

MEMORANDUM DECISION

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ATTORNEYS FOR APPELLANT

Alexander N. Moseley
Matthew C. McConnell
Dixon & Moseley, P.C.
Indianapolis, Indiana

ATTORNEY FOR APPELLEE

Nicholas R. Sauter
Wallace Law Firm
Rockville, Indiana

IN THE COURT OF APPEALS OF INDIANA

Michael Copenhaver,
Appellant-Respondent,

v.

Paula Copenhaver,
Appellee-Petitioner.

November 27, 2023

Court of Appeals Case No.
22A-DC-2626

Appeal from the
Parke Circuit Court

The Honorable
Samuel A. Swaim, Judge

Trial Court Cause No.
61C01-1908-DC-326

Memorandum Decision by Senior Judge Robb
Chief Judge Altice and Judge Bradford concur.

Robb, Senior Judge.

Statement of the Case

- [1] Michael Copenhaver appeals from the trial court's decree dissolving his marriage with Paula Copenhaver. He argues the trial court erred in its division of the marital debts between the parties and in ordering him to pay some of Paula's attorney's fees. Concluding the trial court did not err, we affirm.

Facts and Procedural History

- [2] Michael and Paula married in 1992. They have five children, all of whom were homeschooled by Paula and are now adults. Michael operated a well drilling business. Paula was the sole shareholder of the business's corporate entity and helped Michael run the business. In December 2015, Paula ended her ownership of the business and significantly limited her involvement in its operations because she was concerned about failures to timely complete jobs and pay bills.
- [3] In May 2016, Paula obtained full-time employment outside the home. Michael continued to operate the drilling business, along with one of the parties' sons. Michael had received periodic payments from an annuity arising out of a past settlement, but the payments ended in 2016. Paula began filing her income taxes separately from Michael in 2018. As of June 2020, Michael had not paid taxes for the years 2016 to 2019 and expected to owe additional fines for nonpayment.
- [4] In August 2019, Paula filed a Petition for Dissolution. While the case was pending, Michael changed attorneys five times. Paula switched attorneys once.

Also, Michael requested five extensions of discovery deadlines or continuances of the evidentiary hearing, while Paula requested two continuances. In addition, Paula twice moved to compel discovery, alleging Michael had failed to respond to discovery requests. She claimed Michael's failure to timely respond to her requests had caused her to unnecessarily incur additional attorney's fees. The trial court granted both motions to compel, and Michael ultimately complied with the court's orders.

[5] In March 2022, the trial court appointed a guardian ad litem ("GAL") to determine whether Michael needed a guardian due to poor health. The court rescheduled the evidentiary hearing, over Paula's objection, to allow the GAL time to investigate. The GAL determined a guardianship was unnecessary.

[6] The trial court held an evidentiary hearing in August 2022. The trial court later issued a decree of dissolution, in which it granted Michael possession of the marital home, allocated the parties' personal property, and ordered Michael to pay Paula an equalization payment of \$189,849.27. The court further stated the parties were each responsible for the debts in their own names and declared Michael solely responsible for both his personal tax debts and the well drilling business's tax debts from 2010 to the present. Finally, the court stated:

That due to the numerous continuances, multiple motions in order to compel discovery compliance, the cost involved in responding to the motion for involuntary guardianship on Respondent, it is ordered that Husband shall be responsible for \$7,5000 [sic] of Wife's attorney fees. Each party shall otherwise be responsible for their own attorney fees.

Appellant's App. Vol. II, p. 27. This appeal followed.

Issues

[7] Husband raises two issues, which we restate as:

- I. Whether the trial court erred in ordering each party to pay their own medical and tax debts.
- II. Whether the trial court erred in ordering Michael to pay \$7,500 to Paula as a partial compensation for her attorney's fees.

Discussion and Decision

I. Allocation of Debts

[8] Michael argues the trial court failed to properly value and allocate the parties' debts.

[T]he trial court has broad discretion in ascertaining the value of property in a dissolution action, and its valuation will not be disturbed absent an abuse of that discretion. The trial court does not abuse its discretion if there is sufficient evidence and reasonable inferences therefrom to support the result. In other words, we will not reverse the trial court unless the decision is clearly against the logic and effect of the facts and circumstances before it. A reviewing court will not weigh evidence, but will consider the evidence in a light most favorable to the judgment.

Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996) (citations omitted).

“Although the facts and reasonable inferences might allow for a different

conclusion, we will not substitute our judgment for that of the trial court.” *Love v. Love*, 10 N.E.3d 1005, 1012 (Ind. Ct. App. 2014).

[9] Michael argues he had far more medical and tax debts than Paula, and the trial court should have explicitly assigned values for those debts instead of merely ordering each side to pay their own debts. He further claims the court’s failure to state values for these debts amounted to “excluding the debts from the marital pot.” Appellant’s Br. p. 16. We disagree. In a dissolution case, the trial court shall divide all of the parties’ property, whether or not either spouse acquired the property before or after the marriage (but before final separation), or whether a spouse acquired the property alone or jointly with the other spouse. Ind. Code § 31-15-7-4(a) (1997). Any property that meets this statutory description belongs to “the marital pot” and is subject to division. *See Hill v. Hill*, 863 N.E.2d 456, 460 (Ind. Ct. App. 2007) (describing the concept of the marital pot). “While the trial court may ultimately determine that a particular asset should be awarded solely to one spouse, it must first include the asset in its consideration of the marital estate to be divided.” *Id.*

[10] Here, the trial court did not exclude Michael’s debts from the marital pot. To the contrary, the trial court explicitly identified the parties’ debts as subject to division and allocated them between the parties. The court did not improperly set aside marital assets or liabilities. *Cf. Montgomery v. Faust*, 910 N.E.2d 234, 237-38 (Ind. Ct. App. 2009) (reversing dissolution court’s allocation of land and truck to husband based on his ownership of property before the parties’ three-year marriage; the land and the truck were marital assets and should have been

included in marital pot); *Wilson v. Wilson*, 409 N.E.2d 1169, 1174 (Ind. Ct. App. 1980) (reversing dissolution court's determination husband should keep inherited property; trial court erroneously excluded the property from marital pot, with no attempt to account for it in marital estate).

[11] Michael cites *Crider v. Crider*, 26 N.E.3d 1045 (Ind. Ct. App. 2015), in support of his claim, but that case is distinguishable. In *Crider*, the wife argued the trial court erred in failing to credit her for paying a tax debt incurred during the parties' marriage. The wife provided an IRS notice directed to both of the spouses that identified the debt, and she testified she paid the outstanding debt solely out of her own funds. The Court determined the debt was a marital liability and should have been included in the marital estate. *Id.* at 1049-50.

[12] By contrast, in the current case the trial court did not overlook any debts or exclude them from the marital pot, but considered the debts and divided them between Paula and Michael. Further, the wife in *Crider* submitted a document to support her claim. Michael's only evidence of his tax and medical debts was his own testimony and his answers to interrogatories. The trial court was not required to credit his statements. *See Israel v. Israel*, 189 N.E.3d 170, 177 (Ind. Ct. App. 2022) (trial court did not err in valuing marital residence; court was not required to accept husband's testimony as to value of home), *trans. denied*.

[13] Next, among other facts and circumstances presented to the trial court, we note Michael admitted he owed debts to the IRS for past nonpayment of taxes, and he had failed to file taxes for the years 2016 to 2019. By contrast, Paula testified

she had paid all of her taxes and had also made property tax payments for the marital home, even though she had moved out in 2019. The trial court could have reasonably concluded it was fair to hold Michael solely responsible for his personal tax debt due to his admission of nonpayment. Additionally, Paula separated herself from the well drilling business in 2015 due to concerns about mismanagement, causing her to find separate employment and to pay her own taxes commencing in 2018. As a result, the trial court could have reasonably concluded it was appropriate to hold Michael responsible for the business's tax debts. Moreover, in interrogatories Paula asked Michael to describe how he would prefer the trial court allocate the marital estate. Michael answered: "I want the house, acreage, what remains, my well-drilling vehicles and equipment, guns, stones and old junk vehicles. I will pay my bills." Tr. Vol. IV, p. 19. The trial court's dissolution decree allocated these assets and debts to Michael exactly as requested.

[14] Finally, the trial court's allocation of marital assets was within the range of the evidence presented by the parties. Michael concedes, "the trial court's property distribution was based upon Wife's proposed distribution in Wife's marital balance, which was admitted as Exhibit 1." Appellant's Br. p. 14. In her proposed distribution, Paula did not attempt to value Michael's tax and medical debts. The only evidence of the value of these debts was Michael's testimony, which the trial court was not required to credit. Michael has failed to demonstrate the trial court abused its discretion in valuing and dividing the marital estate's assets and liabilities.

II. Trial Court's Award of Attorney's Fees to Paula

[15] Michael argues the trial court erred in ordering him to pay some of Paula's attorney's fees. "We review a trial court's award of attorney fees in connection with a dissolution decree for an abuse of discretion." *Goodman v. Goodman*, 94 N.E.3d 733, 751 (Ind. Ct. App. 2018), *trans. denied*.

[16] Indiana Code section 31-15-10-1(a) (1997) provides:

The court periodically may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this article and for attorney's fees and mediation services, including amounts for legal services provided and costs incurred before the commencement of the proceedings or after entry of judgment.

[17] When ordering an award of litigation expenses under Indiana Code section 31-15-10-1(a), "the trial court must consider the resources of the parties, their economic condition, the ability of the parties to engage in gainful employment and earn adequate income, and such factors that bear upon the reasonableness of the award." *Weigel v. Weigel*, 24 N.E.3d 1007, 1012 (Ind. Ct. App. 2015).

Another factor is "the responsibility of the parties in incurring the fees."

Mitchell v. Mitchell, 875 N.E.2d 320, 325 (Ind. Ct. App. 2007), *trans. denied*.

Stated differently, "misconduct that directly results in additional litigation expenses may be properly taken into account in the trial court's decision to award attorney's fees." *Hendricks v. Hendricks*, 784 N.E.2d 1024, 1028 (Ind. Ct. App. 2003).

[18] Here, almost three years elapsed between Paula petitioning to dissolve the marriage and the court holding the final evidentiary hearing. Michael unreasonably delayed the case by switching attorneys five times and by twice failing to comply with discovery requests, forcing Paula to file motions to compel discovery. By contrast, Paula changed attorneys only once and requested only two continuances. The case was further delayed when Michael's attorney asked the trial court to appoint a guardian ad litem, which resulted in another delay of the evidentiary hearing over Paula's objection. Paula testified her request for \$7,500 was not intended to fully compensate her for the full amount of her attorney's fees, merely the amount she expended to address Michael's delays and noncompliance.

[19] Michael argues Paula has better resources and prospects because she is still employed and will receive an equalization payment from him. By contrast, Michael claims he is over seventy years old, and Social Security payments are his sole means of income. The parties' resources and earning potential are valid considerations, but so is a party's unreasonable litigation conduct that forces another party to unnecessarily incur litigation expenses. Under the facts and circumstances, especially Michael's repeated discovery noncompliance, the trial court did not abuse its discretion by ordering Michael to pay a portion of Paula's attorney's fees. *See Thompson v. Thompson*, 811 N.E.2d 888, 929 (Ind. Ct. App. 2004) (no abuse of discretion in ordering husband to pay \$11,052 in additional attorney's fees; husband had failed to comply with the dissolution decree), *trans. denied*.

Conclusion

[20] For the reasons stated above, we affirm the judgment of the trial court.

[21] Affirmed.

Altice, C.J., and Bradford, J., concur.