

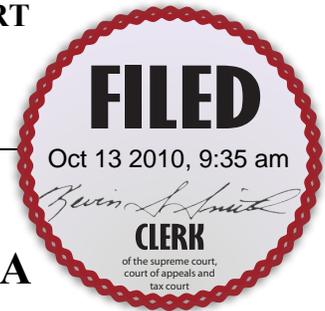
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**IN THE  
COURT OF APPEALS OF INDIANA**

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WILLARD BOLTON, )  
 )  
Appellant-Respondent, )  
 )  
vs. )  
 )  
NANETTE BOLTON, )  
 )  
Appellee-Petitioner. )

No. 34A05-1002-DR-59

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APPEAL FROM THE HOWARD SUPERIOR COURT  
The Honorable George A. Hopkins, Judge  
Cause No. 34D04-0804-DR-0426

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**October 13, 2010**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**MATHIAS, Judge**

The marriage of Willard Bolton (“Husband”) and Nanette Bolton (“Wife”) was dissolved in Howard Superior Court. Husband appeals and raises five issues, which we restate as:

- I. Whether the trial court abused its discretion by denying Husband’s request for permanent spousal maintenance;
- II. Whether the trial court abused its discretion in valuing certain marital assets;
- III. Whether the trial court abused its discretion by ordering an unequal division of the marital assets;
- IV. Whether the trial court abused its discretion by finding Husband to be in indirect contempt; and
- V. Whether the trial court abused its discretion by failing to award Husband attorney fees.

We affirm in part, reverse in part, and remand with instructions.

### **Facts and Procedural History**

Husband and Wife were married in 1987. There were no children born of the marriage. Wife is employed as a nurse and earns \$85,000-\$90,000 per year. Husband is unemployed and receives approximately \$10,000 per year in disability benefits. During the marriage, Husband and Wife amassed a large amount of personal property, including collectibles, firearms, tools, musical instruments, and seven vehicles.

Wife filed a petition for dissolution of marriage on April 17, 2008. On May 20, 2008, the trial court held a provisional hearing and issued an order precluding both parties from transferring, encumbering, concealing, selling, or otherwise disposing of any joint property without the written consent of the other or permission from the court. On

December 17, 2008, the trial court entered an order directing the parties to place all of their collectible items, firearms, vehicle parts, and tools into a secure storage unit and to provide an inventory to counsel of the items placed in storage. The parties were further ordered that only one key was to be issued for the storage unit and that it was to be held in the custody of the court. Wife was to pay the costs of storage.

On April 21, 2009, Wife filed an “Affidavit of Citation” in the trial court alleging that Husband had disobeyed the court’s December 17, 2008 order by failing to deposit personal property in his possession into storage. A hearing was held on April 29, 2009, and on May 4, 2009, the trial court issued a ruling finding Husband to be in indirect contempt. The trial court withheld imposing any sanctions on Husband, provided that he strictly obey all further orders of the court.

The trial court also ordered that the collectibles and certain other marital property be sold at auction. The parties were allowed to bid on the items, and the amounts they bid to “purchase” items at the auction were to be deducted from their portion of the proceeds. Wife’s “purchases” at the auction totaled approximately \$400.00, while Husband’s “purchases” exceeded \$18,000.00.

The final hearing was held in two parts, on August 24 and October 21, 2009. At the hearing, Wife alleged that Husband had disposed of or secreted items of marital property. Husband testified that after the issuance of the May 20, 2008 provisional order prohibiting the parties from selling or otherwise disposing of marital property, he sold two vehicles, a 1983 Buick and a 1970 AMC Rebel. He did not dispute that the vehicles were marital property, and he admitted to signing Wife’s name to the titles. Husband

also testified that he broke into a storage unit and removed items without Wife's consent or the trial court's permission.

On December 7, 2009, the trial court issued its final ruling dissolving the marriage and dividing the marital assets. The trial court awarded approximately sixty percent of the net marital estate to Wife and the remaining forty percent to Husband. In so doing, the court charged the value of the "missing" items listed in Petitioner's Exhibit 2 ("Exhibit 2") and Petitioner's Exhibit 11 ("Exhibit 11") to Husband. The trial court also charged the sale prices of the 1983 Buick and 1970 AMC Rebel to Husband and found that Husband had disobeyed an order of the trial court by selling the vehicles. Further, the trial court found Husband in indirect contempt and sentenced him to thirty days in the Howard County Jail, with execution of the sentence suspended provided that Husband strictly obey all orders of the court. Husband now appeals. Additional facts will be provided as necessary.

### **Standard of Review**

Where, as here, the trial court enters findings of fact and conclusions *sua sponte*, we review its findings and conclusions to determine whether the evidence supports the findings and whether the findings support the judgment. Helm v. Helm, 873 N.E.2d 83, 87 (Ind. Ct. App. 2007). We will set aside the trial court's findings only if they are clearly erroneous, that is, where our review of the record leaves us with a firm conviction that a mistake was made. Id. We consider only the evidence most favorable to the judgment, and we will not reweigh the evidence or judge witness credibility. Id. Further, *sua sponte* findings control only the issues they cover, and we apply a general judgment

standard to those issues on which the trial court has not found. Id. Thus, we examine the record and affirm on any theory the evidence of record supports. Id.

### **I. Spousal Maintenance**

Husband initially challenges the trial court's denial of his request for permanent spousal maintenance. An award of spousal maintenance is within a trial court's sound discretion, and we will reverse only when the decision is clearly against the logic and effect of the facts and circumstances of the case. Augspurger v. Hudson, 802 N.E.2d 503, 508 (Ind. Ct. App. 2004). In determining whether the trial court has abused its discretion in making its spousal maintenance determination, we presume that the trial court properly considered the applicable statutory factors in reaching its decision. Bizik v. Bizik, 753 N.E.2d 763, 769 (Ind. Ct. App. 2001), trans. denied. Our task is limited to determining whether there is sufficient evidence to support the trial court's judgment. Moore v. Moore, 695 N.E.2d 1004, 1008 (Ind. Ct. App. 1998).

Husband claims that he is permanently and totally incapacitated as a result of injuries he sustained in two separate car accidents, and bases his claim for maintenance on Indiana Code section 31-15-7-2(1) (2008), which provides:

If the court finds a spouse to be physically or mentally incapacitated to the extent that the ability of the incapacitated spouse to support himself or herself is materially affected, the court may find that maintenance for the spouse is necessary during the period of incapacity, subject to further order of the court.

To award maintenance under this provision, the trial court must make a threshold determination that (1) the spouse physically or mentally incapacitated, and (2) that the incapacity materially affects the spouse's self-supportive ability. Bizik, 753 N.E.2d at

769. A request for maintenance must be evaluated by giving a strict interpretation to the statute. Cannon v. Cannon, 758 N.E.2d 524, 526 (Ind. 2001).

In denying Husband's request for maintenance, the trial court did not enter specific findings. Therefore, we may affirm on any theory supported by the record. Helm, 873 N.E.2d at 87. Husband claims that "[b]oth parties agree that [H]usband is disabled." Appellant's Br. at 7. In support of this statement, Husband directs us to Wife's testimony that Husband receives disability benefits and has health problems. However, Husband fails to cite to any portion of the record reflecting his assertion that the parties agreed that Husband is disabled, and we decline to scour the record in search of support for Husband's contention. See Vandenburgh v. Vandenburgh, 916 N.E.2d 723, 729-30 (Ind. Ct. App. 2009). Husband also directs our attention to Respondent's Exhibits M and N, two letters from Husband's physicians in which the physicians opine that Husband is permanently and totally disabled. However, the trial court was in no way obligated to accept the opinions of Husband's physicians.

Even assuming that Husband is incapacitated to some degree, the evidence reasonably supports the conclusion that Husband's ability to support himself is not materially affected. Husband receives approximately \$10,000.00 per year in disability benefits, and he testified that he earns additional income by buying and selling car parts. Tr. pp. 70, 251. Moreover, Husband "purchased" more than \$18,000.00 worth of collectibles and other valuable personal property at the auction. Under these facts and circumstances, we cannot conclude that the trial court abused its discretion by denying Husband's request for permanent spousal maintenance.

## II. Valuation of Marital Assets

Husband also argues that the trial court abused its discretion in valuing certain marital assets. The trial court has broad discretion in ascertaining the value of property in a dissolution action, and its valuation will only be disturbed for an abuse of that discretion. Hartley v. Hartley, 862 N.E.2d 274, 283 (Ind. Ct. App. 2007). We will find no abuse of discretion if the trial court's decision is supported by sufficient evidence or reasonable inferences therefrom. O'Connell v. O'Connell, 889 N.E.2d 1, 13 (Ind. Ct. App. 2008). A trial court abuses its discretion when there is no evidence in the record supporting its decision to assign a particular value to a marital asset. Id.

In its final ruling dissolving the marriage and dividing the marital assets, the trial court awarded the values of the items listed in Exhibits 2 and 11, respectively \$12,460.00 and \$2,555.00, to Husband. With the exception of two items, listed in Exhibit 2 as "Marilyn Monroe Dolls" and "GI Joe Footlocker," Husband does not dispute that the items listed in the exhibits went missing from his possession during the pendency of the dissolution proceedings. Husband argues that the Marilyn Monroe Dolls and the GI Joe Footlocker are both "checked off Petitioner's Exhibit 11 as being logged in by the auction house, and sold at auction." Appellant's Br. at 9. Exhibit 11 contains an entry for "2 Marilyn Monroe Dolls" and two separate entries for "Marilyn Monroe Barbie," as well as an entry for "6 GI Joes and footlocker." While there are check marks to the right of each of these listings, it is unclear what these check marks are meant to signify. Husband has not identified any portion of the record supporting his contention that the check marks mean that the items were sold at auction, and neither party has provided a comprehensive

list of items sold at the auction. Accordingly, we cannot conclude that the trial court abused its discretion by charging the value of these items to Husband.

Next, Husband argues that there are duplicate listings of personal property contained in Exhibit 2 and Exhibit 11, and the trial court abused its discretion by charging the value of these items to him twice. Husband argues that the following are duplicate listings:

<b>Item</b>	<b>Value listed in Exhibit 2</b>	<b>Value listed in Exhibit 11</b>
Drill Press	\$75.00	\$75.00
Hydraulic Press	\$60.00	\$60.00
Car Dolly	\$100.00	4 x \$25.00 = \$100.00
Peavy Amp	\$75.00	\$75.00
Table Saw	\$30.00	\$30.00
Twelve Toy Motorcycles	\$120.00	12 x \$10 = \$120.00
Pocket Watches	\$500.00	No value listed
Thermometers	\$500.00	No value listed
Dean Flying V Guitar	\$100.00	No value listed
Signed Country Guitar	\$400.00	\$150.00
Roseann Cash Dress	\$350.00	\$350.00
Pipes	\$100.00	No value listed
Iggy Pop Signature	\$50.00	\$5.00
Ozzy Osbourne Poster	\$50.00	\$3.00
<b>TOTAL:</b>	<b>\$2,510.00</b>	<b>\$968.00</b>

We agree that the trial court inadvertently charged the value of these items to Husband twice. We conclude that \$968.00, the total value of the duplicate items listed in Exhibit 11, must be deducted from Husband's asset award. We therefore remand with instructions to the trial court to subtract \$968.00 from the amount charged to Husband for the items listed in Exhibit 11 and to make corresponding deductions from the net and gross marital estate.

Husband next argues that the trial court failed to include the balances of two bank accounts in Wife's column on the asset sheet. In support of this argument, Husband directs our attention to Wife's testimony that on the date of separation, she had an account at Solidarity Federal Credit Union with a balance of \$310.00 and an account at First Farmer's Bank with a balance of \$704.15.

Regarding the Solidarity Federal Credit Union account, we first note that when Wife testified that it had a balance of \$310.00, she was looking at an account statement labeled Respondent's Exhibit C. Although Husband's counsel and Wife both stated that it reflected a balance of \$310.00 as of April 16, 2008, the actual amount reflected in the exhibit is \$210.00. The trial court included this amount, labeled "Solidarity FCU," in Wife's asset column. Appellant's App. p. 18. Accordingly, Husband's argument regarding the Solidarity Federal Credit Union account is invited error at best.

With regard to the First Farmer's Bank account, Wife testified that Husband closed this account before the date of the final hearing. Tr. p. 159. The trial court has discretion to value the marital assets at any date between the date of filing the dissolution petition and the date of the final hearing. Bertholet v. Bertholet, 725 N.E.2d 487, 497 (Ind. Ct. App. 2000). Thus, the trial court did not abuse its discretion by assigning a zero value to this account and omitting it from the asset sheet.

Husband also argues that the trial court abused its discretion by failing to include \$500.00 for "Personal effects" in Wife's asset column, as proposed by Wife in Petitioner's Exhibit 5. Because it appears that the trial court may have inadvertently

failed to include the \$500.00 in Wife's asset column, on remand, we instruct the trial court to consider whether this amount should be added to Wife's award.

Next, Husband argues that the trial court abused its discretion in valuing a 1970 Mustang. The trial court valued the Mustang at \$19,000.00, the amount listed in Petitioner's Exhibit 5, Wife's proposed asset sheet. Husband argues that the trial court's valuation of the Mustang was not supported by sufficient evidence because the vehicle sustained significant damage while in Wife's possession after the date of separation and because Wife gave no indication of how she arrived at the \$19,000.00 amount.

Husband's argument is simply an invitation to reweigh the evidence and judge the credibility of witnesses, which we will not do. The trial court specifically rejected Husband's claim that the Mustang was damaged while in Wife's possession. The trial court's finding was supported by Kokomo Police Officer Greg Richardson's testimony that he observed the vehicle in an impound lot and saw no damage. Regardless, even if the vehicle were damaged, the trial court could have chosen to value the Mustang on the date of separation, prior to the alleged damage. See Bertholet, 725 N.E.2d at 497.

As to the valuation of the Mustang without the alleged damage, Wife claimed that the vehicle was worth \$19,000.00. Ex. Vol., Petitioner's Ex. 5. Husband introduced an appraisal dated April 24, 1999, in which the appraiser opined that the Mustang was worth \$18,000.00. Ex. Vol., Respondent's Ex. S, Tr. pp. 267-68. The trial court valued the Mustang at \$19,000.00, which was within the range of values supported by the evidence. The trial court did not abuse its discretion in valuing the Mustang.

### III. Unequal Division of Marital Assets

Next, Husband argues that the trial court erred when it awarded sixty percent of the marital estate to Wife. The disposition of marital assets is within the trial court's sound discretion, and we will reverse only for an abuse of that discretion. Eye v. Eye, 849 N.E.2d 698, 701 (Ind. Ct. App. 2006). In so doing, we consider only the evidence most favorable to the trial court's decision, without reweighing the evidence or assessing the credibility of witnesses. Id. A trial court abuses its discretion if its decision is clearly against the logic and effect of the facts and circumstances before the court, or if the trial court has misinterpreted the law or disregards evidence of factors listed in the controlling statute. Id.

Pursuant to Indiana Code section 31-15-7-5 (2008), the trial court is required to divide the marital estate in a just and reasonable manner. An equal division is presumed just and reasonable, but a party may rebut this presumption by presenting evidence that an equitable division would not be just and reasonable, including evidence concerning the following factors:

- (1) The contribution of each spouse to the acquisition of 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. A party challenging the trial court’s division of marital property must overcome a strong presumption that the trial court “considered and complied with the applicable statute, and that presumption is one of the strongest presumptions applicable to our consideration on appeal.” McCord v. McCord, 852 N.E.2d 35, 43 (Ind. Ct. App. 2006), trans. denied (quoting DeSalle v. Gentry, 818 N.E.2d 40, 44 (Ind. Ct. App. 2004)).

Here, the trial court found that the presumption in favor of equal division was rebutted for the following reasons:

- a. The husband disposed of property in disobedience of a court order.
- b. The wife has incurred post separation debt in an amount in excess of \$27,000.00.
- c. The husband does not avail himself of public assistance that may be available to him.
- d. The husband broke into storage facilities and removed an unknown amount of the marital property.
- e. The husband secreted items of marital property.

Appellant’s App. p. 16.

Husband first argues that the trial court’s finding that Husband does not avail himself of public assistance that may be available to him is unsupported by the record. In support of this contention, Husband directs our attention to his testimony at the final hearing, where he claimed to have been “fighting” to get food stamps and Medicaid. Tr. p. 278. However, Husband presented no independent evidence that he had applied for government assistance. Additionally, at a previous provisional hearing, Husband testified as follows:

Q: Are you eligible for food stamps?

A: Don't know yet. I figure if I'm taking them, that means there's somebody out there worse that ain't getting them. I wasn't living on food stamps prior to and leaning on the system and I don't feel that I should burden the system because my wife picked a 27 year old boyfriend.

Q: Are you getting any money from any government agencies to help you pay for the utilities?

A: No, sir, I do not.

Tr. p. 70. This evidence supports the trial court's finding that husband does not avail himself of public assistance that may be available to him. Accordingly, we cannot conclude that the finding was clearly erroneous.

Husband also claims that even if the finding that Husband does not pursue available government assistance is accurate, the trial court's consideration of that finding was improper. However, Husband makes no argument and cites no authority in support of this assertion. Therefore, we deem this argument waived for failure to make a cogent argument. See Ind. App. R. 46(A)(8)(a).

Next, Husband appears to argue that the trial court's finding that Wife incurred post-separation debt in excess of \$27,000.00 is clearly erroneous. However, even Husband testified at the final hearing that Wife incurred post-separation credit card debt well in excess of \$27,000.00. Tr. p. 250. Additionally, Wife testified that after filing for dissolution, she took out a loan against her retirement account in an unspecified amount and incurred \$13,000.00 in credit card debt and \$2,056.00 in storage fees. Tr. pp. 124-25, 132, 302. Under these facts and circumstances, and considering only the evidence most favorable to the judgment, we cannot conclude that the trial court's finding is clearly erroneous.

Husband also argues that it was improper for the trial court to consider Wife's post-separation debt in ordering an unequal division of property. In support of this contention, Husband correctly notes that "the marital estate closes on the date the dissolution is filed, and debts incurred by a party after that point are not to be included in the marital pot." Appellant's Br. at 18; see also Moore v. Moore, 695 N.E.2d 1004, 1009 (Ind. Ct. App. 1998). However, the trial court did not include Wife's post-separation debt within the marital estate; rather, the court considered Wife's post-separation debt when weighing the statutory factors to determine whether an unequal division of property was just and equitable. Because Wife's post-separation debt relates directly to her economic circumstances at the time the property disposition was to become effective, it was not an improper consideration for the trial court. See Ind. Code § 31-15-7-5(3).

The remaining findings supporting the trial court's unequal division of property are clearly supported by the record, and Husband's arguments to the contrary are simply an invitation to reweigh the evidence and judge the credibility of witnesses, which we will not do. Husband testified that he sold the 1983 Buick and the 1970 AMC Rebel in violation of the court's order of May 20, 2008, and that he broke into a storage unit and removed property. Additionally, Wife testified that Husband secreted items of marital property. Each of these findings bear on Husband's conduct as related to the dissipation of marital property and support an unequal division of property in favor of Wife. See Ind. Code § 31-15-7-5(4). Accordingly, under these facts and circumstances, we cannot

conclude that the trial court abused its discretion by ordering an unequal division of marital assets.<sup>1</sup>

#### **IV. Contempt**

Husband also challenges the trial court's findings of contempt. The determination of whether a person is in contempt of a court order is within the trial court's discretion and, again, we will reverse only where an abuse of that discretion has been shown. Mitchell v. Mitchell, 785 N.E.2d 1194, 1199 (Ind. Ct. App. 2003). When reviewing a contempt order, we consider only the evidence favorable to the judgment, and we reverse only if there is no evidence to support the order. MacIntosh v. MacIntosh, 749 N.E.2d 626, 629 (Ind. Ct. App. 2001), trans. denied.

Indirect contempt involves the willful disobedience of a lawfully entered court order of which the offender had notice. Id. To support a contempt finding, the court's order must be clear and certain such that there is no question regarding what a person may or may not do. Mitchell, 785 N.E.2d at 1198. Thus, a party may not be held in contempt for failing to comply with an ambiguous or indefinite order. Id.

Indirect contempt proceedings are to be conducted with an array of due process protections, including notice and an opportunity to be heard. Henderson v. Henderson, 919 N.E.2d 1207, 1210 (Ind. Ct. App. 2010). These protections are set forth in Indiana Code section 34-47-3-5 (1999), which provides:

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<sup>1</sup> Even after the adjustments discussed in Section II, *supra*, the proportion of assets awarded to Husband and Wife remains approximately the same, with Wife receiving approximately sixty percent of the marital estate and Husband receiving the remainder. Therefore, on remand, the trial court need not adjust the proportion of assets awarded to the parties, other than to make the changes discussed in Section II.

(a) In all cases of indirect contempts, the person charged with indirect contempt is entitled:

- (1) before answering the charge; or
  - (2) being punished for the contempt;
- to be served with a rule of the court against which the contempt was alleged to have been committed.

(b) The rule to show cause must:

- (1) clearly and distinctly set forth the facts that are alleged to constitute the contempt;
- (2) specify the time and place of the facts with reasonable certainty, as to inform the defendant of the nature and circumstances of the charge against the defendant; and
- (3) specify a time and place at which the defendant is required to show cause, in the court, why the defendant should not be attached and punished for such contempt.

(d) A rule provided for under subsection (b) may not issue until the facts alleged to constitute the contempt have been:

- (1) brought to the knowledge of the court by an information; and
- (2) duly verified by the oath of affirmation of some officers of the court or other responsible person.

Here, the trial court found Husband to be in indirect contempt on two separate occasions. Husband was first found to be in indirect contempt on May 4, 2009, for failing to deposit items of personal property into a storage unit as required by the trial court's order of December 17, 2008. Husband was again found to be in indirect contempt in the trial court's final ruling dissolving the marriage dated December 7, 2009. We will consider each finding of contempt in order.

*A. Order of May 4, 2009*

Husband first challenges the trial court's May 4, 2009 finding of indirect contempt, arguing that the evidence is insufficient to support such a determination. Specifically, Husband contends that his failure to place items in his possession into storage was Wife's fault. In support of this assertion, Husband notes that Wife was

ordered to pay the initial cost of the storage unit. Husband argues that after he was ordered to place the items into storage, he located a suitable storage unit and notified his counsel, who then informed Wife's counsel by letter, but Wife failed to pay the costs of storage.

On April 21, 2009, Wife filed an "Affidavit of Citation" alleging that Husband had disobeyed the trial court's December 17, 2008 order. It appears from the chronological case summary that a rule to show cause was issued and served on Husband on the same date, and neither party argues that no rule to show cause was issued. Wife testified at the April 29, 2009 hearing that she had never seen the letter from Husband's counsel or been notified that Husband had requested money for a unit. Wife testified further that she placed the items in her possession in a storage unit immediately after the being ordered to do so, and that there was room for Husband to store at least some of the items in his possession in that unit. Because Wife's testimony supports the trial court's May 4, 2009 contempt finding, we cannot conclude that the trial court abused its discretion in finding Husband in contempt.

*B. Order of December 7, 2009*

Husband also challenges the trial court's indirect contempt finding in its final ruling dissolving the marriage dated December 7, 2009. In that ruling, the trial court found that Husband had disobeyed the order of May 20, 2008 by selling the 1983 Buick and the 1970 AMC Rebel. At the final hearing, Husband admitted to selling the vehicles in violation of the court order.

Although Husband clearly violated the trial court's May 20, 2008 order, no rule to show cause was issued. In fact, Wife did not request issuance of a rule to show cause order against Husband. When no rule to show cause is issued as required by Indiana Code section 34-47-3-5, courts generally cannot hold a person in indirect contempt. Henderson, 919 N.E.2d at 1211. Moreover, Wife concedes the error. Appellee's Br. at 16. We therefore reverse the trial court's December 7, 2009 finding of contempt against Husband.

### V. Attorney Fees

Finally, Husband argues that the trial court abused its discretion by denying his request for attorney fees. Indiana Code section 31-15-10-1 (2008) provides that the trial court *may* order a party to pay a reasonable attorney fee for the opposing party. We review a trial court's decision to award attorney fees for an abuse of discretion. Thompson v. Thompson, 811 N.E.2d 888, 927 (Ind. Ct. App. 2004), trans. denied. However, Indiana Code section 31-15-10-1 does not affirmatively require the trial court to award attorney fees and "[t]here is no abuse of discretion for the trial court not to do that which it is not required to do." Russell v. Russell, 693 N.E.2d 980, 984 (Ind. Ct. App. 1998), trans. denied (quoting Maloblocki v. Maloblocki, 646 N.E.2d 358, 364 (Ind. Ct. App. 1995)).

Husband argues that he is entitled to attorney fees because of the disparity between his income and that of Wife. However, "a trial court is not required to award fees based on disparity of income alone." Id. Furthermore, Husband's conduct throughout the dissolution proceedings supports the trial court's decision not to award

attorney fees. Accordingly, the trial court did not abuse its discretion by failing to award Husband attorney fees.

### **Conclusion**

The trial court abused its discretion as to only two minor issues in this contentious divorce: the valuation of certain marital assets by inadvertently charging them to Husband twice, and in its finding Husband in contempt in its December 7, 2009 order without proper notice through a rule to show cause. We further note possible confusion about whether the trial court failed to appropriately list \$500.00 of “Personal effects” in its division of the parties’ property. As to all other claims made by Husband on appeal, the trial court’s decisions were well within the evidence and well within its discretion.

Affirmed in part, reversed in part, and remanded with instructions.

BAKER, C.J., and NAJAM, J., concur.