of his provisional order obligations with the exception of \$4,530.06 in child support and child-related expenses. And the order specified that some portion of the gift equity from Wife's mother would be set aside to Wife, obviating the need for an equalization payment.

[14] Husband acknowledges, as he must, that he failed to comply with the provisional order and thus liabilities accrued. But he argues that the trial court did not sufficiently focus upon his diminished earnings capacity. Husband testified that his employment prospects were lessened because of his felony convictions, and he explained that his health had declined because of the conditions of his home incarceration. Clearly, the trial court did not ignore Husband's circumstances; the court reduced his child support for two children to \$66 weekly. To the extent that Husband suggests the property division would have been more favorable to him had the trial court focused more upon his economic adversity, admittedly in large part attributable to his illegal conduct, Husband asks that we reweigh the evidence. We decline the invitation. *See Bringle*, 150 N.E.3d at 1065. Husband has not shown, prima

facie, that the trial court abused its discretion by failing to make a property division that was just and reasonable.

Order on Arrearage

[15] Husband contends that, given his income of \$290 weekly, the order that he pay \$300 monthly in child support arrearage and satisfy existing obligations deprived him of a means of self-support at a subsistence level. He directs our attention to *McGill v. McGill*, 801 N.E.2d 1249 (Ind. Ct. App. 2004). In *McGill*, we acknowledged that “our supreme court has previously warned that trial courts must avoid the pitfall of blind adherence to the computation for support without giving careful consideration to the variables that require a flexible application of the guidelines in order to do justice.” *Id.* at 1253 (citing *Kinsey v. Kinsey*, 640 N.E.2d 42, 43 (Ind.1994); Child Supp. G 1, commentary).

[16] In *McGill*, the appellant was a non-custodial father who was disabled and living on public assistance benefits “directed at providing him with the minimum support necessary to live.” *Id.* He had been ordered to pay \$15.51 in weekly child support, and an additional \$5.00 toward the arrearage of \$9,110.00. The underlying “calculations [were] made utilizing the income shares model set forth in the Indiana Child Support Guidelines.” *Id.* at 1251. However, his sole income consisted of SSI and disability benefits. In order to establish his eligibility for SSI benefits, the father had been required to prove that he was unable “to do any substantial gainful activity by reason of any medically determinable physical or mental impairment.” *Id.* at 1252 (quoting 20 C.F.R. §

416.905(a)). Those benefits were not properly includable in the calculation of weekly gross income for a child support determination. *Id.*

[17] The *McGill* Court then addressed the father’s particular financial circumstances as revealed by the evidence presented in the trial court. That is: the father had monthly income of \$276 in SSI and \$296 in disability benefits; he had no control over his finances but had a relative representative payee; his monthly payments on a trailer amounted to \$185 towards the purchase price and \$145 for lot rent; he had utility and insurance expenses bringing his aggregate bills to \$500 monthly; and he had \$72 per month remaining for food, toiletries, and other basic needs. Based upon the unique facts, where all of the father’s expenses were “absolutely essential,” appellate review of the record left the *McGill* Court “with the firm conviction that a mistake has been made.” *Id.* at 1253. The Court reversed a child support order that would have left the parent with approximately \$12 per month for food and basic necessities.

[18] Here, the trial court was not presented with evidence of circumstances akin to those in *McGill*. Nor did the trial court incorporate excludable subsistence income within its child support calculation. Husband was not disabled from employment; rather, his employment prospects were arguably diminished by his criminal conduct. He had also incurred consumer debt because of his criminal conduct.

[19] Husband submitted a child support worksheet and asked the trial court to set his child support obligation based upon a calculation of his gross income at

minimum wage. The trial court granted Husband's request. Husband's arrearage was fixed at \$4,530.06, significantly less than the amount requested by Wife. Husband was to satisfy the arrearage at the rate of \$300 per month. He did not present specific evidence that he would be unable to meet his basic needs, as did the appellant in *McGill*. Unlike in *McGill*, Husband has not persuaded us to conclude with firm conviction that a mistake has been made.

Conclusion

[20] Husband has failed to show, prima face, that the trial court abused its discretion in dividing the marital estate or determining Husband's child support obligation.

[21] Affirmed.

Riley, J., and Vaidik, J., concur.