MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Dustardie D. Reed,
Appellant,

v.

Brian L. Reed,
Appellee.

July 26, 2023

Court of Appeals Case No. 22A-DR-2940

Appeal from the Cass Superior Court

The Honorable Daniel C. Banina, Special Judge

Trial Court Cause No. 09D02-1409-DR-132

Memorandum Decision by Judge Bailey
Judges Tavitas and Kenworthy concur.

Bailey, Judge.

Case Summary

[1] Dustardie D. Reed ("Wife") appeals from the trial court's dissolution decree dissolving her marriage to Brian L. Reed ("Husband"). We affirm.

Issues

[2] Wife raises four issues, which we consolidate and restate as the following two issues:

1. Whether the trial court clearly erred when it valued the marital assets and liabilities.

2. Whether the court clearly erred when it excluded certain property from the marital estate.

Facts and Procedural History

[3] Husband and Wife married on March 7, 1992, and had two children together: P.R., born May 29, 1999, and Z.R., born January 5, 2004. Husband and Wife equally own a company called Reed Family Farms, LLC ("Reed Farms"). In addition, Husband and Wife have nonvoting shares in a company called Reed Farm Properties, LLC ("Reed Properties"). Husband's parents own the only voting shares in Reed Properties. Reed Properties owns approximately one thousand acres of farmland. Reed Farms owns farm machinery and equipment and rents land from Reed Properties to farm. *See* Ex. Vol. 5 at 80, 83. Husband farmed the land on behalf of Reed Farms, and Wife worked as an internal medicine physician.

[4] On September 16, 2014, Husband filed a petition to dissolve his marriage to Wife. After Husband filed his petition, the parties came to an agreement regarding custody, support, and visitation for the children. However, they were not able to agree on the valuation and distribution of many of the marital assets, which included shares in the two corporations, real property, bank accounts, animals, farm equipment, crops, firearms, jewelry, and vehicles. The parties were also unable to agree on the valuation and distribution of various debts and other liabilities.

[5] The court held a three-day fact-finding hearing on the value and distribution of marital property. During the hearing, Husband testified as to his opinion of the disputed assets' values based on his personal knowledge and experience. In addition, he presented the testimony of Donald Zehner, a Certified Public Accountant ("CPA") who had been personally involved with the accounts of both the family and the businesses. During Zehner's testimony, Husband had admitted as evidence a spreadsheet that Zehner had prepared that listed all of the parties' assets and liabilities as well as their assigned value.

[6] Wife then testified as to what she believed the assets were valued at, and she presented the testimony of Michael Strauch, another CPA. Wife had admitted as evidence a document that listed what she believed to be the parties' assets and liabilities and their value. That document was based on prior asset and liability statements Husband had presented to a bank in support of a line of credit, which had higher values for the assets and lower values for the liabilities than Zehner's spreadsheet.

[7] Following the hearing, both parties submitted proposed findings and conclusions. On November 18, 2022, the court entered extensive findings of fact and conclusions thereon and dissolved the parties' marriage. In particular, the court found that the "best evidence as to the value of the assets . . . is the testimony of the parties' accountant, Donald Zehner, Jr., who prepared the income taxes for both parties throughout the marriage and thereafter." Appellant's App. Vol. 2 at 73. The court then found that the parties had assets totaling $2,703,290.00, of which it awarded $2,144,907 to Husband and $558,383 to Wife. *See id*. at 107. And the court found that the parties' liabilities totaled $933,848.00 and attributed the entire sum to Husband. *See id*. Accordingly, the court determined that net value of assets awarded to Husband was $1,211,059 and the net value of assets awarded to Wife was $558,383. The court then ordered Husband to pay Wife an equalization payment of $326,338.00. This appeal ensued.

Discussion and Decision

Standard of Review

[8] Wife appeals the trial court's final decree dissolving her marriage to Husband. Where, as here, the trial court entered findings and conclusions, our Supreme Court has explained that we

> will not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. Where a trial court enters findings . . . , the appellate court reviews issues

> covered by the findings with a two-tiered standard of review that asks whether the evidence supports the findings, and whether the findings support the judgment. . . .
>
> Additionally, there is a well-established preference in Indiana for granting latitude and deference to our trial judges in family law matters. Appellate courts are in a poor position to look at a cold transcript of the record, and conclude that the trial judge, who saw the witnesses, observed their demeanor, and scrutinized their testimony as it came from the witness stand, did not properly understand the significance of the evidence. On appeal, it is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by appellant before there is a basis for reversal. Appellate judges are not to reweigh the evidence nor reassess witness credibility, and the evidence should be viewed most favorably to the judgment.

Steele-Giri v. Steele, 51 N.E.3d 119, 124 (Ind. 2016) (quotation marks and citations omitted).

Issue One: Valuation of Property

[9] On appeal, Wife purports to raise three different issues—Issues I, III, and IV—regarding the court's valuation of marital assets and liabilities. Specifically, in her first issue, Wife contends that the court erred when it divided the property. Then, in her third issue, Wife asserts that the court erred when it credited Husband's expert witness over her own. And, in her fourth issue, Wife contends that the court issued findings of fact that were inconsistent with her evidence. However, at their core, each of these arguments is premised on Wife's assertion that the court should have credited the testimony of her and Strauch over that of Husband and Zehner. *See* Appellant's Br. at 9-10 (arguing

that the court "agreed with [Husband] and his accountant on each valuation disagreement between the parties and, by doing so, provided no reason for its logic in completely discounting [her] testimony, her evidence, and that of her independent expert witness"); Appellant's Br. at 20 (arguing that the court abused its discretion "when it relied solely upon [Zehner's] testimony"); Appellant's Br. at 21 (arguing that the court "considered only [Husband's] and [Zehner's] testimony and evidence" instead of Wife or Strauch's).

[10] But Wife's arguments are nothing more than blatant requests for this Court to reweigh the evidence and judge the credibility of the witnesses, which we cannot do. *See Steele-Giri*, 51 N.E.3d at 124. It was the role of the court, as fact-finder, to determine which witness or witnesses to credit. And it is clear from the findings of fact that the court found Zehner to be the more credible CPA. Indeed, the court specifically noted in its findings that Zehner's testimony was the "best evidence as to the value of the assets[.]" Appellant's App. Vol. 2 at 73. And while Wife appears to assert that Zehner was not credible because he had a prior relationship with the parties and was not independent, that is precisely why the court chose to credit Zehner over Strauch. *See id*. (finding that Zehner was the best evidence because he "prepared the income taxes for both parties throughout the marriage and thereafter").

[11] To the extent Wife contends that Zehner was unreliable as a witness because he frequently relied on Husband's "own valuation" of the disputed assets, that is again nothing more than a request to reweigh the evidence. Appellant's Br. at 12. Wife thoroughly cross-examined Zehner about the source of his

information and elicited numerous admissions that Zehner had relied on statements from Husband. But the court still determined that Zehner was credible. Given that the majority of the disputed assets and liabilities were related to the farming operation and given Husband's long-standing personal experience and knowledge of the farming industry, the court was well within its discretion to rely on Zehner's report regarding the value of the assets and liabilities, even if many of the values came only from Husband.[1]

[12] Still, Wife also asserts that the court should not have relied on Husband and Zehner's valuations because those valuations varied greatly from prior financing statements Husband had prepared. We acknowledge that Husband had previously prepared financing statements, which each contained higher values for assets and lower values for liabilities than what Husband presented to the trial court. *See* Ex. Vol. 6 at 32-40; *see also* Appellant's App. Vol. 2 at 56. But Husband testified that each of the prior financing statements had been prepared for financial institutions in support of a line of credit. And he testified that he had "puff[ed]" up his asset value and income "to try to make [himself]

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[1] Wife also argues that the trial court erred when it adopted Husband's proposed findings of fact and conclusions thereon. However, our Supreme Court has stated that "[i]t is not uncommon for a trial court to enter findings that are verbatim reproductions of submissions by the prevailing party." *Prowell v. State*, 741 N.E.2d 704, 708 (Ind. 2001). The practice of adopting a party's proposed findings is not prohibited. *In re Marriage of Nickels*, 834 N.E.2d 1091, 1096 (Ind. Ct. App. 2005). Although the practice is not encouraged, the critical inquiry is whether such findings, as adopted by the court, are clearly erroneous. *Id*. Here, Wife's entire argument is again premised on her assertion that the court should not have relied on Husband's and Zehner's valuations. Other than this request to reweigh evidence, Wife makes no other argument that the findings are clearly erroneous. Accordingly, we conclude the trial court did not err when it adopted Husband's proposed findings.

look good." Tr. Vol. 3 at 10. Husband specifically testified that he had used "what [they] paid for things" for the value as opposed to current market value. *Id*. at 13. Thus, Husband provided an explanation to the court for the discrepancy between what he had previously asserted and what he was now requesting, and the court was free to determine that his testimony was credible. We cannot say that the court erred when it credited Husband's and Zehner's testimony over Wife's and Strauch's.

Issue Two: Exclusion of Certain Property

[13] Wife next contends that the court abused its discretion when it excluded certain personal property from the marital pot. In particular, Wife asserts that the court should have included a GRT Sporting Club membership; the parties' 2015 tax refund; a Farm Service Agency ("FSA") crop payment; cash on hand; a health savings account ("HSA"), a hedge account, and a stock account; hay; and a betting account, a Frontsight Membership, and a legal settlement. We address each argument in turn.

[14] GRT Sporting Club Membership. In its list of assets and liabilities, the trial court simply placed a "?" as the net value of the GRT Membership, giving it no value. Appellant's App. Vol. 2 at 102. Wife asserts that the court erred when it did not place a value on the GRT Sporting Club Membership—in essence removing it from the marital pot—because Husband and Wife had paid $25,000 for the membership and because Husband valued it at $3,000. *See* Appellant's Br. at 15. However, Zehner testified that the membership was an investment "that never came to fruition." Tr. Vol. 2 at 33. He also testified that, after

conversations with Husband, he understood the membership to have "no value." *Id*. at 95. Thus, there is evidence to support the court's determination that the membership had no value.

[15] 2015 Tax Refund. Wife next asserts that the court erred when it omitted the 2015 tax refund from its list of assets and liabilities. In particular, Wife contends that she received a $6,881 tax refund but that it was sent to Husband, who did not provide it to her. *See* Appellant's Br. at 15-16. However, Husband testified that Wife had "already gotten her use and value out of that" because it was "carr[ied] over" and applied to subsequent liabilities. Tr. Vol. 2 at 173-74. And Zehner similarly testified that the refund had "rolled forward" such that she "already got that benefit in her tax return." Tr. Vol. 3 at 208. The evidence therefore supports the court's omission of the 2015 tax refund as a marital asset.

[16] FSA Crop Payment. Wife next contends that Husband had received an FSA Crop Payment totaling $109,000 in 2014 but that she "never received any of those funds." Appellant's Br. at 16. She maintains the court erred when it did not include it as a marital asset. But Zehner testified that he had "no record . . . anywhere" of a $109,000 payment in 2014 and that, to his knowledge, Husband and Wife did not receive such a payment. Tr. Vol. 2 at 39, 110. And Husband testified that the only payment he had received from the government was a payment to Reed Farms in October of 2016, more than two

years after he had filed for dissolution.[2] *See id*. at 196. The evidence therefore supports the court's finding that the FSA Crop Payment was not a marital asset.

[17] Cash on Hand. Wife next contends that the court erred when it excluded $15,000 cash from the marital pot. She contends that her own testimony demonstrated that she and Husband had "a bank account with a $15,000 balance." Appellant's Br. at 17. However, Wife did not present any other evidence to demonstrate that the parties indeed had that amount in the bank. And the court was not required to accept Wife's unsupported testimony as true. To the contrary, Zehner testified that he did not include $15,000 cash as an asset because removing it "was a more accurate presentation of what was in the bank." Tr. Vol. 2 at 75-76. There is evidence to support the court's omission of $15,000 cash from the list of assets.

[18] HSA, Hedge Account, Stock Account. Wife also argues that the court erred when it omitted an HSA, a Hedge Account, and a Stock Account from the marital pot. Wife contends that she testified to the value of the accounts and that Husband "stipulated" to them but that the court nonetheless omitted them as assets. Appellant's Br. at 17. Wife is correct that Husband agreed to the accounts and their values. But Wife disregards Husband's testimony that he did not include any of those as accounts as marital assets because he had used her half of those accounts to offset the parties' mutual debt on a line of credit for

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[2] Wife does not make any argument that monies received two years after Husband filed for dissolution should be included in the marital pot.

which Wife had only made "minor" payments. Tr. Vol. 3 at 176. As such, there is evidence to support the court's conclusion that the value of those accounts were not separate assets to be included in the marital pot.

[19] Hay. Wife also contends that the court erred when it did not include $5,500 worth of hay as a marital asset. Wife contends that Husband "stipulated" to the amount but that the court omitted it anyway. Appellant's Br. at 17. At the fact-finding hearing, Husband acknowledged that the $5,500 value for hay had been "zeroed out," but he testified that Zehner likely "would have put" that value in "with the total amount of the crop." Tr. Vol. 2 at 222. In other words, Husband provided at least some evidence that the hay was otherwise accounted for in a different asset. We therefore cannot say that the court clearly erred when it did not include the hay as a separate asset.

[20] TwinSpires Account, Frontsight Membership, and Legal Settlement. Finally, Wife contends that the court erred when it excluded a TwinSpires betting account, a Frontline Membership, and a Legal Settlement from the marital pot. Wife contends that she "introduced testimony" regarding each of those accounts such that the court erred when it did not include those as assets. Appellant's Br. at 18. Regarding the TwinSpires account, we acknowledge that the parties had a betting account that contained $403.29. However, we need not decide whether the court erred when it excluded that account because we hold that any error would be so minor as to not require reversal. Again, the account at issue contained just over $400. But the court distributed assets that totaled well over two million to Husband and Wife. In other words, the $400

account would have a negligible impact on the whole award. We therefore decline to remand for such a de minimus correction. *See Hartley v. Hartley*, 862 N.E.2d 274, 285 (Ind. Ct. App. 2007) (declining to remand for a $360 error when the court distributed assets worth over $350,000).

[21] As for the Frontsight Membership, Wife only testified as to her belief regarding the initial cost of the membership but did not present any testimony or evidence about the present value of the membership at the time of the dissolution. Rather, Zehner testified that, based on his "discussions" with Husband, the membership was not worth anything. Tr. Vol. 2 at 97. Finally, regarding the legal settlement, Husband acknowledged that he had received a payment but testified that he deposited it into Husband and Wife's company to pay for certain joint expenses. *See* Tr. Vol. 2 at 192. As such, there is evidence to support the court's determination that neither of those items were marital assets.

Conclusion

[22] The trial court did not abuse its discretion when it chose to credit Husband and Zehner over Wife and Strauch. And the court did not clearly err when it omitted several items from the marital pot. To the extent the court erred when it excluded the betting account, we will not remand for the de minimus correction. We therefore affirm the trial court's dissolution decree.

[23] Affirmed.

Tavitas, J., and Kenworthy, J., concur.