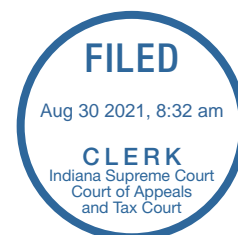


MEMORANDUM DECISION

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.



ATTORNEY FOR APPELLANT

Elizabeth Eichholtz Walker
Becker Bouwkamp Walker, P.C.
Indianapolis, Indiana

ATTORNEY FOR APPELLEE

Michael H. Hagedorn
Hagedorn Law Office
Tell City, Indiana

IN THE COURT OF APPEALS OF INDIANA

Connie Cocksedge,
Appellant / Cross-Appellee-Respondent,

v.

Graham R. Cocksedge,
Appellee / Cross-Appellant-Petitioner

August 30, 2021

Court of Appeals Case No.
21A-DN-197

Appeal from the
Perry Circuit Court

The Honorable
Lucy Goffinet, Judge

Trial Court Cause No.
62C01-1806-DN-319

Vaidik, Judge.

Case Summary

- [1] Connie Cocksedge (“Wife”) appeals several aspects of the trial court’s decree in her divorce from Graham R. Cocksedge (“Husband”). Husband cross-appeals,

challenging other aspects of the decree. Finding each party entitled to relief, we reverse and remand for the trial court to (1) correct mathematical errors on the marital-property balance sheet, (2) include a portion of Husband's worker's compensation settlement in the marital pot, and (3) formally rule on Husband's request for incapacity maintenance.

Facts and Procedural History

- [2] In 2004, following a nearly twenty-one-year career in the U.S. Marine Corps, Husband became a "Global Response Services" (GRS) operator with a contractor for the CIA; in this role, Husband provided "executive protection for dignitaries, presidents, congressmen, senators, and others." Tr. Vol. II pp. 9-10.
- [3] Husband and Wife married in 2009. Before their marriage, Husband had a house in Indiana, and Wife had a house in Illinois. Wife moved into Husband's house.
- [4] On February 14, 2013, while Husband was working as a GRS operator in Afghanistan, he "ripped [his] hamstring in two places." *Id.* at 10. Husband made a worker's compensation claim for this injury and post-traumatic stress disorder (PTSD) under the Longshore and Harbor Workers' Compensation Act (33 U.S.C. § 901 et seq.), as extended by the Defense Base Act (42 U.S.C. § 1651 et seq.). Starting February 18, 2013, Husband received "\$1,325.18 per week" in temporary total disability (TTD) benefits. Ex. Vol. III p. 74.

[5] In November 2017, Husband and his employer settled his worker's compensation claim. According to the settlement agreement, Husband would receive "\$0.00 for past compensation benefits" and "\$600,000.00 for future compensation benefits." *Id.* at 75. The agreement also provided Husband's TTD benefits would continue until the agreement was approved. *Id.* at 74. An administrative law judge for the U.S. Department of Labor approved the agreement on December 6, at which point Husband's TTD benefits stopped. *Id.* at 85. Husband deposited the \$600,000 into a savings account in his name.

[6] Husband filed for divorce on June 18, 2018. At this time, the savings account had a balance of \$483,952.95. *See Ex. Vol. III p. 56.*¹ A final hearing was held in August 2020. At the hearing, the parties presented evidence about the mortgages and fair market values of the Indiana and Illinois houses and evidence about a loan they had obtained to purchase a "camping service" from Thousand Trails Campground. *Tr. Vol. II p. 45.* In addition, the parties disputed whether the settlement was marital property subject to division. Following the hearing, each party submitted proposed findings and conclusions. In his proposed findings and conclusions, Husband requested that Wife pay him \$310/week in incapacity maintenance.

¹ A \$130,000 withdrawal was made on May 4, 2018. It appears this withdrawal was made to pay the parties' joint tax liability. *See Proposed Findings of Fact, Conclusions of Law and Orders Thereon*, No. 62C01-1806-DN-319 (filed by Wife on Oct. 12, 2020) (Proposed Finding 139); *see also Tr. Vol. II p. 91.*

- [7] In January 2021, the trial court issued a decree of dissolution of marriage. The court found the settlement was not marital property subject to division. Appellant’s App. Vol. II pp. 17-18. In addition, although the court found Husband is “totally disabled” and “mentally and physically incapacitated to the extent that his ability to support himself is materially affected,” *id.* at 17, the court did not say whether it was awarding him incapacity maintenance. Finally, the court entered a balance sheet for the marital property, which it found to be “subject to equal division.”² *Id.* at 19.
- [8] Wife appeals, and Husband cross-appeals.

² Although the parties don’t raise the issue on appeal, we note the trial court excluded from the marital pot several assets of the parties. For example, the trial court found Husband had purchased three cars (Jeep Wrangler, Ford Mustang, and Shelby GT) before the parties’ marriage, did not include these cars on the balance sheet, and concluded “these assets shall be set off fully” to Husband. Appellant’s App. Vol. II pp. 16-17 (Finding 7). This was improper. It is well settled 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). While a court may decide to award a particular asset solely to one spouse as part of its just and reasonable property division, it must first include the asset in its consideration of the marital estate to be divided. *Falatovics*, 15 N.E.3d at 110. This is an issue that can be addressed on remand.

Discussion and Decision

I. Wife’s Appeal

A. Mathematical Errors

[9] Wife contends the trial court made “a mathematical error” on the balance sheet concerning the Indiana house. Appellant’s Br. p. 13; *see also* Appellant’s Reply Br. p. 6. The balance sheet provides, in pertinent part:

Asset/Debt	Husband	Wife
Mortgage on Indiana house	(\$152,027.04)	
Equity in Indiana house	\$67,972.96	

See Appellant’s App. Vol. II p. 20. Wife argues the court should have listed the full fair market value of the Indiana house—\$220,000—on the balance sheet instead of just the equity—\$67,972.96. Husband agrees with Wife that the court erred and acknowledges that “[c]orrection of the error favors [Wife] financially.” Appellee’s Br. p. 20.

[10] Husband then points out the trial court made other errors concerning the Illinois house and the camping service. *See id.* at 20-21. The balance sheet provides, in pertinent part:

Asset/Debt	Husband	Wife
Mortgage on Illinois house		(\$12,853.15)

Equity in Illinois house	\$17,146.85
Thousand Trails Campground	(\$10,684.13)

See Appellant’s App. Vol. II p. 20. Similar to the error the court made with the Indiana house, the court should have listed the full fair market value of the Illinois house—\$30,000—on the balance sheet instead of just the equity—\$17,146.85. For the camping service, the court listed debt of \$10,684.13 but no value. According to the parties’ proposed balance sheets, the camping service had a value of \$10,684.13. *See* Ex. Vol. III p. 191; Ex. Vol. IV p. 21; *see also* Tr. Vol. II pp. 45-46, 117 (the parties agreeing the camping service had a debt of approximately \$10,000 and a value of approximately \$10,000). We therefore remand this case to the trial court with instructions to correct the above mathematical errors and to adjust the remaining property division to account for these errors.³

B. Worker’s Compensation

[11] Wife next contends the trial court erred in determining the worker’s compensation settlement was not marital property subject to division. The Indiana Supreme Court addressed whether federal worker’s compensation benefits are marital property in *Leisure v. Leisure*, 605 N.E.2d 755 (Ind. 1993).

³ Husband argues he rebutted the presumption that an equal division of the marital property is just and reasonable because he made a \$56,000 down payment on the Indiana house before the parties were married. *See* I.C. § 31-15-7-5. Because we are remanding this case for the court to make corrections to its division of the marital property, the ultimate division could change significantly, so we do not address this issue.

There, the husband filed for divorce in May 1989. Two months later, he became eligible to receive monthly federal worker's compensation benefits and a lump-sum payment. The trial court found the husband's worker's compensation benefits were marital property and awarded one-half to the wife. Our Supreme Court reversed:

We hold that worker's compensation benefits are not a vested property interest subject to distribution as a present marital asset, but, rather, they represent future income. In dividing the property eligible for disposition under a dissolution decree, the trial court may depart from an equal division upon consideration of various statutory factors among which are economic circumstances and earning abilities. Ind. Code § 31-1-11.5-11(c) [*see now* Ind. Code § 31-15-7-5]. However, these considerations may not expand the definition of property available for distribution by the dissolution court, nor may the trial court divide the future earnings of a party in anticipation that they will be earned. Having determined that the worker's compensation benefits represent future income, we hold that the worker's compensation benefits are not property within the definition of property contained in Ind. Code § 31-1-11.5-2(d) [*see now* Ind. Code § 31-19-2-98] and are not subject to distribution. **The worker's compensation benefits received during the marriage to replace earnings of that period are a marital asset subject to distribution, but to the extent the worker's compensation benefits replace earnings after dissolution, the benefits remain separate property.** Dissolution is defined by statute as the "date of filing the petition for dissolution of marriage." The petition for dissolution of marriage was filed in this case on May 8, 1989. Husband began receiving benefits for the period beginning July 16, 1989. Therefore, the benefits he received remain his separate property. Similarly, the lump sum payment . . . represents income for the period beginning July 16, 1989, and is likewise the separate property of Husband.

Id. at 759 (cleaned up, emphasis added).⁴

[12] Here, in November 2017 Husband and his employer entered into a settlement agreement for “future compensation benefits.” The agreement was approved on December 6, at which point Husband’s TTD benefits stopped. But Husband did not file for divorce until June 18, 2018. Thus, a portion of the settlement replaced Husband’s lost income from December 6, 2017, to June 18, 2018.⁵ On remand, the trial court should determine what portion of the \$600,000 settlement represents Husband’s income from December 6, 2017, to June 18, 2018 and include that portion in the marital pot for division.⁶

⁴ Wife argues this case is distinguishable from *Leisure* because it involves a lump-sum award, not monthly payments. *Leisure*, however, involved both monthly payments and a lump-sum award, neither of which were found to be marital property.

⁵ The trial court found the settlement is not marital property “under the Longshore and Harbor[er] Worker[s]’ Compensation Act (33 U.S.C. § 901, et seq.), as extended by the Defense Base Act (42 U.S.C. § 1651, et seq.)” Appellant’s App. Vol. II pp. 17-18 (emphases added). The court didn’t cite any specific code section or otherwise elaborate on this conclusion. Husband does not defend this conclusion on appeal; rather, he argues the settlement is not marital property under *Leisure*. Husband does make a one-sentence argument that the settlement is “exempt from [Wife’s] marital division claims under 5 U.S.C. § 8130,” Appellee’s Br. p. 30 (emphasis added); however, he doesn’t develop this argument, so it is waived.

⁶ As explained above in footnote 1, it appears that on May 4, 2018, before Husband filed for divorce, he used \$130,000 of the settlement to pay the joint tax liability of the parties. The trial court may take this evidence into consideration in determining whether Husband has rebutted the presumption that an equal division of the marital property is just and reasonable. *See* I.C. § 31-15-7-5.

II. Husband's Cross-Appeal

[13] Husband contends the trial court erred in failing to award him incapacity maintenance under Indiana Code section 31-15-7-2(1) given that Findings 12, 13, 14, and 15 appear to support such an award.⁷

[14] Section 31-15-7-2(1) sets forth the requirements for incapacity maintenance:

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.

Here, the trial court made these findings about Husband's disability:

12. Husband suffered a debilitating hamstring and hip injury during his employment as [a GRS operator] while in Afghanistan.

13. Husband has been diagnosed with PTSD and major neurocognitive disorder due to chronic pain and PTSD.

14. Husband is mentally and physically incapacitated to the extent that his ability to support himself is materially affected.

⁷ Wife says Husband has waived this issue because "he failed to request spousal maintenance at the final hearing." Appellant's Reply Br. p. 7. Husband has not waived this issue. At the final hearing, Wife's attorney asked Husband's attorney if Husband would withdraw his request for maintenance, but Husband's attorney declined. *See* Tr. Vol. II p. 159. In addition, both parties' proposed findings and conclusions discuss maintenance.

15. Husband is totally disabled.

Appellant's App. Vol. II p. 17. Although these findings appear to support an award of incapacity maintenance, the court did not make a conclusion one way or the other. On remand, the court should determine whether Husband is entitled to incapacity maintenance under Section 31-15-7-2(1).⁸

[15] Reversed and remanded.

Kirsch, J., and May, J., concur.

⁸ Wife suggests the trial court may have decided not to require her to pay maintenance to Husband because she was "potentially disabled" and thus her "income could not support a maintenance award to [Husband]." Appellant's Reply Br. p. 8. That might be the case, but that is not clear from the court's order. We leave it to the court to clarify this issue on remand.