MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Marriage of:

Karen Ann Frazier,

Appellant-Respondent,

v.

Verlon B. Frazier,

Appellee-Petitioner.

June 9, 2021

Court of Appeals Case No. 20A-DN-2206

Appeal from the Shelby Circuit Court

The Honorable Jennifer Kinsley, Magistrate

Trial Court Cause No. 73C01-1904-DN-93

Kirsch, Judge.

[1] Karen Ann Frazier ("Wife") appeals the trial court's order dissolving her marriage to Verlon B. Frazier ("Husband") and dividing the parties' marital property. Wife raises the following restated issue for our review: whether the trial court abused its discretion in its division of the marital property because it

failed to conclude that Wife had rebutted the presumption that an equal division of the marital property was just and reasonable.

[2] We affirm.

Facts and Procedural History

[3] Husband and Wife were married on May 4, 1991. *Tr. Vol. II* at 91. It was the second marriage for both parties, and there were no children born during their marriage. *Id*. Husband and Wife were married for almost twenty-eight years, when on April 19, 2019, Husband filed a petition for dissolution. *Appellant's App. Vol. 2* at 10. A final hearing was held on the petition for dissolution on September 11, 2020. *Id*. at 8. At the time of the final hearing, Husband was eighty-one years of age, and Wife was sixty-two years of age. *Id*. Husband is legally blind and can no longer drive a vehicle but is able to live independently. *Tr. Vol. II* at 15.

[4] When the parties married in 1991, both were employed full-time, and Husband had retirement benefits totaling $170,080.00. *Ex. Vol.* at 3-4. Husband also owned a home, which was sold shortly after the parties' marriage for a net profit of $105,000.00. *Tr. Vol. II* at 11-12. In 1997, Husband retired from Cummins, and at the time of the dissolution, had an annual income of approximately $59,688 from his pension, social security benefits and required minimum distributions. *Appellant's App. Vol. 2* at 12; *Ex. Vol.* at 46. At the time of the dissolution, Wife continued to be employed at Columbus Regional

Hospital where she earns approximately $80,000.00 annually. *Appellant's App. Vol. 2* at 12.

[5] The parties built a new home ("the marital home") in 1991, and Husband sold the home he owned prior to the parties' marriage and paid $105,000.00 from the sale proceeds toward the purchase of the marital home. *Tr. Vol. II* at 11-12. The parties financed the remaining balance of $68,000.00, which Husband paid during the marriage. *Id*. at 12-13. In 1996, the parties refinanced the mortgage secured by their marital home for $102,695.00, and this mortgage was paid in full in March 2001. *Id*. at 44-45. Over the course of the marriage, Husband paid the mortgage and real estate tax payments, and Wife paid other expenses associated with the marital home. *Id*. at 13. On the date of separation, the marital home had a value of $330,000.00, and there was no debt owing on the marital home. *Id*.; *Ex. Vol.* at 3-4.

[6] The marital home was built on five acres of land obtained from Wife's grandfather, which was part of a larger plot owned by Wife's family ("the Family Farm"). *Tr. Vol. II* at 45-46. In 2007, Wife received an undivided one-third interest in the Family Farm after her mother's death along with a cash payment of $69,052.00. *Id*. at 100. The parties stipulated that Wife's share of the Family Farm had a value of $435,400.00. *Id*. Although Husband testified that he mowed three to four acres behind his house that were part of the Family Farm and also that he helped maintain the lane to the Family Farm, Wife testified that Husband only mowed a portion of the five acres they owned together, not the Family Farm. *Id*. at 101. During the marriage, neither party

had much involvement in the Family Farm since it was cash rented. *Id*. at 102. Wife's share of the earnings from the Family Farm are approximately $8,500.00 annually, and the parties reported this income and paid taxes on that income on their joint income tax returns filed each year. *Id*. at 22, 103.

[7] At the time of the dissolution, the parties had substantial investments and funds on deposit. *Ex. Vol.* at 3-4. Over the course of the marriage, the parties maintained mostly separate investments and bank accounts, which was done out of convenience. *Tr. Vol. II* at 17. The parties agreed that during their marriage, each party paid various marital expenses and improvements to the real estate, as needed, from the various funds. *Id*. at 116-19. Also, during their marriage, the parties filed joint state and federal income tax returns and listed their income from all sources including employment income, retirement income, investment income, and farm income, and both parties were jointly liable for the taxes incurred on all their income. *Id*. at 19-20.

[8] On November 10, 2020, the trial court issued its decree dissolving the marriage between Husband and Wife and dividing the marital property. *Appellant's App. Vol. 2* at 10-18. The trial court concluded that based on the statutory factors and relevant case law, an equal division of the marital estate was just and reasonable. *Id*. at 14-15. The trial court found that Wife had not met her burden of proof to deviate from the strong presumption of an equal split after considering all the factors as set forth in Indiana Code section 31-15-7-5. Wife now appeals.

Discussion and Decision

[9] The division of marital property is within the sound discretion of the trial court, and we will reverse only for an abuse of discretion. *In re Marek*, 47 N.E.3d 1283, 1287 (Ind. Ct. App. 2016), *trans. denied*. "We will reverse a trial court's division of marital property only if there is no rational basis for the award; that is, if the result is clearly against the logic and effect of the facts and circumstances, including the reasonable inferences to be drawn therefrom." *Id*. When we review a claim that the trial court improperly divided marital property, we consider only the evidence most favorable to the trial court's disposition of the property without reweighing evidence or assessing witness credibility. *Id*. at 1288-89. "Although the facts and reasonable inferences might allow for a conclusion different from that reached by the trial court, we will not substitute our judgment for that of the trial court." *Id*. at 1289. Such a case turns on "whether the trial court's division of the marital property was just and reasonable." *Morgal-Henrich v. Henrich*, 970 N.E.2d 207, 210-11 (Ind. Ct. App. 2012).

[10] Wife argues that the trial court abused its discretion in its division of the marital property. She specifically asserts that the trial court abused its discretion when it found that she had not rebutted the presumption that an equal division is just and reasonable. Wife contends that the trial court failed to craft a just and reasonable property division that balanced the statutory factors and that the evidence presented showed that she had rebutted the presumption that an equal division was just and reasonable. She maintains that the trial court failed to

consider that nearly one-quarter of the parties' marital estate was inherited by Wife and that Husband made no efforts toward the acquisition of that inherited property. Wife further argues that the trial court failed to consider her desire to retire and her future earnings based on that retirement.

[11] The division of marital property is a two-step process in Indiana. *Estudillo v. Estudillo*, 956 N.E.2d 1084, 1090 (Ind. Ct. App. 2011). First, the trial court determines what property must be included in the marital estate. *Id.* It is well established that all marital property goes into the marital pot for division, whether it was owned by either spouse before the marriage, acquired by either spouse after the marriage and before final separation of the parties, or acquired by their joint efforts. Ind. Code § 31-15-7-4(a); *Falatovics v. Falatovics*, 15 N.E.3d 108, 110 (Ind. Ct. App. 2014), *trans. denied*. For purposes of dissolution, property means "all the assets of either party or both parties[.]" Ind. Code § 31-9-2-98(b). This "one pot" theory ensures that all assets are subject to the trial court's power to divide and award. *Carr v. Carr*, 49 N.E.3d 1086, 1089 (Ind. Ct. App. 2016), *trans. denied*.

[12] After determining what constitutes marital property, the trial court must then divide the marital property under the presumption that an equal split is just and reasonable. Ind. Code § 31-15-7-5. This presumption may be rebutted by a party who presents relevant evidence, including evidence of 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.

Id. A challenger must overcome a strong presumption that the court considered and complied with the applicable statute, and that presumption is one of the strongest presumptions applicable to our consideration on appeal. *J.M. v. N.M.*, 844 N.E.2d 590, 601 (Ind. Ct. App. 2006), *trans. denied*.

[13] Here, after looking at the statutory factors, the trial court found that an equal division of the marital property was just and reasonable. The trial court specifically found that each party contributed to the acquisition of the marital property or have their own separate investments, which have substantially increased in value during the marriage, and that the parties' substantial assets were used for the benefit of both parties throughout the lengthy marriage. *Appellant's App. Vol. II* at 15. It also found that although Husband retired early in the marriage, he had significant assets at that time, which allowed him to pay for the marital home and contribute to the expenses throughout the marriage, and that Wife contributed financially during the marriage as she remained employed throughout the marriage making substantially more than husband since his retirement. *Id*. at 14-15. The trial court also found that both parties acquired property of their own either before the marriage or during the marriage -- Husband through the real estate and retirement benefits he had acquired before the marriage and Wife through the significant assets she inherited during the marriage over thirteen years before the dissolution. *Id*. at 15. The trial court also took into account the economic circumstances of the parties at the time of dissolution and found them to be comparable, even though Wife desired to retire and her retirement benefits would be less than Husband's, because Wife received the marital home (valued at $330,000), which was paid in full, and Husband would have to purchase a new home, incurring new debt. *Id*. The trial court also found the earning ability of the parties is the same for both parties because they both have significant investment accounts, which will

allow both of them to live comfortably, and that, at the time of the dissolution, Wife had the capability to continue to earn significant annual income. *Id*.

[14] Wife argues that the trial court abused its discretion because it did not craft a just and reasonable property division that balanced the statutory factors when it rejected her request for an unequal division of the marital estate by deviating in an amount equal to the inheritance she received consisting of funds and her interest in the Family Farm. "A party's inheritance alone does not necessarily dictate how property should be divided." *In re Marek*, 47 N.E.3d at 1291. Instead, "inherited property 'must be considered in conjunction with relevant evidence regarding other statutorily prescribed factors, and with any evidence demonstrating additional reasons that an unequal distribution would be just and reasonable.'" *Id*. 1291-92. In this case, Wife received her inheritance in 2007, over thirteen years before the dissolution occurred. Although Wife kept the funds separate from other marital funds, and neither party had much involvement in the Family Farm since it was cash rented, over the many years since Wife gained her share of the Family Farm, her share of the annual earnings from the Family Farm was reported on the parties' joint income tax returns, and the parties jointly paid the taxes due on those earnings. Therefore, for tax purposes, the parties treated the income from the inheritance as joint marital property for thirteen years.

[15] Further, as to Wife's assertion that the trial court failed to consider the parties' relative economic circumstances and earning ability, she contends that the trial court's division of property made it impossible for her to retire, at least with

sufficient income to retire comfortably. In looking to determine if the presumption that an equal division is just and reasonable, the trial court is to look at the economic circumstances of each spouse at the time the disposition of the property is to become effective. Ind. Code § 31-15-7-5. Here, at the time that the property disposition was to become effective, Wife was still working full-time, making $80,000.00 annually, and had not yet set a date for retirement. Husband was retired and was receiving a monthly pension in the gross amount of $1,405.06 and Social Security benefits in the gross amount of $1,759.00 monthly. As part of the division of property, Wife received the marital home, which had a value of $330,000.00 and was free and clear of all debt. She also received various accounts, including the $69,052.00 that she received as part of her inheritance. Although, the trial court ordered that Wife pay an equalization payment to Husband, she was not left without options as to the payment of such as she could mortgage the marital home.

[16] Wife has not met her burden of overcoming the presumption on appeal that the trial court acted correctly in applying the statutory presumption of an equal division of the marital estate. The trial court weighed the factors required to rebut the presumption of an equal division, found them in equipoise, and determined that an equal distribution was just and reasonable because the presumption had not been rebutted. Specifically, the trial court's findings indicated its consideration of the parties' comparable economic circumstances and their similar earning ability due to their investment accounts, Wife's award of the marital home and ability to earn income, and Husband's retirement

benefits, as well as the existence of Wife's inheritance, which it balanced against Husband's assets brought into the marriage. The trial court also considered the length of the marriage, the age of the parties, and the parties' contribution to the acquisition of property during the twenty-eight-year marriage. The trial court's findings support its conclusion that equal division is just and reasonable. We, therefore, conclude that the trial court did not abuse its discretion in its division of marital property.

[17] Affirmed.

Altice, J., and Weissmann, J., concur.