

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Steven L. Sailor,
Appellant-Petitioner,

v.

Eileen Ruth Sailor,
Appellee-Respondent

April 26, 2023

Court of Appeals Case No.
22A-DN-2743

Appeal from the Hamilton
Superior Court

The Honorable Jonathan M.
Brown, Judge

Trial Court Cause No.
29D02-2107-DN-4879

Memorandum Decision by Judge Mathias
Judges May and Bradford concur.

Mathias, Judge.

[1] Steven Sailor (“Husband”) appeals the Hamilton Superior Court’s decree dissolving his marriage to Eileen Sailor (“Wife”). Husband presents three issues for our review:

I. Whether some of the trial court’s findings are unsupported by the evidence.

II. Whether the trial court abused its discretion when it awarded Wife more than fifty percent of the marital estate.

III. Whether the trial court abused its discretion when it ordered him to pay \$5,000 of Wife’s attorney’s fees.

[2] We affirm in part, reverse in part, and remand with instructions.

Facts and Procedural History

[3] In May 1989, Husband and Wife married. At that time, Wife worked and earned more than Husband. But, after the parties had children, Wife gave up her career to care for the parties’ two children full time. After twelve years, when the children were a little older,¹ Wife returned to the workplace part time and eventually returned to full time employment. Husband earned a master’s degree during the marriage and worked full time.

[4] On July 9, 2021, Husband and Wife separated, and on July 12, Husband filed a petition for dissolution of the marriage. At that time, Husband was earning

¹ The two children are now adults.

\$133,230 annually, and Wife was earning \$80,621 annually. The parties had a joint savings account worth \$50,000 as of July 1. Husband withdrew \$13,501 from that account, without Wife's consent, to buy furniture and other items for his new apartment. Wife then withdrew the balance of that account and placed the money in a personal account.

[5] During the final hearing on March 1, 2022, Husband testified that, between 2014 and 2021, he had received "either a bonus" or "incentive pay" in addition to his salary. Tr. p. 36. But Husband had not included either on his financial declaration submitted to the court. Husband testified that he usually received a bonus in February or March each year, but he had not yet received his bonus in 2022. Wife presented evidence showing that Husband had earned, on average, an additional \$11,000 per year in annual bonuses and incentives since 2017.

[6] After the final hearing, the trial court issued the decree, in which the court found that the total value of the marital estate was \$1,509,534.44. The court divided the marital estate unequally, with 54.67% going to Wife. In support of the unequal distribution, the court found and concluded in relevant part as follows:

[Findings:]

9. Prior to the marriage, Wife had a 401(k) retirement account and GTE stock, both of which were sold and used for the down payment on the couple's second house;

10. During the course of the marriage, Wife's family gifted to Wife, the sum of \$34,000.00. The court finds that any gifts

and/or inheritance received by the parties during the marriage was commingled with marital assets by agreement and the conduct of the parties;

11. At the time of the marriage, Wife was earning more than Husband[.] Thereafter, Wife left the workforce in order to be a stay-at-home mother, and raise the parties' children for approximately twelve years, and supported Husband's career advancement and increased earning capacity;

12. Husband had an uninterrupted career, was free to take on any special work projects and global travel, and earned a master's degree during the marriage;

13. At the time of the final hearing, Husband was sixty (60) years old and Wife was fifty-nine (59) years old;

* * *

20. Over the past six (6) years, there is a large discrepancy in the incomes of the parties. They are as follows:

Year	Husband	Wife
2021	\$133,230.00	\$80,621.00
2020	\$125,282.00	\$74,762.00
2019	\$128,925.00	\$79,392.00
2018	\$126,248.00	\$67,003.00
2017	\$121,515.00	\$64,891.00
2016	\$113,865.00	\$62,386.00
. . . .		

21. This [annual] income disparity of over \$50,000.00 is anticipated to continue into the future;

* * *

[Conclusions:]

9. The presumption for equal division of marital property has been rebutted in Wife's favor;

10. At the time the disposition of the property is to become effective, Wife earns significantly less than Husband. Wife is 59 years old and is approaching retirement age. Though limited, Wife presented evidence of Husband's dissipation of marital property. The amount was de minimus and the Court is offsetting such sums to Husband. Husband has significantly higher earning ability due to Wife's support of his career development and advancement, both of which were at the expense of her career. Wife had acquired some assets prior to the marriage, but those assets were comingled with other assets of the parties, as well as Husband's higher income;

11. Thus, the Court finds there should be deviation from the 50/50 split in Wife's favor whereby Wife will receive 54.67% of the marital estate. . . .

Appellant's App. Vol. 2, pp. 17-22. In addition, the trial court ordered Husband to pay \$5,000 towards Wife's attorney's fees. This appeal ensued.

Discussion and Decision

Standard of Review

- [7] Husband appeals 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 an evidentiary hearing. 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. 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.*

Issue One: Findings of Fact

[8] Husband first contends that some of the trial court’s findings are not supported by the evidence. We address each challenged finding in turn.

[9] In Finding No. 22, the trial court found as follows:

Husband will receive a [sic] \$10,191 in a profit-sharing bonus in April 2022, per the Aptiv Total Compensation Statement Husband receives every year. This bonus was based on 2021 company and employee performance per Husband’s testimony at [the] final hearing. The Court will attribute 25% of the bonus (\$2,547.00) as an asset to be divided by the Court (based upon the date of filing), and this amount will be offset to Husband;

Appellant’s App. Vol. 2, p. 18. Husband argues that the evidence does not support that finding. In particular, he cites his testimony that, as of March 1, 2022, he had not yet received a bonus and he did not know whether he would receive a bonus.

[10] Wife asserts that, given the lack of evidence regarding the amount of his 2022 bonus, “the trial court properly considered the evidence of Husband’s prior yearly bonuses in calculating” the 2022 bonus. Appellee’s Br. at 13. While we agree with Wife that the trial court *could have* averaged the prior year bonuses to assign a value to the expected 2022 bonus, *see, e.g., Trabucco v. Trabucco*, 944

N.E.2d 544, 551 (Ind. Ct. App. 2011), there is nothing in the trial court's findings to indicate that that is how it arrived at the \$10,191 figure. Rather, the trial court appears to have based that amount on a "Compensation Statement" that is not in evidence. Accordingly, we reverse the court's Finding No. 22. On remand, the trial court may assign a value to Husband's 2022 bonus based on the evidence presented at the factfinding hearing and recalculate the distribution of the marital estate accordingly.

[11] In Finding No. 24, the trial court found as follows:

Husband further spent joint funds in the amount of \$13,501.00 between [the] date of [the] divorce announcement on June 28, 2021, and [the] separation of finances by Wife on September 7, 2021. This pre-distribution will be offset to Husband in the marital distribution. The court order of September 13, 2021, halted the spending by stating only the mortgage could be withdrawn from the joint savings account going forward. This joint savings account was funded by both parties' incomes;

Appellant's App. Vol. 2 p. 18. Husband contends that this finding shows that the court erroneously found that he dissipated marital funds and "penalized [him] for spending money from the parties' joint accounts, without accounting for contributions he made to the same accounts during the time the Court incorrectly finds that he was dissipating joint funds." Appellant's Br. at 13.

[12] We disagree with Husband's contention that Finding No. 24 includes a finding that he dissipated marital assets. There is no reference to dissipation of assets in Finding No. 24. And in Exhibit A, attached to the decree, the trial court

identifies other assets that Husband had dissipated that are listed separately from the “pre-distribution from savings” addressed in Finding No. 24.

Appellant’s App. Vol. 2, p. 27. The court expressly treats the \$13,501 as an advance to Husband on his share of the marital estate. Husband has not shown error on this issue.

- [13] Finally, Husband contends that the trial court erred when it valued Husband’s and Wife’s personal property equally, at \$2,500 each. As Husband points out, neither Husband nor Wife presented evidence to support those valuations. Rather, Husband’s financial declaration stated that his personal property was worth \$1,950 and Wife’s personal property was worth \$6,450. And Wife’s financial declaration stated that Husband’s personal property was worth \$10,000 and her personal property was worth \$6,500. However, Wife changed her mind at the factfinding hearing and testified that she was asking the trial court to assign “equivalent values” to the personal property in each party’s possession. Tr. p. 104. Because the trial court had discretion to honor that request, and because the parties received personal property of equal value, any error in the actual values assigned to the personal property was harmless.

Issue Two: Unequal Division of the Marital Estate

- [14] Husband contends that the trial court abused its discretion when it divided the marital estate unequally. [Indiana Code Section 31-15-7-5](#) provides that the court shall presume that an equal division of the marital property between the parties is just and reasonable. However, this presumption may be rebutted by a party

who presents relevant evidence, including evidence concerning the following factors, that an equal division would not be just and reasonable:

(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 statutory factors are to be considered together in determining what is just and reasonable; any one factor is not entitled to special weight. *Smith v. Smith*, 136 N.E.3d 275, 282 (Ind. Ct. App. 2019). The party seeking to rebut the presumption of equal division bears the burden of proof of doing so, and a party

challenging the trial court's decision on appeal must overcome a strong presumption that the trial court acted correctly in applying the statute. *Id.*

[15] Husband argues that the trial court's conclusion that Wife rebutted the presumption of an equal division erroneously "overlooks evidence of the statutory factors and its determination stands against the logical and reasonable inferences from the findings[.]" Appellant's Br. at 20. In support, Husband directs us to evidence that tends to support an equal division of the marital estate. For example, Husband asserts that the court "fail[ed] to account for the uncontroverted evidence that Husband contributed significantly more to the parties' acquisition of property, specifically while Wife was also working full-time[.]" *Id.* at 17. Husband's argument amounts to a request that we reweigh the evidence, which we will not do.

[16] The trial court addressed each of the statutory factors in its findings to support the slightly unequal division of the marital estate, and the evidence supports the court's findings. Specifically, the trial court found that: Wife gave up her career for twelve years in order to raise the parties' children and that Wife's support of Husband's career contributed to his success; Wife's pre-marriage retirement savings were used to buy the parties' second residence; Wife's inheritance was commingled with the parties' money; and Husband has consistently earned significantly more income than Wife and continues to do so. We cannot say that the trial court abused its discretion when it found that Wife had rebutted the presumption of an equal division of the marital estate. *See, e.g., In re Marriage of Marek*, 47 N.E.3d 1283, 1292 (Ind. Ct. App. 2016) (holding that wife rebutted

the presumption of an equal division where she had received an inheritance, she had been out of the workforce for fifteen years to raise children, and husband's income was significantly higher than wife's income), *trans. denied*.

Issue Three: Attorney's Fees

[17] Finally, Husband contends that the trial court abused its discretion when it ordered him to pay \$5,000 of Wife's attorney's 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). An abuse of discretion occurs when the court's decision is clearly against the logic and effects of the facts and circumstances before the court or if the court has misinterpreted the law. *J.B. v. S.W. (In Re the Paternity of G.G.B.W.)*, 80 N.E.3d 264, 272 (Ind. Ct. App. 2017).

[18] Here, the trial court explained the attorney's fee award as follows:

32. Each party owes substantial attorney fees to their respective counsel, and while Husband may have higher income potential, Wife is also receiving a deviation from the presumptive 50/50 split with regards to the division of marital property, and this deviation is primarily due to the disparity in income earning potential for each party, and Wife's support of Husband in his employment over the course of a 33-year marriage;

33. The parties' marital estate is reasonably substantial in value and each party will receive significant assets from the Court's division of their marital estate;

34. Wife is gainfully employed, and the Court is awarding [her] the marital residence;

35. Both Husband and Wife are rapidly approaching retirement age;

36. The Court, having considered all relevant factors, finds Wife shall not be ordered to contribute to Husband's attorney's fees;

37. The Court, having considered all relevant factors, finds Husband shall be ordered to contribute \$5,000.00 to Wife's attorney's fees, to be paid to Robert Becker, attorney at law, within sixty (60) days of the entry of this Decree;

38. The Court finds that both parties have adequate income and property to bear responsibility for the remainder of their own attorney fees in accordance with the American Rule.

Appellant's App. Vol. 2, pp. 25-26.

[19] Those findings are supported by the record. Once again, Husband's contentions on appeal amount to a request that we reweigh the evidence. We affirm the trial court's order for Husband to pay \$5,000 of Wife's attorney's fees.

Conclusion

[20] The trial court erred when it found that Husband earned a \$10,191 bonus in April 2022. On remand, the trial court may assign a value to Husband's 2022 bonus based on the evidence presented at the factfinding hearing and recalculate the division of the marital estate accordingly. We reject Husband's other challenges to the trial court's findings. The trial court did not abuse its discretion when it awarded Wife more than fifty percent of the marital estate.

And the trial court did not abuse its discretion when it ordered Husband to pay \$5,000 towards Wife's attorney's fees.

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

May, J., and Bradford, J., concur.