

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Stephanie J. Henry,
Appellant-Petitioner,

v.

Alex A. Wulpi,
Appellee-Respondent

February 21, 2024

Court of Appeals Case No.
23A-DN-171

Appeal from the Allen Circuit
Court

The Honorable Wendy W. Davis,
Judge
The Honorable Ashley N. Hand,
Magistrate

Trial Court Cause No.
02C01-2202-DN-160

Memorandum Decision by Judge May
Chief Judge Altice and Judge Foley concur.

May, Judge.

[1] Stephanie J. Henry appeals the trial court’s order denying Henry’s motion to correct alleged errors in the trial court order that dissolved Henry’s marriage to Alex A. Wulpi. Henry argues the trial court abused its discretion when it valued some of their personal property and when it awarded Wulpi fifty-five percent of the marital estate. Because Henry has not demonstrated the trial court abused its discretion, we affirm the trial court’s judgment.

Facts and Procedural History

[2] Henry and Wulpi married on January 1, 2021, and separated approximately seven months later. Henry continued to live in the duplex that was titled in Wulpi’s name and in which the parties had cohabitated (hereinafter “marital residence”). On February 14, 2022, Henry filed a petition for dissolution of their marriage. The court held a provisional hearing on March 3, 2022, during which Henry requested a continuance to obtain counsel.¹ The court granted the continuance. Counsel for Wulpi filed an appearance on April 7, 2022, and requested the court set a case management conference. Wulpi also requested permission to enter the marital residence to “inventory and appraise marital property presently under the exclusive possession and control” of Henry. (Appellant’s App. Vol. 2 at 21.)

¹ Henry remained pro se until September 29, 2022.

[3] The trial court set a hearing for June 7, 2022, and following that hearing the court issued a Pre-Trial Order Regarding Personal Property and an order for the parties to engage in mediation. The Pre-Trial Order Regarding Personal Property provided:

1. The Court now makes the following pre-trial order with respect to discovery, identification, valuation, and where appropriate, distribution of certain items of tangible personal property, which Order shall apply if among the issues to be resolved in this action are the valuation and distribution of tangible personal property of the marital estate. If unresolved prior to trial, this issue may require substantially greater time, effort and expense than is justified in this matter. The Court thus orders this issue resolved on an expeditious basis, so as to allow efficient and equitable distribution of the tangible personal property.

2. Within thirty (30) days of this Order, at an agreed time, the parties shall be granted the opportunity to inspect and photograph those items of tangible personal property in each other's actual and/or constructive possession.

3. Within sixty (60) days following the above inspections and photography, the parties shall meet for purposes of concluding the valuation and disposition of such items of tangible personal property. Each item of tangible personal property shall then be listed for bid, and shall be valued and distributed as follows. Each party shall alternate the opening bid for each single item. The other party shall have the opportunity to counter with a higher bid, and the bid process shall so proceed until concluded by a party failing/refusing to make a higher bid for the item than [the] last bid made. Each bid shall be no less than \$5.00 higher than the previous bid. The party then making the highest bid shall retain ownership of that item through any

final distribution and Decree of Dissolution, free and exclusive of any claims by the other, and the amount bid on the item shall be recorded and maintained, which will be provided to the Court as dispositive of the issue of value of such items subject to disposition by the Court.

4. To the extent the parties may mutually agree that neither wishes to bid on any single item or items, that item(s) shall be set aside for liquidation, and shall thereafter be promptly liquidated in a commercially reasonable manner. This may include, but it not necessarily be limited to the parties paying for the services of a mutually agreeable professional liquidator, who shall conduct the liquidation at the earliest available time and place. The proceeds from this professional liquidation shall be held in trust by counsel, and shall be reported to the Court for final disposition, absent agreement of the parties to the contrary.

5. Notwithstanding the above set time line, this entire process for valuing and distributing the tangible personal property of the marital estate shall be concluded no later than sixty (60) days before trial.

(Id. at 27.)

[4] Mediation was scheduled for August 18, 2022, and the parties appeared for mediation, but it was unsuccessful. The court held a pre-trial conference on August 31, 2022. Wulpi attended by counsel, but Henry, who remained pro se, failed to appear. The trial court set the trial for September 29, 2022, and ordered the parties to exchange discovery, file financial declarations, and comply with the Pre-Trial Order Regarding Personal Property, which the court re-issued with the pre-trial conference order.

[5] On September 22, 2022, Henry filed a motion to voluntarily dismiss the dissolution proceedings under Indiana Trial Rule 41(A). The next day, the court ordered the motion be heard on September 29, 2022. On September 26, 2022, Wulpi filed a counter-petition for dissolution of marriage that asked the court to “proceed with final hearing previously scheduled for September 29, 2022.” (*Id.* at 69.) On September 29, 2022, a lawyer entered an appearance for Henry and requested a continuance of trial to have time to prepare. The court granted the continuance, reset trial for November 1, 2022, and informed the parties that “no further continuances shall be granted.” (*Id.* at 80.) The court also reminded the parties that they were required to comply with the Pre-Trial Order Regarding Personal Property, which the court again attached to the order memorializing the hearing. (*Id.* at 81.)

[6] The parties, through their counsel, arranged for the private auction required by the Pre-Trial Order Regarding Personal Property to occur on October 28, 2022. At issue during that auction were forty-five contested pieces of personal property, including memorabilia, furniture, appliances, tools, artwork, dishes, books, linens, electronics, a piano, and a Sleep Number bed. (*See id.* at 136-38.) Henry did not appear for the auction. As a result, Wulpi bid \$5 on each piece of property and thereby earned the right to all forty-five items for \$225.

[7] The parties appeared for the final dissolution hearing on November 1, 2022. Henry’s counsel orally moved to continue the proceedings, and Henry explained that, because of medical issues, she needed another 60 to 120 days to gather her financial evidence. Her counsel informed the court that he had

received “virtually none of the documents that I’ve asked my client for . . . , mostly financial documentation, to prepare for today’s hearing.” (Tr. Vol. 2 at 8-9.) The trial court denied her motion and reminded her that the court indicated it would not allow more continuances when the court granted her motion to continue on September 29, 2022.

[8] Wulpi took the stand and testified about his financial declaration and marital balance sheet, about the private auction and its results, and about his willingness to equally divide the equity in the marital residence, which he had purchased prior to the marriage. Henry did not object to the admission of any of that evidence. When Henry was on the stand, she testified about why she wanted to keep some of the items assigned to Wulpi via auction. On cross-examination, counsel for Wulpi asked Henry what value she would assign to the auctioned items that she wanted to keep, and Henry testified, “I do not have a number at this time.” (*Id.* at 128.)

[9] Henry also expressed interest in purchasing the marital residence and asked that she be given six months to arrange the financing. Because Henry had not given her counsel any of the financial documents that he requested, Henry did not file financial declarations or a marital balance sheet. Nor did she testify to the balances of any accounts she may have. She testified that she did not know what her annual income was for 2021 or the first ten months of 2022. (*Id.* at 87.) She stated she thought her income in 2022 had been less than \$10,000, but she was in the final stages of the interview process for a job that would pay \$130,000 per year.

[10] The trial court entered an order dissolving the marriage on November 3, 2022. In that order, the trial court assigned to Wulpi the forty-five items from the auction, with each item valued at five dollars, and then indicated the parties could keep all other personal property that each of them presently possessed. Henry was given four months to refinance the marital residence, or the residence was to be sold; either way, each party should receive half of the existing equity. Each party was to pay all debts in their own names, “though this Court was presented no evidence of [Henry’s] debts.” (Appellant’s App. Vol. 2 at 123.) The court found Wulpi had rebutted the presumption of equal division of the marital estate and awarded Wulpi “roughly” fifty five percent of the estate. Finally, the court ordered each party to pay their own attorney fees.

[11] On December 5, 2022, Henry filed a motion to correct error in which she asserted the court erred when it accepted the five-dollar valuations of the forty-five items auctioned on October 28, 2022, because Henry was unable to attend and the values assigned are “clearly and obviously inequitable and unjust.” (*Id.* at 149.) Wulpi filed a response in which he argued the trial court could not have erred because Henry failed to attend the auction, failed to object to the admission of the auction’s results, and failed to offer other evidence of the value of the items at issue. The trial court denied Henry’s motion in an order that included the following pertinent findings:

3. [Henry] was represented by legal counsel when a private auction was coordinated by counsel for October 28, 2022 pursuant to the Court’s Pre-Trial Order. [Henry] failed to attend the private auction and as such made no bids on the personal

property. The purpose of the Court’s Pre-Trial Order Regarding Personal Property is to establish an efficient and equitable distribution of the tangible personal property.

4. The parties attempted to conduct the private auction in compliance with the Court’s Pre-Trial Order, yet [Henry] failed to appear for the personal property auction.

5. The Court finds that there is no error made in accepting the final bid values for the personal property submitted by [Wulpi]. [Henry] did not submit any values for the personal property at the private auction or during the trial.

(*Id.* at 155.)

Discussion and Decision

[12] The trial court denied Henry’s motion to correct error. We review the trial court’s denial of such a motion for an abuse of discretion. *Expert Pool Builders, LLC v. Vangundy*, 224 N.E.3d 309, 312 (Ind. 2024). “A trial court exceeds its discretion when its decision is unlawful, illogical, or otherwise unreasonable.” *Id.* If the parties raise questions of law, we review those de novo. *Berg v. Berg*, 170 N.E.3d 224, 227 (Ind. 2021).

[13] Both the trial court’s order denying the motion to correct error and the underlying order dissolving the parties’ marriage contained findings of fact and conclusions of law. We may not reverse a judgment with findings and conclusions unless the evidence does not support the findings or the findings do not support the judgment. *Goodman v. Goodman*, 94 N.E.3d 733, 741 (Ind. Ct.

App. 2018), *trans. denied*. We will not set aside findings unless there are no facts or inferences to support those findings. *Perkinson v. Perkinson*, 989 N.E.2d 758, 761 (Ind. 2013). As we undertake our review, we neither reweigh the evidence nor reassess the credibility of witnesses. *Id.*

1. Valuation of personal property

[14] Henry first challenges the trial court’s five-dollar valuation of each of the forty-five items of personal property assigned to Wulpi following the private auction. We review the values assigned to marital assets in a dissolution proceeding for an abuse of discretion. *Bingley v. Bingley*, 935 N.E.2d 152, 154 (Ind. 2010). The value assigned is not an abuse of discretion “if sufficient evidence and reasonable inferences support the valuation.” *Id.* As we determine whether the evidence and inferences are sufficient, we “consider the evidence in a light most favorable to the judgment.” *Meyer v. East*, 205 N.E.3d 1066, 1073 (Ind. Ct. App. 2023).

[15] Henry argues the trial court “abdicated its responsibility [by] accepting the results of the pseudo-auction . . . without evaluating whether the pseudo-auction results provided sufficient evidence from which the trial court could make a reasonable inference of value.” (Appellant’s Br. at 14.) In support, Henry claims “the descriptions [of the auctioned items] are specific enough to alert any reasonable person to the unreasonableness of a \$5.00 value for many of the described items.” (*Id.*) However, the trial court’s responsibility is to assign a value within the range of the evidence. *See Priore v. Priore*, 65 NE.3d

1065, 1076 (Ind. Ct. App. 2016) (“Generally, there is no abuse of discretion if a trial court’s chosen valuation is within the range of values supported by the evidence.”), *trans. denied*.

[16] Five dollars was within the range of evidence for each of the items, as that was the value assigned by the private auction that the parties were required to hold.² Henry could have provided different evidence of the value of the contested items by attending the auction to bid on the items until they reached a value that she felt was more appropriate. She could have challenged the admission of the results of the auction when offered into evidence by Wulpi. She could have provided testimony about the value of the contested items when invited to do so by Wulpi’s counsel on cross-examination. Henry did none of these. “Where the parties fail to present evidence as to the value of assets, it will be presumed that the trial court’s decision is proper.” *Quillen v. Quillen*, 671 N.E.2d 98, 103 (Ind. 1996). We accordingly find no error in the court accepting the valuations provided by the private auction for the forty-three of the forty-five items for which there was no other evidence. *See Goodman*, 94 N.E.3d at 748 (refusing to overturn valuation based on trial court’s failure to consider tax consequences when party failed to present evidence of tax consequences to the trial court).

² We note the trial court issued the Pre-Trial Order Regarding Personal Property multiple times. That Order explained the valuation and distribution of personal property, if left unresolved for trial, “may require substantially greater time, effort and expense than is justified[.]” (Appellant’s App. Vol. 2 at 27.) That Order also indicated the final bid for each item “shall be . . . dispositive of the issue of value of such items subject to disposition by the Court.” (*Id.*) Henry was well aware of this fact but failed to attend the auction.

[17] The two remaining items are the bed and the piano. Wulpi testified the Sleep Number bed cost over \$8,000.00 and he still owed \$5,175.00 on it. (Tr. Vol. 2 at 26.) When asked about the value of the bed at the time of the final hearing, Wulpi testified: “There is no resale market. For them.” (*Id.* at 64.) As for the piano, Wulpi testified his research suggested the piano had a value “anywhere from three hundred to six hundred” dollars. (*Id.*) Although the trial court had this other evidence before it of possible values of the piano and bed, we cannot say the court abused its discretion by assigning those items the value assigned by the auction. *See Crider v. Crider*, 15 N.E.3d 1042, 1059 (Ind. Ct. App. 2014) (refusing to reweigh evidence when trial court chose between differing opinions of value of property), *trans. denied*.

2. Division of marital estate

[18] Henry also argues the trial court erred by assigning fifty five percent of the marital estate to Wulpi. Trial courts have broad discretion when dividing a marital estate, and we can reverse only for an abuse of that discretion. *Goodman*, 94 N.E.3d at 742. We presume the trial court considered and complied with the controlling statutes, and the party challenging the trial court’s division has the burden to overcome that presumption. *Id.*

[19] Trial courts are to divide the marital estate “in a just and reasonable manner[,]” Ind. Code § 31-15-7-4(b), and Indiana law “presume[s] that an equal division of the marital property between the parties is just and reasonable.” Ind. Code §

31-15-7-5. A divorcing party may rebut this presumption by presenting contrary evidence. *Id.* Some factors to be considered include:

(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.

[20] The trial court entered the following findings and conclusions on this issue:

7.3 With respect to those factors stated in I.C. 31-15-7-5 and other evidence presented, the following facts are relevant for this Court's consideration:

7.3.1 The parties were married a short time, separating only six months after marrying with a legal separation date thirteen months after marrying.

7.3.2 [Wulpi's] two retirement plans valued close to \$12,000.00 accrued before the marriage and [Wulpi] made no contributions during the marriage.

7.3.3 [Henry] has an employment opportunity where she would make an annual salary of \$130,000, giving [Henry] a much higher earning capacity than [Wulpi].

7.4 Based on the evidence presented, including, but not limited to the non-exhaustive factors on I.C. § 31-15-7-5 as identified above, the Court finds and concludes that the presumption of an equal division of the marital estate has been rebutted. Thus, the Court adopts [Wulpi's] Marital Balance Sheet, entered as Exhibit A, awarding [Wulpi] roughly a 55% division and [Henry] roughly a 45% division.

(Appellant's App. Vol. 2 at 124-25 (footnote omitted³)).

³ The footnote indicated the balance sheet failed to include the equity in the home that Wulpi brought to the marriage, but the trial court "factored in a value of \$25,934.67 to both Husband and Wife as representative of their equal interests in the \$51,869.34 equity[.]" (Appellant's App. Vol. 2 at 125 n.2.)

[21] Henry claims the trial court erred by dividing the estate unequally because the court relied on her employment opportunity but she did not get the job.⁴ While it may be that Henry did not get that job, the fact that she was in contention for a job with a starting salary of \$130,000 per year does suggest she has a higher earning capacity than Wulpi, whose gross income is less than one thousand dollars per week. (*See* Tr. Vol. 2 at 49.) Moreover, as the trial court also noted in its findings, the marital estate included \$11,802.21 in retirement savings that Wulpi had accumulated prior to his seven-month marriage to Henry, and that savings accounts for twenty percent of the marital estate that is being divided nearly equally between the parties. Finally, we would be remiss if we did not reiterate that Henry failed to file financial declarations and failed to testify about any cash accounts or debts. The division being made reflects only the accounts and debts known to Wulpi, who had not lived with Henry for more than a year by the time of the final hearing. Given these facts and circumstances, we cannot hold the trial court erred when it divided the marital estate in the manner that it did. *See Roetter v. Roetter*, 182 N.E.3d 221, 229 (Ind. 2022) (noting “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” and holding trial court did not abuse its discretion in dividing property because

⁴ Henry testified she was in the interview process for a job that would have a salary of \$130,000 per year. When asked about her chances of getting the job, Henry testified: “I think it’s a significant chance considering how far I am in the process and it’s an organization that I’ve been very actively engaged in for a number of years. Um, so I’m fairly confident, uh, but again, I’m still in the interview process.” (Tr. Vol. 2 at 117.)

the trial court considered all assets and liabilities and entered sufficient findings to explain the unequal division).

Conclusion

[22] Neither of Henry's arguments convince us that the trial court abused its discretion, and we therefore affirm the trial court's judgment.

[23] Affirmed.

Altice, C.J., and Foley, J., concur.