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**IN THE  
COURT OF APPEALS OF INDIANA**

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JOHN D. GEERLIGS,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 49A05-0812-CV-688
	)	
SUSAN M. HOFFMAN,	)	
	)	
Appellee-Respondent.	)	

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Richard A. Mann, Temporary Judge  
Cause No. 49D07-0311-DR-2068

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**September 11, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

John D. Geerligs appeals the trial court's decree of dissolution. He argues that the trial court denied him due process by conducting the dissolution hearing without his presence. Geerligs specifically contends that he was unable to attend the hearing because the courtroom doors were locked. However, we do not reach the issues raised by Geerligs. Instead, we *sua sponte* raise the following issue: whether the trial court's decree of dissolution is supported by sufficient evidence.

We reverse and remand.

### **FACTS AND PROCEDURAL HISTORY**

Geerligs and Susan M. Hoffman were married on June 4, 1983. No children were born during the marriage. On November 19, 2003, Geerligs filed a petition for legal separation. Roughly one year later, Geerligs filed a verified petition for dissolution of marriage in which he alleged that the marriage was irretrievably broken.

After numerous delays and a failed attempt at mediation, the trial court held a final dissolution hearing on October 20, 2008. Geerligs was not present at the hearing, nor did he have counsel present to represent him. Hoffman and her counsel did attend the hearing. Hoffman's testimony during the hearing, in total, was as follows:

- Q. Can you please state your name for the record?  
A. Susan M. Geerligs.  
Q. And what is your date of marriage, Miss Geerligs?  
A. 6/4/83.  
Q. And did your husband, John Geerligs, file this Petition for Dissolution of Marriage on November 19, 2003?  
A. Yes, he did.  
Q. And at the time that he filed the petition had you been a resident of the State of Indiana for more than six months?  
A. Yes, ma'am.

- Q. And had you been a resident of Marion County for more than three months?
- A. Yes.
- Q. And do you have any children as a result of your marriage?
- A. No.
- Q. Do you own any real property with your husband that you wish for the Court to divide?
- A. No.
- Q. Was the home that you owned at 4455 Central Avenue, Indianapolis, Indiana 46205, foreclosed upon?
- A. Yes, it was.
- Q. And was your husband responsible for making the payments associated with that real property?
- A. Yes, he was.
- Q. Are you requesting that your husband be solely responsible for any deficiency associated with the foreclosure?
- A. Yes, I am.
- Q. Have you and your husband divided any personal property that you own?
- A. Yes.
- Q. Are you requesting that you be awarded any jewelry, clothing and personal effects that are currently in your possession?
- A. Yes.
- Q. Do you own an automobile?
- A. Yes, I do.
- Q. And what kind of automobile do you own?
- A. Plymouth Breeze.
- Q. Are you requesting that the Court award the Plymouth Breeze to you?
- A. Yes.
- Q. Are you requesting that the Court award any automobile in your husband's possession to him?
- A. His car.
- Q. Are you requesting that any deficiency associated with his vehicle be given to him?
- A. Yes.
- Q. And the same with your Plymouth Breeze?
- A. Correct.
- Q. Do you have any bank accounts?
- A. No.
- Q. Are you requesting that any bank accounts that either you or your husband own be awarded to each of you individually?
- A. Yes.

- Q. And are you aware of whether your husband owns any retirement accounts?
- A. Disability retirement with the post office.
- Q. Are you requesting that if there's any retirement account that can be divided with the post office that you be awarded 50 percent of that?
- A. Yes, I am.
- Q. And are you requesting that your husband be awarded sole possession of any life insurance policies of which he is an owner?
- A. Yes.
- Q. With regard to debts, are you requesting that your husband be solely liable for any property--any taxes associated with any property that he [sic] awarded?
- A. Correct.
- Q. And are you requesting that he be obligated to pay any debts that he incurred after November [1]9, 2003?
- A. Yes.
- Q. And this would be including credit card debts?
- A. Yes.
- Q. Are you requesting that the Court order you to be responsible for the same types of debts?
- A. For my own debts, yes.
- Q. Okay. Have you incurred any attorney's fees as a result of this action?
- A. Yes.
- Q. Are you requesting that the Court order your husband to pay \$4,036 in attorney's fees?
- A. Yes, I am.
- Q. Are you requesting that he be ordered to pay that directly to your counsel?
- A. Yes.
- Q. Are you requesting that your maiden name of Susan M. Hoffman be restored to you?
- A. Yes, I am.

*Tr.* at 6-9. Hoffman did not introduce any exhibits during the hearing.

That same day, the trial court issued a decree of dissolution of marriage in which it entered findings and conclusions. In the decree, the trial court found that the marriage was irretrievably broken and dissolved the marriage. The trial court divided the marital

property pursuant to Hoffman's requests and ordered Geerlig's to pay Hoffman's attorney fees, which totaled \$4,036. Geerlig's now appeals.

### **DISCUSSION AND DECISION**

The dispositive issue is whether the trial court's decree of dissolution is supported by sufficient evidence. Where, as here, the trial court enters findings of fact and conclusions thereon pursuant to Indiana Trial Rule 52, we apply a two-tiered standard of review. *Tompa v. Tompa*, 867 N.E.2d 158, 163 (Ind. Ct. App. 2007). First, we determine whether the evidence supports the findings and then whether findings support the judgment. *Id.* "The trial court's findings and conclusions will be set aside only if they are clearly erroneous, that is, if the record contains no facts or inferences supporting them." *Id.* "A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made." *Id.* We will not reweigh the evidence or assess the credibility of witnesses and we will only consider the evidence most favorable to the judgment. *Id.* "We review conclusions of law de novo." *Id.*

In his petition for dissolution of marriage, Geerlig's alleged that there was an irretrievable breakdown of the marriage. A court must grant a dissolution of marriage once an irretrievable breakdown in the marriage is found to exist. Ind. Code § 31-15-2-3; *Clark v. Clark*, 578 N.E.2d 747, 751 (Ind. Ct. App. 1991).

When a petition for dissolution alleges "irretrievable breakdown," the key issue is whether there is a reasonable possibility of reconciliation. If there is a reasonable possibility, the trial court may continue the matter and order the parties to seek reconciliation through counseling; if not, the marriage is necessarily irretrievably broken and must be dissolved.

*Moore v. Moore*, 654 N.E.2d 904, 905 (Ind. Ct. App. 1995) (citations omitted).

Here, Geerligs did not testify at the dissolution hearing. Hoffman did testify, but never stated that the marriage was irretrievably broken or that the couple was incapable of reconciliation. Nor did Hoffman introduce any exhibits that would suggest this. The evidence presented at the hearing was insufficient to support the trial court's finding that the marriage was irretrievably broken. Accordingly, the trial court's conclusion that the statutory grounds for dissolution were satisfied is clearly erroneous.

This case suffers from additional evidentiary failures. Indiana Code section 31-15-7-4(b) provides that the trial court shall divide the marital property in a just and reasonable manner. It is presumed that an equal division of the marital property between the parties is just and reasonable. Ind. Code § 31-15-7-5. Here, although Hoffman testified to the assets and debts included in the marital estate, there is no evidence in the record of the value of the marital property. Without this evidence, we cannot determine whether the trial court equally divided the marital property, and thus, whether the trial court's division of the marital property was just and reasonable.

Because there is no evidence of the value of the marital property, it is not clear from the dissolution decree, but it is possible that the trial court did not equally divide the marital estate. An unequal division of the marital estate is permissible under Indiana Code section 31-15-7-5 if the presumption of an equal division of the marital property is rebutted through the introduction of evidence concerning the following factors:

- (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.

Ind. Code § 31-15-7-5. Here, there was no evidence of the contribution each spouse made to the acquisition of the property, whether the property was acquired before the marriage or through an inheritance or gift, the economic circumstances and earning ability of each spouse, or whether one of the parties dissipated the property. Therefore, to the extent that the trial court did not equally divide the marital property, there was insufficient evidence to support this as there was no evidence in the record that would rebut the presumption of an equal division of the marital property.

Additionally, we note that the trial court ordered Geerligns to pay Hoffman's attorney fees, which totaled \$4,036. Pursuant to Indiana Code section 31-15-10-1(a), a trial court "can order one spouse to pay a reasonable amount for the cost of the other spouse's maintaining or defending proceedings related to dissolution." *Mitchell v. Mitchell*, 875 N.E.2d 320, 325 (Ind. Ct. App. 2007), *trans. denied*. In awarding attorney fees, the trial court should "consider the spouses' resources, economic condition, ability to earn income, and other similar factors that would bear on the reasonableness of the

award.” *Id.* Here, there is no evidence in the record regarding Hoffman’s and Geerlig’s resources, economic condition, or ability to earn income, nor is there any indication in the dissolution decree that the trial court considered these factors. Furthermore, there is no evidence in the record that would suggest that Hoffman’s attorney fees were reasonable. Thus, the evidence was insufficient to support the trial court’s award of attorney fees.

Therefore, because there was insufficient evidence to support the dissolution decree, the trial court’s judgment is reversed and this case is remanded for further proceedings.

Reversed and remanded.

NAJAM, J., and BARNES, J., concur.