

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Joy Adebola Adewopo,
Appellant-Respondent,

v.

Cheedy Thomas Jaja,
Appellee-Petitioner.

January 21, 2022

Court of Appeals Case No.
21A-DC-880

Appeal from the Hendricks
Superior Court

The Honorable Robert Freese,
Judge

Trial Court Cause No. 32D01-
1809-DC-521

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Respondent, Joy Adebola Adewopo (Wife), appeals the trial court's division of marital estates arising from the dissolution of her marriage to Appellee-Petitioner, Cheedy Thomas Jaja (Husband).

[2] We affirm.

ISSUES

[3] Wife raises two issues on appeal, which we restate as the following:

(1) Whether the trial court abused its discretion by including certain items in the marital pot; and

(2) Whether trial court abused its discretion by equally dividing the marital estate.

FACTS AND PROCEDURAL HISTORY

[4] Wife and Husband were married on June 20, 2008. While there were no children born of the marriage, Husband adopted Wife's biological daughter (Daughter). Daughter is now emancipated and in medical school in the Caribbean.

[5] Husband has twenty-eight years of teaching experience in institutes of higher education. He is currently an associate professor in the College of Nursing at the University of South Carolina, Columbia. He also holds an adjunct research faculty appointment in the Department of Emergency Medicine at Augusta University and the College of Medicine and Emergency Medicine at University

of Sierra Leone. Husband's annual salary from the University of South Carolina is approximately \$144,000. Husband is also a Registered Nurse and is a board-certified Psychiatric and Mental Health Nurse Practitioner. As for Wife, she obtained her nursing degree in Nigeria in 1985, and a bachelor's degree in Social Sciences and Economics in London in 1991. Since 1997, Wife has been a Registered Nurse in Indiana and she has worked at Community East Hospital and at St. Vincent Hospital, both located in Indianapolis.

[6] In addition, Wife is the owner/operator of four businesses. In 2002, Wife created Joy Health Services, LLC (JHS), which offers home health aide to patients. JHS also supplies rehabilitative services such as physical, occupational, speech, and social therapy. Wife is the director of nursing at JHS, where she oversees and coordinates patient care. Wife also acts as JHS' office administrator and human resources officer. Her annual salary at JHS is \$118,000. After their marriage in 2008, Husband joined Wife at JHS, replacing the physician, served on the board of directors, and began receiving a salary. During his employment with JHS, Husband computerized and set up online accounts for Wife's businesses, met with Wife's accountants, and assisted Wife with an IRS audit for her companies.

[7] In October of 2007, Wife set up her second business. Wife bought an adult daycare franchise, Sarah Care of Indianapolis (Sarah Care), which supplies a range of daily activities for adults who have disabilities or require daily supervision. Wife oversees the daily operations of Sarah Care. Following the purchase of the franchise, Wife set up her third company in October 2007, a

holding company, JHS Investments, LLC (JHS Investments).¹ Wife also established Grace Adult and Family, LLC (Grace) in 2014. Grace offers supportive and personal care services to disabled and/or elderly individuals who cannot function independently. Husband played a role in Wife's other business since he computerized and set up online accounts for Wife's businesses, met with Wife's business accountants, and assisted Wife with an IRS audit for her companies.

- [8] The parties owned separate properties prior to the marriage. Wife inherited properties in Nigeria and Ghana. Wife also owned a house on Summerfield Drive in Plainfield, Indiana (Summerfield House), and the parties lived in that house from 2008 to 2012. Wife paid the mortgage on Summerfield House with her income. Wife had initially added Husband to the Summerfield House deed in 2013, but she subsequently removed him from the deed in 2017. She then transferred the house to Daughter in that same year. In 2012, the parties built a house at 1025 Heathrow Lane in Avon (Heathrow House), with Husband contributing \$50,000 and Wife paying \$20,000 toward the down payment. As for Husband, prior to the marriage, he had bought a home in Seattle, Washington, (Seattle Home) in 2003. After their marriage, Husband added

¹ In January of 2008, JHS Investments bought the real estate at 2825 East 96th Street in Indianapolis (96th Street Property). That property is JHS's primary office. In 2015, JHS Investments bought two houses located at 3444 Allison Avenue, Indianapolis (Allison House) and 2947 North Colorado, Indianapolis (Colorado House) to house their patients.

Wife to the deed of that home. In 2007, Husband sold that home and put the proceeds, \$96,966.01, into his Wells Fargo account.

[9] Prior to their marriage, Husband had approximately \$80,000 in student loans. Unbeknownst to Husband, Wife had incurred a substantial tax liability of \$409,087 prior to the marriage between 2005 and 2007. Following a federal tax lien assessment in 2011, Wife paid all her tax liability with marital funds, including \$101,000 that she levied from Husband's Bank of America bank account which she had access to.

[10] Sometime in 2013, the parties began having marital issues. Wife later ousted Husband from JHS, and it became apparent to Husband that Wife did not want him involved in the operation of her businesses. In 2014, the parties began living separate lives. Husband enrolled at IUPUI to earn a master's degree in nursing and volunteered for six months with the CDC to be part of the relief effort for the Ebola pandemic in Sierra Leone.

[11] In 2018, Husband filed his petition for dissolution of marriage. After mediation, the parties sought appraisals of all their assets and liabilities. Upon Husband's request, the trial court appointed Jeff Donovan (Donovan), who holds licenses and certificates as a Certified Public Accountant and a Certified Valuation Analyst, to evaluate Wife's operating companies, *i.e.*, JHS, Sarah Care, and Grace.

[12] On March 3, 2021, the trial court conducted a two-day final hearing. Donovan testified that he performed a combined valuation of JHS, Sarah Care, and

Grace using an income-based valuation method. Donovan determined that there was a significant amount of personal goodwill attributable to Wife and her involvement in the businesses. Donovan opined that using a combination of market-based and income-based valuation methods, the fair market value of enterprise goodwill was approximately \$730,000.

[13] Based upon the testimony, the stipulated values of the marital assets, and the expert business valuation opinion offered by Donovan, the trial court determined the total value of the marital estate to be \$3,141,274.11. That sum included \$730,000 of combined enterprise goodwill from Wife's businesses, \$166,800 of the value of the Summerfield House, \$8,000 of Wife's property interests in her inherited properties in Nigeria and Ghana, and \$76,189 of Husband's student loans. The trial court then equally divided the marital estate between the parties, finding such division proper and equitable, resulting in an equalization payment due to Husband in the amount of \$1,318,288.91. The trial court additionally ordered Wife to pay \$20,000 of Husband's attorney's fees.

[14] Wife now appeals. Additional information will be provided as necessary.

DISCUSSION AND DECISION

I. Standard of Review

[15] Initially we observe that the dissolution court entered special findings of fact and conclusions thereon pursuant to Indiana Trial Rule 52(A). Accordingly, our standard of review is two-tiered: first, we determine whether the evidence

supports the findings, and second, whether the findings support the judgment. *O’Connell v. O’Connell*, 889 N.E.2d 1, 10 (Ind. Ct. App. 2008). Findings of fact are clearly erroneous when the record lacks any evidence or reasonable inferences from the evidence to support them. *Id.* The judgment will be reversed if it is clearly erroneous. *Id.* To determine whether the findings or judgment are clearly erroneous, we consider only the evidence favorable to the judgment and all reasonable inferences flowing therefrom. *Id.* We will not reweigh the evidence or assess witness credibility. *Id.* Even though there is evidence to support it, a judgment is clearly erroneous if the reviewing court’s examination of the record leaves it with the firm conviction that a mistake has been made. *Id.*

II. *Marital Pot*

[16] Challenging the property division, Wife first contends that the trial court erred by including certain items in the marital pot. In dissolution actions, it is well-settled that all marital property goes into the marital pot for division, whether it was owned by either spouse before the marriage, acquired by either spouse after the marriage and before final separation of the parties, or acquired by their joint efforts. Ind. Code § 31-15-7-4(a); *Beard v. Beard*, 758 N.E.2d 1019, 1025 (Ind. Ct. App. 2001), *trans. denied*. For purposes of dissolution, property means “all the assets of either party or both parties.” I.C. § 31-9-2-98. “The requirement that all marital assets be placed in the marital pot is meant to insure that the trial court first determines that value before endeavoring to divide property.” *Montgomery v. Faust*, 910 N.E.2d 234, 238 (Ind. Ct. App. 2009). “Indiana’s ‘one

pot' theory prohibits the exclusion of any asset in which a party has a vested interest from the scope of the trial court's power to divide and award." *Wanner v. Hutchcroft*, 888 N.E.2d 260, 263 (Ind. Ct. App. 2008). While the 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. *Hill v. Hill*, 863 N.E.2d 456, 460 (Ind. Ct. App. 2007). The systematic exclusion of any marital asset from the marital pot is erroneous. *Falatovics v. Falatovics*, 15 N.E.3d 108, 110 (Ind. Ct. App. 2014).

[17] Wife argues that the trial court erred when it included the Summerfield House, her property interest in her inherited properties in Africa, and Husband's student loans in the marital pot.

A. *Summerfield House*

[18] Wife argues that the house belonged to Daughter at the time Husband filed for dissolution, therefore, the trial court erred by including that house as a marital asset. We agree with Wife's contention that a trial court may not distribute property not owned by the parties. *See England v. England*, 865 N.E.2d 644, 649 (Ind. Ct. App. 2007). However, we have held that when distributing marital property, a trial court may consider the use and occupancy of property titled in the name of a third party. *Id.*; see also *In re Dall*, 681 N.E.2d 718, 722-23 (Ind. Ct. App. 1997) (holding that the trial court erred by including the parties' residence in the marital estate as it was owned by wife's parents; however, the court could consider the value of wife's continued dwelling in the home);

Hacker v. Hacker, 659 N.E.2d 1104, 1111 (Ind. Ct. App. 1995) (holding that the trial court properly considered husband's occupancy of a farm owned by his parents when distributing marital assets). Use and occupancy of property owned by a third party is also relevant to distribution as it pertains to the economic circumstances of the parties at the time of dissolution under Section 31-15-7-5(3). See *England*, 865 N.E.2d at 650.

[19] The record shows that Wife purchased the Summerfield House in 2000, the parties lived there between 2008 and 2012, and the mortgage was paid from Wife's income. In 2013, Wife included Husband's name on the deed. Sometime thereafter, the parties began having marital issues, and by 2014, the parties were living separate lives. In 2017, Wife removed Husband's name from the deed, and she transferred the house to Daughter. Husband filed for divorce in 2018. During her deposition, Wife stated even though she had transferred the Summerville House to Daughter, she was still paying the mortgage. In relation to that transfer, Husband testified, "I have no idea how that transaction occurred. Ordinarily I would have been involved but was not, so it is mystery how that occurred in the first place." (Transcript Vol. II, p. 74). Wife testified that although Daughter owned the home, Daughter did not reside in the house since she was in medical school. Wife claimed that she, and not Daughter, had collected rent in the past. Wife testified that her nephew now lives at the house rent free, and whenever she has her extended family visiting, she allows them to stay at the house rent free. Though Wife claimed to have transferred the house to Daughter, her conduct suggests that she has a present

possessory interest in the house for her use and enjoyment. During her deposition, she admittedly stated that she continued paying the mortgage following the transfer. In addition, her conduct suggests she is capable of occupying the property in lieu of collecting rent, if she is so inclined. *See Estudillo v. Estudillo*, 956 N.E.2d 1084, 1090 (Ind. Ct. App. 2011) (holding that a Husband's present possessory interest in real property could be considered in making distribution of marital assets in divorce action, even though husband claimed to have made a gift of the property to his daughter, husband evicted daughter from the property and began collecting rent from tenants living there, suggesting that he was capable of occupying the property in lieu of collecting rent, if he was so inclined). Based on the foregoing, we hold that the trial court did not abuse its discretion by including the Summerfield House into the pot of marital assets when dividing the marital estate.

B. *Wife's Inheritance*

[20] Wife claims that the properties in Ghana and Nigeria that she inherited prior to the marriage should not have been included in the marital estate. The trial court entered the following pertinent findings:

55. Wife inherited property prior to the marriage in Nigeria and Ghana.

56. During her deposition, Wife described the Nigerian property as [a]3-4-bedroom house in a subdivision worth \$25,000-30,000 in US Dollars divided between siblings and her mother.

57. However, at final hearing, Wife indicated the property in Nigeria was an apartment building with units and that she received varying amount of rent from the property.

58. The fair market value of the international properties is uncertain, they are included in the marital pot as the parties have stipulated and Exhibit provides, and the [c]ourt orders those properties set over to Wife's and she alone retains any right, title, and interest therein.

(Appellant's App. Vol. II, pp. 15-16). Indiana Code section 31-15-7-4 (a) clearly states that the trial court shall "divide the property of the parties, whether: (1) owned by either spouse before the marriage . . ." Thus, *all* property, whether acquired before or during the marriage, is generally included in the marital estate for property division. *Bertholet v. Bertholet*, 725 N.E.2d 487, 495 (Ind. Ct. App. 2000), *trans. denied*. Additionally, there is no requirement that assets of individual origin must have been physically "commingled" during the marriage to be considered as marital property. *Huber v. Huber*, 586 N.E.2d 887, 889 (Ind. Ct. App. 1992), *trans. denied*. Wife's interests in the African properties was clearly a marital asset subject to distribution and were rightfully added to the marital pot. Wife's additional assertion that she jointly inherited those properties with her siblings and mother should lead to the properties being excluded to the marital pot also fails. The trial court expressly took that into consideration, and it did not include the value of the properties, but only included a certain value of her inherited property in the marital pot. Thus, we hold that the trial court did not abuse its discretion by including Wife's property interest in her inherited property in the marital pot.

C. *Husband's Student Loan*

[21] Wife argues that Husband's student loans should have been excluded from the marital estate. She claims that it was unclear whether the loan was incurred prior or during the marriage. As noted, it is well-established that all marital property goes into the marital pot for division, whether it was owned by either spouse before the marriage, acquired by either spouse after the marriage and before final separation of the parties, or acquired by their joint efforts." *Smith v. Smith*, 938 N.E.2d 857, 860 (Ind. Ct. App. 2010). Marital property includes both assets and liabilities. *Id.* "The trial court has no authority to exclude or set aside marital property but must divide all property." *Id.* Here, the trial court properly included Husband's student loan debt, which was incurred prior to the marriage. To the extent that Wife argues that it is unclear when the loan was incurred, Husband provided a statement showing that as of August 1, 2008, his remaining balance was \$76,189.94. Wife has not met her burden of persuading us that the trial court erred in including Husband's student loans.

III. *Valuation and Division of Marital Pot*

[22] Wife next argues that the trial court erred by adopting Donovan's calculation of the enterprise goodwill of her businesses. She also contends that the trial court erred by equally dividing the marital estate. The decision regarding the valuation and division of marital property lies within the sound discretion of the trial court, and we will reverse only for an abuse of that discretion. *Hartley v. Hartley*, 862 N.E.2d 274, 285 (Ind. Ct. App. 2007). We address each of Wife's concerns in turn.

A. *Goodwill*

[23] Wife contends that the trial court erred by accepting Donovan’s methodology in calculating the enterprise goodwill of her businesses. “A trial court has broad discretion in ascertaining the value of property in a dissolution action, and its valuation will not be disturbed absent an abuse of that discretion.” *Nowels v. Nowels*, 836 N.E.2d 481, 485 (Ind. Ct. App. 2005). The trial court has not abused its discretion if its chosen valuation is supported by sufficient evidence and the reasonable inferences drawn from it. *Id.* Even when the circumstances would support a different award, we will not substitute our judgment for that of the trial court. *Id.*

[24] In *Yoon v. Yoon*, 711 N.E.2d 1265 (Ind. 1999), our supreme court analyzed the issue of goodwill as follows:

Goodwill has been described as the value of a business or practice that exceeds the combined value of the net assets used in the business. Goodwill in a professional practice may be attributable to the business enterprise itself by virtue of its existing arrangements with suppliers, customers or others, and its anticipated future customer base due to factors attributable to the business. It may also be attributable to the individual owner’s personal skill, training or reputation. This distinction is sometimes reflected in the use of the term “enterprise goodwill,” as opposed to “personal goodwill.”

Enterprise goodwill “is based on the intangible, but generally marketable, existence in a business of established relations with employees, customers and suppliers.” Factors affecting this goodwill may include a business’s location, its name recognition, its business reputation, or a variety of other factors depending on

the business. Ultimately these factors must, in one way or another, contribute to the anticipated future profitability of the business. *Enterprise goodwill is an asset of the business and accordingly is property that is divisible in a dissolution to the extent that it inheres in the business, independent of any single individual's personal efforts and will outlast any person's involvement in the business.* It is not necessarily marketable in the sense that there is a ready and easily priced market for it, but it is in general transferrable to others and has a value to others.

* * * *

In contrast, the goodwill that depends on the continued presence of a particular individual is a personal asset, and any value that attaches to a business as a result of this “personal goodwill” represents nothing more than the future earning capacity of the individual and is not divisible. Professional goodwill as a divisible marital asset has received a variety of treatments in different jurisdictions, some distinguishing divisible enterprise goodwill from nondivisible personal goodwill and some not.

Indiana's dissolution law opts for recognition of this distinction. The General Assembly has determined that the “relative earning power” of the parties is not a divisible asset because it is not property, but may be considered in determining the percentage of property to be given to each. Accordingly, we join the states that exclude goodwill based on the personal attributes of the individual from the marital estate.

Id. at 1268-69 (emphasis added) (citations omitted). The trial court in this case entered the following findings regarding the combined enterprise goodwill of Wife's businesses:

75. Jeff Donovan of Donovan CPA was jointly retained by the parties to conduct [a] business valuation of Joy Health Services, Grace Adult Family Care, and Sarah Care of Indianapolis.

76. Mr. Donovan has [a] significant amount of experience conducting business valuations of this nature. He conducted site visits to the businesses and met with Wife and her staff to obtain necessary information. He also reviewed tax returns for the multiple businesses.

77. None of the business real estate owned by Wife's holding company is included in Mr. Donovan's valuation.

78. Mr. Donovan determined that there is [a] significant amount of personal goodwill attached to the value of the businesses attributable to Wife and her specific involvement in the businesses.

79. "Enterprise goodwill" in professional practice may be attributable to the business enterprise itself by virtue of its existing arrangements with suppliers, customers or others, and its anticipated future customer base due to factors attributable to the business. *Yoon v. Yoon*, 711 N.E.2d 1265, 1268-69 (Ind. 1999).

80. Mr. Donovan indicated that, using combination of market based and income-based valuation methods, the fair market value of Wife's business interests was approximately \$730,000.00, absent personal goodwill. The [c]ourt includes this amount in the parties' marital assets on Exhibit A.

(Appellant's App. Vol. II, pp. 17-18). At the final hearing, Donovan stated that he implemented an income-based valuation method and he explained that using the income-based approach allowed him to consider the combined enterprise

goodwill of Wife's businesses. However, he conceded that the method was not a "hard and fast calculation" but depended "on the facts and circumstances of each individual business." (Tr. Vol. II, p. 186). Donovan noted that the process of arriving at the value of enterprise goodwill was complicated by the fact that each of Wife's businesses owned a small percentage of each other and because Wife's personal and business finances were unaccountably intertwined since Wife loaned money to the businesses and borrowed money from the businesses.

[25] As an alternative to Donovan's calculation, Wife requested the trial court to accept valuation amounts based *only* on JHS's book equity value as calculated by her accountant Kim Kock (Kock). Kock only evaluated JHS, and she quoted an increased equity value of \$210,442 for JHS, which was accumulated between 2008, the date of marriage, and 2018, the date of filing. When asked how the book equity value of \$210,442 was computed, Wife stated, "my accountant put it together." (Tr. Vol. II, p. 124). When asked whether her calculations considered the intercompany loans, Wife stated, "I should think so." (Tr. Vol. II, p. 124). When Donovan was asked about Wife's valuation method, he testified that his understanding of Wife's valuation method was "assets minus liabilities." (Tr. Vol. II, p. 188). Donovan explained that "an operating entity with income by default has usually a component of goodwill" and that he had disregarded an asset-based approach during his valuation because that methodology did not arrive at enterprise goodwill. (Tr. Vol. II, p. 183).

[26] 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. *See Quillen v. Quillen*, 671 N.E.2d 98, 103 (Ind. 1996). Further, as we noted, if the trial court's chosen valuation is within the range of values supported by the evidence, the court does not abuse its discretion. *Nowels*, 836 N.E.2d at 485. The trial court, as the factfinder, had discretion to credit Donovan's expert valuation opinion regarding the enterprise goodwill value of Wife's businesses. Moreover, Wife presented no evidence, through an expert witness or otherwise, as to an alternate methodology to calculate enterprise goodwill, and the gravamen of her arguments is that we should ignore Donovan's methodology, which was supported by the evidence, and which we will not do. Here, we conclude that the trial court did not abuse its discretion by crediting Donovan's valuation method, or in concluding that Wife had \$730,000 enterprise goodwill in her businesses, and that amount was divisible as a marital asset.

B. *Equal Division of Marital Property*

[27] Wife argues that the trial court abused its discretion in concluding that she failed rebut the presumption of equal division of marital property. As noted, the division of marital property is a two-step process in Indiana. *Estudillo*, 956 N.E.2d at 1090. 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. I.C. § 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.

(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.

I.C. § 31-15-7-5. In dividing marital property, the trial court must consider all of these factors, but it is not required to explicitly address all of 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). This is one of the strongest presumptions applicable to our consideration on appeal. *Id.*

[28] Wife argues the trial court abused its discretion when it ordered an equal division of the marital estate because Husband did not contribute to her businesses, and her inherited properties were never commingled with marital assets.

A. *Wife's Businesses*

[29] At the final hearing, Wife testified that Husband did not play a significant role at JHS, Sarah Care, or Grace. Contrary to Wife's claim that Husband did not contribute to the growth of her businesses during the marriage, the evidence presented showed that shortly after their marriage in 2008, Husband joined Wife at JHS. Husband replaced the physician, served on the board of directors and began receiving a salary. Husband computerized and set up online accounts for Wife's businesses, met with Wife's accountants, and assisted with an IRS audit. In reference to that IRS audit, Wife settled her tax liability and she used \$101,000 from Husband's bank account. The record also showed that Husband aided with the expansion of Wife's business interests by supervising the construction of the Sarah Care franchise building, hiring of staff, procurement office materials and furniture, and attending a Sarah Care training

in Ohio. While Wife contributed a great deal to the accumulation of the business interests for JHS, Sarah Care and Grace, the record shows that Husband also contributed to the growth of JHS, Sarah Care, or Grace. Accordingly, we find no abuse of discretion.

B. *Wife's Inheritance*

[30] Wife additionally claims that her inherited properties in Ghana and Nigeria, which were acquired prior to the marriage, were never commingled with marital assets. In support of her claim, Wife cites to *Castaneda v. Castaneda*, 615 N.E.2d 467 (Ind. Ct. App. 1993). In *Castaneda* we upheld the trial court's award of the wife's inheritance when dividing the marital estate, which resulted in an unequal division of the marital estate in the wife's favor. *Id.* at 470. The *Castaneda* court concluded that where the inheritance was never commingled with other marital assets and the wife did not treat it as marital property, the trial court did not abuse its discretion in setting aside the inheritance to the wife. *Id.* However, as our supreme court explained

Castaneda does not stand for the proposition that a trial court is required to reach an unequal division of property because one spouse brought some items separately to the marriage. Rather, *Castaneda* permits the trial court, in its discretion, to choose to distribute the marital property unequally in favor of one spouse based on statutorily identified considerations . . . Whether to do so is a matter of trial court discretion in light of all other relevant factors.

Fobar v. Vonderahe, 771 N.E.2d 57, 59 (Ind. 2002). Turning to Wife's argument, we note that whether or not property was commingled is not an included

component of the statutory analysis required to rebut the presumption of an equal distribution of marital assets, although relevant evidence might also indicate whether property was kept separate and distinct, or whether a type of *de facto* commingling occurred. *Eye*, 849 N.E.2d at 703. Therefore, the fact that the proceeds from the inheritance were kept separate by Wife does not automatically indicate that the presumption was rebutted. *Id.* Wife's argument that her inherited properties were not commingled with marital assets and therefore should not be included in the marital pot for division fails.

[31] As to whether her inherited properties were divisible, we have held that the trial court's disposition 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 a number of different considerations in arriving at an ultimate disposition. *Fobar*, 771 N.E.2d at 60. 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.*

[32] Looking at other factors, there is ample basis justifying the trial court's inclusion of Wife's interests in the Nigerian and Ghanaian properties and the equal division of the entire marital pot. Husband is an associate professor in the College of Nursing at the University of South Carolina, Columbia, earning

\$144,000 per year. Husband stated that when he fails to teach in the summer, his annual income is about \$120,000. Husband stated that beginning in 2008, he received an income from JHS. Wife, as director of nursing at JHS, earned an annual income of \$118,071. Evidence presented showed that between 2009 and 2018, aside from her wages, Wife withdrew additional income from her businesses in varying amounts, and her gross withdrawals during that period amounted to \$6,310,957. Wife's average annual business income during the marriage was \$631,095.70.

[33] During the marriage, Husband contributed an additional \$123,000 to his retirement account and paid down \$24,000 of student loan debt during the marriage. Wife contributed \$285,534.35 to her JHS 401k account and purchased whole life insurance policies with cash values of \$29,410.86. Aside from their income and the growth of their individual retirement accounts, the record reflects that Wife dissipated marital assets. Wife failed to cooperate with discovery requests as to her bank accounts except to provide her 2018 bank statements for her Indiana Members Credit Union (IMCU) accounts. Wife's JHS income/business income was deposited into her IMCU. A review of her 2018 checking account statements showed that Wife transferred \$65,880 to various individuals, wrote checks totaling \$70,475.52, and took cash withdrawals of over \$108,000. Wife's 2018 married but filing separately tax return indicates she earned \$118,071 in wage income and \$457,430 in business income, for a total income of \$575,501. She owed \$148,617 on the taxable portion of this income, for a net income of \$426,884. Wife provided little to no

explanation for the disposition of her personal income and business income. During her deposition, when asked how her income was disbursed, Wife replied alternatively “I don’t know”, and “who knows. Hello?” (Exh. Vol. IV, pp. 48, 49). At the final hearing, Wife indicated she financially helped her mother and extended family in Nigeria but failed to offer any evidence supporting her claim. Wife also claimed that she paid for Daughter’s medical school tuition and other expenses, but she failed to provide any evidence documenting those expenses.

[34] In many circumstances, it may be appropriate to award a greater share of the marital property to one spouse by reason of inheritance. *Fobar*, 771 N.E.2d at 60. But Indiana statute requires all property to be considered in the marital estate. I.C. § 31-15-7-4. 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. *Id.* The trial court considered 131 exhibits and the testimony of several witnesses, which were presented over the course of two days. Although several of the parties’ assets were brought to the marriage, there was no requirement that any be set off for one spouse, nor was there any requirement that the overall pot be unequally divided. It was well within the trial court’s discretion in offsetting Wife’s higher earning capacity and resources by including her inherited properties in the overall 50–50 split, rather than setting it off to Wife as a separate item prior to division. We find no abuse of discretion.

[35] In sum, Wife has not met her burden of overcoming the presumption on appeal that the trial court acted correctly in applying the statutory presumption of an equal division of the marital estate. The trial court weighed the factors required to rebut the presumption of an equal division, found them in equipoise, and determined that an equal distribution was just and reasonable because the presumption had not been rebutted. The trial court's findings support its conclusion that an equal division is just and reasonable, and we find no abuse of discretion.

CONCLUSION

[36] In sum, we conclude that the trial court did not abuse its discretion by including certain items in the marital pot, and by equally dividing the marital estate between the parties.

[37] Affirmed.

[38] Robb, J. and Molter, J. concur