MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Robyn N. Washburn,
Appellant/Cross-Appellee-Petitioner,

v.

William R. Washburn,
Appellee/Cross-Appellant-Respondent.

March 29, 2021

Court of Appeals Case No. 20A-DC-527

Appeal from the Warrick Superior Court

The Honorable Amy Steinkamp Miskimen, Special Judge

Trial Court Cause No. 87C01-1805-DC-724

Mathias, Judge.

[1] Robyn Washburn ("Wife") appeals and William Washburn ("Husband") cross-appeals the Warrick Superior Court's order dissolving their marriage. Both challenge the trial court's valuation of the martial assets and debts and the

division of the marital estate. We consolidate and restate the issues raised as the following six:

I. Whether the trial court's equal division of the marital estate was just and reasonable;

II. Whether the trial court correctly calculated the parties' marital credit card debt;

III. Whether the trial court abused its discretion when it failed to include the value of Husband's Jeep as a marital asset;

IV. Whether the trial court abused its discretion in its valuation of the marital residence, Washburn Financial Services, and the parties' personal property;

V. Whether the trial court abused its discretion when it gave Husband credit for payments made under the provisional order; and

VI. Whether the trial court abused its discretion when it denied Wife's request for attorney fees.

[2] We affirm in part, reverse in part, and remand for proceedings consistent with this opinion.

Facts and Procedural History

[3] The parties married in 1992, and two children were born during the marriage. Wife is a teacher and Husband is a financial advisor. After their second child was born, Wife and Husband agreed that Wife would quit her job to stay at home with the children. In 2003, Husband left his employment and started Washburn Financial Services, a financial advising business. Wife assisted with

the business as she was able and received specialized training on the business's computer system. However, in 2015, Wife resumed teaching on a full-time basis and only periodically assisted Husband at Washburn Financial Services in the last three years of their marriage.

[4] On May 21, 2018, Wife filed a petition for dissolution of marriage. During the dissolution proceedings Wife and Husband engaged in spiteful behavior, which ultimately resulted in their college-aged children repudiating their father. Husband demeaned Wife when he communicated with her. Wife often shared their communications with the children. And Wife referred to Husband as the children's "sperm provider." Appellant's App. p. 23. Husband also sent text messages to the children that furthered the discord between himself and his children.

[5] The parties filed an agreed provisional order which the trial court approved on October 9, 2018. As allowed by the provisional order, Wife continued to reside in the marital residence throughout the proceedings while Husband paid the mortgage, insurance, and taxes. During these proceedings, the mortgage on the residence was paid in full. The parties' respective appraisers valued the marital residence in a range from $120,000 to $149,000. The trial court found that the marital residence was worth $140,000.

[6] Wife and Husband also had a second home, located in Florida, which Husband bought in 2015 without discussing the purchase with Wife. The family and Wife's parents enjoyed vacationing in the home until the parties separated in

May 2018. A year later, the parties sold the Florida home. The net proceeds from the sale of that residence totaled $58,524.

[7] The parties hired experts to appraise Washburn Financial Services, which was valued in a range from $570,000 to $904,270. The experts utilized different approaches in their respective valuations. The trial court concluded that Husband's expert was more credible than Wife's and adopted the $570,000 value proposed by Husband's expert.

[8] Wife's salary in 2018 was $44,153. Husband's total income that year, including wages and distributions from his business, was $526,087. Husband paid $2,000 in temporary maintenance to Wife for thirteen months during these proceedings and a $20,000 payment for credit card debt in Wife's name. Husband reserved the right to argue for a credit for these payments in the court's division of the marital estate. Husband also made a $35,000 lump sum payment to Wife as required by the parties' provisional order. The parties agreed that Husband would receive a $35,000 credit for this payment in the final division of the marital estate. The parties also had several substantial investment and retirement accounts in their individual names.

[9] The trial court held the final dissolution hearing on several dates from July through September 2019. On November 19, 2019, the court issued its decree dissolving the parties' marriage. The court concluded that an equal division of the marital estate was just and reasonable. And while acknowledging the disparity in the parties' respective earning abilities, the court found that because

the parties accumulated significant assets and minimal debt during the marriage, equal division of the marital estate left both parties in a secure financial position. Ultimately, each party received over $900,000 in marital assets, and the court denied the parties' request for attorney fees.

[10] Both Wife and Husband filed motions to correct error. The trial court issued an order adjudicating their motions on February 3, 2020. In that order, the court rejected Wife's argument that it erred when it concluded that an equal division of the marital estate was just and reasonable. But the court concluded that it erred: (1) when it failed to include as a marital asset $5,000 in cash that Husband kept in a safe at the Florida home; and (2) that it miscalculated the credit Husband received for the marital expenses he paid during the proceedings. To correct those errors, the court ordered Husband to pay Wife an additional $23,187.

[11] Both parties appeal the trial court's dissolution decree. Additional facts concerning the issues raised in this appeal will be set forth as needed below.

Standard of Review

[12] Wife requested findings of fact and conclusions of law pursuant to Indiana Trial Rule 52(A). Our two-tiered standard of review is well settled. "First, we determine whether the evidence supports the findings, and second, whether the findings support the judgment." *Quinn v. Quinn*, 62 N.E.3d 1212, 1220 (Ind. Ct. App. 2016). The trial court's findings control unless there are no facts in the

record to support them, either directly or by inference. *Id.* However, we review legal conclusions de novo. *Id.*

[13] We will set aside a trial court's judgment only if it is clearly erroneous, which occurs when, after reviewing the evidence most favorable to the judgment, we are firmly convinced that a mistake has been made. *Id.* Because dissolution actions invoke the inherent equitable and discretionary authority of our trial courts, we review their decisions with "substantial deference." *Bringle v. Bringle*, 150 N.E.3d 1060, 1064 (Ind. Ct. App. 2020) (citing *R.W. v. M.D.*, 38 N.E.3d 993, 998 (Ind. 2015)).

I. Equal Division of the Marital Estate

[14] Wife argues the trial court abused its discretion when it concluded that an equal distribution of the marital estate was just and reasonable.

> The division of marital assets lies within the trial court's discretion, and as such, we reverse only on a showing that the court has abused its discretion. An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. In conducting our review, we neither reweigh evidence nor reassess witness credibility; rather, we consider only the evidence most favorable to the trial court's disposition.

Bock v. Bock, 116 N.E.3d 1124, 1130 (Ind. Ct. App. 2018) (internal citations omitted).

[15] All marital property, whether 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, is included in the marital estate for division. Ind. Code § 31-15-7-4(a); *Falatovics v. Falatovics*, 15 N.E.3d 108, 110 (Ind. Ct. App. 2014). The requirement that all marital assets be placed in the marital pot is meant to insure that the trial court first determines the value before endeavoring to divide property. *Montgomery v. Faust*, 910 N.E.2d 234, 238 (Ind. Ct. App. 2009). This "one pot" theory insures that all assets are subject to the trial court's power to divide and award. *Hill v. Hill*, 863 N.E.2d 456, 460 (Ind. Ct. App. 2007). The trial court's disposition of the marital estate is to be considered as a whole, not item by item. *Fobar v. Vonderahe*, 771 N.E.2d 57, 59 (Ind. 2002).

[16] Trial courts "shall presume that an equal division of the marital property between the parties is just and reasonable." Ind. Code § 31-15-7-5. However,

> 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.
>
> (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.

Id. "The statutory factors are to be considered together in determining what is just and reasonable; any one factor is not entitled to special weight." *Smith v. Smith*, 136 N.E.3d 275, 282 (Ind. Ct. App. 2019) (quoting *In re Marriage of Lay*, 512 N.E.2d 1120, 1125 (Ind. Ct. App. 1987)).

[17] Wife argues the evidence does not support the trial court's findings that an equal division of the marital estate is just and reasonable. In support, Wife notes (1) the significant disparity in the parties' incomes and earning abilities; (2) her contributions to Husband's business; and (3) her claim that Husband dissipated marital assets.[1] Wife also contends that the trial court treated the parties inequitably and attributed fault to Wife in concluding that an equal division of the marital assets was just and reasonable.

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[1] The parties do not contest the trial court's findings that the marital assets were acquired through the parties' joint efforts and not through inheritance or gift.

[18] The court rejected Wife's argument that she rebutted the presumption of an equal division because of the significant disparity in the parties' incomes and earning potential. Appellant's App. p. 28. Specifically, the court acknowledged that disparity, but concluded that

> [b]oth parties leave this marriage with a secure financial status with substantial assets and very little debt. They both have graduate degrees and are gainfully employed. While there will be a disparity of earning ability post-dissolution, both parties will continue to have their investments and retirement accounts - which are considerable.

Id. In its order addressing Wife's motion to correct error, the court further observed that during the marriage Husband "established investment and retirements accounts in . . . Wife's name that has met and exceeded [her] retirement savings plan through the Warrick County School Corporation." *Id.* at 35.

[19] Wife also claims that the trial court attributed her fault in concluding that she failed to rebut the presumption of an equal division. Wife cites to the following factual finding:

> From July 1, 2018 through May 31, 2019, Wife spent $100,581.35. These expenses included going to the movies, dining out, shopping, vacation trip to Florida for herself and the parties['] children plus a niece, paying for a third party to clean her house, monthly massages, monthly hair appointments, and Jazzercise.

Id. at 25.

[20] The court did not conclude that Wife dissipated marital assets. We agree with Husband that the trial court likely issued this finding in response to Wife's claim that Husband dissipated marital assets. It was more than fair for the court to consider that both parties spent lavishly throughout both the marriage and these proceedings. Wife's total expenditures after she filed for dissolution and in the year leading up to the dissolution hearings exceeded the aggregate of her total annual income and the monthly maintenance payments she received from Husband while the dissolution was pending.

[21] Wife also argues the trial court's finding that Husband did not dissipate marital assets is clearly erroneous. Dissipation of marital assets involves the "frivolous, unjustified spending of marital assets." *Goodman v. Goodman*, 754 N.E.2d 595, 598 (Ind. Ct. App. 2001). "Waste and misuse are the hallmarks of dissipation." *In re Marriage of Coyle*, 671 N.E.2d 938, 943 (Ind. Ct. App. 1996). To determine whether dissipation occurred, we consider the following four factors: (1) whether the expenditure benefited the marriage or whether it was made for a purpose unrelated to the marriage; (2) the timing of the transaction; (3) whether the expenditure was excessive or de minimis; and (4) whether the dissipating party intended to hide, deplete, or divert the marital asset. *Goodman*, 754 N.E.2d at 598. Dissolution courts may consider evidence of both pre- and post-separation dissipation. *Hardebeck v. Hardebeck*, 917 N.E.2d 694, 700 (Ind. Ct. App. 2009).

[22] Wife claims Husband purchased the vacation home in Florida without consulting her, and that he therefore dissipated marital assets. But the parties,

their children, and Wife's parents used the vacation property. And for this reason, the expense of maintaining the Florida home does not constitute dissipation of marital assets. Moreover, the parties profited when they sold the property. For these reasons, the trial court appropriately concluded that the vacation home purchase was not dissipation of marital assets.

[23] Wife also argues that Husband dissipated marital assets by making grand expenditures and significant ATM cash withdrawals, including the purchase of a sports car that Husband kept in Florida. Husband's cash withdrawals, however, occurred over the course of several years and he often gave cash to the parties' children. As we noted above, neither party limited their personal expenditures throughout the marriage or these proceedings. Husband's spending habits were comparable to Wife's habits. Wife did not present any evidence that Husband was hiding or depleting assets or that his expenditures were excessive in light of the parties' income.

[24] In sum, we are not persuaded that the trial court attributed fault to Wife when it decided that an equal division of the marital estate was just and reasonable, and Wife did not establish that Husband dissipated marital assets. The significant disparity in the parties' incomes arguably supports Wife's argument that she is entitled to a greater share of the marital estate. Wife also contributed to the development of Husband's successful business. But the success of that business resulted in the accumulation of significant assets over the course of the parties' marriage, including investment accounts Husband established in Wife's name. And Wife received significant marital assets totaling over $900,000. Because

Wife is gainfully employed and leaves the marriage with considerable assets and little debt, we cannot conclude that the trial court erred when it found that an equal division of the marital estate was just and reasonable.

II. Credit Card Debt

[25] The parties raise several issues concerning the trial court's consideration of the parties' credit card debt. We address each in turn.

A. *Discover Credit Card*

[26] The trial court's provisional order noted that the amount owed on the Discover card on May 25, 2018—two days after Wife filed her petition for dissolution—was $7,281.21. The court found that the expenses Wife incurred on the credit card account before she filed for dissolution included household and marital expenses. Appellant's App. p. 18. However, in its dissolution order, the trial court found that the Discover credit card debt totaling $7,281.21 as of May 25, 2018,[2] was not marital debt. Wife argues the court's conclusion that this debt accrued post-filing is not supported by the evidence. We agree.

[27] Wife continued to use the Discover card after she filed for dissolution on May 23, 2018. But the parties agreed that the accumulated debt in the amount of $7,281.21 on May 25, 2018, was marital debt and the trial court approved that agreement in the provisional order. Appellant's App. pp. 17–18. And though

[2] The trial court's finding contains a scrivener's error as it incorrectly lists the year as 2019.

Wife continued to use the Discover card after May 25 for personal expenses, a vacation, and attorney fees; therefore, these were not marital expenses. Husband, however, agreed to "pay $20,000.00 to Wife for the Discover card by October 15, 2018.," and thus reserved the "right to argue for credit against final property division for the post-filing payments made under this paragraph including the monthly sum for Wife's maintenance (excluding the $7,281.21 balance as of the final separation date)". *Id*. at 18-19.

[28] In short, the trial court's finding concerning the pre-filing Discover card debt is not supported by the evidence, but Wife is also not entitled to any relief despite the error. The trial court's erroneous finding does not impact the treatment of the debt in the provisional order. Husband was ordered to give $20,000 to Wife to pay the Discover card debt, and he did so.

[29] The trial court also erred by awarding Husband a $20,000 credit for the Discover card debt. The parties agreed that Husband would not argue for a credit of the $7,281.21 Discover card balance. The trial court approved the agreement in the provisional order. The trial court should have reduced the $20,000 credit to $12,718.79 in the final decree.

[30] Therefore, on remand, we instruct the trial court to correct its finding and reduce the $20,000 credit Husband was awarded in the final decree to reflect his agreement that Husband would not seek credit for the $7,281.21 marital debt on that accrued on Wife's Discover card.

B. *Other Credit Card Debt*

[31] Husband argues that the trial court clearly erred when it failed to include in the marital estate the parties' credit card debt on their Barclay, Heritage Federal Credit Union, Bank of America, and Banana Republic credit accounts. *See* Ex. Vol. X, Husband's Ex. MM. Husband claims the debts listed on Exhibit MM, including the debt accrued on his credit card accounts, were incurred before the petition for dissolution was filed. He therefore asserts those debts are liabilities that belong in the marital pot.

[32] Wife responds that she either had no knowledge of the accounts or no knowledge of Husband's ongoing use of the accounts. Appellant's Reply Br. at 16. She also argues that nearly all charges on those accounts were made after she filed for dissolution. The Banana Republic Visa contained charges for men's clothing, which is not a marital expense. The Bank of America card and the Barclay's card had balances of $352.24 and $6,855.26, respectively, on the date the parties separated.[3] Wife agrees that those charges were incurred during the marriage and those debts should have been included in the marital pot. Wife does not raise any argument concerning the Heritage Federal Credit Union debt.

[33] The "Court's Marital Balance Sheet" credited Husband for the debts listed on Exhibit MM and noted that these debts included "[h]alf of all Taxes, Ins.,

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[3] Husband made significant purchases on his Barclay's Card during May and June 2018, most of which were associated with establishing and furnishing a separate residence. Like the purchases Wife made on the Discover Card after she filed for dissolution, Husband's Barclay's Card post-separation purchases only benefited Husband and are therefore not marital debts.

Credit Cards, etc" in the amount of $31,861. Appellant's App. p. 31. In the court's order adjudicating the parties' motions to correct error, the court found that it erred when it calculated the credit for expenses "set forth in Respondent-Husband's Exhibit MM. The correct figure should be $18,187." *Id.* at 36.

[34] After reviewing Exhibit MM, we are unable to discern how the court arrived at $18,187 as the corrected amount of Husband's credit for tax, insurance, and credit card payments.[4] On remand, we order the trial court to recalculate the credit for Husband's payments. In its recalculation, the trial court should value the parties' marital debt on the Bank of America card at $352.24 and the Barclay's card at $6,855.26.

III. Husband's Jeep

[35] Wife argues that the trial court abused its discretion when it included indebtedness on Husband's Jeep Renegade in the martial pot but failed to include its value. Husband sold the Jeep for $14,000 and paid the loan balance, which was $18,905. Husband also listed the Jeep's Kelley Blue Book value as $14,000. *See* Ex. Vol. IX, Husband's Ex. GG. Thus, Husband sustained a loss of $4,905 on the Jeep. But the trial court included in the marital pot the entire loan balance as a liability. Husband argues Wife has waived her claim that the net liability related to the Jeep was only $4,905 because she did not include the

[4] The parties did not include their motions to correct error in the record on appeal.

value of the Jeep on her list of marital assets and liabilities. *See* Ex. Vol. V, Wife's Ex. 13. We disagree.

[36] Wife listed the Jeep as an asset and she indicated the Kelley Blue Book value was appropriate. And Husband testified that the Kelley Blue Book value was $14,000. Tr. Vol. IV, p. 92. The trial court abused its discretion when it failed to include the value of the Jeep as a marital asset. On remand, the trial court is instructed to value the Jeep at $14,000 and adjust its division of the marital pot accordingly.

IV. Credit for the Payments Made Pursuant to the Provisional Order

[37] A provisional order is designed to maintain the status quo of the parties. *Mosley v. Mosley*, 906 N.E.2d 928, 929 (Ind. Ct. App. 2009). It is a temporary order that terminates when the final dissolution decree is entered. *Id.* at 930 (citing I.C. § 31-15-4-14). "Any disparity or inequity in a provisional order—can and should—be adjusted in the trial court's final order." *Id.* "Great deference is given to the trial court's decision in provisional matters, as it should be. The trial court is making a preliminary determination on the basis of information that is yet to be fully developed." *Id.*

[38] Wife argues that the trial court abused its discretion when it credited Husband for the temporary maintenance payments he made to Wife during the provisional period. Wife claims the evidence established that she paid significant expenses while the dissolution was pending, including utility

expenses for the marital residence, health insurance premiums for the parties and their children, and daughter's cell phone bills. Wife also claims she paid other expenses that Husband refused to pay despite being ordered to.

[39] We first observe that the parties agreed Husband would receive credit against the final property settlement for the $35,000 payment he made to Wife pursuant to paragraph ten of the provisional order. Appellant's App. p. 19. Husband was also ordered, under paragraph seven, to pay "$20,000 to Wife for the Discover card" and "the monthly sum of $2,000.00 for Wife's temporary maintenance."[5] *Id*. at 18. Husband reserved the "right to argue for credit against final property division for the post-filing payments made under this paragraph including the monthly sum for Wife's maintenance (excluding the $7,281.21 balance as of the final separation date)." *Id*. at 18–19.

[40] Husband received credit for the $20,000 payment[6] and the monthly maintenance payments he made under the provisional order in the amount of $26,000. He also received credit for other expenses he was ordered to pay, including the mortgage and line of credit payments for the marital residence,

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[5] Husband was also given credit for half of all credit cards, taxes, insurance, etc. in the trial court's marital balance sheet. It appears that this amount relates to Husband's Exhibit MM, which details the expenses he paid during the marriage and the dissolution proceedings. This amount was reduced in the trial court's order addressing the parties' motions to correct error. *See supra* ¶ 33.

[6] As we concluded in paragraph 29, the trial court erred when it awarded the entire $20,000 without reducing the amount by $7,281.21 as agreed by the parties.

homeowner's and automobile insurance for the parties' four vehicles, and real estate taxes.[7] *Id.* at 17, 29.

[41] The marital residence is an asset of the marriage, and the trial court did not abuse its discretion when it credited Husband for payments he made toward the debt and taxes owed on the residence. In addition, Wife was gainfully employed throughout the proceedings. Because Wife had the funds necessary to pay her basic expenses, the monthly temporary maintenance payments were essentially an advance distribution of marital assets to Wife to assist her in maintaining the status quo until a final distribution was made.[8] Also, the post-filing Discover card debt included charges for Wife's attorney fees and non-marital expenses. Therefore, the court did not abuse its discretion when it gave Husband credit for both the monthly temporary maintenance payments and the portion of the $20,000 payment made for the purpose of paying the post-filing Discover card debt.

[42] However, in its provisional order, the trial court specifically excluded Husband's right to argue that he should be credited for $7,281.21—the marital debt on the Discover card at the time of filing. As we concluded above, the court failed to subtract this amount from the credit it awarded to Husband in

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[7] Husband was also ordered to pay all expenses associated with the Florida residence, and credit for these expenses was subtracted from the sale proceeds of the home.

[8] Given the parties' substantial assets and because the majority were in Husband's name, the parties reasonably anticipated that Husband would be required to make a cash distribution to Wife when the trial court divided the marital estate.

the final decree. On remand, we instruct the court to correct its final decree and adjust its distribution of the marital estate accordingly.

V. Value Assigned to Marital Assets

[43] A trial court has broad discretion in ascertaining the value of property in a dissolution action. *O'Connell v. O'Connell*, 889 N.E.2d 1, 10 (Ind. Ct. App. 2008). We will not reweigh the evidence and will consider the evidence in the light most favorable to the judgment. *Morey v. Morey*, 49 N.E.3d 1065, 1069 (Ind. Ct. App. 2016). A trial court does not abuse its discretion if its decision is supported by sufficient evidence and reasonable inferences therefrom. *O'Connell*, 889 N.E.2d at 10. However, a trial court does abuse its discretion "when there is no evidence in the record supporting its decision to assign a particular value to a marital asset." *Id.* at 13–14.

[44] A trial court generally does not abuse its discretion when its chosen valuation is within the range of values supported by the evidence. *Del Priore v. Del Priore*, 65 N.E.3d 1065, 1076 (Ind. Ct. App. 2016), *trans. denied*. "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." *Id.* (citing *Alexander v. Alexander*, 927 N.E.2d 926, 935 (Ind. Ct. App. 2010), *trans. denied*). The parties claim that the trial court abused its discretion in valuing certain marital property. Each will be addressed in turn.

A. *Husband's Business*

[45] The trial court adopted the value for Washburn Financial Services that was proposed by Husband's expert, Michael Strauch. Strauch used set standards and protocols as required by Certified Business Valuators. Strauch and Wife's expert used the "income approach" method in their valuations. Tr. Vol. III, p. 115. However, within that method, Wife's expert used a "weighted average." Tr. Vol. III, pp. 130–33; Appellant's App. p. 24. Strauch "cautioned against using a weighted average instead of a straight average to determine the business valuation." Appellant's App. p. 24. Strauch found that Wife's expert "cherry pick[ed]" five values to arrive at his valuation of Washburn Financial Services. Tr. Vol. III, pp. 124–25.

[46] Wife is asking our court to choose her expert's valuation over the valuation Husband's expert proposed. The trial court found Husband's expert to be "more credible and convincing in his valuations." *See* Appellant's App. p. 25, Wife is simply asking us to reweigh the evidence and the credibility of the witnesses, which we will not do.[9]

B. *The Marital Residence*

[9] In support of her argument, Wife cites to evidence she presented showing, in 2017, Husband's offer to sell the business for over $1.5 million was rejected. The trial court did not ignore the evidence, but it also did not credit the evidence as a method for assigning a value to Washburn Financial Services. Appellant's App. p. 35. It was within the trial court's discretion to determine that Husband's unsuccessful attempt to sell the business for over $1.5 million was not proper evidence of the business's actual value. Moreover, Wife did not use the proposed sale amount to value the business but instead asked the court to value the business at $904,279—the value calculated by her expert.

[47] The trial court adopted the value proposed by Wife's appraiser. The appraiser valued the residence at $140,000 but deducted $20,000, the cost of needed repairs, from its appraised value. The trial court found that the damage requiring repair occurred after the date the dissolution petition was filed and did not deduct repair costs from its valuation of the marital residence. Wife argues she presented evidence that the damage needing repairs occurred before the dissolution petition was filed. Husband does not respond to Wife's claim that the damages occurred before she filed for dissolution. *See* Husband's Br. at 40–41.

[48] As to the damages, the appraiser concluded that the fireplace, deck, driveway, and plumbing required repair, and a tree in the back yard needed to be removed. Tr. Vol. II, pp. 93–94. The appraiser stated the repairs would cost approximately $20,000. *Id*. at 98. Husband agreed that issues with the tree roots growing into the sewer line, plumbing, and non-working fireplace pre-dated the filing of the petition for dissolution. Tr. pp. Vol. IV, pp. 190–91. Thus, the evidence does not support the trial court's finding that the damage occurred after the petition for dissolution was filed.[10] For this reason, the trial court erred when it failed to deduct the cost of needed repairs from the appraised value of

[10] The trial court found that the damage occurred after Wife filed her petition for dissolution because Wife testified that there was water damage to a bedroom ceiling that occurred two to three months before the final hearing. Tr. Vol. III, pp. 205–06; Appellant's App. p. 28 n.1. But that damage did not exist and was not mentioned by Wife's appraiser in his June 2018 appraisal. Ex. Vol. V, Wife's Ex. 12. The damage the appraiser described occurred before the parties separated.

the marital residence. On remand, we instruct the trial court to adjust its dissolution order accordingly.

C. *Personal Property*

[49] Husband valued the personal property in the marital residence at $75,000 and argues that Wife accepted that valuation. Husband's Appellant's Br. at 49; Tr. Vol. III, pp. 158–59. But the trial court assigned a value of $150,000 to the personal property and awarded $75,000 of personal property located in the marital residence to both Husband and Wife. Husband asserts that the property remains in Wife's possession; therefore, "the $75,000 assigned to Husband should be removed from his side of the balance sheet[.]" Husband's-Appellant's Br. at 49. Wife agrees that the trial court erred when it credited both parties with the value of the personal property from the marital residence. But she claims that the court's valuation of the personal property is not supported by the evidence. Wife asserts that although the personal property was insured for over $200,000, this is not evidence of its fair market value.

[50] First, we observe that Wife did not explicitly agree that the personal property should be valued at $75,000. Believing that Husband proposed that he should keep the contents of the marital home, Wife agreed that he could keep the property he valued "for $75,000." Tr. Vol. IV, p. 159; *see also* Ex. Vol. IX, Husband's Ex. GG. But Husband testified that he had purchased new furniture, and Wife should keep the personal property in the marital residence. *Id.* at 158. During the dissolution hearing, Wife testified that she believed the value of the

furniture she retained was $10,000. Tr. Vol. II, p. 144; Vol. IV, pp. 11–12. In her brief, Wife asserts that "husband obviously does not want these items for his inflated price and his choice to purchase new furniture and furnishing for himself is indicative of the quality, condition and value of the items in the family home." Appellant's Reply Br. at 27. She also argues it is reasonable to infer that the furnishings in the six-room ranch home, which the parties lived in for many years, would not be worth $75,000. Wife does not dispute that she kept the personal property from the marital residence.

[51] Husband relies on the parties' homeowner's insurance coverage to support his claim that the personal property in the marital residence was worth $75,000. The parties' personal property was insured for over $200,000. The parties' insurance coverage included a personal property endorsement for Wife's jewelry in the amount of $6,075, but that is the only personal property separately listed on the insurance documents. Ex. Vol. IX, Husband's Ex. LL. Husband also vaguely asserted that there were antiques in the marital residence. Tr. Vol. IV, p. 103.

[52] We conclude that Wife's $10,000 valuation is not credible in light of the fact that she retained jewelry valued at over $6,000 in addition to the furniture and electronics in the residence. Although Husband's testimony concerning how he arrived at his proposed $75,000 value was less than specific, Wife implicitly agreed to his value during her questioning of Husband. *Id.* at 158–59.

[53] Wife also argues that the evidence does not support the trial court's finding that both parties received $10,000 in personal property from the Florida home. Wife testified that the only furniture she removed from the Florida home was her son's bedroom furniture and her father's bed. *Id.* at 10–13. In support of her argument that the items were not worth $10,000, she observes that Husband had emailed the parties' son to report that the personal property removed from the Florida home by Wife was not worth the trip. *Id.* at 158. Wife included the furniture removed from the Florida home and the items she retained in the marital residence in her proposed value that the furniture was worth $10,000. *Id.* at 12.

[54] Husband proposed that he would receive the personal property from the Florida home, which he valued at $10,000. Ex. Vol. IX, Husband's Ex. GG. Husband also testified that his proposed $75,000 value of personal property in the marital residence included the property Wife took from the Florida house. Tr. Vol IV, pp. 105–06. There is no evidence to support the trial court's finding that each party retained $10,000 worth of property from the Florida home.

[55] In short, the trial court did not abuse its discretion when it valued the parties' personal property. However, the trial court erred when it: (1) awarded $75,000 worth of personal property from the marital residence to both Husband and Wife; and (2) awarded $10,000 of personal property from the Florida home to both parties. On remand, the trial court is instructed to correct these errors and adjust its division of the marital estate accordingly.

D. *Checking Accounts*

[56] Husband also argues that the trial court clearly erred when it included two Washburn Financial Services checking accounts as marital assets. Husband claims these accounts were included in the valuation of Washburn Financial Services and should not have been considered separate marital assets. Specifically, Husband claims that the checking accounts at Boonville Federal Savings Bank and Evansville Teacher's Federal Credit Union belong to Washburn Financial Services.

[57] The trial court found that Husband's business valuation expert, Michael Strauch, was the more credible expert. Strauch testified that under the "income approach" valuation model, the business's bank accounts were included in his valuation. Tr. Vol. III, p. 125. Although Strauch did not specifically identify the accounts that belonged to Washburn Financial Services, the accounts are identified on Wife's balance sheet as Husband's accounts, and the Credit Union account is titled with the initials "WFS," which we may reasonably assume refers to Washburn Financial Services.

[58] Wife does not respond to Husband's argument concerning the accounts at issue. For this reason, and after reviewing the evidence cited by Husband, we agree that the trial court erred when it listed the two checking accounts as separate assets because they were included in Strauch's valuation of Washburn Financial Services. On remand, we instruct the trial court to remove those account balances from the marital estate and adjust its distribution accordingly.

VI. Attorney Fees

[59] Finally, Wife argues that the trial court abused its discretion when it refused her request for Husband to pay her attorney fees. "Indiana adheres to the American rule that in general, a party must pay his own attorneys' fees absent an agreement between the parties, a statute, or other rule to the contrary." *R.L. Turner Corp. v. Town of Brownsburg*, 963 N.E.2d 453, 458 (Ind. 2012).

[60] Indiana Code section 31-15-10-1 allows the trial court to order a party in a dissolution proceeding to pay a reasonable amount of the other party's attorney's fees. *Eads v. Eads*, 114 N.E.3d 868, 879 (Ind. Ct. App. 2018). The court has broad discretion in deciding whether to award attorney's fees. *Id.*

[61] To determine whether an award of attorney fees in a dissolution proceeding is appropriate, trial courts should consider the parties' resources, their economic condition, their ability to engage in gainful employment and earn income, and other factors bearing on the reasonableness of the award. *Id.* A party's misconduct that directly results in additional litigation expenses may also be considered. *Id.* Consideration of these factors promotes the legislative purpose behind the award of attorney fees, which is to ensure that a party who would not otherwise be able to afford an attorney is able to retain representation. *Id.* When one party is in a superior position to pay fees over the other party, an award is proper. *Id.*

[62] By virtue of their incomes, Husband's financial position is indisputably superior to Wife's. However, Wife received over $900,000 in marital assets and is

gainfully employed. Wife cites to no evidence that Husband engaged in conduct that resulted in fees greater than one would expect in a contentious divorce involving significant assets. Husband was also ordered to pay $20,000 for the debt incurred on the Discover card, which included charges for Wife's attorney fees between the filing date and the date the provisional order issued. Ex. Vol. VIII, Husband's Ex. L.

[63] For all of these reasons, we conclude that the trial court did not abuse its discretion when it denied Wife's request for attorney fees.

Conclusion

[64] The trial court did not abuse its discretion when it concluded that an equal division of the marital estate was just and reasonable or when it denied Wife's request for attorney fees. However, the court erred in several respects with regard to valuation of the marital assets and debts and credits to Husband for payments made during the provisional period. We instruct the trial court on remand to make the following corrections to its dissolution decree and to redistribute the marital estate accordingly to maintain equal division:

> 1. Correct its findings to reflect the Discover card debt, in the amount of $7,281.21, accrued pre-filing as a marital debt, and to reduce the $20,000 credit Husband received by that same amount as provided in the parties' provisional order.
>
> 2. Recalculate the credit owed to Husband for marital debts he paid as reflected in Husband's Exhibit MM when the parties' pre-filing marital debt owed on the Bank of America card is calculated at $352.24 and the Barclay's card is calculated at $6855.26.

3. Include the value of Husband's Jeep as a marital asset in the amount of $14,000.

4. Value the marital residence at $120,000, which reflects the appraised value of $140,000 minus $20,000 of necessary repairs on the date the dissolution petition was filed.

5. Remove the $75,000 award of personal property from the marital residence from Husband's side of the balance sheet and remove the $10,000 award of personal property from the Florida home from Wife's side of the balance sheet.

6. Remove the Washburn Financial Services checking accounts at Boonville Federal Savings Bank and Evansville Teacher's Federal Credit Union from the parties' marital assets because those account balances were included in the valuation of the business.

[65] Affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion.

Altice, J., and Weissmann, J., concur.