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IN THE COURT OF APPEALS OF INDIANA

Marcia A. Nix,
Appellant-Respondent,

v.

Edward F. Nix,
Appellee-Petitioner

February 22, 2023

Court of Appeals Case No. 22A-DN-2108

Appeal from the Allen Circuit Court

The Honorable Wendy W. Davis, Judge

Trial Court Cause No. 02C01-1707-DN-966

Opinion by Judge Mathias
Judges May and Bradford concur.

Mathias, Judge.

[1] Marcia Nix ("Wife") appeals the Allen Circuit Court's decree of dissolution of her marriage to Edward Nix ("Husband"). Wife presents a single issue for our review, namely, whether the trial court abused its discretion when it valued a business owned by Husband and Wife during their marriage.

[2] We reverse and remand with instructions.

Facts and Procedural History

[3] Husband and Wife were married in 1979 and have three adult children together. During the marriage, Husband and Wife started a business called Outerspace, LLC ("Outerspace"), which, in turn, owns thirty-three acres of land, including warehouses, in Auburn, Indiana. In addition, Wife is the sole shareholder in an S Corporation called NX Enterprises, Inc. ("NXE"), which is a warehousing and logistics company. NXE leases property from Outerspace.

[4] On July 20, 2017, Husband filed a petition to dissolve the marriage. On April 15, 2021, the parties agreed that Wife would be awarded Outerspace in the division of marital assets, and the parties assigned that business a value of $1.6 million. During the final hearing in March and April 2022, the parties submitted evidence regarding the value of NXE. Husband submitted an expert's opinion that NXE was worth $992,100 as of July 20, 2017, the date of the parties' separation. Wife submitted an expert's opinion that NXE was worth $470,000 as of December 31, 2018. In their proposed marital balance sheets, the parties asked the trial court to value NXE based on their respective experts' opinions.

[5] However, another witness, the parties' adult child Amanda Couts testified that on June 1, 2017, she offered to buy NXE for $4.25 million. In support of that testimony, Husband introduced into evidence Couts's unsigned purchase agreement ("Agreement"). The Agreement stated in relevant part that Wife

owned "the Business," which was identified as "NX Enterprises/Outer Space, located at 2839 Co Rd 72, Auburn, Indiana[.]" Ex. Vol. 2 p. 6. The Agreement also included in a "Description of Business" the "leasehold interest owned by [Wife] for premises on which the business is located, pursuant to a valid assignment of [the] lease." *Id.* In addition, in a section entitled "Allocation," the Agreement stated that "[t]he Purchase Price shall be allocated for tax purposes as follows," and listed "Accounts Receivable," "Building and Land," vehicles, and equipment each having a fair market value of "$0.00." *Id.* at 7. Couts testified that Wife did not take the offer seriously and laughed at her.

[6] After the final hearing, the trial court issued its decree of dissolution, in which the court divided the marital estate equally between the parties. The trial court went into painstaking and laudable detail to explain its reasons for valuation of the parties' assets and the final division. In relevant part, the court valued NXE at $4.25 million "due to the offer to purchase at or near the date of filing," and the trial court awarded NXE to Wife. Appellant's App. Vol. 2, p. 47. The court further ordered Wife to pay to Husband an equalization payment of $622,839.74 plus $10,000 towards Husband's attorney's fees.

[7] The parties filed cross-motions to correct error. In particular, Wife argued in relevant part that the trial court had erred when it valued NXE. The trial court denied the parties' motions and stated in relevant part that,

> [a]s it relates to the valuation of NSX Enterprises, LLC, the Court's valuation is based off the evidence presented at trial including the offer to purchase NSX Enterprises, Inc., and its

> assets on June 1, 2017[,] for $4,250.000.00. There is no factual dispute that [Wife] rejected this offer. There is no dispute that a business valuation was completed on April 13, 2021. The Court found the best evidence as to the business value was the offer to purchase the business shortly before the divorce was filed[,] which [Wife] rejected seemingly because the value was too low. The valuation of the business is within the range of evidence presented at trial and[,] as such[,] the Court finds no error was made in the valuation of the business.

Id. at 85. This appeal ensued.

Discussion and Decision

[8] Wife's sole contention on appeal is that the trial court abused its discretion when it valued NXE.

> When reviewing valuation decisions of trial courts in dissolution actions, [our] standard of review [is as follows]: that the 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. *Cleary v. Cleary*, 582 N.E.2d 851, 852 (Ind. Ct. App. 1991). The trial court does not abuse its discretion if there is sufficient evidence and reasonable inferences therefrom to support the result. *Id.* In other words, we will not reverse the trial court unless the decision is clearly against the logic and effect of the facts and circumstances before it. *Porter v. Porter*, 526 N.E.2d 219, 222 (Ind. Ct. App. 1988), *trans. denied*. A reviewing court will not weigh evidence, but will consider the evidence in a light most favorable to the judgment. *Skinner v. Skinner*, 644 N.E.2d 141, 143 (Ind. Ct. App. 1994).

Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996). Further, this Court has held that "'[a] valuation submitted by one of the parties is competent evidence of the

value of property in a dissolution action and may alone support the trial court's determination in that regard.'" *Alexander v. Alexander*, 927 N.E.2d 926, 935 (Ind. Ct. App. 2010) (quoting *Houchens v. Boschert*, 758 N.E.2d 585, 590 (Ind. Ct. App. 2001), *trans. denied*), *trans. denied*.

[9] As the trial court stated, both in the decree and in the order denying the parties' cross-motions to correct error, it based its valuation of NXE on Couts's June 2017 offer to purchase NXE for $4.25 million. Wife contends that that was an abuse of discretion because Couts's offer was made prior to the date Husband filed the dissolution petition and because it was not "a legitimate offer" to purchase the business. Appellant's Br. at 16. First, Wife is correct that we have held that a trial court abuses its discretion in valuing a marital asset when it does not "select[] a date between the dissolution petition filing date and the final hearing date." *Trackwell v. Trackwell*, 740 N.E.2d 582, 584 (Ind. Ct. App. 2000). Second, and moreover, we agree with Wife that Couts's offer is not competent evidence of the market value of NXE.

[10] As Wife points out, the Agreement includes several ambiguities that undermine its reliability as a valuation tool. Again, the Agreement describes "the Business" as "NX Enterprises/*Outer Space*, located at 2839 Co Rd 72, Auburn, Indiana[.]" Ex. Vol. 2 p. 6 (emphasis added). Thus, the offer to purchase appears to encompass *both* NXE and Outerspace. Further, in a section entitled "Allocation" the Agreement identified various assets of the Business and allocated their values "for tax purposes." *Id.* at 7. Among the assets, the Agreement lists "Building and Land." *Id.* at 7. However, it is undisputed that,

while Outerspace owns buildings and real estate, NXE does not own either. At the same time, the Agreement included in a "Description of Business" the "leasehold interest owned by [Wife] for premises on which the business is located, pursuant to a valid assignment of [the] lease." *Id.* at 6. Finally, Couts testified that Wife did not take the offer seriously and laughed at her. Indeed, it is undisputed that Couts did not have enough money herself to buy NXE. Instead, she claimed to have an investor who would fund the purchase. However, Couts did not identify the investor and she did not establish either the investor's ability or contractual responsibility to fund the purchase offer. Finally, Couts did not sign the purchase agreement and, thus, could not be bound by it.

[11] Given the ambiguities and overall unreliability of the promises made in the Agreement, we hold that it is not competent evidence of the fair market value of NXE. As our Supreme Court has held with respect to an offer to buy real property,

> [a] mere offer to buy or sell property is not a measure of the market value of a similar property. It is incompetent to prove the market value of property because the asking price is only the opinion of one who is not bound by his statement, and [it] is too unreliable to be accepted as a correct test of value.

State v. Lincoln Memory Gardens, Inc., 242 Ind. 206, 213, 177 N.E.2d 655, 658 (1961). That reasoning applies here, where Couts was not bound by the unsigned Agreement and where there is no evidence that it was a serious offer.

Accordingly, we agree with Wife that the trial court abused its discretion when it valued NXE at $4.25 million.

[12] We therefore reverse the decree with respect to the $4.25 million valuation of NXE and remand with instructions for the court to assign a value to NXE within the range of values put forth by Husband and Wife, namely, between $470,000 and $992,100, which is the only competent evidence of the business's value. Once the court has chosen a new value for NXE based on that evidence, it shall recalculate the division of marital property accordingly.

[13] Reversed and remanded with instructions.

May, J., and Bradford, J., concur.