ATTORNEY FOR APPELLANT

Charles E. Traylor
Kolb Roellgen & Traylor LLP
Vincennes, Indiana

ATTORNEY FOR APPELLEE

Bernadette A. Kovacs
Rahman Law Office
Ferdinand, Indiana

IN THE COURT OF APPEALS OF INDIANA

Robert L. Meyer,
Appellant-Respondent,

v.

Eileen M. (Meyer) East,
Appellee-Petitioner.

March 17, 2023

Court of Appeals Case No. 22A-DN-1762

Appeal from the Dubois Circuit Court

The Honorable William E. Weikert, Senior Judge

Trial Court Cause No. 19C01-2007-DN-375

Opinion by Judge Tavitas
Judges Vaidik and Foley concur.

Tavitas, Judge.

Case Summary

[1] Robert Meyer ("Husband") appeals the trial court's division of the marital estate in his dissolution of marriage from Eileen (Meyer) East ("Wife"). Husband raises multiple issues regarding the trial court's determination of the

marital estate, valuation of certain marital property, and the division of the marital estate. We conclude that: (1) the trial court properly included Husband's inheritance, a grill, and a ring as marital assets but erred by excluding a Parent Plus Loan liability from the marital estate; and (2) the trial court properly valued the marital residence but erred in valuing Wife's INPRS pension. Accordingly, we affirm in part, reverse in part, and remand. Given the trial court's errors regarding the Parent Plus Loan and the INPRS pension valuation, the trial court shall reconsider the property division and distribution method of the INPRS pension on remand.

Issues

[2] Husband raises multiple issues regarding the division of the marital estate, which we revise and restate as:

> I. Whether the trial court properly determined assets and liabilities to be included in the marital estate.
>
> II. Whether the trial court properly valued certain assets of the marital estate.
>
> III. Whether the trial court properly divided the marital estate.

Facts

[3] Husband and Wife were married in June 1989 and have three adult children. Wife was employed as a teacher during the marriage, and Wife participated in the INPRS Pension throughout her employment. Husband initially owned a plumbing company, but approximately eight years ago, he began part-time

employment at an excavating company. Although Husband is capable of working full-time, he chooses to work part-time "[b]ecause [Wife's] retirement was so much . . . ." Tr. Vol. II p. 137.

[4] In July 2020, Wife filed a petition for dissolution of marriage. The trial court held final hearings on October 28, 2021, and November 23, 2021. Husband presented a report from Dan Andrews, an expert on pension valuations hired by Husband, as to the value of Wife's INPRS pension. Andrews noted that the Teachers Retirement Fund is a "defined benefit pension that requires 10 years to vest and, in their standard form, are single life payable with a five-year guarantee. . . . The Rule of 85 provides that if a retiree has his/her age in years plus service years totaling 85, retirement may occur as early as age 55 with no early retirement actuarial reduction." Ex. Vol. I p. 132. Wife, who was almost fifty-five years old at the time of filing her dissolution petition, will meet the Rule of 85 at the age of 56.5. At that point, Wife could retire and begin receiving $1,919.85 per month. Andrews concluded that the present value of a "$1,919.85 per month fixed annuity starting at age 56.55 and continuing for life thereafter (5 Year Guarantee)" based, in part, upon Wife's life expectancy, was $507,353.43. *Id.* at 135. Wife, however, proposed valuing the INPRS pension at $1,919.85 per month for the duration of the five-year guarantee only, or $115,191.00.

[5] Husband and Wife both requested possession of the marital residence and offered different valuations for the marital residence. Husband requested an equal division of the marital estate but asked that the trial court "exclude[] from

the marital estate" property that he inherited from his parents. Tr. Vol. II p. 124. Wife proposed an unequal distribution due to Husband's alleged dissipation of assets.

[6] On November 30, 2021, the trial court signed a decree of dissolution dissolving the marriage but bifurcated the issue of the distribution of the marital estate. The trial court gave the parties until December 17, 2021, to agree on the value of all personal property. When the parties were unable to agree, the trial court appointed an appraiser.

[7] On May 5, 2022, the trial court issued an order regarding the valuation and division of the marital estate, except for the personal property, which was appraised separately.[1] The trial court valued Wife's INPRS pension at $115,191.00; valued the marital residence at $246,700.00, which was Wife's proposed valuation; gave possession of the marital residence to Wife; included Husband's inheritance in the marital estate; and excluded a "Parent Plus Loan" from the marital estate and ordered Wife to pay this debt in full. Appellant's App. Vol. II pp. 16. The trial court found that the marital estate should be divided equally. The trial court valued and divided the marital estate, except for the personal property, and ordered Wife to pay Husband $114,319.97 as an equalization payment.

[1] Inexplicably, the trial court issued a separate order regarding the personal property rather than one order for all of the marital estate.

[8] On May 9, 2022, the trial court issued a separate order regarding the valuation and division of the personal property. The trial court divided the personal property equally and ordered Husband to pay Wife $14,140.00 as an equalization payment related only to the personal property. The trial court then: (1) subtracted the $14,140.00 personal property equalization payment that Husband owed from the earlier $114,319.97 equalization payment that Wife owed; and (2) ordered Wife to pay Husband a final equalization payment of $100,179.97 within four months.

[9] Husband filed a motion to correct error. After a hearing, the trial court denied the motion to correct error except to clarify that it purposely excluded the Parental Plus Loan from the marital estate. Husband now appeals. The trial court granted a stay regarding the equalization payment pending this appeal.

Discussion and Decision

[10] Husband challenges the identification of marital assets, the valuation of certain marital assets, and the division of the marital assets. "'The party challenging the trial court's property division bears the burden of proof.'" *Smith v. Smith*, 194 N.E.3d 63, 72 (Ind. Ct. App. 2022) (quoting *Smith v. Smith*, 854 N.E.2d 1, 5 (Ind. Ct. App. 2006)). "That party must overcome a strong presumption that the court complied with the statute and considered the evidence on each of the statutory factors." *Id*.; *see* Ind. Code § 31-15-7-5. "The presumption that a dissolution court correctly followed the law and made all the proper considerations when dividing the property is one of the strongest presumptions applicable to our consideration on appeal." *Smith,* 194 N.E.3d at 72. "Thus,

we will reverse a property distribution only if there is no rational basis for the award." *Id*.

I. Marital Estate

[11] We begin by addressing Husband's arguments regarding whether certain property was properly included or excluded from the marital estate. "It is well settled that in a dissolution action, 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." *Falatovics v. Falatovics*, 15 N.E.3d 108, 110 (Ind. Ct. App. 2014). Specifically, Indiana Code Section 31-15-7-4(a) provides:

> In an action for dissolution of marriage under IC 31-15-2-2, the court shall divide the property of the parties, whether:
>
> (1) owned by either spouse before the marriage;
>
> (2) acquired by either spouse in his or her own right:
>
> (A) after the marriage; and
>
> (B) before final separation of the parties; or
>
> (3) acquired by their joint efforts.

For purposes of dissolution, property means "all the assets of either party or both parties." Ind. Code § 31-9-2-98. "Marital property includes both assets and liabilities." *McCord v. McCord*, 852 N.E.2d 35, 45 (Ind. Ct. App. 2006).

[12] "'The requirement that all marital assets be placed in the marital pot is meant to insure [sic] that the trial court first determines that value before endeavoring to divide property.'" *Falatovics*, 15 N.E.3d at 110 (quoting *Montgomery v. Faust*, 910 N.E.2d 234, 238 (Ind. Ct. App. 2009)). "'Indiana's 'one pot' theory prohibits the exclusion of any asset in which a party has a vested interest from the scope of the trial court's power to divide and award.'" *Id*. (quoting *Wanner v. Hutchcroft*, 888 N.E.2d 260, 263 (Ind. Ct. App. 2008)). In general, "[w]hile the trial 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." *Id.* "The systematic exclusion of any marital asset from the marital pot is erroneous." *Id*.

[13] Husband argues that his inheritance, which consisted of a bank account in his name containing over $96,000 and stocks in two companies, should not have been included as marital property. Husband also argues that a Big Green Egg grill and a ring should not have been included as assets because the grill was a gift to Husband and the ring was a gift to Wife. Finally, Husband and Wife both agree that the Parent Plus Loan should have been included as a marital liability and that the trial court erroneously excluded it.

[14] All assets and liabilities of both parties must be included in the marital pot. Accordingly, the inheritance, grill, ring, and Parent Plus Loan should have been included as marital assets and liabilities. The trial court may then award a particular asset to one party as part of its division of the marital estate. *See* Ind. Code § 31-15-7-5. The trial court did not abuse its discretion by including

Husband's inheritance, the grill, or the ring as marital assets. The trial court was required to consider all property obtained prior to the filing of the petition. The trial court, however, did abuse its discretion by excluding the Parent Plus Loan liability from the marital estate.

II. Valuation of Marital Assets

[15] Husband next argues that the trial court abused its discretion when valuing the marital residence and Wife's INPRS pension. The trial court has broad discretion in ascertaining the value of property in a dissolution action, and we will not disturb its valuation absent an abuse of that discretion. *Smith*, 194 N.E.3d at 73 (citing *Kakollu v. Vadlamudi*, 175 N.E.3d 287, 299 (Ind. Ct. App. 2021), *trans. denied*). "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." *Id*. We will not reweigh evidence, and we will consider the evidence in a light most favorable to the judgment. *Id*.

Marital Residence

[16] We first address Husband's argument regarding the valuation of the marital residence. Husband presented an appraisal of the property with a value of $389,400, and Wife presented an appraisal of the property with a value of $246,700. Wife included the $246,700 value in her proposed distribution exhibit, while Husband included a value of $318,050 in his proposed distribution exhibit, which is the average of Husband's and Wife's asserted

values. The trial court assigned the value of $246,700 to the home. Husband, however, does not explain why the trial court's valuation was an abuse of discretion, and we will not reweigh the evidence. "If the trial court's valuation is within the scope of the evidence, the result is not clearly against the logic and effect of the facts and reasonable inferences before the court." *Webb v. Schleutker*, 891 N.E.2d 1144, 1151 (Ind. Ct. App. 2008). We conclude, therefore, that the trial court's valuation of the marital residence was not an abuse of discretion.

INPRS Pension

[17] Next, Husband argues that the trial court abused its discretion when it valued Wife's INPRS Pension at $115,191.00. Indiana Code Section 31-9-2-98(b) provides:

> "Property", for purposes of IC 31-15, IC 31-16, and IC 31-17, means all the assets of either party or both parties, including:
>
> (1) a present right to withdraw pension or retirement benefits;
>
> (2) the right to receive pension or retirement benefits that are not forfeited upon termination of employment or that are vested (as defined in Section 411 of the Internal Revenue Code) but that are payable after the dissolution of marriage; and
>
> (3) the right to receive disposable retired or retainer pay (as defined in 10 U.S.C. 1408(a)) acquired during the marriage that is or may be payable after the dissolution of marriage.

The parties do not dispute that Wife's pension benefits are vested and not forfeited upon termination of her employment and are, therefore, "property" as defined in Indiana Code Section 31-9-2-98(b).[2]

[18] Wife was eligible to retire and begin receiving her pension when she was 56.5 years old. At that point, Wife could begin receiving $1,919.85 per month for the rest of her life. Wife, however, was only guaranteed that amount for five years. In valuing the INPRS pension, Husband presented an expert report, which valued the pension at $507,353.43. Wife proposed valuing the INPRS pension at $1,919.85 per month for the five-year guarantee only, or $115,191.00. Wife, however, offered no expert opinion regarding her valuation. The trial court valued the pension at $115,191.00 and distributed Husband's portion to him by immediate offset.

[19] Under the trial court's valuation of Wife's INPRS pension, if Wife lives longer than five years after retirement, then Wife receives a windfall. If Wife dies within the five years after retirement, then Husband receives a windfall. Indiana Code Section 31-9-2-98(b), however, does not differentiate between guaranteed benefits and benefits that continue until death. In fact, Indiana Code Section 31-9-2-98(b) requires the inclusion of "the right to receive pension or retirement benefits that are not forfeited upon termination of employment or that are vested (as defined in Section 411 of the Internal Revenue Code) but that

[2] It is undisputed that Wife's pension was earned during the marriage, and the coverture formula is inapplicable here.

are **payable after the dissolution of marriage**." (emphasis added). The post-five-year-guarantee payments are also "payable after the dissolution of marriage" and must be included in the calculation of the pension's present value. Accordingly, we conclude that the trial court abused its discretion by failing to include a value of the pension after the five-year guarantee.

[20] Wife argues that, if the trial court abused its discretion by failing to include the value of the pension after the five-year guarantee, we should remand for the trial court to distribute the pension by deferred distribution rather than by immediate offset. Pursuant to Indiana Code Section 31-15-7-4(b), the trial court "shall divide the property in a just and reasonable manner by":

> (1) division of the property in kind;
>
> (2) setting the property or parts of the property over to one (1) of the spouses and requiring either spouse to pay an amount, either in gross or in installments, that is just and proper;
>
> (3) ordering the sale of the property under such conditions as the court prescribes and dividing the proceeds of the sale; or
>
> (4) ordering the distribution of benefits described in IC 31-9-2-98(b)(2) or IC 31-9-2-98(b)(3) that are payable after the dissolution of marriage, by setting aside to either of the parties a percentage of those payments either by assignment or in kind at the time of receipt.

[21] Although not discussed by the parties here, the trial court is generally prohibited from distributing an INPRS Pension by way of a qualified domestic relations order ("QDRO") or otherwise ordering Wife to assign her benefit payments directly to Husband. *See Smith*, 194 N.E.3d at 67 n.1. We discussed the

options for distributing such a pension at length in *Smith*, 194 N.E.3d at 74-76. "'Courts utilize a number of methods for distributing pension benefits, including an immediate offset method, a deferred distribution method, or a variation or combination of the methods.'" *Id.* at 75 (quoting *Kendrick v. Kendrick*, 44 N.E.3d 721, 726 (Ind. Ct. App. 2015)). Under the immediate offset method, which the trial court used here, "'the court determines the present value of the retirement benefits and awards the nonowning spouse his or her share of the benefits in an immediate lump sum award of cash or property equal to the value of his or her interest.'" *Id.* (quoting *Kendrick*, 44 N.E.3d at 726). "'Under the deferred distribution method, the court makes no immediate division of the retirement benefits but determines the future benefits to which the nonowning spouse is entitled.'" *Id.* (quoting *Kendrick*, 44 N.E.3d at 726).

> Several fact situations may favor the use of an immediate offset method, including where the present value of the pension is relatively modest, the parties are highly litigious, the separating parties are relatively young, and the receiving spouse has immediate and substantial financial need. Other fact situations may favor a deferred distribution method, including where there is not sufficient other tangible property remaining in the marital estate so that a present award is possible, there is an unusually substantial risk that benefits will never be received, the present value of benefits is difficult to compute with reasonable accuracy, and both spouses have no other steady source of income for their retirement years.
>
> It is also possible to apply both the deferred distribution and immediate offset methods in a single case. One such way to combine the methods is to order an offsetting cash award payable in installments. Such an award can give the benefits of immediate offset in a case where there are not sufficient funds

> available for an immediate cash payment. Like the immediate offset method, deferred offset awards are limited by the liquid funds available in the marital estate. However, the limitation is not as severe as with an immediate offset award, because a deferred award is spread out over time, but the payor must still have sufficient liquid funds to make the installment payments.

Id. at 75 (quoting *Kendrick*, 44 N.E.3d at 726-27 (citing Brett R. Turner, 2 EQUIT. DISTRIB. OF PROPERTY, 3d §§ 6:30, 6:36 (2014) (internal citations omitted)). On remand, the trial court may consider whether immediate offset or a deferred distribution is warranted here.

Division of Marital Assets

[22] Finally, Husband argues that the trial court's division of property was an abuse of discretion because his inheritance "weigh[s] in favor of dividing the assets unequally in favor of [Husband] . . . ."[3] Appellant's Br. p. 46. Pursuant to Indiana Code Section 31-15-7-4(b), the trial court "shall divide the property in a just and reasonable manner . . . ." We "presume that an equal division of the marital property between the parties is just and reasonable." I.C. § 31-15-7-5.

> However, this presumption may be rebutted by a party who presents relevant evidence, including evidence concerning the

[3] Husband contends that Wife made a judicial admission that Husband would retain the entire value of his inheritance. Husband again misinterprets the inclusion of such property in the marital estate with the division of such property. Wife merely agreed that Husband's inheritance should be awarded to Husband in the final distribution. Wife included Husband's inheritance in her proposed distribution of marital assets and assigned those accounts to Husband in her proposed distribution. Accordingly, we conclude that Wife did not make a binding judicial admission regarding Husband's inheritance.

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.

[23] "After determining what constitutes marital property, the trial court must then divide the marital property under the presumption that an equal division is just and reasonable." *Eads v. Eads*, 114 N.E.3d 868, 874 (Ind. Ct. App. 2018). The presumption of an equal division may be rebutted by the presentation of certain factors detailed in Indiana Code Section 31-15-7-5. The trial court, however,

must state its reasons for deviating from the presumption of an equal division in its findings and judgment. *Id*.

[24] The trial court here purported to order an equal division of the marital estate. Husband argues that an equal division was improper given his inheritance, and Wife argued at trial that an equal division was improper given Husband's dissipation of assets.[4] Given the trial court's abuse of discretion regarding the Parent Plus Loan liability and the valuation of the INPRS pension, the trial court's decision to divide the marital pot equally was not based upon an adequate determination of the marital estate. Once the trial court determines the proper valuation of the marital estate on remand, the trial court will need to determine whether equal division is "just and reasonable." The trial court's decision to divide the marital pot equally was not based upon the proper valuation of the marital estate. *See Falatovics*, 15 N.E.3d at 111.

[25] In such a circumstance, we remand for the trial court to include the Parent Plus Loan liability and the proper valuation of the INPRS pension in the marital estate and either: (1) divide the marital estate pursuant to the rebuttable presumption of an equal division; or (2) set forth its rationale for an unequal division of the marital estate. *See, e.g., Morey v. Morey*, 49 N.E.3d 1065, 1072 (Ind. Ct. App. 2016) ("If the trial court determines that a party has rebutted the

[4] Husband argues that Wife waived any challenge to the trial court's order of an equal division "as she did not raise a competent argument in favor of an unequal distribution scheme before the trial court." Appellant's Br. p. 39. Wife, however, repeatedly argued that Husband dissipated marital assets, and we do not find this issue waived.

presumption of an equal division of the marital pot and decides to deviate from an equal division, then it must state its reasoning in its findings and judgment.").

Conclusion

[26] The trial court did not abuse its discretion by including Husband's inheritance, the grill, and the ring as marital assets, but the trial court abused its discretion by excluding the Parent Plus Loan liability from the marital estate. The trial court did not abuse its discretion in its valuation of the marital residence, but the trial court abused its discretion in its valuation of Wife's INPRS pension. Accordingly, we affirm in part, reverse in part, and remand. Given the trial court's errors regarding the Parent Plus Loan and the INPRS pension valuation, the trial court may reconsider the property division and distribution method of the INRPS pension on remand.

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

Vaidik, J., and Foley, J., concur.