MEMORANDUM DECISION

APPELLANT PRO SE

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ATTORNEY FOR APPELLEE

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IN THE COURT OF APPEALS OF INDIANA

Alan C. Karenke,
Appellant-Respondent,

v.

Brenda J. Karenke,
Appellee-Petitioner

July 14, 2021

Court of Appeals Case No. 20A-DN-1974

Appeal from the Jackson Superior Court

The Honorable Bruce A. MacTavish, Judge

Trial Court Cause No. 36D02-1912-DN-290

Crone, Judge.

Case Summary

[1] Alan C. Karenke (Husband), an incarcerated person, brings this pro se appeal from the trial court's order dissolving his marriage to Brenda Karenke (Wife). Husband asserts that the trial court abused its discretion in denying (or not ruling on) various pro se motions filed by him, in dividing the marital property, and in determining his parenting time with the parties' minor child. He also argues that insufficient evidence supports the court's finding that there has been an irretrievable breakdown of the marriage, and he requests that we remand this case and order counseling to foster reconciliation. We disagree with all Husband's assertions, decline his request for remand, and affirm.

Facts and Procedural History

[2] The limited facts presented to the trial court and thus available to this Court are as follows. Husband and Wife were married on December 17, 2010. Husband and Wife are the parents of one child, A.K., who was born prior to the marriage in June 2010. In March 2017, Husband was arrested on allegations that he raped and criminally confined Wife's daughter (Husband's stepdaughter). Husband was subsequently found guilty and convicted of attempted rape, criminal confinement, and resisting law enforcement, and was incarcerated at the New Castle Correctional Facility, where he remains currently.

[3] On December 23, 2019, Wife, by counsel, filed a verified petition for dissolution of marriage alleging, among other things, that there had been an irretrievable breakdown of the marriage. On February 5, 2020, Husband filed a

pro se appearance in the matter. On April 23, 2020, Husband filed a "Request For Legal Aid For Verified Petition For Dissolution of Marriage" alleging that he had requested legal aid from a local legal aid service and was denied assistance; Wife has counsel that agreed to assist her pro bono; he is not qualified to make legal decisions for an adequate defense; and Wife is in possession of all marital property, so he has no access to any property, income, or funds to hire legal aid for a proper defense. Appellant's App. Vol. 2 at 17. The trial court denied Husband's request, concluding that Husband was "not entitled to appointed Counsel in this case." *Id*. at 18.

[4] Wife conducted limited discovery and thereafter filed a motion for final hearing. On July 29, 2020, the trial court entered an order setting the final hearing for August 31, 2020, at 1:00 p.m. The order was served on both parties. On August 24, 2020, Wife submitted a marital balance sheet and proposed division of property with attached exhibits containing evidence regarding the valuation of each asset and each liability. The balance sheet and proposed division reflected essentially an equal division of the marital assets as well as an equal division of the substantial marital liabilities. The only item that was set aside in a column to be awarded to Wife alone was a residence located on South Emerson Avenue in Indianapolis (the South Emerson Property) that was labeled as "Inherited." *Id*. at 27. On that same date, Husband filed a pro se motion for continuance and a motion for discovery, along with a request for "leave to proceed as an indigent person for appointment of counsel in

accordance with Indiana Code 34-10-1-1 and 34-10-1-2." *Id*. at 30. On August 26, 2020, the trial court issued the following order:

> [Husband] files Motion to Continue, Motion for Discovery, Request to Proceed as an Indigent Person and Request for Indigent Attorney. The Court denies [Husband's] request to be appointed counsel. [Husband] is not entitled to court appointed counsel as the Court previously ruled on April 23, 2020. [Husband] is proceeding pro se. No action taken on Motion for Discovery. [Husband's] Motion for Continuance is denied and the hearing remains set on August 31, 2020 at 1:00 p.m.

Id. at 32.

[5] The final hearing was held as scheduled on August 31, 2020. Wife appeared in person and by counsel. Husband failed to appear. During the hearing, Wife testified that the parties' marriage is irretrievably broken and that there is no hope of reconciliation. Regarding the division of marital property, Wife submitted evidence regarding the value of each item of property, the amount of each liability, and her proposed division of property. Specifically, as to real estate, Wife explained that she was seeking exclusive possession of the marital residence. Wife presented evidence to show that the parties had built very little equity in the residence after acquiring it in 2014 and that the property had actually depreciated in value since that time.[1] She testified that although the

[1] Tax assessment records submitted by Wife, and admitted into evidence, indicate that the assessed value of the marital residence had fallen from $85,800 to $54,800 as of January 1, 2020. Even so, rather than submitting a marital balance sheet reflecting the lower value, which would have reflected that the parties had substantial negative net equity in the residence, Wife's counsel, we think very graciously, used the previous

mortgage loan was in Husband's name alone, she had been paying the mortgage and all other bills related to the property since Husband's incarceration. She requested permission to refinance the loan and take it out of Husband's name and place it into her name.

[6] Wife also explained that she was requesting that the South Emerson Property, listed as inherited property and valued at $43,900, be awarded to her alone. Wife explained that the residence was owned by her grandparents for sixty years and that her grandparents placed the residence into a trust until her last grandparent who lived there died in 2013. Wife stated that she used $10,000 that she inherited upon that death, and her uncle used $30,000, to purchase the residence from her grandfather's estate for $40,000. Wife stated that she did not use marital property to purchase her interest in the residence and that she has not used any marital property to maintain the residence. Wife testified that her uncle currently lives in the residence, pays all bills associated with it, and pays to maintain the residence. Wife stated that her uncle has "put the residence in her name alone" with the intent being that "when he dies it will just go straight to [her]." Tr. Vol. 2 at 10.

[7] As for child custody and parenting time, Wife testified that she was asking for sole custody of A.K. due to Husband's incarceration, and she explained the nature of Husband's crimes involving her daughter. Wife stated that Husband's

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higher assessed value, which, after subtracting the mortgage loan balance of $84,252, resulted in positive net equity of only $1,548. Appellant's App. Vol. 2 at 27.

parenting time currently involved speaking with A.K. on the phone one time per week from prison and that she was okay with that continuing as well as permitting Husband to communicate with A.K. by writing letters. Wife requested, however, that the trial court grant Husband "no physical parenting time." *Id*. at 13. The trial court interjected, "I think that's very reasonable…, [Husband] needs to be out and come before the Court and … I think [Wife] should have the right to be here with [her counsel] [c]ross [e]xamining [Husband] before he gets any parenting time in person." *Id*. Wife stated that she was not asking for any child support while Husband is incarcerated. Wife testified that Husband's projected release date is December 2022.

[8] The trial court issued its decree dissolving the parties' marriage on September 2, 2020. The trial court noted in the decree that Husband failed to appear at the final hearing and further failed to "request to appear in person, via telephone and/or video" despite "having been duly served with the Petition and having been notified of the hearing date and time." Appealed Order at 1. Based upon the evidence presented by Wife, the trial court found and ordered in relevant part:

> 4. There has been an irretrievable breakdown of the marriage
>
> ….
>
> 8. That Wife shall have the sole physical and legal custody, care and control of the parties' minor child.
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> 9. Husband is currently incarcerated in the Indiana Department of Correction ("IDOC") as a result of Husband's convictions for

among other things, the attempted rape and criminal confinement of Wife's daughter, Husband's stepdaughter. This Court finds it is not in the minor child's best interest to be brought to the IDOC facility to visit with Husband. However, Husband has been exercising parenting time during his term of incarceration via weekly telephone calls to the minor child. Therefore, Husband's parenting time shall consist of one (1) telephone call per week, initiated by Husband during Husband's free call time (what the parties have been doing). The expense, if any, of Husband's telephone call with the minor child shall be borne solely by the Husband.

10. Husband shall not be required to pay child support while he is incarcerated. However, when Husband is released from incarceration, he shall promptly notify the Court and a child support obligation shall be determined.

11. Wife shall be awarded and shall retain exclusive possession of the marital residence … and she shall be responsible for payment of the monthly installments of the mortgage, taxes, insurance, and utilities thereon. Wife shall refinance the mortgage on the Marital Residence into her name within Six (6) months after the granting of this Decree. Husband shall sign any and all documents necessary for the carrying out of this Order, which would include but not be limited to signing a Quitclaim Deed immediately upon Wife's request for him to do so, quitclaiming all right, title and interest to the Marital Residence.

12. Wife shall be awarded and shall retain exclusive possession of the residence located at 705 S Emerson Ave Indianapolis.

13. The parties shall divide the remainder of the real and personal property and liabilities, not effectively divided herein, pursuant to the asset and liability list attached hereto and incorporated herein by reference.

Id. at 1-3.

[9] On September 21, 2020, Husband filed an objection to final hearing and motion to correct error regarding the denial of his motion for continuance. The trial court denied the objection and motion to correct error on September 23, 2020. Husband then filed a motion to set aside judgment and motion to correct error regarding the dissolution decree on October 9, 2020, both of which the trial court denied on October 19, 2020. This appeal ensued.[2]

Discussion and Decision

[10] We begin by noting that Husband proceeded pro se both in the trial court and on appeal.[3] It is well settled that a pro se litigant is held to the same legal standards as a licensed attorney. *Zavodnik v. Harper*, 17 N.E.3d 259, 266 (Ind. 2014). Neither the trial court nor this Court owes Husband any inherent leniency simply by virtue of being self-represented. *Id*.

[11] Husband asserts that the trial court abused its discretion in denying (or not ruling on) various motions, including his motions for appointed counsel, continuance, and to compel discovery, as well as his motion to correct error regarding the dissolution decree. He further asserts that the court erred in dividing the marital property, in determining his parenting time with A.V., and

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[2] Husband filed an affidavit of indigency and a pro se motion to appoint pauper counsel with this Court, which was denied on November 2, 2020. Husband then filed a pro se motion to clarify order in which he requested that we clarify our decision to deny his motion for appointed counsel. We issued an order denying that motion on December 17, 2020.

[3] We note that Husband has submitted handwritten briefs that are lengthy and extremely difficult to read.

in finding that there had been an irretrievable breakdown of the marriage. Husband's arguments are voluminous and rambling, and he conflates several issues. While his discontent that his marriage to Wife has been dissolved, as well as his dissatisfaction with each and every trial court order, including the final one, comes through loud and clear, we would be remiss not to observe that Husband's precise claims on appeal are not well articulated. Nevertheless, we address his claims as we understand them.

Section 1 – The trial court did not abuse its discretion in denying Husband's motion for appointed counsel.

[12] Husband, who is incarcerated, first contends that the trial court abused its discretion in denying his motion for appointed counsel. It is well settled that a prisoner has no absolute right to counsel in a civil case. *Sabo v. Sabo*, 812 N.E.2d 238, 242 (Ind. Ct. App. 2004). However, Indiana Code Section 34-10-1-1, known as the in forma pauperis statute (IFP Statute), provides that an indigent person "may apply to the court ... for leave to prosecute or defend as an indigent person." If the court is satisfied that the person does not have sufficient means to prosecute or defend the action, the court "(1) shall admit the applicant to prosecute or defend as an indigent person; and (2) may, under exceptional circumstances, assign an attorney to defend or prosecute the cause." Ind. Code § 34-10-1-2(b). In determining whether to appoint counsel, "[t]he factors that a court may consider" include "(1) [t]he likelihood of the applicant prevailing on the merits of the applicant's claim or defense; [and] (2) [t]he applicant's ability to investigate and present the applicant's claims or

defenses without an attorney, given the type and complexity of the facts and legal issues in the action." Ind. Code § 34-10-1-2(c). Moreover, Indiana Code Section 34-10-1-2(d) specifies that the court "shall deny" the application for appointed counsel if the court determines that "[t]he applicant is unlikely to prevail on the applicant's claim or defense." The burden is upon the party seeking to proceed IFP to demonstrate that he or she is indigent and without "sufficient means." *Sholes v. Sholes*, 760 N.E.2d 156, 160 (Ind. 2001).

[13] "Indigency determinations present a subject for the sound discretion of the trial court, and a very clear case of abuse must be shown before this discretionary power can be interfered with." *Zavodnik*, 17 N.E.3d at 267 (citation omitted). Our supreme court has explained,

> Whether the applicant has "sufficient means" goes beyond a mere snapshot of the applicant's financial status. Rather, the court must examine the applicant's status in relation to the type of action before it. If the action is of the kind that is often handled by persons of means without counsel, the court may find that even an indigent applicant has "sufficient means" to proceed without appointed counsel. … In these cases, an indigent may well be found to have sufficient means to prosecute or defend the action.

Sholes, 760 N.E.2d at 161 (citations omitted).

[14] Here, Husband filed his pro se appearance in the dissolution proceeding before twice requesting the appointment of counsel due to his alleged indigency, with only one request following the correct application procedure pursuant to the IFP Statute. Still, in neither request did Husband provide the trial court with

evidence of his financial status, by affidavit or otherwise, to establish that he was without the financial resources to defend a straightforward dissolution action. Husband merely baldly claimed that he could not get access to his financial resources to hire an attorney because he was incarcerated; he did not allege that he was without the financial resources to hire an attorney. Moreover, there was no reason for the trial court to believe that Husband, simply because he was incarcerated, was unable to adequately investigate and present his claims or defenses without an attorney, given the type and complexity of the facts and legal issues in the present action. Indeed, as this Court has previously recognized, noncomplex "dissolution proceedings are often handled by non-indigent persons without the assistance of counsel" because the "matters involved" are "essentially factual issues requiring no formal legal training to 'comprehend' or to present to a trial court."[4] *Sabo*, 812 N.E.2d at 245; *Boring v. Boring*, 775 N.E.2d 1158, 1163 (Ind. Ct. App. 2002) (both cases affirming trial court's determination that incarcerated husband had sufficient means to proceed without counsel in dissolution proceedings).

[15] Husband's filings here failed to convince the trial court, and have failed to convince us, that he was both indigent and without sufficient means to proceed

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[4] Husband argues that this dissolution of marriage was too complex for him to handle pro se because the parties have a minor child. We agree that a dissolution of marriage with a child custody issue would generally be more complex than one without. However, Father's current incarceration obviously limited the trial court's discretion regarding physical custody of A.K. As for parenting time, it appears that Father received the same arrangement that the parties had already been following prior to the dissolution. Moreover, the trial court made clear that it would revisit the issues involving child custody (including child support) once Husband is released. As we will discuss more fully later, this was eminently reasonable, and Father has not demonstrated how his pro se status prejudiced him in this regard.

without appointed counsel. In other words, Father did not meet his burden to establish that he was entitled to proceed IFP. Under the circumstances, we conclude that the trial court did not clearly abuse its discretion in denying Husband's motion for appointment of counsel.

Section 2 – The trial court did not abuse its discretion in denying Husband's motion for continuance.

[16] We next address Husband's contention that the trial court abused its discretion in denying his motion for continuance. Continuances are governed by Indiana Trial Rule 53.5, which provides in pertinent part, "Upon motion, trial may be postponed or continued in the discretion of the court, and shall be allowed upon a showing of good cause established by affidavit or other evidence." A trial court's ruling on a motion for continuance is reviewed for an abuse of discretion, and there is a strong presumption that the court properly exercised its discretion. *Gunashekar v. Grose*, 915 N.E.2d 953, 955 (Ind. 2009). "A denial of a motion for continuance is [an] abuse of discretion only if the movant demonstrates good cause for granting it." *Id.* "There are no 'mechanical tests' for determining whether a request for a continuance was made for good cause." *In re M.S.*, 140 N.E.3d 279, 285 (Ind. 2020). "Rather, the decision to grant or deny a continuance turns on the circumstances present in a particular case[.]" *Id*. A trial court abuses its discretion when it reaches a conclusion that is clearly against the logic and effect of the facts or the reasonable and probable deductions which may be drawn therefrom. *Smith v. Smith*, 136 N.E.3d 656,

659 (Ind. Ct. App. 2019). No abuse of discretion will be found when the moving party has not shown that he was prejudiced by the denial. *Id*.

[17] One week before the scheduled final hearing date, Husband filed a motion for continuance. In his motion, Husband simply asserted, "Due to Coronavirus (COVID-19) the [New Castle Correctional Facility] has limited movement, no interaction and quarantines making it impossible to prepare and defend during this epidemic." Appellant's App. Vol. 2 at 30. Aside from this bald assertion, Husband submitted no "affidavit or other evidence" supporting his claim that his ability to prepare and defend was in any way compromised due to the pandemic. Indeed, the record indicates that the case had been pending for eight months, and Husband offered no explanation as to how his ability to prepare had been restricted, why he needed more time, or how he would be prejudiced in the event of a denial.[5] Under the circumstances, the trial court's decision to deny Husband's motion, absent a showing of good cause for the continuance, was not against the logic and effect of the facts and circumstances before the trial court.

[5] In his motion, Husband indicated that he had simultaneously filed a second motion for appointment of counsel and a motion to compel discovery and that he believed that he needed a "90-day" continuance so that he could "receive a response" regarding those motions from the trial court. Appellant's App. Vol. 2 at 30. However, Husband received the trial court's response to those motions the same day he received the court's response to his motion for continuance, thus obviating the need for a continuance simply on that basis.

[18] On appeal, Husband points to the fact that the final hearing was held in his absence as proof that he was prejudiced by the trial court's denial of his motion for continuance. For the first time, Husband claims that he needed a continuance so that he could make arrangements to attend the final hearing in person (via transport request), or via telephone and/or video. Thus, he argues, the trial court's denial of a continuance had the effect of violating his due process rights, namely, the opportunity to be heard. *See Matter of E.T.*, 152 N.E.3d 634, 640 (Ind. Ct. App. 2020), *trans. denied* (2021) (recognizing that due process is essentially "the opportunity to be heard at a meaningful time and in a meaningful manner."); *Smith*, 136 N.E.3d at 659 ("There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request was denied.") (quoting *Ungar v. Sarafite*, 376 U.S. 575, 589-90 (1964)).

[19] Significantly, however, Husband never argued to the trial court that a continuance was necessary so that he could make arrangements to attend the final hearing. Issues not raised at the trial court are waived on appeal. *Cavens v. Zaberdac*, 849 N.E.2d 526, 533 (Ind. 2006). "In order to properly preserve an issue on appeal, a party must, at a minimum, 'show that it gave the trial court a bona fide opportunity to pass upon the merits of the claim before seeking an opinion on appeal.'" *Id*. (quoting *Endres v. Ind. State Police*, 809 N.E.2d 320, 322 (Ind. 2004)). Because Husband did not raise this issue to the trial court in his motion for continuance, we find it waived.

Section 3 – Husband has not shown how he was prejudiced by the trial court's order declining to rule on his motion to compel discovery.

[20] Husband also contends that the trial court abused its discretion in declining to rule on his motion to compel discovery filed one week before the final hearing. It is well settled that discovery is intended to require "little, if any, supervision or assistance by the trial court[.]" *M.S. ex rel. Newman v. K.R.*, 871 N.E.2d 303, 311 (Ind. Ct. App. 2007), *trans. denied*. When the goals of this system break down, Indiana Trial Rule 37 provides the trial court with tools to enforce compliance if it so chooses. *Id*. Due to the fact-sensitive nature of discovery matters, the ruling of the trial court is cloaked in a strong presumption of correctness on appeal. *Nat'l Eng'g & Cont. Co. v. C & P Eng'g & Mfg. Co.*, 676 N.E.2d 372, 375 (Ind. Ct. App. 1997). There will be no reversal of a trial court discovery ruling without a showing of prejudice. *Id*. (citing Ind. Trial Rule 61).

[21] In this case, Husband has failed to demonstrate how he was prejudiced by the trial court's order declining to rule on his motion to compel discovery. In his motion filed on August 24, 2020, Husband requested that the trial court compel Wife to provide him with an "inventory of all marital assets" and "any and all evidence" that Wife intended to use at any hearing or trial. Appellant's App. Vol. 2 at 29. However, that same date, Wife filed her witness and exhibit list with the trial court, as well as her marital balance sheet and proposed division of property, which presumably included all the information Husband was seeking. Other than a bald assertion that the trial court abused its discretion in

"not ruling" on his motion to compel, *see* Appellant's Br. at 5, Husband has not specified what information he was actually deprived of and/or how his access to that information would have changed the outcome of this case. Accordingly, we find no reversible error in this regard.

Section 4 – The trial court did not abuse its discretion in denying Husband's motion for relief from judgment.[6]

[22] We next address Husband's challenge to the trial court's denial of his motion for relief from judgment.

> "We review a trial court's denial of a motion for relief from judgment for abuse of discretion." A trial court abuses its discretion when its denial is clearly against the logic and effect of the facts and inferences supporting the motion for relief." "On a motion for relief from judgment, the burden is on the movant to demonstrate that relief is both necessary and just."

Dillard v. Dillard, 889 N.E.2d 28, 33 (Ind. Ct. App. 2008) (citations omitted). Indiana Trial Rule 60(B) "affords relief in extraordinary circumstances which are not the result of any fault or negligence on the part of the movant." *Id*.

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[6] Although Husband titled his motion as a motion to correct error, it was more akin to a motion for relief from judgment, so we will address it as such. We decline to address Husband's assertion that the trial court also abused its discretion in denying his "motion to set aside default judgment," as no default judgment has ever been entered by the trial court. Contrary to Husband's assertions, the dissolution order issued following a final hearing held in his absence, as occurred here, is not the same as the entry of a default judgment. *See Hawblitzel v. Hawblitzel*, 447 N.E.2d 1156, 1161 (Ind. Ct. App. 1983) ("When a trial court proceeds to hear a divorce action on the merits even though one of the parties is absent, the resulting judgment is on the merits. The judgment is not a default judgment.")

[23] Husband essentially asserts that extraordinary circumstances are present here and that he is entitled to relief from judgment because—through no fault of his own—he was denied his right to defend himself in the final dissolution hearing in person, by counsel, by video, or telephonically. *See, e.g., Murfitt v. Murfitt*, 809 N.E.2d 332, 334 (Ind. Ct. App. 2004) (holding that remand was required because incarcerated defendant was not afforded opportunity to protect his own interests in divorce proceedings because he was unable to present his claim of defense in person, telephonically, by counsel, or through documentary evidence). It is true that

> [a] trial court should not be able to deprive a prisoner of his or her constitutional right to maintain or defend against a civil action by denying motions that the trial court can properly deny while concurrently ignoring the prisoner's requests for other methods that would allow the prisoner to prosecute or defend from prison.

Sabo, 812 N.E.2d at 242-43. However, Husband mischaracterizes the record.

[24] Unlike the incarcerated defendants/respondents in the cases Husband relies upon, Husband was never denied the opportunity to protect his own interests in the dissolution action, and the trial court did not ignore any requests for methods that would have allowed Husband to defend himself from prison, as none were made. The trial court specifically noted in its final order that, despite his clear notice of the date and time of the final hearing, Husband never requested transport to participate in the final hearing in person, nor did he even attempt to make arrangements or request to participate by alternative means.

He simply failed to appear. As we already discussed above, Husband never argued to the trial court that a continuance or any other accommodation was necessary for him to appear, and thus he has waived his due process argument. In short, Husband has not shown that his absence from the final hearing, and any prejudice resulting therefrom, occurred through no fault of his own, and thus he has not met his burden to demonstrate that relief is both necessary and just. The trial court's denial of Husband's motion for relief from judgment is not clearly against the logic and effect of the facts and inferences before the court. Therefore, the trial court did not abuse its discretion in denying Husband's motion for relief from judgment.

Section 5 – The trial court did not abuse its discretion in dividing the marital property.

[25] Husband challenges the trial court's division of marital property. The division of marital property is within the sound discretion of the trial court, and we will reverse only for an abuse of discretion. *In re Marek*, 47 N.E.3d 1283, 1287 (Ind. Ct. App. 2016), *trans. denied*. "We will reverse a trial court's division of marital property only if there is no rational basis for the award; that is, if the result is clearly against the logic and effect of the facts and circumstances, including the reasonable inferences to be drawn therefrom." *Id*. When we review a claim that the trial court improperly divided marital property, we consider only the evidence most favorable to the trial court's disposition of the property without reweighing evidence or assessing witness credibility. *Id*. at 1288-89.

[26] By statute, the trial court must divide the property of the parties in a just and reasonable manner, including the property owned by either spouse prior to the marriage, acquired by either spouse after the marriage and prior to final separation of the parties, or acquired by their joint efforts. *Gish v. Gish*, 111 N.E.3d 1034, 1038 (Ind. Ct. App. 2018) (citing Ind. Code § 31-15-7-4). An equal division of marital property is presumed to be just and reasonable. *Id.* (citing Ind. Code § 31-15-7-5). 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.
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> (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.

Ind. Code § 31-15-7-5. A challenger must overcome a strong presumption that the court considered and complied with the applicable statute, and that presumption is one of the strongest presumptions applicable to our consideration on appeal. *J.M. v. N.M.*, 844 N.E.2d 590, 601 (Ind. Ct. App. 2006), *trans. denied*.

[27] Husband first argues that the trial court failed to comply with the applicable statute by erroneously "excluding" the South Emerson Property from the "marital pot." Appellant's Br. at 20. It is well settled that while a trial court must include inherited property in the marital pot, the decision of whether to set over the inherited property to a party is discretionary. *Hyde v. Hyde*, 751 N.E.2d 761, 766 (Ind. Ct. App. 2001). It is apparent in this case that, after considering the evidence presented by Wife, the trial court determined that the presumption of an equal division of the marital property had been rebutted specifically regarding the South Emerson Property. Here, Wife included the South Emerson Property on the marital balance sheet, and thus included it in the marital pot, but she requested that it be set aside to her alone as "inherited." She explained to the trial court that she purchased the property, along with her uncle, with funds she inherited from her grandparents; no marital assets were used to acquire the property; the residence had been in her family for over sixty

years; her uncle currently resides in the residence and pays all associated expenses; and her uncle agreed to place the property in Wife's name alone so that possession would pass to her upon his death. Given these facts, we cannot say that the trial court abused its discretion when it deviated from an equal division of property and set aside Wife's interest in the South Emerson property solely to her.

[28] Husband also broadly challenges the trial court's valuation of each additional item of marital property, and he further asserts that Wife dissipated marital assets. Regarding the latter, there was no evidence presented to the trial court that Wife dissipated any assets, and we decline to address that issue further. Regarding the trial court's valuation of assets, we review a trial court's valuation of an asset in a marriage dissolution for an abuse of discretion. *Bingley v. Bingley*, 935 N.E.2d 152, 154 (Ind. 2010). As long as evidence is sufficient and reasonable inferences support the valuation, an abuse of discretion does not occur. *Webb*, 891 N.E.2d at 1151. Upon review of a trial court's valuation of property in a dissolution, we neither reweigh the evidence nor judge the credibility of witnesses. *Crider v. Crider*, 15 N.E.3d 1042, 1056 (Ind. Ct. App. 2014), *trans. denied*.

[29] While we need not go into detail regarding each marital asset, our review of the record reveals that the trial court's valuations of the items is supported by the only evidence presented to the trial court, namely, Wife's exhibits attached to the marital balance sheet. Husband essentially asks us to consider valuation

evidence that was never presented to the trial court, which we will not do. We find no abuse of discretion.

Section 6 – The trial court did not abuse its discretion in determining Husband's parenting time with A.K.

[30] Husband contends that the trial court abused its discretion in determining his parenting time with A.K. "A trial court's determination of a parenting time issue is afforded latitude and deference; we reverse only when the trial court abuses its discretion." *Dumont v. Dumont*, 961 N.E. 2d 495, 501 (Ind. Ct. App. 2011), *trans. denied* (2012). "If supported by a rational basis, the trial court's determination does not constitute an abuse of discretion." *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 the appellant before there is a basis for reversal." *Gomez v. Gomez*, 887 N.E.2d 977, 983 (Ind. Ct. App. 2008). "We will not reweigh the evidence or judge the credibility of the witnesses." *Id*. "In all parenting time issues, courts are required to give foremost consideration to the best interest of the child." *Id*.

[31] Indiana Code Section 31-17-4-1(a) provides,

> a parent not granted custody of the child is entitled to reasonable parenting time rights unless the court finds, after a hearing, that parenting time by the noncustodial parent might endanger the child's physical health or significantly impair the child's emotional development.

This Court has previously interpreted this language to mean that parenting time rights may not be restricted absent a finding by the court that parenting time might endanger the child's health or significantly impair his or her emotional development. *Hatmaker v. Hatmaker*, 998 N.E.2d 758, 762 (Ind. Ct. App. 2013). To ensure the child's well-being, "trial courts have discretion to set reasonable restrictions and conditions upon a parent's parenting time …." *T.R. v. E.R.*, 134 N.E.3d 409, 417 (Ind. Ct. App. 2019) (citation omitted).

[32] Husband complains that his parenting time with A.K. was unduly restricted to weekly phone calls rather than in-person visits without evidence or a finding by the trial court that "normal parenting time" might endanger A.K.'s physical or emotional health. Reply Br. at 11. However, the trial court specifically found that due to Husband's incarceration for committing violent acts against Wife's daughter and Husband's stepdaughter, it was "not in the minor child's best interest to be brought to the IDOC facility to visit with Husband." Appealed Order at 2. The trial court determined instead that Husband's parenting time would continue as it had been predissolution, with weekly telephone calls. We cannot say that these conditions on Husband's parenting time are unreasonable under the circumstances presented. Husband's arguments on appeal are simply a request that we reweigh the evidence regarding A.K.'s best interest, which we cannot do. We affirm the trial court's order regarding Husband's parenting time with A.V.

Section 7 – Sufficient evidence supports the trial court's finding that there has been an irretrievable breakdown of the marriage.

[33] Finally, we address Husband's contention that there was insufficient evidence presented to support the trial court's finding that his marriage to Wife is irretrievably broken. Indiana Code Section 31-15-2-3(1) provides that a trial court "shall" decree a marriage dissolved when there has been an "irretrievable breakdown of the marriage." "When a petition for dissolution alleges 'irretrievable breakdown,' the key issue is whether there is a reasonable possibility of reconciliation." *Moore v. Moore*, 654 N.E.2d 904, 905 (Ind. Ct. App. 1995). If such a possibility exists, the trial court may continue the matter and order the parties to seek reconciliation through counseling; otherwise, the trial court must dissolve the marriage. *Id*.

[34] In concluding that there is no reasonable possibility of reconciliation, the trial court "must be satisfied that the parties can no longer live together because of difficulties so substantial that no reasonable effort could reconcile them." *Id*. The inquiry goes to "the marital relationship as a whole." *Id*. All surrounding facts must be inquired into, and both the state of mind of the parties and observable actions are relevant to the trial court's decision. *Id*. at 905-06. On appeal, we review the trial court's decision only to determine whether the judgment is supported by substantial evidence of probative value.

[35] During the hearing, Wife testified that there had been an irretrievable breakdown of her marriage to Husband and that there was no hope of

reconciliation. Tr. Vol. 2 at 5. She explained that Husband was convicted of, among other things, the attempted rape and criminal confinement of her daughter, and that he was currently incarcerated with an expected release date in December 2022. *Id*. at 12. We have little difficulty determining that this evidence is sufficient to support the trial court's finding that the marriage had suffered an irretrievable breakdown with no possibility of reconciliation. The judgment of the trial court is affirmed in all respects.

[36] Affirmed.

Riley, J., and Mathias, J., concur.