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IN THE
COURT OF APPEALS OF INDIANA

Elizabeth Roetter,
Appellant-Petitioner,

v.

Michael P. Roetter, Jr.,
Appellee-Respondent

August 20, 2021

Court of Appeals Case No. 20A-DC-2150

Appeal from the Hendricks Circuit Court

The Honorable Daniel F. Zielinski, Judge

Trial Court Cause No. 32C01-1911-DC-673

May, Judge.

[1] Elizabeth Roetter ("Wife") appeals following the trial court's dissolution of her marriage to Michael P. Roetter, Jr. ("Husband"). Wife presents two issues for our review, which we revise and restate as:

> 1. whether the trial court abused its discretion when it awarded Wife eighteen months of maintenance rather than three years; and

2. whether the trial court erred when it determined what property to include in the marital estate.

We affirm in part, reverse in part, and remand.

Facts and Procedural History

[2] Husband and Wife married on May 9, 2014. Husband had significantly more assets than Wife at the time of marriage, but the couple did not execute a premarital agreement. Husband's premarital assets included a State Farm Whole Life IRA ("IRA") with a value of $82,364 at the time of the marriage, a 401K account with a value of $383,000 at the time of the marriage, and two Tri-Vest life insurance policies. Wife entered the marriage carrying over $100,000 in student loan debt from her attendance at Bowling Green State University in the late 1990s. Wife attended the university for three years, but she did not complete her degree.

[3] Two children were born of the marriage, M.R. and O.R. The children were age five and age two, respectively, at the time of dissolution. Wife was the primary caregiver to the children during the marriage. Husband worked outside the home and earned a salary of over $100,000 per year. Shortly before M.R.'s birth, the parties agreed that Wife would leave her job and devote herself to full-time childcare responsibilities. Wife had earned $10.50/hour as an employee at a daycare center before M.R.'s birth.

[4] M.R. was diagnosed with Autism Spectrum Disorder at age three. He also has a speech delay and an "imminent diagnosis of ADHD." (Tr. Vol. II at 31.) Wife testified that M.R. does "whatever pops into his head" and "lacks . . . that certain awareness of danger that would be expected of a child his age." (*Id*. at 33.) She also explained that she lives with the children in a rented house rather than an apartment, in part, because M.R. "has lots of melt downs and screaming and um that would [be] very, very difficult for all of us." (*Id*. at 51.) M.R. requires a high degree of supervision and attends multiple types of therapy. Prior to the COVID-19 pandemic, Wife was responsible for transporting M.R. to these therapies. The therapies moved online during the pandemic, but M.R. still required an adult in the room with him during the online sessions to keep him on task. Wife testified that M.R. was enrolled in "mainstream kindergarten with lots of supports in place[.]" (*Id*. at 31.) Like his therapies, M.R.'s kindergarten transitioned to online schooling during the pandemic.

[5] The parties separated on October 11, 2019, and Wife filed a petition for dissolution of marriage on November 8, 2019. The trial court held a two-day dissolution hearing on September 9 and September 11, 2020. At the dissolution hearing, the parties stipulated to an agreed custody arrangement, parenting time schedule, and child support calculation. Wife sought $100 per week in spousal maintenance payments from Husband for a period of three years. She explained that she cannot work outside the home because she must devote practically all of her time to caring for M.R. and O.R. Wife also asked the

court to award her 55% of the marital estate, and she asked that the full value of the IRA and 401K be divided as part of the marital estate. Wife also asked that 50% of her student loan debt be attributed to Husband.

[6] Husband asked for the pre-marital values of the IRA and 401K to be individually awarded to him. During the couple's marriage, the IRA increased in value by $73,255 and the 401K increased in value by $351,438. Husband asked the court to evenly split the gains his 401K accrued during the marriage and to award him the full value of the IRA. He also disputed Wife's characterization of the level of care M.R. required and objected to Wife's request for spousal maintenance.

[7] The trial court entered a dissolution decree on October 20, 2020. The trial court incorporated the parties' stipulations regarding custody, parenting time, and child support into the dissolution decree. The trial court awarded Husband the values that his 401K, IRA, and two Tri-Vest life insurance policies held at the time Husband and Wife married. The court also assigned Wife the student loan debt she brought into the marriage. The court then calculated the value of the remaining assets in the marital estate as $748,504 and the value of the marital estate's remaining debts as $174,665. The court awarded wife 55% of the remaining value of the marital estate "[d]ue to the disparity of the party's [sic] income and earning abilities[.]" (Appellant's App. Vol. II at 17.) As part of this division, the trial court included a $49,576 cash payment from Husband to Wife as an asset of Wife and a debt of Husband. The trial court further ruled:

> The Court GRANTS wife's Request for Spousal Maintenance. During the pendency of this matter, wife received a $12,000 "advance" toward her anticipated share of the division of the marital assets. The Court GRANTS wife's request for spousal maintenance and ORDERS husband to pay wife $100 per week for a period of eighteen months beginning the first Friday after the issuance of this order. In lieu of additional "monthly maintenance" payments, wife shall retain the $12,000 advance previously set aside to her.

Id. at 18 (emphasis in original).

Discussion and Decision

I. Spousal Maintenance

[8] Wife contends the trial court erred in awarding her maintenance for a period of eighteen months rather than for the three years she requested. Indiana Code section 31-15-7-2 governs the award of spousal maintenance and states:

> A court may make the following findings concerning maintenance:
>
> * * * * *
>
> (2) If the court finds that:
>
> > (A) a spouse lacks sufficient property, including marital property apportioned to the spouse, to provide for the spouse's needs; and

> (B) the spouse is the custodian of a child whose physical or mental incapacity requires the custodian to forgo employment;

the court may find that maintenance is necessary for the spouse in an amount and for a period of time that the court considers appropriate.

(3) After considering:

> (A) the educational level of each spouse at the time of marriage and at the time the action is commenced;
>
> (B) whether an interruption in the education, training, or employment of a spouse who is seeking maintenance occurred during the marriage as a result of homemaking or child care responsibilities, or both;
>
> (C) the earning capacity of each spouse, including educational background, training, employment skills, work experience, and length of presence in or absence from the job market; and
>
> (D) the time and expense necessary to acquire sufficient education or training to enable the spouse who is seeking maintenance to find appropriate employment;

a court may find that rehabilitative maintenance for the spouse seeking maintenance is necessary in an amount and for a period of time that the court considers appropriate, but not to exceed three (3) years from the date of the final decree.

[9] We presume a trial court properly considered the statutory factors when fashioning a maintenance award, and we review such a decision for an abuse of discretion. *Lloyd v. Lloyd*, 755 N.E.2d 1165, 1171 (Ind. Ct. App. 2001). In fact, "[t]he presumption that the trial court correctly applied the law in making an award of spousal maintenance is one of the strongest presumptions applicable to the consideration of a case on appeal." *Luttrell v. Luttrell*, 994 N.E.2d 298, 305 (Ind. Ct. App. 2013), *trans. denied*. "An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances, or the reasonable, probable, and actual deductions to be drawn therefrom." *Augspurger v. Hudson*, 802 N.E.2d 503, 512 (Ind. Ct. App. 2004). A trial court may also abuse its discretion if it "misinterprets the law or disregards evidence of factors listed in the controlling statute." *Id*. The party seeking spousal maintenance bears the burden of proving entitlement to it. *Lesley v. Lesley*, 6 N.E.3d 963, 967 (Ind. Ct. App. 2014).

[10] Wife argues the trial court's maintenance award was inadequate because she cannot both care for M.R. and O.R. and maintain a part-time job until O.R. begins school, which will not happen for three years. However, Indiana Code section 31-15-7-2 affords the trial court discretion in fashioning the amount of spousal maintenance and the duration of payments as long as they do not exceed three years from the date of the final decree. While the trial court did not order Husband to pay spousal maintenance for three years, the trial court did order: "In lieu of additional 'monthly maintenance' payments, wife shall retain the $12,000 advance previously set aside to her." (Appellant's App. Vol.

II at 18.) As Husband notes, this arrangement benefitted Wife, as an additional eighteen months of $100 weekly payments would have been less than the $12,000 that Wife was allowed to keep. *See* (Appellee's Br. at 11.) Wife asserts that she "should have been awarded maintenance for the full three (3) year period in order to provide her with an ability to provide a stable home and environment for herself as well as the children." (Appellant's Br. at 16.) However, Wife's argument appears to conflate spousal maintenance with child support, and the two types of payments are distinct. *See Dewbrew v. Dewbrew*, 849 N.E.2d 636, 644 (Ind. Ct. App. 2006) (holding trial court was required to order child support payments separate from spousal maintenance payments). The trial court separately took the children's well-being into consideration and ordered Husband to pay $348 each week in child support. Therefore, we hold the trial court did not abuse its discretion in ordering Husband to pay spousal maintenance for only eighteen months. *See Clokey v. Bosley Clokey*, 956 N.E.2d 714, 719 (Ind. Ct. App. 2011) (holding trial court did not abuse its discretion in awarding spousal maintenance), *aff'd on rehearing*, 957 N.E.2d 1288 (Ind. Ct. App. 2011).

II. Marital Pot

[11] Wife also argues the trial court erroneously excluded Husband's prior owned assets from the marital estate and, thus, awarded her less property than she was entitled to receive. Wife asserts that she "will require as many assets as possible in order to provide stability and safety for the children over the next three (3) years. She will also require assets to support herself so that she can provide the

[sic] care for [M.R.] and be available for his education and therapies." (Appellant's Br. at 18.) Husband and Wife did not execute a premarital agreement spelling out the way in which their assets and debts would be distributed in the event of divorce. Had Husband and Wife entered into such a contract, the trial court would have been obligated to enforce it. *See Perrill v. Perrill*, 126 N.E.3d 834, 840 (Ind. Ct. App. 2019) ("Generally, courts favor premarital agreements and our Supreme Court 'has consistently held that [antenuptial] agreements, so long as they are entered into freely and without fraud, duress, or misrepresentation and are not, under the particular circumstances of the case, unconscionable, are valid and binding.'" (quoting *In re Marriage of Boren*, 475 N.E.2d 690, 693 (Ind. 1985) (brackets in original)). However, in the absence of a premarital agreement, the trial court is left to divide the marital estate according to the general laws governing division of marital property. *See Fetters v. Fetters*, 26 N.E.3d 1016, 1023-24 (Ind. Ct. App. 2015) (holding premarital agreement executed by sixteen-year-old wife was unconscionable and remanding for trial court to divide marital property in manner consistent with the general laws governing division of marital estate), *reh'g denied*, *trans. denied*.

[12] In Indiana, courts divide marital property using a two-step process. *O'Connell v. O'Connell*, 889 N.E.2d 1, 10 (Ind. Ct. App. 2008). First, the trial court determines what property is included in the marital estate, and second, the trial court justly and reasonably divides the marital estate. *Id.* at 10-11. Indiana Code section 31-15-7-5 anticipates that an equal division of property is just and

reasonable. However, a party may rebut this presumption by presenting "relevant evidence . . . that an equal division would not be just and reasonable[.]" Ind. Code § 31-15-7-5. Such relevant evidence may concern:

> (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. "The distribution of marital property is committed to the sound discretion of the trial court. A party who challenges the trial court's division of marital property must overcome a strong presumption that the court considered and complied with the applicable statute." *Wanner v. Hutchcroft*, 888 N.E.2d 260, 263 (Ind. Ct. App. 2008) (internal citation omitted).

[13] "It is well settled that in a dissolution action, all marital property, whether 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, goes into the marital pot for division." *Eads v. Eads*, 114 N.E.3d 868, 873 (Ind. Ct. App. 2018). In the instant case, the trial court listed Husband's premarital assets in the dissolution decree, but pursuant to Indiana Code section 31-15-7-5, the trial court set these assets aside and awarded them to Husband. The trial court also listed Wife's student loans as a debt in the dissolution decree, but it set the debt aside and assigned it to Wife. These individualized allocations skewed the trial court's ultimate division of the marital estate heavily in Husband's favor. Husband was awarded essentially seventy-five percent of the net gross marital estate, and Wife was left with approximately twenty-five percent.[1]

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[1] Wife's share of the total marital estate equals the assets the trial court awarded Wife in its distribution of assets and debts ($322,499) minus Wife's student loan debt ($100,206), divided by the net gross value of the marital estate ($956,899). Husband's share of the total marital estate equals the assets awarded to Husband ($475,698) minus the debts assigned to Husband ($224,241) in the trial court's distribution of assets and debts plus the assets the trial court set aside and awarded to Husband ($473,173), divided by the total value of the estate.

[14] In *Wallace v. Wallace*, Mila Wallace appealed the trial court's division of property following her divorce from Chris Wallace. 714 N.E.2d 774, 775 (Ind. Ct. App. 1999), *reh'g denied*, *trans. denied*. The trial court determined that Chris inherited over $1.6 million in assets, and the court awarded those assets solely to Chris. *Id*. at 778. This large allocation of assets to Chris left him with eighty-six percent of the marital estate. *Id*. at 779. Mila challenged the trial court's division of assets on appeal, and we held the trial court abused its discretion in dividing the marital estate. *Id*. at 781. We observed

> that a consideration of whether the property was acquired by one of the parties through inheritance or gift is only one of the five factors a court should review. By focusing only upon one factor when others are present, a trial court runs the risk of dividing a marital estate in an unreasonable manner.

Id. at 780. While the trial court did not err in considering the origin of the various marital assets, the means of acquisition alone was not a sufficient justification "for the wide disparity between the value of the marital pot awarded to Chris versus the value of the marital pot awarded to Mila." *Id*. at 781. We thus held the trial court erred when it "systematically excluded from the marital estate those assets that were attributable to gifts or inheritance from Chris's family" and instructed the trial court to redetermine the property division. *Id*. A trial court is not required to explicitly address each of the five factors listed in the statute. *Eye v. Eye*, 849 N.E.2d 698, 702 (Ind. Ct. App. 2006). However, a trial court cannot, based solely on one factor, affect "an unequal distribution of the marital estate absent consideration of other factors

necessary for the conclusion that such a distribution would be just and reasonable." *Id*. at 705.

[15] Indiana Code section 31-15-7-5(2) allows the trial court to consider the extent to which property in the marital pot was acquired by the parties before the marriage or through means of inheritance as a factor in dividing the marital estate, and Husband entered the marriage with significantly more assets and less debt than Wife. However, other statutory factors significantly favor Wife.

[16] Indiana Code section 31-15-7-5(1) provides that the trial court should consider "[t]he contribution of each spouse to the acquisition of the property, regardless of whether the contribution was income producing." Wife's actions contributed to Husband's ability to acquire and retain property. While Husband and Wife were still married, they agreed that Wife would take care of the children and not work outside the home. This arrangement allowed Wife to care for the children, and it allowed Husband to work outside the home without interruptions necessitated by the children's needs. It also saved the couple from having to pay for outside childcare, and both parties preferred for Wife to care for the children rather than placing them in a daycare facility.

[17] Subsection 5 of Indiana Code section 31-15-7-5 directs the court to consider the parties' respective earning abilities, and Subsection 3 of the statute provides that the trial court should consider "[t]he economic circumstances of each spouse at the time the disposition of the property is to become effective[.]" Wife's economic circumstances are adversely impacted by her need to care for the

couple's children, and Husband's earning capacity significantly outpaces that of Wife. Husband earns over $100,000 a year, whereas Wife testified that she would not be able to earn more than $30,000 a year. Moreover, Wife has been out of the workforce for over five years. Husband also acknowledged in his testimony that he is always going to have a greater earning capacity than Wife.

[18] The trial court attempted to account for the statutory factors favoring Wife when it awarded Wife fifty-five percent of the marital estate after setting aside various assets and debts. (Appellant's App. Vol. II at 17) ("Due to the disparity of the party's [sic] income and earning abilities, the Court finds that wife should receive 55% of the net marital estate."). However, the trial court's fashioned remedy is completely meaningless in light of the portions of the net gross marital estate the trial court individually assigned to each party. These assignments effectively excluded the parties' premarital assets and debts from the marital estate. The facts and circumstances before the trial court clearly indicated that Wife was entitled to a share of the marital estate larger than the twenty-five percent she received, and therefore, we reverse the trial court's division of property and remand with instructions for the trial court to fashion a remedy closer to the fifty-five, forty-five split Wife requested. On remand, the trial court shall consider the $12,000 payment Husband made to Wife while the divorce was pending as a payment made in lieu of additional maintenance, and the trial court shall not consider the payment as part of the fifty-five, forty-five split. *See*, *e.g.*, *Eye*, 849 N.E.2d at 706 (remanding with instructions for trial

court to consider the relevant statutory criteria before determining an unequal distribution of marital estate was warranted).

Conclusion

[19] The trial court did not abuse its discretion in fashioning a spousal maintenance award. While Wife would prefer a more substantial maintenance award, the ordered award provides her with a means of income and does not require her to repay Husband the $12,000 he previously gave her. However, the gross disparity in the trial court's distribution of assets and debts between Husband and Wife renders the division of property unjust and unreasonable. Therefore, we affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

[20] Affirmed in part, reversed in part, and remanded.

Bailey, J., and Robb, J., concur.