MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Wanda Maranto,
Appellant-Respondent,

v.

Barry Maranto,
Appellee-Petitioner

March 18, 2022

Court of Appeals Case No. 21A-DN-2055

Appeal from the Orange Superior Court

The Honorable Debra Andry, Judge

Trial Court Cause No. 59D01-2008-DN-64

Crone, Judge.

Case Summary

[1] Wanda Maranto (Wife) appeals the trial court's division of the marital estate following the dissolution of her marriage to Barry Maranto (Husband). She contends that the trial court abused its discretion. Finding no abuse of discretion, we affirm.

Facts and Procedural History

[2] Wife and Husband were married on July 4, 2019, and separated on July 24, 2020. No children born of the marriage.[1] On August 14, 2020, Husband filed a pro se petition for dissolution of marriage and motion for provisional orders. On September 8, 2020, Wife, by counsel, filed a counterpetition for dissolution of marriage, a petition for a joint and mutual restraining order, and various other requests. Counsel appeared on Husband's behalf on that same date. The trial court granted a joint and mutual restraining order on September 9, and, following a provisional hearing, the parties entered into an agreed provisional order on November 9, 2020.

[3] A final dissolution hearing was held on July 23, 2021. On August 20, 2021, the trial court entered its dissolution decree and division of marital assets. In its order, the trial court listed the marital assets and their values as follows:

> a. Marital Residence having a FMV estimated at $250,000,00;
> b. 2008 Ford Edge, value undetermined;

[1] Husband has a son from a prior marriage.

c. Sixty thousand dollars ($60,000.00) cash from parties' joint account;
d. Polaris RZR, which was sold during the pendency of this action for $21,347.53;
e. Tools, having an estimated value of $11,000.00;
f. Shear Perfection (Wife's Business), value undetermined;
g. Balance of Joint Account in the amount of $101.53;
h. Wife's IRA, having an estimated value of $10,000;
i. Husband's 401(k), value undetermined;
j. Furnishings for Marital Residence, value undetermined;
k. Wife's Personal Property owned prior to the marriage; value undetermined; and
l. Husband's Personal Property owned prior to the marriage (excluding Husband's tools listed above); value undetermined.

Appealed Order at 1-2. The trial court found that the parties had two marital debts including:

a. Mortgage owed on Marital Residence estimated to be $206,000.00; and
b. Deficiency owed after sale of Polaris RZR in the amount of $2,847.57.

Id. After including all assets and debts in the marital pot, the trial court determined that each party had waived their interest in certain assets and set those assets aside to the other party as his or her sole and separate property.[2] As

[2] Husband waived any interest in Wife's business, the 2008 Ford Edge, Wife's IRA, and Wife's personal property owned prior to the marriage. Therefore, the trial court set those assets aside to Wife as her sole property. Wife waived any interest in Husband's tools, Husband's 401(k), and Husband's personal property owned prior to the marriage. Therefore, the trial court set those assets aside to Husband as his sole property. Appealed Order at 2.

for the remaining marital assets, the trial court divided those assets and liabilities equally between the parties. Wife now appeals.

Discussion and Decision

[4] Wife appeals the trial court's division of marital property. We apply a strict standard of review to a court's division of property upon dissolution. *Smith v. Smith*, 854 N.E.2d 1, 5-6 (Ind. Ct. App. 2006). The division of marital assets is a matter within the sound discretion of the trial court. *Id*. The party challenging the trial court's property division bears the burden of proof. *Id*. That party must overcome a strong presumption that the dissolution court correctly followed the law and made all the proper considerations when dividing the property. *Id*. Thus, we will reverse a trial court's property distribution only if there is no rational basis for the award. *Id*.

[5] Wife specifically asserts that the trial court abused its discretion in dividing the marital estate equally and in concluding that she failed to rebut the presumption of an equal division of marital property. The division of marital property is a two-step process in Indiana. *Estudillo v. Estudillo*, 956 N.E.2d 1084, 1090 (Ind. Ct. App. 2011). First, the trial court determines what property must be included in the marital estate. *Id*. After deciding what constitutes marital property, the trial court must then divide the marital property under the presumption that an equal split is just and reasonable. Ind. Code § 31-15-7-5. This presumption may be rebutted by a party who presents relevant evidence, including evidence of 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:
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> (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. In dividing marital property, the trial court must consider all these factors, but it is not required to explicitly address all the factors in every case. *Eye v. Eye*, 849 N.E.2d 698, 701-02 (Ind. Ct. App. 2006). To the contrary, we presume that the trial court considered these factors. *Hatten*

v. Hatten, 825 N.E.2d 791, 794 (Ind. Ct. App. 2005), *trans. denied*. This is one of the strongest presumptions applicable to our consideration on appeal. *Id*.

[6] We further emphasize our longstanding rule that the trial court's disposition of marital assets is to be considered as a whole, not item by item. *Simpson v. Simpson*, 650 N.E.2d 333, 335 (Ind. Ct. App. 1995). In crafting a just and reasonable property distribution, a trial court is required to balance several different considerations in arriving at an ultimate disposition. *Fobar v. Vonderahe*, 771 N.E.2d 57, 60 (Ind. 2002). The court may allocate some items of property or debt to one spouse because of its disposition of other items. *Id*. Similarly, the factors identified by the statute as permitting an unequal division in favor of one party or the other may cut in different directions. *Id*. As a result, if the appellate court views any one of these in isolation and apart from the total mix, it may upset the balance ultimately struck by the trial court. *Id*.

[7] Before reaching the merits of this case, we note that Wife urges this Court to employ an altered standard of review. She claims that it is "impossible" for us to consider the trial court's division of marital assets "as a whole," and that we "must" instead follow her lead and consider her evidence supporting an unequal division of specific assets in isolation and apart from the whole. Appellant's Br. at 21, 24. We reject each of Wife's justifications for this altered standard of review.

[8] First, Wife complains that consideration of the court's division as a whole is impossible because "significant assets were not valued by the trial court."

Appellant's Br. at 22. We recognize that several marital assets included in the marital pot were indeed listed with an "undetermined" value. Appealed Order at 2. However, specific to the division of marital property, it has been held repeatedly that it is incumbent on the parties to present evidence of the value of property to the trial court and that trial courts do not err in failing to assign values to property where no evidence of such value was presented. *Quillen v. Quillen*, 671 N.E.2d 98, 103 (Ind. 1996). In other words, both Husband and Wife invited any error by their own neglect. The doctrine of invited error is grounded in estoppel and precludes a party from taking advantage of an error that he or she commits, invites, or which is the natural consequence of his or her own neglect or misconduct. *Balicki v. Balicki*, 837 N.E.2d 532, 541 (Ind. Ct. App. 2005), *trans. denied* (2006). If Wife wished to obtain and provide evidence of the value of any item of marital property, or object to the lack thereof, she should have done so. Wife cannot take advantage of her own neglect and argue that the trial court should have assigned values to property for which no evidence was presented.

[9] More significantly, almost all the assets that were not assigned a value were not part of the trial court's equal division of property because they were ultimately set aside to one of the parties based upon the parties' expressed intent to waive any interest in those specific assets.[3] This leads us to Wife's next complaint.

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[3] The only assets listed with an undetermined value that were not set aside to either Husband or Wife individually were the furnishings for the marital residence. The trial court ordered that those furnishings be divided equally. In the event the parties are unable to agree on a fair and equitable distribution of those

Wife contends that the trial court improperly "excluded" those assets from the marital pot. Appellant's Br. at 22. To be clear, those assets were not excluded from the marital pot. Rather, the trial court placed all known marital property in the pot and then set aside certain property to each party based upon their respective waivers of interest. It is well settled that while a 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. *Falatovics v. Falatovics*, 15 N.E.3d 108, 110 (Ind. Ct. App. 2014). This is exactly what happened here. Wife's assertion that any marital assets or liabilities were improperly excluded from the marital pot is unfounded.[4]

[10] Thus, considering the marital estate as a whole, we turn to whether Wife rebutted the statutory presumption that an equal division of the assets and liabilities that remained in the marital pot, after the trial court set aside certain property to each party based upon the parties' express waivers, would be just as

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furnishings, the trial court ordered the furnishings sold with the net proceeds being divided equally between Husband and Wife. Appealed Order at 3.

[4] While Wife concedes that the trial court included in the martial pot for division two debts of the marriage (the mortgage on the marital residence and the deficiency from the sale of the Polaris), she contends that the trial court improperly excluded "other debts of the marriage." Appellant's Br. at 23. Wife points specifically only to her claimed medical bills of $3,000. However, Husband vigorously challenged Wife's credibility on this issue, and our review of the record reveals that, other than Wife's self-serving testimony that she incurred those expenses during the marriage, Wife presented no evidence (bills or receipts) to substantiate those expenses. The trial court was well within its discretion to reject Wife's claim. To the extent that Wife baldly asserts that there were also "other" excluded debts, she fails to make a cogent argument on this issue, and it is therefore waived. *See* Ind. Appellate Rule 46(A)(8)(a) (noting that each contention in appellant's brief must be supported by cogent reasoning); *Schwartz v. Schwartz*, 773 N.E.2d 348, 353 n.5 (Ind. Ct. App. 2002) (failure to make a cogent argument as required by Rule 46(A)(8)(a) results in waiver of issue on appeal).

reasonable. Specifically, the trial court equally divided the furnishings purchased for the martial residence, the deficiency owed on the Polaris ($2,847.57), and the balances of joint bank accounts ($101.53 and $60,000).[5] The trial court ordered the marital residence sold with any net proceeds (minus sales expenses and reimbursement to Wife for any decrease in the mortgage principal resulting from her payment of the debt from the date the petition for dissolution was filed and the sale) divided equally.

[11] The lion's share of Wife's argument that an equal division was not just and reasonable revolves around her claim that she contributed more (including premarital assets) than Husband to the acquisition of the marital residence.[6] *See* Ind. Code § 31-15-7-5(1), -5(2)(A). However, Wife wildly overstates the "undisputed" nature of her contribution evidence. Reply Br. at 9.[7] While there is some evidence to support Wife's claim that she contributed more financial assets to the initial acquisition of the martial residence, that evidence must be tempered with additional evidence that most of that financial contribution was reimbursed by a construction loan obtained by the parties. Moreover, Husband

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[5] Wife complains that the trial court equally divided the $60,000 that remained in a joint bank account. She argues that Husband "waived" his right to any part of the $60,000 because he stated during the dissolution hearing that he "don't care nothin' about" that money. Appellant's Br. at 28 (quoting Tr. Vol. 2 at 45). In context, it is abundantly clear that Husband was simply informing the trial court that, if he was awarded the marital residence, the funds in the joint account could be distributed to Wife as an offset payment. Husband was in no way implying that he did not consider the funds in the joint account as marital property subject to equal division by the trial court.

[6] The marital residence was valued at $250,000, with a mortgage owed of $206,000.

[7] The extremely contentious nature and tone of Wife's arguments on appeal are not well taken. While presumably this mirrors the contentious nature of the parties' relationship, and perhaps that of their respective attorneys, there is no place for such antics in appellate briefs.

testified that he also contributed financial assets from both his salary and large cash bonuses to the construction of the residence, and that he additionally contributed ample "sweat" equity to the construction.[8]

[12] We further remind Wife that, even if some items meet the statutory criteria that may support an unequal division of the overall pot, the law does not require an unequal division if overall considerations render the total resolution just and equitable. Ind. Code § 31-15-7-4. The evidence indicates that Husband earned a substantial salary during the marriage and that Wife's salon business was closed during the Covid-19 pandemic, requiring Husband's salary alone to support the couple for approximately three months of the marriage. In other words, there is evidence to suggest that each party contributed to the overall financial well-being of this short marriage, albeit in different ways, and the trial court balanced these different considerations in arriving at an ultimate disposition of an equal division of the marital property.

[13] In sum, we conclude that Wife has not rebutted the statutory presumption that an equal division of the marital estate would be just and reasonable. Her arguments on appeal are simply an invitation for us to reweigh the evidence in her favor, which we cannot do. *See Luttrell v. Luttrell*, 994 N.E.2d 298, 301 (Ind. Ct. App. 2013) (appellate court cannot reweigh evidence and considers only the evidence favorable to the dissolution court's decision), *trans. denied* (2014).

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[8] Husband testified that he did "some of the work in the house" himself and has a lot of "sweat and blood" invested in the property. Tr. Vol. 2 at 44.

Because there is a rational basis for the trial court's property distribution, we affirm it in all respects.

[14] Affirmed.

Bradford, C.J., and Tavitas, J., concur.