MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jill D. Beagle (formerly Schlotterback),

Appellant-Petitioner,

v.

Terry L. Schlotterback, Jr.,

Appellee-Respondent

May 31, 2023

Court of Appeals Case No. 22A-DN-2947

Appeal from the Noble Superior Court

The Honorable Steven T. Clouse, Judge

Trial Court Cause No. 57D01-2009-DN-6

Memorandum Decision by Judge Crone
Judges Robb and Kenworthy concur.

Crone, Judge.

Case Summary

[1] Jill D. Beagle (formerly Schlotterback) (Wife) appeals the decree dissolving her marriage to Terry L. Schlotterback (Husband). Wife's sole assertion on appeal is that the trial court abused its discretion in valuing the marital residence. We agree, and therefore we reverse and remand for modification of the decree.

Facts and Procedural History

[2] Husband and Wife were married in 2015. No children were born of the marriage. During the marriage, the parties resided in a home located in Albion (the marital residence) that, at all relevant times, was titled jointly in both parties.[1] Wife left the marital residence on or about September 18, 2020, and filed a petition for dissolution of marriage on September 22, 2020. After Wife left, Husband retained possession of the marital residence.

[3] The final dissolution hearing was held on April 21, 2022. During the hearing, the parties presented multiple appraisals of the marital residence, including two appraisals prepared by Jared Sipe, an appraiser jointly commissioned by both parties. One of Sipe's appraisals valued the residence at $385,000 as of the September 2020 date of filing, and the second appraisal valued the residence at

[1] Although Husband retained the marital residence as his "sole and separate property" at the beginning of the marriage pursuant to the terms of the parties' written premarital agreement, he executed a quitclaim deed in October 2017 transferring his interest in the marital residence to "Terry Lee Schlotterback, Jr. and Jill Dyan Schlotterback," husband and wife. Appealed Order at 1, 2. "The deed was duly recorded in the Office of the Noble County Recorder on October 24, 2017." *Id.* at 2.

$530,000 as of July 7, 2021.[2] Sipe also testified at the final hearing and stated that if he were asked to assign a value to the residence as of the date of the hearing it would be around $550,000 to $560,000.

[4] On August 15, 2022, the trial court issued its findings of fact, conclusions thereon, and decree dissolving the parties' marriage. Regarding its valuation of the marital residence specifically, the trial court found:

> 17. Wife argues that she is entitled to receive the benefit in the [marital residence's] increase in value due to market increase from the date of filing, and proposes the [marital residence] be valued as of the date of trial, as opposed to the date of filing.
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> 18. This Court may choose a date from the date of filing to the date of trial to value the marital property. "There is no requirement in our law that the valuation date be the same for every asset." *Wilson v. Wilson*, 732 N.E.2d 841, 845 (Ind. Ct. App. 2000).
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> ….
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> 20. Following the date of filing on September 22, 2020, Husband has been exclusively in possession of the [marital residence] and thereby responsible for the maintenance and upkeep of the [marital residence] and payment of all financial obligations associated with the [marital residence], including the mortgage obtained by the parties in December 2020, as well as a loan for a new roof installed in 2021. The Court finds it is fair for Husband to receive and enjoy whatever market growth has been realized

[2] The trial court also had before it an appraisal that valued the marital residence at $490,000 as of November 28, 2020. Petitioner's Ex. 12. This appraisal was prepared for the parties for the purpose of securing a post-filing home equity line of credit.

> with the [marital residence] since September 23, 2020.
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> 21. The parties have presented multiple appraisals of the [marital residence]. The Court finds consistent with its findings herein, that the [marital residence] is valued at $385,000.00 (Exhibit G)….

Appealed Order at 3. Accordingly, the trial court valued the marital residence at $385,000, the value as of the date of filing. After assigning values to all the additional marital assets and liabilities, which are not at issue herein, and specifically finding that neither party had successfully rebutted the presumption that an equal division of marital property is just and reasonable, the trial court divided the marital estate equally.[3] This appeal ensued.

Discussion and Decision

[5] Wife challenges a portion of the trial court's dissolution decree. We begin by noting that the trial court here entered findings of fact and conclusions thereon pursuant to Indiana Trial Rule 52. Our standard of review in this regard is well settled.

> 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

[3] Based upon the assigned property values and before equalization, this resulted in Husband receiving $374,910 of the net marital estate and Wife receiving $20,829. The court ordered Husband to pay Wife an equalization payment of $177,040.50. Appealed Order at 8.

> 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.

Israel v. Israel, 189 N.E.3d 170, 176 (Ind. Ct. App. 2022) (citation omitted), *trans. denied*.

[6] Moreover, "there is a well-established preference in Indiana for granting wide latitude and deference to our trial judges in family law matters." *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016). 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." *Id.* "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*.

[7] On appeal, Wife challenges a single trial court finding regarding the valuation of the marital residence. Specifically, Wife argues that the trial court erred in choosing the time-of-filing appraisal amount of $385,000 and thereby failing to account for the residence's substantial increase in value during the pendency of the proceedings. She asserts that the trial court's determination that "it is fair for Husband to receive and enjoy whatever market growth has been realized with the [marital residence] since September 23, 2020," resulted in an unequal

division of marital property, which was not the trial court's stated intent. We must agree.

[8] It is well settled that 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 v. Smith*, 194 N.E.3d 63, 73 (Ind. Ct. App. 2022). "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*.

[9] Generally speaking, "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). Moreover, the trial court has discretion when valuing the marital assets to set any date between the date of filing the dissolution petition (the final separation date) and the date of the hearing. *Wilson v. Wilson*, 732 N.E.2d 841, 846 (Ind. Ct. App. 2000) (citing *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996)), *trans. denied*. Nevertheless, this Court has held that it is possible for a court to abuse its discretion in picking a valuation date which unjustly fails to account for a significant increase or decrease in the value of an asset during the proceedings. *Id*. at 846-47; *see McGrath v. McGrath*, 948 N.E.2d 1185, 1189 (Ind. Ct. App. 2011) (reversing and

remanding for modification of dissolution decree because trial court's failure to account for substantial decrease in appraised value of certain marital real estate during four-year pendency of proceedings resulted in unequal division of property, which was contrary to trial court's stated intent). We think that this is precisely what happened here.

[10] At the final hearing, the trial court was presented with multiple appraisals of the marital residence. These included an appraisal prepared by Sipe, an appraiser jointly commissioned by both parties, valuing the residence at $385,000 as of the September 2020 date of filing, and a second appraisal prepared by Sipe valuing the residence at $530,000 as of July 7, 2021. Sipe testified at the final hearing that this jump in value during the course of the proceedings was strictly due to "how strong the market" was, and that if he were asked to assign a value to the residence as of the date of the final hearing, it would be around $550,000 to $560,000. Tr. Vol. 2 at 8.[4] This undisputed difference in value between the date of filing and the date of trial is substantial, and we agree with Wife that by choosing the date-of-filing valuation and simply allowing Husband to "receive and enjoy whatever market growth has been realized" during the course of the proceedings, the trial court departed from an equal division of the marital estate, which was contrary to the court's stated intent.

[4] This amount factors in the bad roof, which, as of the date of final hearing, had been replaced by Husband.

[11] Under the circumstances, we conclude that the trial court abused its discretion in assigning a value to the marital residence which failed to account for the substantial change in value between the time of filing and the time of dissolution. Moreover, although the trial court acknowledged in its findings that Husband has been in exclusive possession of the residence and responsible for the maintenance, upkeep, and financial obligations associated with the residence, the trial court failed to make a specific accounting of Husband's contributions and to credit him for the same. Accordingly, we reverse and remand with instructions for the trial court to do the following: (1) determine and assign a value to the marital residence as of the date of dissolution; (2) account for and credit Husband for any contributions, financial or otherwise, that he made to that marital asset during the pendency of these proceedings; and (3) modify the dissolution decree accordingly.[5]

[12] Reversed and remanded.

Robb, J., and Kenworthy, J., concur.

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[5] We reject Husband's suggestion that a reversal of the trial court's valuation of the marital residence requires a reconsideration on remand of whether an equal division of property is just and reasonable. Husband is correct that, based upon his premarital ownership of the marital residence as well as evidence of other statutory factors, the trial court could have determined that the presumption of an equal division of property had been rebutted and that Husband was entitled to a larger share of the total marital estate. *See* Ind. Code § 31-15-7-5 (codifying presumption that equal division of property between parties to a dissolution is just and reasonable unless presumption is rebutted by relevant evidence of certain factors). However, that is not what the trial court determined here. The trial court specifically found that, based upon all the evidence presented, neither party had rebutted the presumption that an equal division was just and reasonable. Accordingly, the trial court's stated intent was to divide the marital estate equally, and its valuation of the marital residence as of the date of dissolution will achieve that goal.