

## 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.



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## IN THE COURT OF APPEALS OF INDIANA

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Keith Faulkner,  
*Appellant,*

v.

Jodie Faulkner,  
*Appellee*

October 19, 2022

Court of Appeals Case No.  
21A-DN-2669

Appeal from the Howard Superior  
Court

The Honorable Hans Pate, Special  
Judge

Trial Court Cause No.  
34D02-1902-DN-520

**May, Judge.**

- [1] Keith Faulkner (“Husband”) appeals the trial court’s division of property following the dissolution of his marriage to Jodie Faulkner (“Wife”). He presents two issues for our review, which we expand and restate as:

1. Whether the trial court abused its discretion in the division of assets when it
  - 1.1 included vehicles purchased by the couple’s joint business venture in the marital assets; and
  - 1.2 denied Husband’s request to credit as marital property the provisional payments he made to Wife prior to the decree of dissolution; and
2. Whether the trial court abused its discretion when it awarded Wife spousal maintenance.

We affirm.

## Facts and Procedural History

[2] Husband and Wife married on October 11, 2014. No children were born of the marriage. In March 2017, the couple began operating Faulkner Trucking LLC, a long-haul trucking company. Faulkner Trucking utilized various financial arrangements to acquire the tractors and trailers<sup>1</sup> it needed to conduct its business. Faulkner Trucking acquired some tractors and trailers through lease-to-own agreements whereby it would make lease payments for the duration of

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<sup>1</sup> “Tractor” refers “to the actual portion of a semi-tractor with the engine,” and “trailer” refers “to the trailer that attaches to the semi-tractor.” (Appellee’s Br. at 6 n.1.)

the lease term, and at the conclusion of the lease term, Faulkner Trucking would have the option to retain ownership of the vehicle. Some of these agreements required Faulkner Trucking to make an additional, residual payment if it wished to purchase the vehicle, and other agreements did not require any additional payments to obtain ownership of the vehicle. Faulkner Trucking also took out loans to purchase tractors and trailers. Faulkner Trucking, in turn, leased its vehicles to the company's contracted drivers. In 2017, Faulkner Trucking's gross sales were over \$900,000. In 2018, the company's gross sales were over \$1.5 million, and in 2019, Faulkner Trucking's gross sales exceeded \$2.2 million.

[3] Husband has served as the company's president since its inception. Wife performed clerical work for the company when it began, but she often had to miss work because of medical appointments. Wife eventually quit working for Faulkner Trucking, and the company hired a secretary to replace Wife in 2018. The couple separated on February 26, 2019, and Wife filed a verified petition for dissolution of marriage on that date. Wife has been unemployed since filing for divorce. She applied for social security disability benefits, but her claim was denied. At the time of the final hearing, Wife was appealing that denial.

[4] Wife's petition for dissolution of marriage asked for an equitable division of the marital estate, and in an agreed provisional order, Husband agreed to pay Wife spousal maintenance in the sum of \$200.00 per week and to cover some of Wife's bills during the pendency of the divorce action. The parties retained Dan Rosio of the accounting firm Katz, Sapper & Miller, LLP to perform a

business valuation of Faulkner Trucking. Rosio calculated the value of the company at the time the couple separated to be \$124,956.00. The valuation listed Faulkner Trucking's fixed assets as worth \$28,173.00, which reflected the value of a 2008 Fontaine Minideck trailer (VIN ending in 8221) and a 1999 Trail King trailer (VIN ending in 5612).

[5] The trial court held a bifurcated final hearing regarding the dissolution petition on May 11, 2021, and May 18, 2021. During the final hearing, Husband testified he acquired a 2016 Kenworth tractor (VIN ending in 5862) in 2017, a 1998 Fontaine trailer (VIN ending 7667) in 2016, a 2018 Monac DD trailer (VIN ending 5524) in 2017, and a 2016 International Lonestar trailer (VIN ending 1437) in 2018. Wife asked the trial court to include these vehicles in the marital estate. Wife also requested the trial court order Husband to continue to pay spousal maintenance, and she asked for a larger share of the marital estate than her presumptive fifty percent. Wife argued this relief was necessary because she could not work due to her various ailments. Husband opposed both requests and asserted it was his belief Wife could work to support herself. He testified that, even after applying for disability benefits, Wife rode in a car all the way to Florida with minimal complaint and she had ridden on a jet ski and a four-wheeler. In addition, Husband asked to be credited for the spousal maintenance he paid to Wife and other costs he covered during the pendency of the couple's divorce proceedings.

[6] On November 9, 2021, the trial court issued findings of fact, conclusions of law, and a decree of dissolution. The trial court found:

12. The parties disagreed as to whether Mr. Rosio included all of the “fixed assets” of the business in his valuation. Wife introduced several email communications her attorney had with Mr. Rosio regarding this subject (Petitioner’s Ex. 29). The financial records provided to Mr. Rosio by Husband had the “fixed assets” of the business at \$28,173.00. Husband provided information to Mr. Rosio that Faulkner Trucking did own two trailers at the time of the divorce, to wit:

- a. 2008 Fontaine Minideck; and
- b. 1999 Trail King. (See Ex. 29 email communication).

These two trailers were valued at the approximate amount of the “fixed assets” included in the valuation and therefore are not included in the attached spreadsheet of their assets and debts.

\* \* \* \* \*

14. The Court will consider the following trucks/trailers as additional assets of the business not reflected in either Husband’s spreadsheet or apparently considered in Mr. Rosio’s valuation:

a. 2016 Kenworth, VIN ending in 5862—According to Ex. 6, this semi-tractor was leased in October, 2017, for a three-year term. Husband agreed he still possessed this vehicle, and the lease term has expired. As of the date of separation, Husband had a balance of \$32,896.00 owed (\$2,056.00 x 16 months) and it had a value of \$84,000.00. There was no residual owed at the end of the lease. The Court will value this asset at \$51,104.00.

b. 1998 Fontaine Trailer, VIN ending in 7667—According to Ex. 10, this trailer was purchased for \$17,500.00 in 2016. Husband was given a trade in allowance of \$8,500.00 and owed a

balance of \$9,000.00. The vehicle was financed through Axis Capital. Husband testified he either still possessed the trailer or it was sold after separation. The Court will value this asset at \$5,000.00.

c. 2018 Manac Trailer, VIN ending in 5524. This vehicle was purchased by Husband in April, 2017, for \$29,500.00 and financed through Axis Title. Husband testified he either still possessed the trailer or it was sold after separation. The Court will value this asset at \$20,000.

15. The Court does not include the following trucks/trailers requested by Wife:

a. 2008 Fontaine Trailer, VIN ending in 8221—This trailer appears to have been considered in the valuation.

b. 1999 TK DD Trailer, VIN ending in 5612—This trailer appears to have been considered in the valuation.

c. 2016 Lonestar Int'l, VIN ending in 1437—The lease did not begin until November 2018, and therefore there would be little to no marital value.

\* \* \* \* \*

19. Wife suffers from numerous ailments including, but not limited to, fibromyalgia, anxiety, restless leg syndrome and anxiety as documented in the medical records submitted to the Court as evidence. Wife applied for disability during the marriage with the support of Husband in her application for said disability. Her claim was denied and is currently in the appellate process. Wife testified that she is unable to work a full-time job due to the pain she suffers after sitting for extended periods of

time. Wife has not worked since her separation from Husband. This Court finds that Wife is physically or mentally incapacitated to the extent that her ability to support herself is materially affected.

20. This Court finds that Husband's current earning ability is substantially greater than Wife's and there should be an unequal distribution of assets in favor of Wife with a 55/45 division. Husband's current financial stability is due to the business that Husband and Wife started during the marriage. According to the business valuation (Ex. 20) and other financial records introduced by Wife (see Ex. 25), Faulkner Trucking has seen an increase in sales from 2017 of \$981,222.23 to \$2,253,767.96 in 2019. Husband's finances and likely future income are much greater than Wife's.

\* \* \* \* \*

22. Husband has paid all of Wife's bills and provided temporary spousal maintenance as part of the agreed upon provisional orders for a period of more than two years. The Court is denying Husband's request for reimbursement or credit for any temporary spousal maintenance he has paid, is awarding wife an unequal distribution of the assets, and also denied Husband reimbursement of any fees associated with appraising the real estate and value of Faulkner Trucking. This Court also anticipates Wife being awarded Social Security Disability in the future. For all of these reasons the Court is awarding Wife a lesser amount of permanent spousal maintenance it might otherwise award.

(*Id.* at 106-110) (errors in original). The trial court attached a spreadsheet listing the couple's assets and liabilities to its findings of fact and conclusions of law, and this spreadsheet listed as assets of the marriage attributable to

Husband the three vehicles detailed in numerical paragraph 14 and a 1988 Mitsubishi Dump Truck (VIN ending in 0256), valued at \$2,500. The trial court then ordered Husband to pay Wife \$173,741.16 to effectuate the 55/45 split of the marital estate. Further, the trial court awarded Wife spousal maintenance in the amount of \$400 per month for twelve months, but the trial court noted it “may consider a reduction of this amount once Wife is awarded Social Security Disability, upon her marriage to another person, upon a change in her income or for any other substantial change in her financial circumstances.” (*Id.* at 114.)

## Discussion and Decision.

[7] We review a trial court’s division of marital property and award of spousal maintenance for an abuse of discretion. *Roetter v. Roetter*, 182 N.E.3d 221, 225 (Ind. 2022). This occurs if the trial court’s decision is “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, like here, the trial court enters findings of fact and conclusions of law, an appellate court may set aside the trial court’s judgment only when ‘clearly erroneous.’” *Id.* We presume the trial court considered and complied with the applicable statutes when dividing property or awarding spousal maintenance, and the appellant must overcome this strong presumption to succeed on appeal. *Id.*



## 1. Division of Property

[8] In dissolution proceedings, the division of property is a two-step process. *Smith v. Smith*, 136 N.E.2d 275, 281 (Ind. Ct. App. 2019). “First, the trial court must ascertain what property to include in the marital estate; second, the trial court must fashion a just and reasonable division of the marital estate.” *Id.* Indiana Code section 31-15-7-4 provides that the trial court shall divide the parties’ property whether it was owned by either spouse prior to the marriage, acquired by either spouse during the marriage, or acquired by the joint efforts of the spouses. 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 dissolution 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.

## **1.1 Valuation of Vehicles**

[9] Husband argues the trial court erred because “[t]he Court included the 2016 Kenworth; 1998 Fontaine Trailer; the 2018 Manac Trailer; and the 1988 Mitsubishi Dump Truck on its asset and liability spreadsheet dividing the property. These assets were already included in the business valuation performed by Rosio.” (Appellant’s Br. at 11.) However, Appendix A of the business valuation report lists several assumptions and limiting conditions regarding its methodology, including:

Except as noted, we have relied on the representations of the owners, management, and other third parties concerning the value and useful condition of all equipment, real estate, and investments used in the business, and any other assets or liabilities, except as specifically stated to the contrary in this report. We have not attempted to confirm whether or not all assets of the business are free and clear of liens and encumbrances or that the entity has good title to all assets.

\* \* \* \* \*

The calculation and its conclusion are subject to review upon the presentation of data that may have been undisclosed or not available at this writing.

(Ex. Vol. IV at 169.) Therefore, the business valuation report was in part limited by Husband's representations of the business's assets. On October 28, 2020, a paralegal with Husband's attorney's firm emailed Rosio and stated:

Also, as of the date of filing, our client did not own any tractors. They were all leased. He did; however own two trailers as follows:

1. 2008 Fontaine Minideck – he paid \$18,000 for this trailer [VIN ending in 8221]
2. 1999 Trail King – he sold this for \$15,000 [VIN ending in 5612]

(*Id.* at 91.) Between the first and second day of the final hearing, Wife's attorney emailed Rosio, and Rosio confirmed that these were the only two trailers Husband represented Faulkner Trucking as owning. These emails were put into evidence during the second day of the final hearing, and the trial court relied on them in its findings of fact and conclusions of law.

[10] Wife presented evidence Faulkner Trucking owned additional vehicles besides the two reported to Rosio. The lease agreement that allowed Husband to acquire the 2016 Kenworth (VIN ending in 5862) allowed Husband to retain

the vehicle at the conclusion of the lease term without making any residual payment, and Husband testified at the final hearing that he retained ownership of the vehicle after the lease term expired. Moreover, even though Faulkner Trucking obtained loans to purchase the 1998 Fontaine trailer (VIN ending in 7667) and the 2008 Manac trailer (VIN ending in 5524), these trailers were assets of the company at the time of separation, and Husband did not tell Rosio about these trailers. With respect to the 1988 Mitsubishi Dump Truck (VIN ending in 0256), Husband presented no evidence this was an asset of Faulkner Trucking, and Husband did not list it as an asset of the company in his response to interrogatories propounded by Wife. Therefore, the trial court did not abuse its discretion when it valued these vehicles as marital assets separate and apart from the value of Faulkner Trucking because Husband did not disclose these vehicles to Rosio such that they could be included in his valuation of the company. *See Webb v. Schleutker*, 891 N.E.2d 1144, 1149 (Ind. Ct. App. 2008) (holding trial court did not abuse its discretion when it considered crops that had been planted but not harvested as a marital asset subject to division).

## **1.2 Pre-Dissolution Payments to Wife**

[11] Husband also contends the trial court abused its discretion when it did not afford him sufficient credit for the payments he made to Wife in accordance with the provisional agreement the parties entered shortly after Wife filed for divorce. However, as the trial court noted in its dissolution decree, Husband enjoyed a greater earning capacity than Wife during the pendency of the divorce. Whereas Wife's medical ailments prevented her from working,

Husband continued to earn an income through the business he and Wife started during their marriage. In addition, the trial court cited Husband's provisional payments to explain why it awarded Wife a lesser amount of spousal maintenance than it otherwise might have given her. While Husband believes he deserves more credit for these payments than he received, his argument to that effect is nothing more than a request for us to reweigh the evidence, which we will not do. *See Kearney v. Claywell*, 181 N.E.3d 336, 340 (Ind. Ct. App. 2021) (holding trial court's finding regarding wife's economic circumstances was supported by the evidence and refusing husband's invitation to reweigh the evidence).

### **3. Spousal Maintenance**

[12] Husband further argues the trial court abused its discretion when it ordered him to pay Wife \$400 a month as spousal maintenance. An award of spousal maintenance is intended to serve one of three purposes: "to assist an incapacitated spouse, to assist a custodial spouse under certain circumstances, or to assist a spouse in need of educational or vocational rehabilitation." *Roetter*, 182 N.E.3d at 225. Indiana Code section 31-15-7-2(1) 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.

Wife's medical records indicate she has been diagnosed with several ailments, including fibromyalgia, occipital neuralgia, degenerative joint disease, restless leg syndrome, and anxiety. In 2012, Wife underwent spinal fusion surgery. These conditions cause her pain and make it difficult for her to sit or stand for long periods of time. Wife testified she cannot work because of her conditions, and during the pendency of the divorce, Wife relied on Husband's weekly payments to cover her everyday living expenses. Even though Wife has applied for social security disability, she has yet to receive any such payments. Thus, the trial court did not abuse its discretion in ordering Husband to pay spousal maintenance to Wife because evidence supported the trial court's finding that various medical conditions prevent Wife from working to support herself and this is likely to remain the case for some time. *See Barton v. Barton*, 47 N.E.3d 368, 376 (Ind. Ct. App. 2015) (holding evidence supported award of incapacity spousal maintenance), *trans. denied*.

## Conclusion

[13] The trial court did not abuse its discretion in its valuation of the marital estate. While the parties obtained a business valuation for Faulkner Trucking, Husband did not disclose to Rosio all of the business's assets, and therefore, the trial court did not abuse its discretion in considering these additional assets as part of the marital estate separate from the value of the business. While Husband believes he should have received more credit for the pre-dissolution payments he made to Wife, the trial court took these payments into account

when dividing the marital estate and awarding Wife maintenance. Moreover, the trial court did not abuse its discretion when it awarded spousal maintenance to Wife because it found she cannot work as a result of her various medical ailments. Therefore, we affirm.

[14] Affirmed.

Riley, J., and Tavitas, J., concur.