MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Shelley Ann Blagrave,
Appellant-Petitioner,

v.

Robert Earl Blagrave,
Appellee-Respondent.

January 31, 2023

Court of Appeals Case No. 21A-DC-2330

Appeal from the Knox Circuit Court

The Honorable Sherry B. Gregg Gilmore, Judge

Trial Court Cause No. 42C01-1908-DC-117

Memorandum Decision by Judge Mathias
Judges Robb and Foley concur.

Mathias, Judge.

[1] Shelley Ann Blagrave ("Wife") appeals and Robert Earl Blagrave ("Husband") cross-appeals the Knox Circuit Court's decree of dissolution of their marriage.

Together, Wife and Husband raise fourteen issues for our review, which we restate as eight issues relating to the identification, valuation, and distribution of marital assets and a ninth issue relating to the court's order for Husband to pay Wife's fees. We affirm in part, reverse in part, and remand with instructions.

Facts and Procedural History

[2] Husband and Wife were married in 1982 and had two children of the marriage, both of whom were adults at the time of the dissolution proceedings.

[3] Prior to their marriage, Husband worked at Adams-Meyer, Inc. During the marriage, Husband purchased Adams-Meyer and owned and operated it. Wife worked at Old National Bank for twenty-three years; however, from about 2003 to 2019 she also worked at Adams-Meyer.

[4] In June 2019, Adams-Meyer was sold to another company, Pigg Implement, in two phases. In the first phase, Pigg Implement agreed to purchase all machinery, equipment, and tangible assets of Adams-Meyer for an immediate payment of $264,500. In the second phase, Pigg Implement agreed to purchase the real property and certain personal property from Adams-Meyer for $400,000, payable at $2,850 per month over ten years at a 4.5% annual interest rate and with a $196,617.16-balloon payment due on May 1, 2029. At the time Wife filed her petition for dissolution, Adams-Meyer still held a Regions bank account in the amount of $183,136.72.

[5] The parties acquired several parcels of real property during the marriage. Their real property assets included a 50.67-acre tract of land in Knox County. On that

land, the parties built their marital residence on 3.67 acres, which residence the trial court later found to have a value of $400,000. The parties refer to the remaining 47 acres as the Farm; on the Farm, they have placed a manufactured residence, which they rent to a third party. The trial court later found the Farm to have a value of $365,000.

[6] During the marriage, title to the Farm and several other real-property assets of the marriage were transferred into the name of a company, REB Rentals, LLC. Husband created REB Rentals to hold title to those marital real properties, and, according to his later testimony but unsupported by any documentation, Husband created REB Rentals such that he and Wife held 80% of the company[1] and their children collectively held the remaining 20%. The trial court later found that Husband had control over all assets and transactions of REB Rentals, that he used funds from REB Rentals' accounts for personal and marital expenses, and that all assets of REB Rentals were marital assets. At the time Wife filed her petition for dissolution, REB Rentals had a checking account in the amount of $46,847.45.

[7] In August 2019, Wife filed her petition for dissolution of the marriage. Thereafter, the trial court held several days of fact-finding hearings. At those hearings, Wife introduced a handwritten note from Husband, from

[1] Husband asserts that he held 70% of REB Rentals and Wife held 10%. Of course, as REB Rentals was created during the marriage, their collective 80% ownership would be the marital asset, and we refer to it accordingly.

approximately 2014, in which he had identified and estimated the value of several firearms in the marital residence to be about $14,705. In its dissolution decree, the court awarded those firearms and numerous other items of personal property to Husband, but the court did not specifically find a value for the firearms or the other items of personal property. Likewise, the court awarded numerous items of personal property to Wife without finding a value to any of those items. Instead, the court found that "the value of the personal property to be retained by the parties is essentially equal." Appellant's App. Vol. 2, p. 28. Also in its decree, the court awarded a boat to Husband that he had acquired with a friend, Paul Meyer, following Wife's petition for dissolution. The court also awarded to Husband a TD Ameritrade account in the amount of $30,043.

[8] Further, Husband argued to the trial court that he had received several loans from Meyer during the marriage, and that those loans should be considered liabilities of the marital estate. But the trial court found differently, stating that "there is no reasonable" and no "sincere expectation" that those purported loans were ever to be paid back by Husband. *Id.* at 28-29. The court then unequally divided the marital estate such that Husband received approximately 61% of the identified assets of the estate while Wife received 39%. In doing so, the trial court stated that the unequal division of the estate was attributable to Meyer's gifts to Husband. The court then ordered Husband to pay $33,620 of

Wife's attorney's fees, mediation fees, and appraiser fees based in part on Husband's greater earning power. This appeal ensued.[2]

Standard of Review

[9] The parties appeal the trial court's dissolution decree. Dissolution actions invoke the inherent equitable and discretionary authority of our trial courts, and, as such, we review their decisions with "substantial deference." *See, e.g.*, *R.W. v. M.D. (In re Visitation of L-A.D.W.)*, 38 N.E.3d 993, 998 (Ind. 2015). Here, the trial court supported its exercise of that authority with findings of fact and conclusions thereon following evidentiary hearings. As our Supreme Court has stated:

> The trial court's findings were entered pursuant to Ind. Trial Rule 52(A) which prohibits a reviewing court on appeal from setting aside the trial court's judgment "unless clearly erroneous." The court on appeal is further required to give "due regard . . . to the opportunity of the trial court to judge the credibility of the witnesses." When a trial court has made special findings of fact, as it did in this case, its judgment is clearly erroneous only if (i) its findings of fact do not support its conclusions of law or (ii) its conclusions of law do not support its judgment. *Estate of Reasor v.*

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[2] Following the entry of the dissolution decree, Husband filed a motion to correct error in the trial court. The trial court held a hearing on that motion within forty-five days of Husband's filing; however, the court did not issue an order on the motion to correct error within thirty days of that hearing. Accordingly, under Indiana Trial Rule 53.3(A), Husband's motion to correct error was deemed denied. Although the trial court later purported to enter an order on Husband's motion to correct error, by then Wife had already filed her notice of appeal. In such circumstances, the court's order on Husband's motion to correct error "is voidable and subject to enforcement of the 'deemed denied' provision of Trial Rule 53.3(A) . . . ." *Paulsen v. Malone*, 880 N.E.2d 312, 313-14 (Ind. Ct. App. 2008) (quoting *Cavinder Elevators, Inc. v. Hall*, 726 N.E.2d 285, 288 (Ind. 2000)). We thus conclude that the trial court's untimely order on Husband's motion to correct error is voided by this appeal, and we do not consider it.

> *Putnam County*, 635 N.E.2d 153, 158 (Ind. 1994). Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference. *Reasor*, 635 N.E.2d at 158.
>
> When reviewing valuation decisions of trial courts in dissolution actions, a similar standard of review has been enunciated: that the trial court has broad discretion in ascertaining the value of property in a dissolution action, and its valuation will not be disturbed absent an abuse of that discretion. *Cleary v. Cleary*, 582 N.E.2d 851, 852 (Ind. Ct. App. 1991). The trial court does not abuse its discretion if there is sufficient evidence and reasonable inferences therefrom to support the result. *Id.* In other words, we will not reverse the trial court unless the decision is clearly against the logic and effect of the facts and circumstances before it. *Porter v. Porter*, 526 N.E.2d 219, 222 (Ind. Ct. App. 1988), *trans. denied*. A reviewing court will not weigh evidence, but [it] will consider the evidence in a light most favorable to the judgment. *Skinner v. Skinner*, 644 N.E.2d 141, 143 (Ind. Ct. App. 1994).

Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996). Similarly, the trial court's division of the marital property "is highly fact sensitive and is subject to an abuse of discretion standard" of review. *Fobar v. Vonderahe*, 771 N.E.2d 57, 59 (Ind. 2002). Under that standard, we consider only "the evidence in a light most favorable to the judgment." *Id.*

1. The parties agree that the dissolution decree failed to distribute substantial marital assets, and we hold that the trial court did not err in finding that the parties held a 100% membership interest in REB Rentals.

[10] We first address the following arguments raised by the parties: that the trial court failed to distribute the 47-acre Farm, which the court found to have a value of $365,000; that the court failed to distribute the REB Rentals checking account, which the court found to have a value of $46,847.45; and that the court failed to distribute Adams-Meyer's Regions bank account, which the court found to have a value of $183,136.72. The trial court found that those assets were marital assets; however, the parties agree that the dissolution decree failed to distribute those assets between Husband and Wife. After reviewing the record, we agree with the parties. Those marital assets were omitted from the court's distribution of the marital property. We therefore reverse the court's distribution of the marital assets.

[11] Still, Husband argues that the trial court erred when it found (although it did not distribute) 100% of REB Rentals' assets, which included the Farm and the REB Rentals checking account, to be within the marital estate. Husband argues that the court's finding is erroneous because he testified that he and Wife owned only 80% of REB Rentals, while their children owned the other 20%. Husband does not otherwise challenge the trial court's valuation of the undistributed REB Rentals assets.

[12] We cannot say that the trial court's finding that 100% of REB Rentals' assets are within the marital estate is clearly erroneous. In other words, the court found that, in fact, Husband and Wife collectively held a 100% ownership interest in REB Rentals. That finding in supported by the record, which reflects that Husband established REB Rentals during the marriage and with marital property. Husband testified that he had complete control over all of REB Rentals' assets and accounts during the marriage. Tr. Vol. 3, pp. 227-28. And Husband does not challenge the trial court's finding that he used REB Rentals' assets for himself and for the marriage. Further, Husband's testimony that he and Wife owned only 80% of REB Rentals was unsupported by any documentary evidence. Husband's argument to the contrary on this point is simply a request for this Court to reweigh the evidence, which we will not do.

[13] Thus, while the trial court erred in not including the parties' REB assets in its distribution of the marital estate, we cannot say that the court clearly erred when it found that the Husband and Wife held a 100% membership in REB Rentals. On remand, the trial court shall value and divide the parties' membership interests in REB Rentals.

2. The parties agree that the trial court erroneously included Husband's boat as a marital asset.

[14] The parties also agree that the trial court erroneously included Husband's boat in the marital estate, which boat was purchased by Meyer and titled in his and Husband's names after Wife had filed her petition for dissolution. We accept the parties' agreement, and we reverse the trial court's inclusion of Husband's

boat in the marital estate. On remand, the trial court shall exclude Husband's boat from the marital estate and redistribute the marital property.

3. The parties agree that the trial court failed to include vested future payments from the sale of Adams-Meyer in the marital estate, but a dispute of fact exists as to the total value of the remaining payments under that contract.

[15] The parties agree that the future payments due under the contract for the sale of Adams-Meyer to Pigg Implement were vested assets of the marital estate and should have been included in the estate and distributed accordingly. We once more agree, and we reverse the trial court's failure to include and distribute that vested asset accordingly. *See, e.g.*, *Newby v. Newby*, 734 N.E.2d 663, 666 (Ind. Ct. App. 2000).

[16] However, on appeal, the parties disagree as to the proper value of those vested future payments. We initially note that much of Husband's argument on this issue is that some portion of those payments were attributable to REB Rentals, and, as such, only 80% of those payments should be included in the marital estate. As explained in Issue One above, however, we cannot say that the trial court erred when it found 100% of REB Rentals' assets to be within the marital estate. We reject Husband's argument here for those same reasons.

[17] Wife, on the other hand, concedes that the proper valuation of the remaining payments under the contract for the sale of Adams-Meyer to Pigg Implement should be based on a "present value, tax-effected analysis" of those payments. Appellant's Br. at 18. Husband's evidence to the trial court was also premised

on such on analysis. However, the trial court made no findings on the number of remaining payments—which number has surely changed pending this appeal—or the total value of those payments under that analysis.

[18] Accordingly, we reverse the trial court's omission from the marital estate of the vested future payments due to the parties under the contract for the sale of Adams-Meyer to Pigg Implement, and we remand with instructions for the trial court to value and divide the parties' shares of Adams-Meyer stock accordingly, the remaining assets of which appear to be the Adams-Meyer Regions bank account and the remaining stream of payments from Pigg Implement.

4. Wife invited any error in the court's valuation of Husband's TD Ameritrade account.

[19] We next consider Wife's argument that the trial court clearly erred when it found Husband's TD Ameritrade investment account to have a value of $30,043. However, that is the value Wife submitted to the trial court in her proposed distribution of the marital assets. Ex. Vol. 1, p. 111. Accordingly, Wife invited any error in the trial court's reliance on that valuation.

5. The trial court did not err when it found that the personal property awarded to the parties, including Husband's guns, was essentially equal.

[20] We next consider Husband's argument that the trial court erred when it "charg[ed him] with the value of a number of guns . . . while excluding the value of [Wife's] jewelry . . . ." Appellee's Br. at 30 (bold typeface removed).

Specifically, Husband argues that the trial court erroneously found that he owned all the firearms in the marital residence when he had testified that some were owned by the children; that the court found the total value of those firearms was $14,705 when he had testified that the value of the firearms was closer to $7,500; and that when the court failed to value and assign to Wife approximately $8,000 in jewelry.

[21] We initially note that Husband's arguments are merely a request for this Court to reweigh the evidence, which we will not do. Wife introduced into evidence a handwritten note created by Husband around 2014 in which he identified all the firearms in the marital residence and their total value, a note he admitted he created so he could insure the firearms. A reasonable inference from that evidence is that the firearms were his and that they had that total value.

[22] Further, Husband's argument that the trial court failed to identify and value jewelry awarded to Wife is not supported by the record. In its decree, the court found that all personal property inside the marital residence not specifically identified in the decree belonged to Wife. The court further found that the cumulative total of all personal property awarded to both Husband and Wife was essentially equal, a finding Husband does not challenge on appeal. Thus, the trial court did not clearly err in its identification, distribution, or valuation of the parties' personal property.

6. The trial court did not clearly err when it rejected Husband's assertion that certain financial contributions from Meyer to Husband were liabilities of the marital estate.

[23] Husband also argues on appeal that the trial court erred when it failed to include in the marital estate purported loans Husband owed to Meyer. On this issue, the trial court specifically found that Husband and Meyer had no "sincere expectation" that Husband would ever pay back these "purported loan[s]." Appellant's App. Vol. 2, pp. 28-29. In effect, the trial court found Husband's evidence on this issue not to be credible, and on appeal we will not reassess credibility. We cannot say the trial court clearly erred when it declined Husband's request to consider the purported loans liabilities of the marital estate.

7. The trial court did not err when it declined to credit Husband for payments he continued to make on the marital residence during the pendency of the dissolution.

[24] Husband also argues that the trial court erred when it declined to order Wife to reimburse Husband for payments he made toward the marital residence, utilities there, and other payments for Wife's benefit. But we cannot agree. First, Husband does not dispute that he was also living at the marital residence during the pendency of the dissolution, and his argument that these payments were solely to Wife's benefit is unreasonable. Second, we cannot say that any payments Husband volunteered to make for Wife's benefit during the dissolution proceedings are required as a matter of law to be reimbursed by Wife. Husband's argument on this issue fails.

8. In light of our above holdings, the trial court on remand may also reconsider in what proportion to divide the marital estate.

[25] We next turn to Wife's argument that the trial court abused its discretion when it did not equally divide the marital estate. We conclude that our holdings above are sufficient to reverse the trial court's original 61%-39% distribution of the marital estate. Specifically, as explained above, the trial court failed to properly identify and determine the value of significant marital assets when it originally distributed the marital estate. On remand, the trial court shall determine those values (where it has yet to) and redistribute the marital estate. In redistributing the marital estate, the trial court may reconsider the allocation of the marital estate between the parties, starting with the presumption that the marital estate should be evenly divided.

9. The trial court did not abuse its discretion when it ordered Husband to pay Wife's fees.

[26] Last, we address Husband's argument that the trial court abused its discretion when it ordered him to pay $33,620 of Wife's attorney, mediation, and appraisal fees. An award of fees is within the sound discretion of the dissolution court and may be based on the parties' unequal resources and earning abilities. *Bean v. Bean*, 902 N.E.2d 256, 266 (Ind. Ct. App. 2009). Here, the court ordered Husband to pay Wife's fees based in part on their "unequal earning power." Appellant's App. Vol. 2, p. 35. In particular, the court found that Wife is retired, that Husband "has rental income and income from the sale of Adams-

Meyer," and that Husband had control over "all of the part[ies'] income." *Id.* Those findings are supported by the record. We therefore affirm the trial court's order for Husband to pay $33,620 of Wife's fees.

Conclusion

[27] In sum, we affirm the trial court's finding that 100% of REB Rentals' assets were within the marital estate; the court's valuation of Husband's TD Ameritrade account; the court's identification, valuation, and distribution of the parties' personal property; the court's finding that Meyer's financial contributions to Husband during the marriage were gifts, not loans; the court's finding that Husband is not entitled to a credit for payments made during the dissolution proceedings that may have been beneficial to Wife; and the court's order that Husband pay Wife's fees. We reverse the trial court's failure to value, include, and distribute the parties' membership interests in REB Rentals and shares of Adams-Meyer stock; the court's inclusion of Husband's boat in the marital estate; and the court's division of the marital estate. We remand for further proceedings consistent with this opinion.

[28] Affirmed in part, reversed in part, and remanded with instructions.