

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

Phyllis J. Garrison
Noblesville, Indiana

ATTORNEY FOR APPELLEE

Anelia T. Ninova
Zivitz Law Group
Carmel, Indiana

IN THE COURT OF APPEALS OF INDIANA

Ahmed Moustafa,
Appellant-Respondent,

v.

Nermine Moustafa,
Appellee-Petitioner.

December 21, 2022

Court of Appeals Case No.
22A-DC-843

Appeal from the Hamilton
Superior Court

The Honorable Jonathan M.
Brown, Judge

Trial Court Cause No.
29D02-1808-DC-7397

Mathias, Judge.

- [1] Ahmed Moustafa (“Husband”) appeals the Hamilton Superior Court’s dissolution of his marriage to Nermine Moustafa (“Wife”). Husband raises four issues for our review, which we restate as follows:

1. Whether the trial court erred when it declined to find the parties' Egyptian marriage invalid or, in the alternative, apply Egyptian law to the dissolution of their marriage.
2. Whether the trial court's finding that Husband is the owner of an apartment in Egypt is clearly erroneous.
3. Whether the trial court's valuation of that apartment is clearly erroneous.
4. Whether the trial court's division of the parties' personal property in the home is clearly erroneous.

We also address the following issue raised by Wife:

5. Whether Wife should be awarded appellate attorney's fees.

[2] We affirm the dissolution decree in all respects, and we remand with instructions for the trial court to determine and award to Wife a reasonable amount of her appellate attorney's fees.

Facts and Procedural History

[3] Husband and Wife were married in Egypt in 1997, and they moved to Hamilton County, Indiana, shortly thereafter. The parties had two children of the marriage, both of whom were in the age of majority by the time the trial court entered its decree of dissolution.

[4] In 2018, Wife filed her petition for dissolution in the Hamilton Superior Court. After several fact-finding hearings in 2021, the court entered the following findings of fact:

12. [Wife] and [Husband] were born and raised in Alexandria, Egypt. [Husband] immigrated to the United States in the early 1990s to pursue a master's degree from Purdue University. [Wife] came to the United States shortly after their marriage in 1997;

13. The marriage ceremony took place in Alexandria, Egypt;

* * *

15. They were married by an Imam (a local marriage official) pursuant to Egyptian law, in front of witnesses, family, and friends;

16. As a part of the wedding ceremony, pursuant to Muslim tradition and Egyptian law, a marriage certificate/contract was executed

* * *

21. Based upon the English translation . . . of the marriage contract . . . , it appears to set forth the descriptions of [Wife] and [Husband], including date[s] of birth, family lineage, residency, birthplace, citizenship, and profession;

22. The . . . document appears to be most analogous to a marriage certificate, which all couples in Indiana need to have in order for their marriage to be considered valid by the State of Indiana;

23. Based upon the document, [Wife] was issued a passport, and [at] all times since their marriage ceremony, both Parties have held themselves out to be Husband and Wife. They have submitted tax returns to the government of the United States indicating they are married. They have been married for purposes of health insurance. They have been married for the purpose of establishing various retirement accounts They have been married for purposes of obtaining mortgage loans;

* * *

32. [Husband] invites this Court to not find the parties to be married Based upon the evidence presented, the Court declines [Husband's] invitation;

33. [Wife] expected Indiana law would apply as they have only resided in Indiana, the parties spent nearly all of their married life in Indiana, and the dissolution was filed in Indiana;

* * *

35. This Court specifically finds the [Wife] and [Husband] have benefitted from the rights and privileges afforded to them by the State of Indiana, as well as the United States of America, as married individuals, and[,] as such, the Court finds [Wife] and [Husband] to be married under Indiana law for purpose[s] of Indiana's dissolution statute[s];

* * *

39. For the duration of the marriage, [Wife] was a stay-at-home mother and she worked to maintain the home;

40. Although [Wife] obtained a bachelor's degree in Egypt, she was not employed outside the home until 2020, when she earned less than [\$6,000] in non-skilled positions, such as daycare and retail sales. [Wife] did not know how to drive, nor had she driven a vehicle, until after the Parties' separation, always relying on her Husband or adult son to take her to run errands. She struggles with conversational English, to such extent she required the use of an interpreter during the hearings for this cause. . . . ;

41. While [Husband] worked outside the home, [Wife] cooked, cleaned, took care of the Parties' children, and kept the household running smoothly. [Husband] paid all of the bills (prior to the date of filing) and he took care of the finances. . . . ;

42. Wife has incurred reasonable attorney fees of over \$56,700.00. A large portion of these fees have been incurred due to:

- The case has been pending since August 2018 (nearly 4 years);
- Numerous delays due to Husband failing to comply with discovery requests and numerous continuance requests;
- [Wife] has required counsel to file several motions to compel and/or motions for contempt[;]
- [Husband] has asserted the parties were not married and/or suggested the marriage contract [that solemnized their wedding in Egypt and was executed by their fathers in accordance with Egyptian law] should be considered in the nature of a prenuptial or post-nuptial agreement;
- [Wife] has incurred additional costs in pursuing discovery from non-parties as [Husband] has refused to cooperate in discovery;
- [Wife] incurred the expense of an attorney in Egypt to defend against Husband's claim [that] Egyptian law should apply in this action;
- [Wife] had to hire experts to investigate assets held by Husband in Egypt;

43. [Wife] resorted to obtaining loans from family and friends in excess of \$30,000 to pay for her attorney fees in this cause;

44. [Husband], however, has spent thousands of dollars in casinos during the course of the marriage, a dissipation of marital assets;

45. [Wife] demonstrated she would not be able to support herself on her current income without temporary spousal support, and she provided evidence to support this request;

46. There was testimony about the ownership interest in an apartment in Alexandria, Egypt. Though testimony from a witness and [Husband] seemed to indicate [Husband] had no ownership interest in the same, the Court did not find such testimony credible. The Court specifically finds [Husband is the owner of the apartment building in Alexandria, Egypt[,] for purposes of dividing the marital assets of the Parties;

47. During the course of the several settings for the final hearing, the Court notes it had concerns about [Husband's] honesty and credibility:

- As to certain documents produced in discovery and admitted into evidence;
- Bank records appeared to be missing/modified;
- Vague and obstreperous responses regarding the ownership of various assets in Egypt;
- Loans between [Husband] and his father were questionable at best, and it was unclear whether such loans were created for purposes of the dissolution proceeding;
- The ownership interest in the Alexandria, Egypt[,] apartment;
- [Husband] was responsible for multiple delays, and he demonstrated a lack of candor with the Court;

- [Husband] could not explain the discrepancy between the Chase bank statements he produced during discovery[] and the ones produced by JP Morgan Chase pursuant to a non-party request;
- He agreed [that] an exhibit which stated he owed his father over \$200,000.00 was incorrect;
- [Husband] asserted he did not gamble, but that he uses the casino for purchasing gifts, such as expensive perfumes for [Wife] and for “marker” loans in order to pay living expenses;
- He has a Caesars Rewards Program card[] but stated[] that he has given his card to his friends, and the hundreds of transactions and slot bets at Indiana Grand Casino could have been made by his friends;
- [Husband] asserted the numerous ATM cash withdrawals made near the casino did not indicate he used the money for gambling, though he did not remember any of them specifically. He testified[] that he has never lost any money on gambling[] and that he only used the free credits, given to him by Caesars, and stopp[ed] after he used those up[, which] was not credible;
- He could not interpret the win-loss statement, produced for his account by Caesars, and he specifically disagreed[] he lost \$41,805.00 for tax year 2017. He also could not explain the \$37,318.00 in Chase withdrawals or the \$8,497.50 in American Express withdrawals, made to Indiana Grand Casino for the year prior to the date of filing. He also could not specifically remember the \$84,745.00 in Huntington bank withdrawals to Indiana Grand Casino for the last 3 years of marriage. [H]owever[,] he was certain[] that they did not represent any gambling by him;
- [Husband] asserted a person would have to be crazy to spend \$16,934.00 in two and a half hours at slots, as line 1492 of the Excel spreadsheet, titled Ahmed Moustafa Slot Transactions Indiana Grand Casino, and produced by the casino during discovery, indicated had occurred on [Husband’s] rewards card;

48. The Court is showing only a debt of \$100,000.00 is owed to Husband’s Father, and said obligation is assessed against Husband;

49. The Court finds Husband dissipated approximately \$172,365.00 in gambling losses, which represented assets of the marriage . . . ;

50. [Husband] also agreed he transferred \$51,000.00 to his father between 2018 and 2020, while the dissolution was pending. Husband disagreed his actions constituted dissipation, though they are clearly . . . ;

51. The Court finds Husband dissipated approximately \$51,000.00 in marital assets by transferring the same to Husband's [f]ather . . . ;

52. [Husband] is employed as Vice President of Information Systems for 40/86 Advisors, a financial services firm. He earns approximately [\$200,000] annually . . . ;

* * *

54. Mahmoud Abd El Baky Ahmed ("Mahmoud") was retained by [Wife] to investigate [Husband's] real estate holdings and business interests in Egypt;

55. Mahmoud concluded the following:

- [Husband] is the sole owner of Apartment 12 . . . in Alexandria, Egypt (the "Apartment"). . . . ;
- The Deed indicates the [Apartment] was transferred to [Husband], with [Husband's] father paying the purchase price on behalf of [Husband] on February 3, 1994;
- The Deed to the [A]partment was transferred "without recourse[,"] meaning Salah[, Husband's father,] did not obtain or retain any ownership of the [Apartment];

- The Apartment is part of a building, the remaining portions of which are owned by [Husband's] brothers and sister;
- The [D]eed is an official document with all the requisite stamps from the Ministry of Justice, Department of Real Estate Publicity and Registration, along with all necessary signatures by all parties;
- [Mahmoud] performed a title search, which indicated[] no ownership transfers of the Apartment have occurred since the 1994 [D]eed;
- Real estate tax and utility bill records for the [Apartment] were issued in [Husband's] name;
- The [A]partment rental contract [with Husband's father as the purported lessee] was allegedly signed on November 1, 1997, but the first payment was not made for almost six years (a little odd as this was a monthly contractual obligation). Further, [Mahmoud] opined that[,] pursuant to Article 375 of the Egyptian Civil Code, all rights to collect on contracts, such as rent, expire after five years. As such, no debt could [be] legally enforceable;
- [Mahmoud] believed the [A]partment has a value to [Husband] . . . between \$500,000.00 and \$900,000.00;

56. For purposes of the property distribution, the Court will use a value for the [Apartment] . . . of \$750,000.00;

57. Mahmoud also . . . discovered [Husband] is an active partner in a poultry farm, of which [Husband] is the partial owner along with his father and brother. The partnership was formed on April 1, 2000, and it is still active. Based on similar businesses in the area, and using the initial capital amount of 1,656,000 Egyptian pounds, [Husband's] share would be worth 20,000,000 Egyptian pounds, or at least \$1,272,000.00;

58. Despite testimony from [Husband] to the contrary (which the Court did not find credible), the Court specifically finds [Husband] is a fractional owner of a poultry farm in Egypt, from which he receives dividend income;

59. For purposes of the property distribution, the Court will use a value for the poultry farm in the amount of \$1,272,000.00;

60. Linda Runyon provided the Court with a comparative market analysis for the marital residence. She estimated a list price between \$345,000.00 and \$355,000.00 would be appropriate. She also indicated that[,] simply because a residence has some issues does not matter in this market, with properties in deplorable condition being sold without inspections. [Husband] presented an appraisal showing the home was listed for \$379,000.00 in 2017.

61. The Court finds the value of the marital residence to be \$355,000.00[.]

Appellant's App. Vol. 2, pp. 26-33.

[5] In light of its findings of fact, the court ordered the parties to equally divide the \$2,292,640 marital estate, with the value of the Apartment and the interest in the Egyptian poultry farm being assigned to Husband. The court likewise directed that each party was "entitled to one[-]half of the household furnishings, appliances, electronics, and other personal property in the home," although the court did not assign specific values to those assets. *Id.* at 34-35. To equalize the distribution of property, the court directed Husband to pay to Wife \$813,320. The court further directed Husband to pay \$56,000 of Wife's attorney's fees. This appeal ensued.

Standard of Review

[6] Husband appeals the trial court’s decree of dissolution. As our Supreme Court has made clear:

An abuse-of-discretion standard of review applies to a trial court’s . . . division of marital assets. *Luttrell v. Luttrell*, 994 N.E.2d 298, 304-05 (Ind. Ct. App. 2013); *Smith v. Smith*, 136 N.E.3d 275, 281 (Ind. Ct. App. 2019). A trial court abuses its discretion if its decision stands clearly against the logic and effect of the facts or reasonable inferences, if it misinterprets the law, or if it overlooks evidence of applicable statutory factors. *Mitchell v. Mitchell*, 875 N.E.2d 320, 323 (Ind. Ct. App. 2007). When, like here, the trial court enters findings of fact and conclusions of law, an appellate court may set aside the trial court’s judgment only when “clearly erroneous.” *Dunson v. Dunson*, 769 N.E.2d 1120, 1123 (Ind. 2002). The party challenging the “trial court’s division of marital property must overcome a strong presumption that the court considered and complied with the applicable statute.” *Wanner v. Hutchcroft*, 888 N.E.2d 260, 263 (Ind. Ct. App. 2008). . . .

Roettner v. Roettner, 182 N.E.3d 221, 225 (Ind. 2022).

1. The Trial Court Did Not Err when It Recognized the Validity of the Parties’ Egyptian Marriage and Applied Indiana Law to the Dissolution Proceedings.

[7] On appeal, Husband first asserts that the trial court erred when it recognized the parties’ marriage in Egypt as valid or, alternatively, dissolved the marriage under Indiana rather than Egyptian law. Husband does not dispute that the parties were legally married in Egypt under Egyptian law; he specifically

concedes that “they were legally married in Egypt” and their “marriage was solemnized in Egypt under Egyptian law and according to the laws of Islam.” Appellant’s Br. at 8. Instead, Husband asserts that the trial court erred in recognizing their marriage as valid because the parties “did not obtain a marriage license” in Indiana or another jurisdiction of the United States. *Id.*

[8] Husband cites no legal authority for his proposition that a foreign marriage must be somehow domesticated in Indiana for an Indiana trial court to recognize it. Indeed, our case law is unambiguously to the contrary:

. . . Indiana’s recognition of the existence of a foreign marriage is a matter of comity. *Roche v. Washington*, 19 Ind. 53, 54 (1862). This court has held that comity “represents a willingness to grant a privilege, not as a matter of right, but out of deference and good will.” *State Bd. of Registration for Prof’l Eng’rs v. Eberenz*, 701 N.E.2d 892, 895 (Ind. Ct. App. 1998) (citing *County of Ventura v. Neice*, 434 N.E.2d 907, 910 (Ind. Ct. App. 1982)). Indiana courts need not apply a sister state’s law if such law violates Indiana public policy. *Maroon v. State Dep’t of Mental Health*, 411 N.E.2d 404, 410 (Ind. Ct. App. 1980).

On comity grounds, Indiana will accept as legitimate a marriage validly contracted in the place where it is celebrated. *Bolkovac v. State*, 229 Ind. 294, 304, 98 N.E.2d 250, 254 (Ind. 1951). . . .

Mason v. Mason, 775 N.E.2d 706, 709 (Ind. Ct. App. 2002), *trans. denied*.

[9] Accordingly, Husband’s assertion that the parties’ Egyptian marriage is invalid in Indiana for not completing an Indiana (or other State’s) marriage license is contrary to precedent and not supported by cogent reasoning. Likewise,

Husband's bald assertion that the parties' marriage is contrary to Indiana public policy is also not supported by cogent reasoning. And Husband's further assertion that the parties orally agreed at the time of the marriage to have Egyptian law govern any dissolution of that marriage is not supported by citations to the record, and, in any event, it is clear that Husband relies only on his own testimony here. The trial court found Husband to not be credible, and we will not reconsider the credibility of the witnesses on appeal. The trial court did not err when it recognized the validity of the parties' marriage and applied Indiana law to the dissolution proceedings.

2. The Trial Court's Finding that Husband Owned the Apartment is Supported by the Record.

[10] Husband next asserts that the trial court's finding that he owned the Apartment is clearly erroneous, and that the Apartment was in fact owned by Husband's father. Husband admitted to the trial court that he is listed as the owner of the Apartment on the deed. Tr. Vol. 2, p. 69. Therefore, the trial court's finding that Husband owned the Apartment is supported by the record. Husband's argument to the contrary on appeal simply seeks to have this court reconsider and reweigh the evidence that was before the trial court, which we will not do.

3. The Trial Court's Valuation of the Apartment is Supported by the Record.

[11] Husband also asserts that the trial court clearly erred when it valued the Apartment at \$750,000. Mahmoud testified, without objection, that the Apartment would likely appraise at around twelve million Egyptian pounds. *Id.*

at 67. Based on the currency-conversion evidence submitted to the trial court at that time, that value equaled approximately \$766,000. Thus, the trial court's valuation of the Apartment is supported by the record.

[12] Nonetheless, on appeal, Husband asserts for the first time that Mahmoud was not qualified to testify to the value of Egyptian real property. But Husband did not object to Mahmoud's testimony in the trial court. *See id.* He therefore cannot now complain about the trial court's reliance on that testimony. We affirm the trial court's valuation of the Apartment.

4. The Trial Court Did Not Clearly Err With Respect to its Division of the Parties' Personal Property in the Home.

[13] Husband's final argument on appeal is that the trial court erred when it found that each party was "entitled to one[-]half of the household furnishings, appliances, electronics, and other personal property in the home" without assigning specific values to those assets. Appellant's App. Vol. 2, pp. 34-35. But, while the parties did not specifically testify as to what these items of personal property might be, or what specific values they might have, they did both represent to the court that these items existed and had a total value between \$3,000 (according to Husband) and \$6,000 (according to Wife). *See* Tr. Vol. 6, pp. 18 (Wife's declaration), 26 (Husband's declaration). Meanwhile, the marital estate as a whole was valued at more than \$2.2 million. Further, the trial court ordered these specific items of personal property to be equally divided between Husband and Wife; therefore, any value in this property to Wife was offset by the equal value of this property assigned to Husband. Thus,

we cannot say that the trial court’s division of these items of personal property is clearly erroneous.

5. Wife is Entitled to Appellate Attorney’s Fees.

[14] Wife asks that she be awarded appellate attorney’s fees pursuant to [Indiana Appellate Rule 66\(E\)](#). As we have explained:

[Ind. Appellate Rule 66\(E\)](#) provides that this Court “may assess damages if an appeal, petition, or motion, or response, is frivolous or in bad faith. Damages shall be in the Court’s discretion and may include attorneys’ fees.” Our discretion to award attorney fees under [Ind. Appellate Rule 66\(E\)](#) is limited to instances when “an appeal is permeated with meritlessness, bad faith, frivolity, harassment, vexatiousness, or purpose of delay.” *Thacker v. Wentzel*, 797 N.E.2d 342, 346 (Ind. Ct. App. 2003). To prevail on a substantive bad faith claim, a party must show that the appellant’s contentions and arguments are utterly devoid of all plausibility. *Id.* Procedural bad faith occurs when a party flagrantly disregards the form and content requirements of the rules of appellate procedure, omits and misstates relevant facts appearing in the record, and files briefs written in a manner calculated to require the maximum expenditure of time both by the opposing party and the reviewing court. *Id.* at 346-347.

Staff Source, LLC v. Wallace, 143 N.E.3d 996, 1012 (Ind. Ct. App. 2020).

[15] Meeting the standards of [Rule 66\(E\)](#) is a high burden for the requesting party, and we are reluctant to award attorney’s fees under that Rule. *See Thacker*, 797 N.E.2d at 346. Nonetheless, we will do so upon a proper showing, and Wife has met that burden here. As explained above, each of Husband’s four issues on appeal is meritless and unsupported by the record under our well-established

standard of appellate review. Indeed, Husband’s argument that the marriage should have been found invalid or dissolved under Egyptian law, in particular, was “utterly devoid of all plausibility.” See *Wallace*, 143 N.E.3d at 1012. Further, Husband’s appendix on appeal is little more than the CCS and dissolution decree, and he repeatedly fails to cite in his brief portions of the record relevant to the disposition of the issues he raised. See *Ind. Appellate Rule 46(A)(8)(a)*. We therefore agree with Wife that the totality of Husband’s work product to this Court demonstrates not just weak legal positions but positions that were utterly devoid of all plausibility. Accordingly, we remand to the trial court with instructions for it to determine and award to Wife a reasonable amount for her appellate attorney’s fees in this appeal.

Conclusion

[16] For all of the above-stated reasons, we affirm the decree of dissolution, and we remand with instructions for the trial court to determine and award to Wife her reasonable appellate attorney’s fees.

[17] Affirmed and remanded with instructions.

Robb, J., and Foley, J., concur.