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IN THE  
COURT OF APPEALS OF INDIANA

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Jacquelyn Ivankovic,  
*Appellant-Respondent,*

v.

Milan Ivankovic,  
*Appellee-Petitioner.*

March 15, 2023

Court of Appeals Case No.  
22A-DC-2933

Appeal from the Lake Superior  
Court

The Honorable Thomas P. Hallett,  
Judge

Trial Court Cause No. 45D03-  
2201-DC-2

**Opinion by Judge Riley**  
Chief Judge Altice and Judge Pyle concur.

**Riley, Judge.**

## STATEMENT OF THE CASE

- [1] Appellant-Respondent, Jacquelyn Ivankovic (Wife), appeals the trial court's division of marital property following the dissolution of her marriage to Appellee-Petitioner, Milan Ivankovic (Husband).
- [2] We reverse.

## ISSUE

- [3] Wife raises one issue on appeal, which we restate as: Whether the trial court abused its discretion when, after awarding Wife ownership of the family dog and requiring Wife to pay Husband for his one-half share of the dog's value, it granted the minor children the right to take Wife's dog to Husband's residence during parenting time at the minor children's discretion.

## FACTS AND PROCEDURAL HISTORY

- [4] Wife, director of pharmacy at Methodist Hospital in Merrillville, Indiana, and Husband, a middle school teacher, were married on August 5, 2006. During the marriage, three children were born: R.I., born in 2007, A.I., born in 2009, and M.I., born in 2014 (collectively, Children). In addition to the parties and the Children, the family also included Roxy, a three-year-old lilac Boston Terrier. In 2020, after researching Boston Terrier breeders online, Mother contacted Roxy's breeder and was placed on a waiting list for a puppy. Prior to being allowed to adopt a puppy, Mother was required to participate in an interview process and was "vetted" about the dynamics of her family, housing situation, and other personal information. (Transcript Vol. II, p. 122). By

signing the purchase agreement, Mother also had to agree to certain contractual provisions, including that if the dog were ever to be re-homed for any reason, Mother was required to return the dog to the breeder. Roxy was microchipped with Mother's information. At Mother's home, Roxy is treated as the fourth child: Roxy has a fenced-in backyard, swims in the pool, plays on the trampoline with the Children, and sits at the dinner table with the rest of the family.

[5] On January 4, 2022, Husband filed his petition for dissolution of marriage. After three mediation sessions, the parties entered into a Partial Mediation Agreement, resolving multiple issues including custody and parenting time, ownership of the former marital residence, and the division of retirement accounts. The two major issues that remained unsolved were the ownership of Roxy and the ownership of a certain firearm. On November 9, 2022, the trial court conducted a hearing on the outstanding issues. The trial court issued its final order from the bench and entered its written Decree of Dissolution of Marriage on November 18, 2023. As to the ownership of the dog, the trial court specifically found as follows:

The [c]ourt finds that family pets are considered personal property pursuant to Indiana statute regardless of the affection the parties may have for their pet, and the [c]ourt orders that Wife shall retain possession of the parties' dog, Roxy. Husband is awarded the firearm in contention. The [c]ourt finds the value of the dog to be \$1,600.00 and the Glock handgun requested by Wife to be \$800.00. Husband is awarded \$400.00 payable by Wife to Husband in cash to compensate him for the gun and for Wife being awarded the dog. This \$400.00 is to be added to the

payment owed to Husband in regard to Asset #7, bringing the total amount owed to Husband [to] \$7,900.00.

The [C]hildren shall be permitted to bring Roxy to Husband's home during their parenting time as they are also able to bring any other of their personal effects to Husband's home during their parenting time. Neither parent shall attempt to influence the [C]hildren to convince them to bring Roxy or to not bring Roxy to Husband's home.

(Appellant's App. Vol. II, p. 16). Less than thirty days after the entry of the Decree, Husband filed a contempt action, alleging that Wife had attempted to influence the Children about bringing Roxy to parenting time and had supposedly failed to send the dog to Husband's residence with the Children.

[6] Wife now appeals. Additional facts will be provided if necessary.

## **DISCUSSION AND DECISION**

[7] Wife contends that the trial court erred when, in contravention of the controlling statute which considers animals to be personal property, it awarded Children decision-making authority over her own personal property. In response, Husband does not challenge the trial court's finding under the statute that Roxy is to be considered Wife's personal property but asserts that the trial court has discretion to allow the Children to bring the dog with them to Husband's home, just like a trial court can allow "the [C]hildren to take a tablet, cellular telephone, video game system, teddy bear, or favorite cup with them to [Husband's] home during parenting time." (Appellee's Br. p. 13).

[8] The division of marital assets is within the trial court’s discretion, and we will reverse a trial court’s decision only for an abuse of discretion. *Smith v. Smith*, 136 N.E.3d 275, 281 (Ind. Ct. App. 2019). A trial court abuses its discretion if its decision stands 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. *Mitchell v. Mitchell*, 875 N.E.2d 320, 323 (Ind. Ct. App. 2007). 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.” *Dunson v. Dunson*, 769 N.E.2d 1120, 1123 (Ind. 2002). The “party challenging the trial court’s division of marital property must overcome a strong presumption that the trial court considered and complied with the applicable statute, and that presumption is one of the strongest presumptions applicable to our consideration on appeal.” *Smith*, 136 N.E.3d at 281. On review, we will neither reweigh evidence nor assess the credibility of witnesses, and “we will consider only the evidence most favorable to the trial court’s disposition of the marital property.” *Id.*

[9] By statute, the trial court must divide the property of the parties in a just and reasonable manner, including property owned by either spouse prior to the marriage, acquired by either spouse after the marriage and prior to final separation of the parties, or acquired by their joint efforts. *Ind. Code § 31-15-7-4(a)*. In Indiana, the law is clear that animals are personal property subject to distribution by the trial court. *See Forbar v. Vonderahe*, 771 N.E.2d 57, 58 n. 1 (Ind. 2002) (affirming the trial court’s division of property including horses,

despite conflicting evidence of the horses true ownership); *Lachenman v. Stice*, 838 N.E.2d 451, 467 (Ind. Ct. App. 2005) (“However unfeeling it may seem, the bottom line is that a dog is personal property[.]”). Our jurisprudence is in line with the majority of states which have declined to treat animals as anything more than personal property and which, contrary to the minority of jurisdictions, have refused to extend child custody precepts to dog disputes. Some jurisdictions have even been plainly dismissive—*see, e.g., Desanctis v. Pritchard*, 803 A.2d 230, 232 (Pa. Super. Ct. 2002) (shared custody of a dog, Barney, is not permissible because he is personal property and as such, said arrangement would be “analogous, in law, to [custody of] a table or a lamp”). Particularly notable is the language used in *Clark v. McGinnis*, 298 P.3d 1137 (Kan. Ct. App. 2013) (Unpubl. text at 2013 WL 1444421). There, the Kansas Court of Appeals declined to award the appellant “custody” of Dinky, one of the parties’ three dogs. *Id.* at \*7. In holding that the “argument that child custody laws should be applied to dogs is a flawed argument,” the court observed, with the classic Midwestern flair for stating the obvious, that “[o]ne relevant difference between children and dogs is that children are human beings and dogs are domestic animals.” *Id.*

[10] Because dogs are treated as chattel or personal property in Indiana, it is the property rights of the parties, rather than their respective abilities to care for the dog or their emotional ties to it, that are determinative. As a consequence, whichever spouse is awarded the canine will have sole possession to the complete exclusion of the other. While regrettably a harsh and seemingly

unfeeling outcome, it is the only one that makes sense. It is no secret that our courts are inundated with child custody cases, cases in which the happiness and welfare of our most precious commodity, children, are at stake. To allow full-blown dog custody cases, complete with canine forensics and attorneys representing not only the parties but the dog itself, would further burden the courts to the detriment of children. Such a drain of judicial resources is unthinkable. Therefore, there is no ‘best interests of the canine’ standard in Indiana.

[11] Although the trial court awarded Roxy to Wife as her personal property, Husband now, in essence, attempts to create pet visitation by using the Children’s decision to bring Roxy with them to Husband’s residence during parenting time. Likening Roxy to a child’s cellphone or Ipad, Husband contends that while parents purchase this personal property given to children, it is the trial court’s discretion to allow children to bring that personal property with them during parenting time. In support of his argument, Husband points to the Indiana Child Support Guidelines wherein certain controlled expense items are required to go back and forth with the children.

[12] According to the Indiana Child Support Guidelines, controlled expense items, such as clothing, winter coats, schoolbooks, personal care items, and even cellphones are typically purchased by the custodial or “controlled expense” parent. *See* Ind. Child Supp. G. 6, Comm. The parent who pays these controlled expenses is the parent who receives the child support, and the other parent may receive a parenting time credit off the child support which is paid.

The controlled expense items are purchased for the child with the child support received by the custodial parent. Husband maintains that when items such as these travel back and forth between the parents' homes with the children, the children are bringing along their own personal property and are not exercising decision-making authority over another person's property.

[13] Here, the trial court awarded Roxy to Wife in its Decree and ordered Wife to pay Husband an equalization payment of \$400. If Roxy had been the Children's personal property, the dog would not have been included in the marital estate or be subject to division by the trial court, and no equalization payment would have been required. *See In re Marriage of Hendricks*, 681 N.E.2d 777, 782 (Ind. Ct. App. 1997) (transferred stock to a child under the Indiana Uniform Transfers to Minors Act rendered the stock outside the marital estate as the stock irrevocably belonged to the child).

[14] Accordingly, while Roxy might be considered a member of the family, under Indiana law, she is Wife's personal property, and the Children cannot be awarded discretionary decision-making authority to transport Wife's personal property to Husband's residence during parenting time. Although the trial court undoubtedly endeavored to reach a fair solution under difficult circumstances, the statute does not contain a provision for pet visitation, and it is not the province of this court to step in and fashion a remedy where the Legislature has abstained from doing so. Therefore, we reverse the trial court's Decree which allows Roxy to travel back and forth between the parties' households during parenting time.



## CONCLUSION

- [15] Based on the foregoing, we reverse the trial court's decision granting the Children the discretionary right to bring Wife's dog back and forth during parenting time at the Children's discretion.
- [16] Reversed.
- [17] Altice, C. J. and Pyle, J. concur