MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Elaine Sanders,
Appellant-Respondent,

v.

Christopher W. Sanders,
Appellee-Petitioner.

August 16, 2022

Court of Appeals Case No. 21A-DN-2760

Appeal from the Kosciusko Superior Court

The Honorable Christopher D. Kehler, Judge

Trial Court Cause No. 43D04-1912-DN-368

Mathias, Judge.

[1] Elaine Sanders ("Wife") appeals the trial court's final decree dissolving her marriage to Christopher Sanders ("Husband"). Wife presents four issues for our review:

1. Whether the trial court erred when it dismissed Wife's motion to correct error.

2. Whether the trial court abused its discretion when it valued the parties' business.

3. Whether the trial court erred when it valued certain personal property and Wife's bank account.

4. Whether the trial court abused its discretion when it denied Wife's request for rehabilitative maintenance.

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

Facts and Procedural History

[3] In March 2003, Husband and Wife were living in Michigan and began dating. Husband was not formally employed, but he earned money working on cars. Wife was employed as a "six sigma lean coordinator" for Visteon. Tr. Vol. 2, p. 186. In November, the parties moved together to Warsaw, Indiana, and Husband started a business called Banzai Racing, Inc. ("Banzai"). Wife, who had left her job at Visteon, started working at Banzai. Husband and Wife got married in May 2008. Wife's participation in running Banzai increased over time and she eventually owned 49% of the company's shares.

[4] On November 30, 2019, the parties separated, and Wife moved to Illinois to live with a friend. Wife's participation in running Banzai ceased. On December 5, Husband filed a petition for dissolution of the marriage. And on January 17, 2020, the trial court issued a protective order prohibiting each party from engaging in direct or indirect contact with the other. On June 1 and 29, 2021,

the trial court held the final hearing on the petition. At the opening of the hearing, the parties executed a partial settlement agreement, which provided in relevant part that the marital residence and certain personal property would be sold, with the net proceeds of those sales held in trust by one of the parties' attorneys until the court order directing distribution of those proceeds.

[5] In the final decree, the trial court found in relevant part that Banzai's value as of November 30, 2019, was $306,629.50; the net value of the marital estate, including Banzai, was $413,946.50; and the court ordered an equal division of the marital estate. The trial court ordered that the "sale proceeds of the real and personal property" would be divided as follows: $17,500 to Husband; $405,894.50 to Wife "for equalization"; and the remaining sale proceeds to be "divided equally by the parties."[1] Appellant's App. Vol. 2, p. 32. The proceeds from the sale of the marital residence had been placed in a trust account and, a few weeks after the court issued the decree, Wife withdrew $148,958.13 from the trust account.

[6] Wife filed a motion to correct error alleging in relevant part that the trial court had abused its discretion when it valued Banzai and when it valued and divided certain personal property.[2] Husband filed a motion to dismiss Wife's motion to

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[1] We note that the amount of the "equalization" payment is almost the entire value of the marital estate. Appellant's App. Vol. 2, p. 32. This must be an error, but neither party questions the amount.

[2] Wife also alleged that the trial court erred when it precluded her from presenting evidence of Husband's violations of the protective order and when it found that Husband had committed only a de minimis violation of the protective order when he sent Wife flowers in February 2020. But Wife does not raise those issues on appeal.

correct error. Husband asserted that Wife had "waived" her right to challenge the decree when she had withdrawn money from the trust account. *Id.* at 84. The trial court agreed and dismissed Wife's motion to correct error. This appeal ensued.

Discussion and Decision

Standard of Review

[7] In our review of the trial court's dissolution decree, our Supreme Court has explained that we

> will "not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." *D.C. v. J.A.C.*, 977 N.E.2d 951, 953 (Ind. 2012) (internal quotation and citations omitted). Where a trial court enters findings sua sponte, the appellate court reviews issues covered by the findings with a two-tiered standard of review that asks whether the evidence supports the findings, and whether the findings support the judgment. *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014) (citation omitted). Any issue not covered by the findings is reviewed under the general judgment standard, meaning a reviewing court should affirm based on any legal theory supported by the evidence. *Id.*
>
> Additionally, there is a well-established preference in Indiana "for granting latitude and deference to our trial judges in family law matters." *In re Marriage of Richardson*, 622 N.E.2d 178 (Ind. 1993). Appellate courts "are in a poor position to look at a cold transcript of the record, and conclude that the trial judge, who saw the witnesses, observed their demeanor, and scrutinized their testimony as it came from the witness stand, did not properly understand the significance of the evidence." *Kirk v. Kirk*, 770 N.E.2d 304, 307 (Ind. 2002) (quoting *Brickley v. Brickley*, 247 Ind.

> 201, 204, 210 N.E.2d 850, 852 (1965)). "On appeal it is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by appellant before there is a basis for reversal." *Id.* "Appellate judges are not to reweigh the evidence nor reassess witness credibility, and the evidence should be viewed most favorably to the judgment." *Best v. Best*, 941 N.E.2d 499, 502 (Ind. 2011) (citations omitted).

Steele-Giri v. Steele, 51 N.E.3d 119, 123-24 (Ind. 2016).

Issue One: Motion to Correct Error

[8] Wife first contends that the trial court erred when it dismissed her motion to correct error. In particular, she asserts that she did not waive her right to challenge the decree when she withdrew funds from the trust account. In her prayer for relief in her brief on appeal, Wife asks that we remand to the trial court "with instructions to consider the merits" of her motion to correct error and with instructions to enter a different valuation for Banzai, to enter different values for certain personal property, and to correct a typographical error in the decree. Appellant's Br. p. 57. Because Wife raises those same issues on appeal, however, there is no reason to remand to the trial court to consider these issues in the first instance.

[9] However, to the extent Husband contends that Wife's *appeal* is likewise barred by the "preclusion doctrine," we disagree. Appellee's Br. p. 14. Husband suggests that Wife is precluded from appealing the final decree because she withdrew money from the trust account. In support, he cites Indiana Code Section 34-56-1-2, which provides that a "party obtaining a judgment shall not

take an appeal after receiving any money paid or collected on a judgment." But Husband acknowledges case law regarding exceptions to this general rule in the context of the dissolution of a marriage.

[10] For instance, Husband cites *DeHaan v. DeHaan*, where this Court stated that "an appeal is not barred merely because the party has accepted some of the benefits of the judgment. Rather, there must be a clear intention on the creditor spouse's part to be bound by the dissolution decree." 572 N.E.2d 1315, 1329 (Ind. Ct. App. 1991) (citing *Scheetz v. Scheetz*, 509 N.E.2d 840, 847-48 (Ind. Ct. App. 1987), *superseded by rule on other grounds*, T.R. 59 (1989)) *trans. denied*. Here, the parties entered into a partial settlement agreement, whereby proceeds from the sale of certain real and personal property would be held in a trust account until the final distribution in the decree. In the final decree, the trial court ordered Husband to pay to Wife an equalization payment of $405,894.50. A few weeks later, Wife withdrew $148,958.13 from the trust account. Wife then filed a motion to correct error alleging errors unrelated to the matters covered by the partial settlement agreement.

[11] On appeal, Husband asserts that Wife's withdrawal shows a clear intention to be bound by the decree. We cannot agree. To the contrary, the withdrawal is entirely unrelated to the parts of the decree challenged by Wife in her motion to correct error and in this appeal. Wife's appeal is not barred. *See Scheetz*, 509 N.E.2d at 848 (holding wife's appeal not barred where she "accepted some benefits of the judgment" including real property and cash from the property division).

Issue Two: Banzai Valuation

[12] Wife next contends that the trial court erred when it valued Banzai.

> When reviewing valuation decisions of trial courts in dissolution actions, [our] standard of review [is as follows]: 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 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). Further, this Court has held that "'[a] valuation submitted by one of the parties is competent evidence of the value of property in a dissolution action and may alone support the trial court's determination in that regard.'" *Alexander v. Alexander*, 927 N.E.2d 926, 935 (Ind. Ct. App. 2010) (quoting *Houchens v. Boschert*, 758 N.E.2d 585, 590 (Ind. Ct. App. 2001), *trans. denied*), *trans. denied*.

[13] Here, Wife's expert witness, Roxane Coffelt, testified that, as of November 30, 2019, the parties' separation date, Banzai was worth $494,857. And Husband's expert witness, Michael Smith, testified that, as of December 31, 2019, Banzai was worth between $292,000 and $320,000. In the decree, the trial court chose a valuation date for the business of November 30, 2019. But the court gave

Smith's testimony "more weight and credibility" and adopted the "average of the values" stated by Smith to assign a value to Banzai of $306,629.50. Appellant's App. Vol. 2, p. 21.

[14] On appeal, Wife contends that the trial court clearly erred when it adopted the average of the values supported by Smith's testimony when Smith had based his calculations on a valuation date of December 31, 2019. As Wife contends, the only evidence of the value of Banzai as of November 30, 2019, which is the valuation date chosen by the trial court, is Coffelt's testimony that it was worth $494,857. Wife also contends that Smith's testimony is flawed because, while he analyzed data through December 31, 2019, he should have included "Banzai's ongoing success after December 2019, not just the diminished revenue in December 2019." Appellant's Br. p. 42. Wife points out that Husband accumulated "$182,452 from Banzai's profits in the time between the separation and final hearing" and she asserts that it "defies logic to conclude that Husband could have deposited over half of Banzai's total value into his personal account in the span of a year, and still retain sufficient capital to operate Banzai thereafter." *Id.* Finally, Wife contends that Smith applied the wrong methodology in determining Banzai's value.

[15] With respect to the trial court's adoption of Smith's data analysis and overall methodology, Wife cannot show that the court abused its discretion. The trial court found Smith more credible than Coffelt. While Wife cites specific reasons to doubt the bases for Smith's valuation, Wife cannot show that the valuation is clearly erroneous. *See Quillen*, 671 N.E.2d at 102.

[16] However, we agree with Wife that the trial court clearly erred when it applied Smith's valuation to a valuation date inconsistent with his testimony. The only evidence of Banzai's value on the valuation date chosen by the trial court, November 30, 2019, was Coffelt's testimony that it was worth $494,857. Accordingly, we reverse the trial court's valuation of Banzai and remand with instructions to determine the value of Banzai based on the evidence already submitted. In the alternative, the trial court may ask the parties to submit additional evidence before it reassesses Banzai's value.

Issue Three: Personal Property

[17] Wife next contends that the trial court erred when it assessed values for certain personal property. We address each alleged error in turn.

eBay Sales

[18] The trial court found that Husband's sales of certain automotive parts on eBay during 2020 and 2021 were "related to the activities of Banzai Racing, Inc., and were part and parcel of any valuation of the business." Appellant's App. Vol. 2, p. 112. Wife contends that both she and Husband testified "that the sale of parts on eBay was a side business, and not part of Banzai's operations." Appellant's Br. p. 44. And she maintains that, at the time of their separation, the parties owned a "collection of automotive parts" valued at $9,700.51 that was sold by Husband on eBay. *Id.* at 45. Wife contends that she is entitled to one-half of the proceeds from those sales, or $4,850.26.

[19] While it may be undisputed that the parties' sales of automotive parts on eBay was historically unrelated to Banzai, the evidence is disputed regarding the value of any automotive parts owned by the parties at the time of their separation. Wife supports her argument on appeal with a single citation to Respondent's Exhibit T. That exhibit consists of a spreadsheet created by Wife purporting to show eBay sales of automotive parts from December 2019 through March 2021. But Husband testified that he stopped selling automotive parts on eBay "in the middle of 2020" and began to "r[u]n the used parts through Banzai" at that time. Tr. Vol. 2, pp. 144-45. And Husband argued that the parts listed on Respondent's Exhibit T were included in his expert's valuation of Banzai. In any event, the trial court had discretion to find Wife's evidence regarding the value of those parts not credible. Wife has not shown error on this issue.

Credit Card Reward Points

[20] Wife contends that the trial court erred when it did not assess a value to the parties' credit card reward points. Wife asserts that the undisputed value of the reward points is $5,028.41 and that she is entitled to one-half of that value. In support, Wife directs us to her summary of the parties' assets submitted to the trial court, which simply lists "Credit Card Rewards" as valued at $5,028.41. Exhibits Vol. 6, p. 149. Wife does not direct us to any evidence showing which credit cards were used jointly by the parties to accrue said points. In any event, again, the trial court had discretion to find Wife's evidence not credible. Wife has not shown error on this issue.

Wine Collection

[21] Wife next contends that the trial court clearly erred when it assigned no value to the parties' wine collection. Wife testified that the collection was worth approximately $5,000 at the time of the parties' separation, and Husband estimated that it was worth $2,000. Given that evidence, we agree with Wife that the court erred when it assigned no value to the wine collection. On remand, the trial court shall assign a value to the wine collection in an amount supported by the evidence and incorporate it into the final division of the marital estate.

Old National Bank Account

[22] Wife points out a typographical error in the final decree regarding the value of her Old National Bank account. The trial court properly listed the value of that account as $890 in paragraphs 5 and 21 of the decree, but in paragraph 9, the court lists the value of that same account as $1,890. On remand, the trial court shall correct this typographical error and recalculate the division of the marital estate accordingly.

Issue Four: Maintenance

[23] Finally, Wife contends that the trial court abused its discretion when it denied her request for rehabilitative maintenance. Wife maintains that she is entitled to rehabilitative maintenance because her "job prospects were substantially diminished by the two decades that she worked for Banzai," and she alleges that additional factors "chill[ed] employment opportunities," such as the

pandemic and a lingering foot injury. Appellant's Br. p. 49. In the end, Wife was unemployed for seven months following the parties' separation, but she found employment in July 2020. We review a trial court's denial of maintenance for an abuse of discretion. *See Roetter v. Roetter*, 182 N.E.3d 221, 225 (Ind. 2022).

[24] Indiana Code Section 31-15-7-2(3) provides:

> 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.

[25] Wife's argument on this issue amounts to a request that we reweigh the evidence, which we cannot do. Wife emphasizes her own testimony regarding her struggles to find employment after the parties separated due to several factors. But, again, "[i]t is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by appellant before there is a basis for reversal." *Steele-Giri*, 51 N.E.3d at 124 (citation omitted). Wife does not direct us to evidence showing that the trial court was *required* to award rehabilitative maintenance. Accordingly, the trial court did not abuse its discretion when it denied Wife's request for maintenance.

Conclusion

[26] Wife's appeal is not barred due to her withdrawal of money from the parties' trust account that is not tied to the issues on appeal. The trial court clearly erred when it valued Banzai, and we remand with instructions for the court to enter a value for the business based on the evidence already submitted or, in the alternative, to permit the parties to submit additional evidence. The trial court did not abuse its discretion when it excluded from the marital estate eBay sales of automotive parts and credit card rewards. But the trial court erred when it assigned no value to the parties' wine collection. On remand, the court shall assign a value to that collection based on the evidence and recalculate the marital estate accordingly. The final decree includes a typographical error in paragraph 9 which shall be corrected on remand to show that Wife's Old National Bank account was worth $890 at the time of the parties' separation,

and the court shall recalculate the marital estate accordingly. Finally, the trial court did not abuse its discretion when it denied Wife's request for rehabilitative maintenance.

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

Brown, J., and Molter, J., concur.