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IN THE
COURT OF APPEALS OF INDIANA

IN RE THE MARRIAGE OF:	)	
JOSEPH M. SIPE,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 32A01-1001-DR-83
	)	
LAURIE L. SIPE,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE HENDRICKS SUPERIOR COURT
The Honorable Karen M. Love, Judge
Cause No. 32D03-0806-DR-79

September 8, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Joseph Sipe appeals the calculation of child support and division of marital property in the dissolution of his marriage to Laurie Sipe. He presents two issues for our review:

1. Whether the trial court erred in calculating Joseph's income; and

2. Whether the trial court abused its discretion in assigning and determining the value of some of the marital property.

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

FACTS AND PROCEDURAL HISTORY

Joseph and Laurie Sipe were married on September 25, 1982. During their marriage, they had three children: A.S., S.S., and E.S. Laurie filed for dissolution of marriage on May 11, 2007. At the time of the filing, only A.S. was emancipated. The divorce was final on December 30, 2009. At that time, S.S. was the only unemancipated child.[1]

DISCUSSION AND DECISION

1. 2006 Child Support Calculations

Joseph alleges the trial court erred when imputing income to him for purposes of determining retroactive child support for the years during the dissolution proceedings. The standard of review for child support awards is well settled. *McGill v. McGill*, 801 N.E.2d 1249, 1251 (Ind. Ct. App. 2004). We begin with the understanding that support calculations are made utilizing the income shares model set forth in the Indiana Child Support Guidelines. *Id*. These Guidelines apportion the cost of supporting children between the parents according to their means. *Id*. A calculation of child support under the Guidelines is

[1] E.S. passed away in June 2009.

presumed valid. *Id*. Therefore, we will not reverse a support order unless the determination is clearly against the logic and effect of the facts and circumstances. *Id*. When reviewing a child support order, we do not revisit weight and credibility issues but confine our review to the evidence and reasonable inferences therefrom favorable to the trial court's decision. *Id*.

Joseph was self-employed as an excavator at the time of the dissolution proceedings. In the final order of dissolution the trial court indicated:

> 68. In 2006, Father reported on his federal income tax return a profit of $16,291 from the excavating business. Father deducted $110,750 in depreciation. $107,659 of this depreciation was under Section 179 of the Internal Revenue Code[2] which permits a person to deduct the entire cost of equipment in the year the equipment was purchased. The useful life of the excavator, tractor, dump bed, etc. is greater than one year. Father purchased $107,659 in equipment during 2006 for the business. The equipment purchased is listed in the tax return. The age of the equipment is not listed. The Court recognizes that a person in the excavation business would have expense of the use of equipment and should be allowed to deduct depreciation over the useful life of the equipment as a business expense for child support purposes. A useful life of five years was shown on the joint tax return and the Court uses a five-year useful life in its calculation of depreciation for child support purposes.

(App. at 45) (footnote added). The court then calculated the 2006 depreciation for the equipment to be $16,533, which changed Joseph's 2006 income for child support purposes to $110,508.

Ind. Child Supp. Guideline 3(A)(2) states:

Weekly Gross Income from self−employment, operation of a business, rent,

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[2] 26 U.S.C. § 179(a) states in relevant part, "Treatment as expenses.--A taxpayer may elect to treat the cost of any section 179 property as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the section 179 property is placed in service." However, there was a limitation of $25,000 for such a deduction in 2006. 26 U.S.C. § 179(b)(1).

> and royalties is defined as gross receipts minus ordinary and necessary expenses. In general, these types of income and expenses from self−employment or operation of a business should be carefully reviewed to restrict the deductions to reasonable out−of−pocket expenditures necessary to produce income. These expenditures may include a reasonable yearly deduction for necessary capital expenditures. Weekly Gross Income from self−employment may differ from a determination of business income for tax purposes.

Regarding that Guideline, our Indiana Supreme Court has explained:

> [D]epreciation, although properly calculated for tax purposes, may be overstated for purposes of determining income to measure child support. In general, we would assume that allowable depreciation under methods designed to encourage investment may be overstated for child support purposes. . . . The trial court has broad discretion, but should have as a goal the direction of Guideline 3(A)(2) to measure 'a reasonable yearly deduction for necessary capital expenditures.' This anticipates smoothing the year to year impact of capital outlays by allowing for a reasonable accrual-like process for anticipated capital expenditures but does not allow depreciation as such.

Glass v. Oeder, 716 N.E.2d 413, 417 (Ind. 1999). Accordingly, the trial court had broad discretion to determine, for purposes of the child support calculation, the amount of depreciation on business equipment that Joseph could claim in a single year. *See id.*

The manner in which Joseph calculated his 2006 income for tax purposes involved a "lump-sum" depreciation of a business asset. While that depreciation may be permissible under Section 179 of the Internal Revenue Code, it does not result in "smoothing the year to year impact of capital outlays" as contemplated by Guideline 3(A)(2). Accordingly we cannot hold the court abused its broad discretion by recalculating the amount of depreciation Joseph could claim when calculating his 2006 income for child support purposes. *See Young v. Young*, 891 N.E.2d 1045, 1049 (Ind. 2008) (holding trial court should "engage in a careful

review of the facts and circumstances in making its determination" regarding accelerated deductions and how they affect a party's child support obligation, especially if the deductions seem to be an effort to gain "favorable tax treatment").[3]

2. Division of Marital Property

Joseph alleges the court abused its discretion when determining and assigning the value of cattle, horses, and Laurie's personal property. In a dissolution action, the trial court must divide marital property in a just and reasonable manner, including property owned by either spouse prior to the marriage, acquired by either spouse after the marriage and prior to final separation, or acquired by their joint efforts. Ind. Code § 31-15-7-4. The determinative date when identifying marital property is the date of final separation, which generally means the date the petition for dissolution was filed. *Granzow v. Granzow*, 855 N.E.2d 680, 684 (Ind. Ct. App. 2006).

The division of marital assets lies within the sound discretion of the trial court, and we will reverse only for an abuse of that discretion. *J.M. v. N.M.*, 844 N.E.2d 590, 599 (Ind. Ct. App. 2006), *trans. denied*. An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances presented. *Id*. When we review a challenge to the division of marital property, we may not reweigh the evidence or assess the credibility of witnesses, and we will consider only the evidence most favorable to

[3] Joseph also argues the court's recalculation of the depreciation and subsequent order to sell the equipment in question is inconsistent with the Internal Revenue Code. However, he does not explain why "consistency" with the depreciation provisions of the Internal Revenue Code is required in calculating a support amount under Indiana's Child Support Guidelines. *See* Ind. Appellate Rule 46(A)(8)(a) (requiring argument contain contentions of appellant on the issues presented, supported by cogent reasoning, and each contention be supported by citations to authorities, statutes, and appendix or parts of the record relied on).

the disposition of marital property. *Daugherty v. Daugherty*, 816 N.E.2d 1180, 1187 (Ind. Ct. App. 2004).

Joseph first argues certain cattle should not have been included in the marital estate, as they had been transferred to A.S. before dissolution proceedings began. However, he offers no evidence the cattle were "transferred" – instead, he offered only A.S.'s testimony that he had been interested and involved in the raising of the cattle since he was very young. Therefore, we cannot find an abuse of discretion in the trial court's inclusion of the cattle in the marital pot.

Joseph further asserts even if the cattle were marital property, they were improperly valued. Joseph argues the value of the cattle was based solely on Laurie's values on the Amended Joint Spreadsheet of Assets and Debts. "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." *Houchens v. Boschert*, 758 N.E.2d 585, 590 (Ind. Ct. App. 2001), *trans. denied*. On the Amended Joint Spreadsheet of Assets and Debts, Laurie valued the cattle at $25,000 and Joseph valued the cattle at $11,400. (Petitioner's Exhibit 2.) His argument is an invitation for us to reweigh the evidence, which we cannot do. *Daugherty*, 816 N.E.2d at 1187.

Next, Joseph argues the court should have included in the marital pot, and assigned to Laurie, the value of a horse that Laurie sold during the proceedings without his knowledge or

consent.[4] Additionally, Joseph contests the trial court's attribution of two horses to S.S.,[5] rather than to Laurie, because S.S. was using them while at college in Alabama. On the date of filing of dissolution, Joseph and Laurie jointly owned six horses, three of which are those at issue. As the determinative date for identification of marital property is the date of filing of dissolution, and Laurie disposed of the horses after that, the value of all three horses should have been included in the marital pot. *See Granzow*, 855 N.E.2d at 684 (holding marital pot closes at date of filing of dissolution). Accordingly, we remand for valuation and assignment of the three horses.

Joseph also challenges the court's decision to charge him with $4000 for Laurie's personal property. Laurie provided the court with a list of items and their values, and she alleged Joseph destroyed or sold the items during the proceedings. The total value of the items listed was more than $20,000. (Appellee's App. at 2-3.) The court noted in its order: "The Court believes Mother's testimony that the items listed in Exhibit 13 are missing but believes the values listed by Mother should be reduced to approximately 20% of the values listed," (Appellant's App. at 50), and the court then charged $4000 to Joseph as a distribution. The revaluation of Laurie's personal property itemization is not clearly against the logic and effect of the facts and circumstances presented. Thus we hold the trial court did

[4] Laurie testified the horse was sold for $4000. (Tr. at 297.) The proceeds from that sale were used to buy a car for S.S.

[5] The horses, Jordan and Zipper, were valued on the Amended Joint Spreadsheet of Assets and Debts at $5000 and $4500, respectively. (Petitioner's Ex. 2.)

not abuse its discretion.[6] *See Alexander v. Alexander*, 927 N.E.2d 926, 942 (Ind. Ct. App. 2010) (finding no abuse of discretion in court's valuation of property).

CONCLUSION

We affirm the trial court's recalculation of the depreciation of Joseph's business equipment for purposes of his 2006 income for child support purposes. We also affirm the trial court's valuation and assignment of the cattle and Laurie's personal property. However, we reverse the court's decision to exclude the value of the three horses from the marital estate. We remand for valuation and division of the three horses between Joseph and Laurie.

Affirmed in part, reversed in part, and remanded.

ROBB, J., and VAIDIK, J., concur.

[6] Laurie requests that we find Joseph's appeal frivolous and award her damages and attorney's fees. Laurie waived the issue for our review by failing to cite relevant authority. *See* Ind. Appellate Rule 46(A)(8)(a) (requiring that argument contain contentions of appellant on the issues presented, supported by cogent reasoning, and that each contention be supported by citations to authorities, statutes, and appendix or parts of the record on appeal relied on). Despite her waiver, we hold Joseph's appeal was not frivolous.