

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

Elizabeth M. Smith
EMS LEGAL
Mooresville, Indiana

ATTORNEY FOR APPELLEE

Rachelle N. Ponist
Hand Ponist Horvath Smith &
Rayl
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

James Sanders,
Appellant-Petitioner,

v.

Belinda Sanders,
Appellee-Respondent.

October 28, 2021

Court of Appeals Case No.
21A-DN-466

Appeal from the Marion Superior
Court

The Honorable Christopher Haile,
Magistrate

Trial Court Cause No.
49D11-1703-DN-12960

Bradford, Chief Judge.

Case Summary

[1] James Sanders (“Husband”) and Belinda Sanders (“Wife”) were married on March 28, 1998. Husband and Wife purchased a marital residence in 2002, putting the mortgage and deed in Husband’s and Wife’s name. Both parties contributed to the bills, mortgage, and upkeep of the home. Sometime around 2014 or 2016, the parties physically separated, and Wife left the marital residence. Husband continued to pay the bills and mortgage for the home and filed a petition for the dissolution of the parties’ marriage on March 30, 2017. Following multiple years of delays and continuances, the trial court held a hearing on December 4, 2020. On February 18, 2021, the trial court issued its final order awarding Husband the marital residence and Wife a judgment of \$41,919.95 for her half of the home’s equity and assigned all remaining property to the party who held it individually or possessed it. Husband appeals, arguing that the trial court erred because it failed to address all of the factors required by Indiana Code section 31-15-7-5 in issuing its order and that the trial court abused its discretion in valuing the marital residence without considering the residence’s significant change in value during the proceedings. Because we disagree, we affirm.

Facts and Procedural History

[2] Husband and Wife were married on March 28, 1998. Husband had worked at General Motors for eighteen years before marrying Wife, and continued working for General Motors during the marriage, eventually accumulating a

pension as a result of that employment. In 2002, the parties purchased the marital residence, located at 1055 Fleetwood Drive in Indianapolis, putting the mortgage and deed in Husband's and Wife's name.

[3] In 2014, Husband sustained an injury which led to difficulty walking and a disability. Though the parties disagree as to when they physically separated, they agree that, when they did separate, Wife left the marital residence.

Husband continued to make home loan payments and pay the bills for the marital residence. When Wife left the residence, she was employed by St. Vincent Carmel Hospital and had a retirement account containing \$409.62.

[4] Husband filed a petition for dissolution of marriage on March 30, 2017. Following several years of delays and continuances, the trial court held a hearing on December 4, 2020. A week before the final hearing, the marital residence was appraised at \$200,000.00. On February 18, 2021, the trial court issued its final order awarding Husband the marital residence and Wife a judgment of \$41,919.95 for her half of the equity and assigned all remaining property to the party who held it individually or possessed it.

Discussion and Decision

[5] Husband requested specific findings of fact and conclusions of law under Indiana Trial Rule 52(A), prohibiting us from setting aside the trial court's judgment "unless clearly erroneous." *Morey v. Morey*, 49 N.E.3d 1065, 1069 (Ind. Ct. App. 2016) (quotations omitted). "When findings and conclusions

thereon are entered by the trial court pursuant to the request of any party to the action, we apply a two-tiered standard of review.” *Coleman v. Atchison*, 9 N.E.3d 224, 227 (Ind. Ct. App. 2014).

First, we determine whether the evidence supports the findings and second, whether the findings support the judgment. In deference to the trial court’s proximity to the issues, we disturb the judgment only where there is no evidence supporting the findings or the findings fail to support the judgment. We do not reweigh the evidence, but consider only the evidence favorable to the trial court’s judgment. Challengers must establish that the trial court’s findings are clearly erroneous. Findings are clearly erroneous when a review of the record leaves us firmly convinced a mistake has been made. However, while we defer substantially to findings of fact, we do not do so to conclusions of law. Additionally, a judgment is clearly erroneous under Indiana Trial Rule 52 if it relies on an incorrect legal standard. We evaluate questions of law *de novo* and owe no deference to a trial court’s determination of such questions.

Balicki v. Balicki, 837 N.E.2d 532, 535–36 (Ind. Ct. App. 2005), *trans. denied*.

I. Indiana Code section 31-15-7-5

[6] Husband argues that, because the trial court did not specifically address all five factors listed in Indiana Code section 31-15-7-5, the trial court’s ruling was clearly erroneous. Indiana Code section 31-15-7-5 states:

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.

“When ordering an unequal division, the trial court must consider *all* of the factors set out in [the statute].” *Wallace v. Wallace*, 714 N.E.2d 774, 780 (Ind. Ct. App. 1999) (emphasis in original), *trans. denied*. However, it “goes too far” to suggest that “the trial court must explicitly address each of the considerations in [Indiana Code] section 31-15-7-5.” *Eye v. Eye*, 849 N.E.2d 698, 702 (Ind. Ct. App. 2006).

In dividing the marital property, the trial court must consider all [Indiana Code section 31-15-7-5] factors, but it is not required to explicitly address each one in every case. To the contrary, we presume that the trial court considered each factor. This is one of the strongest presumptions applicable to our consideration on appeal and must be overcome by a party challenging the trial court's division of property.

Priore v. Priore, 65 N.E.3d 1065, 1078 (Ind. Ct. App. 2016) (citations omitted).

[7] In its order, the trial court made the following factual findings.

1. The Petitioner James Sanders has been a resident of Marion County, Indiana for three months and a resident of the State of Indiana for more than least [sic] six months continuously prior to is [sic] filing of his Verified Petition for Dissolution of Marriage.
2. The Petitioner filed his Verified Petition for Dissolution on March 30, 2017.
3. The parties were married on March 28, 1998.
4. The parties disagree about the date of physical separation with James Sanders testifying it was in 2014 and Belinda Sanders testifying it was in 2016.
5. The parties purchased real estate during the marriage, which is located at 1055 Fleetwood, Drive, Indianapolis, IN 46228.
6. The Respondent is not pregnant and there were no children born to the marriage.
7. The marriage is irretrievably broken and should be dissolved[.]

8. The Petitioner has been disabled since 2014 and is receiving income from social security and a pension from General Motors.
9. Petitioner testified that his disability includes physical impairments including stage four stomach cancer and he has substantial medical bills.
10. Petitioner was employed with General Motors 18 years prior to marrying Respondent-Belinda Sanders.
11. Petitioner inherited his mother's home in August of 1987 prior to the marriage to Respondent and the Respondent does not want any part of this property.
12. There is a mortgage on the home and the net value of the inherited real estate is Four Thousand Three Hundred Dollars (\$4,300).
13. Since the parties' separation, Respondent has not contributed to the mortgage payments, real estate taxes, or repairs on the marital residence.
14. Since the parties' separation, Respondent has not contributed to the mortgage payments, real estate taxes or repairs on the marital residence. The marital residence has an appraised value of two hundred thousand dollars (\$200,000.00) (Exhibit A).
15. The mortgage on the property at the time of the filing was \$116,160.10 (Exhibit 1).
16. The equity in the property is therefore \$83,839.90.
17. The Respondent had a small retirement account of \$409.00.
18. There are significant evidentiary issues in this case.

19. The Petitioner testified that the Respondent had jewelry, a vehicle, and an inheritance but there was no evidence to support his testimony.
20. The Petitioner's pension was not professionally valued and the value assigned to the marital residence is a current value as this case languished for over three years.

Appellant's App. Vol. II pp. 14–16. Relying on the above findings, the trial court made the following conclusions:

1. The Court shall presume that an equal division of the marital estate is just and reasonable. Ind. Code 31-17-7-5 [sic]^[1].
2. This presumption may be rebutted by consideration of the contribution of each party to the acquisition of property; the extent to which property was acquired before marriage or by inheritance; the economic circumstances of the parties at the time of dissolution; and the earning ability and future earning ability of the parties. Ind. Code 31-17-7-5 [sic].
3. The Court finds that the presumption has been rebutted based upon the parties' contribution to the acquisition of property before and during marriage; the inheritance of property; the economic circumstances of the parties; and the earning abilities of the parties.

Appellant's App. Vol. II p. 16. The trial court's conclusions, considered with the factual findings, do not suggest that the trial court acted erroneously; rather, the four Indian Code section 31-15-7-5 factors on which the trial court relied are supported by the trial court's factual findings. The trial court's decision to

¹ Though the trial court miscited the relevant statute as Indiana Code section 31-17-7-5, it was clearly referring to Indiana Code section 31-15-7-5, pulling language directly from the statute.

not address the unused factor, “[t]he conduct of the parties during the marriage as related to the disposition or dissipation of their property,” does not undermine the trial court’s conclusion that the presumption of equal division of property had been rebutted.

II. Marital Residence Valuation

[8] “Generally, the marital pot closes on the date the dissolution petition is filed.” *Sanjari v. Sanjari*, 755 N.E.2d 1186, 1192 (Ind. Ct. App. 2001); however, “a trial court may select a valuation date any time between the date a petition for dissolution is filed and the date a decree of dissolution is entered.” *Magee v. Garry-Magee*, 833 N.E.2d 1083, 1087 (Ind. Ct. App. 2005).

We have previously stated that, although a trial court ‘may choose any date within defined parameters in determining the value of an asset,’ we ‘do not believe that the discretion afforded trial judges is inconsistent with their ability to select a date which would avoid injustice,’ and that it ‘is possible for a court to abuse its discretion in picking a [valuation] date which unjustly fails to account for’ a significant change in an asset’s value during the proceedings.

McGrath v. McGrath, 948 N.E.2d 1185, 1188 (Ind. Ct. App. 2011) (quoting *Knotts v. Knotts*, 693 N.E.2d 962, 969 (Ind. Ct. App. 1998), *trans. denied.*)

[9] Husband argues that the trial court abused its discretion in using a valuation of the marital residence from 2020, more than three years after the filing of the dissolution, which failed to consider the marital residence’s significant increase in value during the pendency of the proceedings. Specifically, husband points

to evidence that the value of the marital residence was \$161,000.00 on March 30, 2017, as proof that the trial court abused its discretion by selecting a valuation date, and thereby an amount, which was \$30,000.00 more than the value of the home when the petition was filed. Husband also points to evidence that the home-loan balance was reduced by \$17,643.10 during the pendency of the proceedings, increasing both Husband’s and Wife’s equity in the property, due solely to Husband making payments. Husband argues, in part, that this is unfair because of the trial court stated that “the marital assets close as of the date of filing the petition.” Tr. pp. 42–43. However, we do not find Husband’s arguments to be persuasive. “[A] trial court may select a valuation date any time between the date a petition for dissolution is filed and the date a decree of dissolution is entered.” *Magee*, 833 N.E.2d at 1087. The trial court ultimately decided to use a valuation from 2020 to determine the value of the marital residence, explaining that, “the value assigned to the marital residence is a current value as this case languished for over three years,” and that there were “significant evidentiary issues in this case.” Appellant’s App. Vol. II pp. 15–16. Husband’s argument essentially asks that we reweigh the evidence, which we will not do. *Alexander v. Alexander*, 927 N.E.2d 926, 933 (Ind. Ct. App. 2010) (“We may not reweigh the evidence or judge the credibility of the witnesses, and we consider only the evidence most favorable to the trial court’s disposition of the marital property.”), *trans. denied*.

[10] The judgment of the trial court is affirmed.

Robb, J., and Altice, J., concur.