MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Connie Cocksedge,
Appellant-Respondent,

v.

Graham R. Cocksedge,
Appellee-Petitioner

July 17, 2023

Court of Appeals Case No. 22A-DN-1749

Appeal from the Perry Circuit Court

The Honorable M. Lucy Goffinet, Judge

Trial Court Cause No. 62C01-1806-DN-319

Memorandum Decision by Chief Judge Altice
Judges Riley and Pyle concur.

Altice, Chief Judge.

Case Summary

[1] This is the second appeal in the dissolution action between Graham and Connie Cocksedge (Husband and Wife, respectively). Last year, another panel of this court found that each party was entitled to relief from the trial court's January 2021 decree of dissolution (the Original Decree). The reversal included detailed directions on remand, only some of which the trial court followed in issuing its amended decree in April 2022 (the Amended Decree).

[2] On appeal from the Amended Decree, the parties challenge the same two issues: distribution of the marital estate and spousal maintenance. Wife contends that the trial court failed to fully comply with this court's instructions on remand, erred in dividing the marital estate, and failed to restore her maiden name. Husband cross-appeals, challenging the trial court's decision not to award incapacity maintenance.

[3] We affirm the trial court's denial of Husband's request for maintenance and part of its revised division of the marital estate. Remand, however, is again necessary because the trial court failed to include in the marital pot for division the portion of Husband's worker's compensation settlement that represents income during the marriage. On remand, the trial court is directed to distribute this asset equally and to restore Wife's maiden name.

[4] Judgment affirmed in part, reversed in part, and remanded.

Facts & Procedural History

[5] Facts were set out in the memorandum decision from the prior appeal, *Cocksedge v. Cocksedge*, No. 21A-DN-197 (Ind. Ct. App. August 30, 2021), which we summarize here. Husband and Wife married in 2009. Husband, who had a long career in the U.S. Marine Corps and then worked as a Global Response Services (GRS) operator with a contractor for the CIA, brought the bulk of the assets into the marriage. Wife completed her nursing education during the marriage and now works full-time in the nursing profession. In 2019, she earned $56,669 in this career, and her income is anticipated to remain at this level in the future.

[6] In 2013, while working as a GRS operator in Afghanistan, Husband was seriously injured. After filing a worker's compensation claim for this injury and for PTSD, he began receiving temporary total disability (TTD) benefits in February of that year. The TTD benefits ended on December 6, 2017, after the settlement agreement that Husband reached with his employer was approved by the U.S. Department of Labor. The settlement resulted in Husband receiving a lump-sum payment of $600,000 for future compensation benefits. He deposited the settlement proceeds into a savings account in his name. When he filed for divorce on June 18, 2018, this account had a balance of $483,952.95.

[7] Following an evidentiary hearing and the parties' submission of proposed findings and conclusions, the trial court issued the Original Decree in January 2021. The trial court set off to Husband and excluded from the marital pot several assets, including the settlement proceeds, and then divided the

remaining assets and liabilities equally among the parties. Additionally, although the court found that Husband is "totally disabled" and "mentally and physically incapacitated to the extent that his ability to support himself is materially affected," it did not rule on Husband's request for incapacity maintenance. *Appendix* at 19.

[8] Both parties appealed the Original Decree, and this court reversed and remanded. In addition to finding certain mathematical errors, we held that the trial court erred in its wholesale exclusion of the settlement award from the marital pot and that "a portion of the settlement replaced Husband's lost income from December 6, 2017, to June 18, 2018." *Slip. Op*. at 8. We directed the trial court on remand to determine and "include that portion in the marital pot for division." *Id*. We also asked the trial court to formally rule on Husband's request for incapacity maintenance. Finally, we noted sua sponte that the trial court improperly excluded several assets from the marital pot – specifically noting three vehicles in Husband's possession – and indicated that the issue could be addressed on remand.

[9] The trial court held a brief hearing on remand, and the parties submitted amended proposed findings of fact and conclusions. Wife also requested that the trial court restore her maiden name of Connie Irvine.

[10] The trial court issued the Amended Decree on April 27, 2022, in which it corrected the identified mathematical errors, denied Husband's request for incapacity maintenance, valued the portion of the settlement award that

constituted a marital asset at $30,479.14, again set off to Husband the three vehicles identified in the prior appeal, and then divided the net marital estate unequally between the parties – 61% to Husband and 39% to Wife – using a balance sheet of assets and debts that did not include the three vehicles or any of the settlement award. The trial court found that the unequal distribution was just and reasonable based on the economic circumstances of the parties and Husband's acquisition of certain assets before the marriage.

[11] Wife filed a motion to correct error, which was deemed denied by the trial court's failure to rule on the motion within forty-five days. Wife timely appealed, and Husband cross-appeals. Additional information will be provided below as needed.

Standard of Review

[12] An abuse-of-discretion standard of review applies to a trial court's division of marital assets and determination regarding an award of maintenance. *See Roetter v. Roetter*, 182 N.E.3d 221, 225 (Ind. 2022). "A trial court abuses its discretion if its decision stands clearly against the logic and effect of the facts or reasonable inferences, if it misinterprets the law, or if it overlooks evidence of applicable statutory factors." *Id*. When, as in this case, the trial court enters findings of fact and conclusions, we may set aside the trial court's judgment only if it is clearly erroneous. *Id*. Further, the party challenging the trial court's division of marital property or ruling on a request for an award of maintenance

must overcome a "strong presumption" that the court considered and complied with the applicable statutes. *Id*.

Discussion & Decision

1. Distribution of the Marital Estate

[13] Division of marital property involves a two-step process. First, the trial court must identify the assets and liabilities to include in the marital estate, which "encompasses all marital property, whether acquired by a spouse before the marriage or during the marriage or procured by the parties jointly." *Id*. at 227 (internal quotations omitted). Second, the court must then distribute the marital estate in a "just and reasonable" manner, which, under Ind. Code § 31-15-7-5, is presumed to be an equal division of property between the parties. *Roetter*, 182 N.E.3d at 227.

[14] The statutory presumption of an equal division "may be rebutted by a party who presents relevant evidence … that an equal division would not be just and reasonable." I.C. § 31-15-7-5. Such evidence may include:

> • each spouse's contribution to the property's acquisition, regardless of whether the contribution produced any income;
>
> • the extent to which a spouse acquired property, either before the marriage or through inheritance or gift;
>
> • each spouse's economic circumstances at the time of divorce;
>
> • the parties' conduct during the marriage, as it related to the disposal or dissipation of assets; and
>
> • the parties' respective earnings or earning ability.

Roetter, 182 N.E.3d at 227 (citing I.C. § 31-15-7-5(1)-(5)). This list is nonexclusive, and "no single factor controls the division of property." *Id*. (noting, for example, that a court may consider the length of the marriage).

[15] Our Supreme Court made clear that "so long as [the trial court] considers all assets and debts, and so long as it offers sufficient findings to rebut the presumptive equal division, the trial court need not apply a technical formula in dividing the marital estate." *Id*. at 228. In *Roetter*, which dealt with a short-term marriage, the trial court set off to the husband certain life insurance policies and the premarital value of an IRA and a 401K before calculating the value of the net marital estate and awarding the wife her share. The Supreme Court affirmed, explaining:

> The better approach, we believe, would have been for the trial court to include all assets and liabilities in the divisible marital pot, rather than setting aside those assets and liabilities at issue before dividing the estate. Such an approach offers greater transparency to the parties, potentially averting further litigation. But, in the end, a trial court's judgment is "tested by its substance rather than by its form." *Shafer v. Shafer*, 219 Ind. 97, 104, 37 N.E.2d 69, 72 (1941) (internal quotation marks omitted). So long as it expressly considers all assets and liabilities, and so long as it offers sufficient findings to rebut the presumptive equal division, a trial court need not follow a rigid, technical formula in dividing the marital estate and we will assume that it applied the law correctly.

Id. at 229.

[16] In this case, Wife argues that the trial court failed to abide by the instructions on remand and did not include all assets in the marital estate for division. Specifically, she contends that the trial court did not include in its balance sheet: (1) the $30,479.14 portion of Husband's settlement award that was subject to division; (2) three vehicles with a combined value of $59,729.00; and (3) the premarital portion of Husband's Ameriprise SEP IRA amounting to $20,780.47. As a result of excluding these assets, Wife asserts that Husband received about 82% of the net marital estate[1] and that a "deviation of this magnitude from the presumed equal division of the net estate is not supported by the evidence." *Appellant's Brief* at 15. We will address these in turn.

[17] We agree with Wife that the trial court did not follow our directions regarding treatment of the settlement award. On remand, the trial court determined that "$30,479.14 of the lump sum settlement balance of $483,952.95 at final separation replaced earnings lost from December 6, 2017, to June 18, 2018." *Appendix* at 58. The trial court then failed to distribute this $30,479.14 marital asset.[2] To avoid additional delay and in the interest of judicial economy, we direct the trial court, on this second remand, to divide this asset equally between the parties.

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[1] It is not clear to us how Wife arrived at the 82% figure.

[2] Husband suggests, contrary to his proposed findings and conclusions below, that this portion of the settlement proceeds is no longer in existence because it was used during the marriage to pay the parties' joint tax liability of $130,000. This contention is not supported by the trial court's findings.

[18] Turning to the three vehicles, we observe that the trial court did not include these marital assets on its balance sheet, once again setting them off fully to Husband. For each of the vehicles – the 1999 Jeep Wrangler Sport, the 2004 Ford Mustang Cobra, and the 2010 Shelby GT 500 – the trial court found that Husband purchased and fully paid for the vehicle in cash before the marriage and it always remained titled in his individual name. In other words, the trial court expressly considered these marital assets and entered findings to rebut the presumptive equal division. While the better, more transparent practice would have been for the trial court to enter these assets on the balance sheet, rather than dealing with them separately, we do not find that its failure to do so was reversible error. *See Roetter*, 182 N.E.3d at 229.

[19] The trial court made the following finding regarding Husband's Ameriprise SEP IRA:

> Husband owned an Ameriprise SEP IRA Plan before marriage with premarital funds in the amount of $20,780.47. The amount shall be set aside as a premarital asset. The account appreciated in value during the marriage. The amount of the appreciated value, $27,419.46, is subject to equal division and shall be awarded to the wife.

Appendix at 57. Accordingly, the trial court included the appreciation of $27,419.49 in Wife's column on the balance sheet. To the extent the trial court erred by not including the premarital value of this asset in the marital pot, we conclude that Wife invited the error, as her own proposed balance sheet listed

the value of this asset as $27,419.[3] *See Hickey v. Hickey*, 111 N.E.3d 242, 246 (Ind. Ct. App. 2018) ("[A] party may not take advantage of an error she commits, invites, or allows to happen as a natural consequence of her own neglect or misconduct."). As invited error is not subject to review by this court, we do not determine the propriety of the trial court's treatment of this asset.

[20] Finally, we observe that Wife is correct that the trial court's actual deviation from an equal division of the marital estate was greater than what was reflected in the trial court's balance sheet. Adding the value of the cars and the portion of the settlement award to the balance sheet, the net marital estate amounts to $252,256.75, of which Husband effectively received $188,861.65, or about 75% under the Amended Order.[4] Once the $30,479.14 of the settlement award is apportioned equally among the parties on remand, the distribution will be approximately 69% to Husband and 31% to Wife.

[21] The trial court justified its deviation from the statutory presumption of an equal division of the marital estate, in part:

> 48. Husband has presented compelling evidence convincing the Court in the exercise of its discretion that the statutory presumption has been rebutted by presentation of relevant evidence that equal division would not be just and reasonable.

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[3] This is the same value the trial court assigned to this asset in the Original Decree, and we see no indication in the record that Wife raised the trial court's original valuation of this asset as an issue on remand.

[4] We say "effectively" because the trial court did not directly award the settlement amount of $30,479.14 to Husband. Regardless, the practical effect of the Amended Order was that these funds stayed in his hands.

> 49. The economic circumstances of each spouse at the time of the disposition of the property is to become effective is the third statutory factor[] the Court must consider. Husband is disabled and cannot work. There is no expectation that husband will be able to return to work. Wife has a bachelor's degree acquired during the marriage which provides a reliable and substantial income in the nursing profession. Even with an unequal division of the marital assets, Wife will recover financially from this divorce due to her earning power.

Appendix at 60-61. Additionally, with respect to the vehicles at issue, the court noted the statutory factor that Husband brought them into the marriage free of any debt and that he kept them titled solely in his name. The trial court amply supported its decision to deviate from the statutory presumption, and we reject Wife's request that we reweigh the evidence on their relative economic circumstances. *See Roetter*, 182 N.E.3d at 228 ("[A]t the end of the day, the standard of review precludes us from substituting our judgement for that of the trial court.").

2. Incapacity Maintenance

[22] Husband cross-appeals challenging the trial court's denial of his request for maintenance under I.C. § 31-15-7-2(1), which provides:

> If the court finds a spouse to be physically or mentally incapacitated to the extent that the ability of the incapacitated spouse to support himself or herself is materially affected, the court may find that maintenance for the spouse is necessary during the period of incapacity, subject to further order of the court.

Husband acknowledges that a trial court's decision about whether to award maintenance is "wholly within its discretion" and will be reversed only if the decision is "clearly against the logic and effect of the facts and circumstances of the case." *Bizik v. Bizik*, 753 N.E.2d 762, 768-69 (Ind. Ct. App. 2001), *trans. denied*.

[23] Here, the trial court found that Husband is "mentally and physically incapacitated to the extent that his ability to support himself is materially affected" and that he is "totally disabled." *Appendix* at 57. Despite this finding of incapacity, the trial court was not required to award Husband maintenance. *See Bizik*, 753 N.E.2d at 769 ("[E]ven if a trial court finds that a spouse's incapacity materially affects her self-supportive ability, a maintenance award is not mandatory."). The trial court explained its decision not to award maintenance by noting Husband's settlement proceeds of $453,473.81 for future earnings, which were not part of the marital estate, and his monthly pension benefit of $1,880.00. The trial court also awarded Husband a greater percentage of the marital estate in recognition of his disability and inability to work. Under the circumstances, we cannot say that the trial court abused its discretion by denying Husband's request for maintenance.

3. Restoration of Wife's Maiden Name

[24] Wife claims that the trial court erred by failing to restore her maiden name. I.C. § 31-15-2-18(b) provides: "A woman who desires the restoration of her maiden … name must set out the name she desires to be restored to her in her petition for dissolution as part of the relief sought. The court shall grant the

name change upon entering the decree of dissolution." The record reflects that when she filed her counter petition for dissolution, Wife requested restoration of her maiden name but did not set out that name in her petition. Because she did not comply with the statute, the trial court did not err in failing to restore her maiden name. *See Maloblocki v. Maloblocki*, 646 N.E.2d 358, 364 (Ind. Ct. App. 1995).

[25] Even so, Wife has since made her desire known and expressly identified her maiden name of "Connie Irvine." *Appendix* at 35 (Wife's petition to amend the Original Decree filed on December 10, 2021, after the case had been remanded). Because this relief was readily available to her under I.C. § 31-15-2-18(b) had she properly requested it, we direct the trial court, on remand, to grant Wife's request to have her name changed to Connie Irvine. *See Maloblocki*, 646 N.E.2d at 364 (directing name change on remand despite the wife's failure to properly request such relief).

Summary

[26] We affirm the trial court's denial of Husband's request for maintenance and, with one exception, its distribution of the marital estate. We remand for the limited purpose of modifying the Amended Decree by dividing equally between the parties the $30,479.14 portion of Husband's settlement award that was subject to division. The trial court shall also grant Wife's request that her name be changed to Connie Irvine. In all other respects the judgment of the trial court is affirmed.

[27] Judgment affirmed in part, reversed in part, and remanded with instructions.

Riley, J. and Pyle, J., concur.