

Pursuant to Ind. Appellate Rule 65(D),
this Memorandum Decision shall not be
regarded as precedent or cited before
any court except for the purpose of
establishing the defense of res judicata,
collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

DANIEL J. MOORE
Laszynski & Moore
Lafayette, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

IN RE: THE MARRIAGE OF:)
)
TINA L. GREEN,)
)
Appellant/Petitioner,)
)
 vs.) No. 79A02-0909-CV-887
)
BRIAN A. GREEN,)
)
Appellee/Respondent.)

APPEAL FROM THE TIPPECANOE CIRCUIT COURT
The Honorable Donald L. Daniel, Judge
Cause No. 79C01-0804-DR-52

May 19, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

On appeal, Appellant/Petitioner Tina L. Green (“Wife”) challenges the trial court’s disposition of the marital estate following the dissolution of her marriage to Brian A. Green (“Husband”). Specifically, Wife argues that the trial court abused its discretion in including in the marital estate a \$36,507 bonus received by Wife from her employer. Alternatively, Wife argues that even if the court did not abuse its discretion in including the \$36,507 bonus in the marital estate, the trial court abused its discretion in valuing the bonus at its pre-tax amount rather than its post-tax amount. We affirm.

FACTS AND PROCEDURAL HISTORY

Husband and Wife were married on April 17, 1997. There were no children born of their marriage, although both Husband and Wife had children from previous marriages. Wife brought certain assets, including the marital home, and minimal debts to the marriage. Husband brought no assets and an undetermined amount of credit card debt. Both parties were employed throughout the marriage and maintained separate bank accounts. The parties accrued various assets and incurred various debts during the course of the marriage.

On April 4, 2008, Wife petitioned for dissolution of the parties’ marriage. The trial court conducted a final hearing on Wife’s petition beginning on March 5, and concluding on March 24, 2009. On May 27, 2009, the trial court issued its decree of dissolution dissolving the parties’ marriage and dividing the marital property. Both parties subsequently filed motions to correct error, which were later deemed denied. This appeal follows.

DISCUSSION AND DECISION

I. Standard of review

Initially, we note that Husband did not file an appellee's brief. When an appellee fails to submit a brief, we do not undertake the burden of developing arguments for him and we apply a less stringent standard of review with respect to the showing necessary to establish reversible error. *Zoller v. Zoller*, 858 N.E.2d 124, 126 (Ind. Ct. App. 2006). "That is, we may reverse if the appellant establishes *prima facie* error, which is an error at first sight, on first appearance, or on the face of it." *Id.*

The disposition of marital assets, however, is an exercise of the trial court's sound discretion. *Eye v. Eye*, 849 N.E.2d 698, 701 (Ind. Ct. App. 2006). Therefore, we review a claim that the trial court improperly divided marital property for an abuse of discretion. *Id.* In doing so, we consider the evidence most favorable to the trial court's disposition of the property, without reweighing the evidence or assessing the credibility of witnesses. *Id.* "An abuse of discretion occurs if the trial court's 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.* (quotation omitted).

II. Whether the Trial Court Abused its Discretion in Including Wife's \$36,507 Bonus in the Marital Estate

Wife contends that the trial court abused its discretion by including her \$36,507 bonus in the marital estate because the bonus, which she claims to have received on April 18, 2008, should be considered post-separation income. Indiana Code section 31-15-7-4 (2008) provides that in an action for the dissolution of a marriage, the court shall divide the property of the parties acquired by either spouse after the marriage but before final separation of the parties. "Final separation" is defined as "'the date of the filing of the petition for dissolution

of marriage.”” *Thompson v. Thompson*, 811 N.E.2d 888, 917 n.24 (Ind. Ct. App. 2004) (quoting *Wilson v. Wilson*, 732 N.E.2d 841, 846 (Ind. Ct. App. 2000); *Harris v. Harris*, 690 N.E.2d 742, 745 (Ind. Ct. App. 1998)). Indiana Code section 31-15-7-4 does not define the term “acquired,” however, this court has determined that for the purpose of Indiana Code section 31-15-7-4, one has “acquired” marital property if they have a vested present interest. *See generally Gard v. Gard*, 825 N.E.2d 907, 910 (Ind. Ct. App. 2005) (providing that in a dissolution proceeding, the trial court is mandated, by statute and case law, to divide the assets and liabilities of the parties to the proceeding in which they have a vested present interest).

The evidence most favorable to the trial court’s determination establishes that Wife had a vested present interest in the \$36,507 bonus as of the date of the filing of petition for dissolution of the marriage. The \$36,507 bonus was earned from her work as an account representative during the fourth quarter of 2007. Wife did not file her Petition for Dissolution of Marriage until April 4, 2008. Therefore, we conclude that because Wife “acquired” the bonus when it was earned during the course of the parties’ marriage, Wife’s \$36,507 bonus was properly considered as part of the marital estate. *See Simpson v. Simpson*, 650 N.E.2d 333, 336 (Ind. Ct. App. 1995) (providing that husband’s bonus was properly considered a part of the marital estate because it was contingent upon his employment during the course of the parties’ marriage). In addition, Wife offers no authority suggesting that property earned during a marriage but not received until after a dissolution

petition is filed has not been “acquired” pursuant to Indiana Code section 31-15-7-4.¹ Thus, the trial court did not abuse its discretion in this regard.

III. Whether the Trial Court Abused its Discretion in Valuing a Certain Marital Asset

Alternatively, Wife contends that the trial court abused its discretion in valuing a certain marital asset, namely the \$36,507 bonus.

In a dissolution action, the trial court has broad discretion in determining the value of property, and its valuation will only be disturbed for an abuse of discretion. So long as there is sufficient evidence and reasonable inferences to support the valuation, an abuse of discretion does not occur. We will not weigh the evidence and will only consider the evidence in the light most favorable to the judgment.

Hartley v. Hartley, 862 N.E.2d 274, 283 (Ind. Ct. App. 2007) (quoting *Breeden v. Breeden*, 678 N.E.2d 423, 425 (Ind. Ct. App. 1997)).

Wife claims that the trial court intended to order an unequal distribution of the marital property in her favor, with fifty-five percent of the marital property being awarded to her and forty-five percent being awarded to Husband. Wife also claims that the trial court’s order did not result in this intended unequal distribution of the marital property because the trial court did not assign the proper value to one of the marital assets, namely, the bonus she received for her work in the fourth quarter of 2007. However, Wife’s claim regarding the trial court’s alleged intended unequal division of the marital property is not supported by the record.

¹ We note that the opposite interpretation would allow an individual to exclude funds from the marital estate simply by requesting that an employer hold earned compensation until after the individual has filed a dissolution petition. We cannot believe that such an interpretation was the legislature’s intent in adopting Indiana Code section 31-15-7-4.

Nothing in the record suggests that the trial court intended to award an unequal distribution of the marital property based upon such specific percentages of the marital estate. To the contrary, the record shows that the trial court provided for an unequal distribution of the marital property in two specific areas only. First, the trial court found that an unequal distribution of the parties' assets was warranted *to the extent that* Wife had accumulated a State Farm Savings and Thrift Plan prior to the marriage because the State Farm Plan had been kept separate as Wife's property and no contributions were made to the State Farm Plan during the course of the parties' marriage. Second, the trial court found that an unequal division of the assets *or* debts was warranted in light of the parties' economic circumstances at the time of the disposition of the property. Consistent with this finding, the trial court ordered an unequal division of the debts accrued during the course of the parties' marriage by attributing approximately sixty-seven percent of the couple's debts to Husband. Again, the record establishes that the trial court's findings regarding an unequal distribution of the marital property were limited to these two specific areas, and we are unpersuaded by Wife's claim to the contrary.

Wife additionally challenges the trial court's valuation of the bonus she received in connection to her work in the fourth quarter of 2007. Specifically, Wife argues that the trial court abused its discretion in finding that \$36,507 represented the post-tax rather than pre-tax value of the bonus. Upon review, we recognize that \$36,507 appears to represent the pre-tax value of Wife's bonus. However, we acknowledge that the trial court consistently used the pre-tax value of all compensation received by the parties in its decree of dissolution. In light

of the trial court's consistent use of the pre-tax value of all compensation received by the parties, we conclude that the trial court likely intended to value all compensation received by the parties, including the bonus at issue, at their pre-tax values.² Because the trial court valued all other compensation, including that attributable to Husband, in terms of its pre-tax value, Wife would not have been disserved by the court's valuation of her bonus at its pre-tax value as well. We find no abuse of discretion.

Furthermore, to the extent that Wife claims that the trial court abused its discretion by assigning the pre-tax value to the compensation received by the parties, including the bonus at issue in the instant matter, we disagree. In support, Wife cites *In Re the Marriage of Mulvihill*, 471 N.E.2d 10 (Ind. Ct. App. 1984). However, *Mulvihill* does not support the proposition that a trial court abuses its discretion unless it uses a post-tax valuation of compensation received by the parties at issue when dividing the parties' assets in divorce proceedings, as Wife asserts. Rather, in *Mulvihill*, this court concluded that based on the facts and circumstances before the court, it was not an abuse of discretion for the trial court to consider the post-tax value of certain assets that were alleged to have been placed in an oral trust. 471 N.E.2d at 14. Wife has presented no authority suggesting that a trial court abuses its discretion merely by assigning the pre-tax value to compensation received by the parties in divorce proceedings, and we are aware of none.

The judgment of the trial court is affirmed.

² While we acknowledge that the trial court appears to have mistakenly noted that \$36,507 represented the post-tax value of Wife's bonus, we conclude that in light of the trial court's consistent use of the pre-tax values of all compensation received by the parties, such statement was likely a typographical error and we are unpersuaded that this error amounted to an abuse of the trial court's discretion.

RILEY, J., and MATHIAS, J., concur.