MEMORANDUM DECISION

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IN THE

Court of Appeals of Indiana

Trishia R. Bergquist,

Appellant-Petitioner

v.

Ryan M. Bergquist,

Appellee-Respondent

April 4, 2024

Court of Appeals Case No.
23A-DC-2307

Appeal from the Steuben Circuit Court

The Honorable Allen N. Wheat, Judge

Trial Court Cause No.
76C01-2201-DC-17

Memorandum Decision by Judge Mathias
Judges Tavitas and Weissmann concur.

Mathias, Judge.

[1] Trishia Bergquist ("Wife") appeals the Steuben Circuit Court's order dissolving her marriage to Ryan Bergquist ("Husband"). Wife raises several issues, which we restate as:

> I. Whether the trial court erred when it issued its decree of dissolution before the deadline for filing proposed orders had passed;
>
> II. Whether the trial court abused its discretion by valuing Wife's business at $160,000;
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> III. Whether the trial court abused its discretion when it divided the marital estate equally between the parties;
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> IV. Whether the trial court abused its discretion when it declined to impute income to Husband when calculating his child support obligation; and,
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> V. Whether the trial court abused its discretion when it ordered Wife to pay her own 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 were married in 2002 and three children were born to the marriage. The oldest child is a student at Ball State University, and he is emancipated for child support purposes. The two younger children were born in 2006 and 2014. Wife filed a petition to dissolve the parties' marriage in January 2022. The parties agreed that Wife would be the primary physical custodian of the unemancipated children and they would share joint legal custody. The parties

also agreed that Husband would have parenting time with the parties' two younger children in accordance with the Parenting Time Guidelines.

[4] Husband is employed by Shockwave Medical, Inc. and his base salary is $120,000 per year. Husband is eligible to receive bonus income through his employment. Husband's income declined significantly from 2020 to 2023 due to changes in his employment. Wife is self-employed and owns a small business, The Bent Fork Art Studio. The business pays rent to Wife, who equally shares ownership of the building where the business is located with her father. Wife claimed her income from the business was approximately $75,000 annually.

[5] The significant assets accumulated during the marriage were the parties' primary residence, Husband's retirement account, and Wife's business. The parties did not agree on the monetary valuation of the business. The parties also had significant debts, including a mortgage on the primary residence.

[6] The trial court held the dissolution hearing on May 18, 2023. The major sources of disagreement between the parties were the value of Wife's business, debts and expenditures incurred by the parties during the provisional period, and the parties' respective incomes, for the purpose of the child support calculation. Wife believed the trial court should impute income to Husband because his income had decreased significantly in recent years. Wife also requested 55% of the net marital estate.

[7] At the end of the hearing, the trial court acknowledged that the parties had until June 16 to file their proposed findings of fact and conclusions of law. Tr. p. 229. On May 26, well before that deadline, the trial court issued its decree of dissolution.

[8] The trial court divided the marital estate equally between the parties. To effectuate an equal division of the marital estate, the court ordered Wife to pay Husband an equalization judgment in the amount of $97,740.10. The trial court ordered Husband to pay "base child support" in the amount of $150.17 per week by utilizing Husband's current base salary from his employment at Shockwave Medical. The court also ordered Husband to pay a percentage of his bonus income and employee reimbursements to Wife for additional child support. Finally, the court ordered each party to pay his or her own attorney fees.

[9] Wife filed a motion to correct error, which the trial court denied on August 29, 2023. Wife now appeals. Additional facts will be provided as necessary.

Standard of Review

[10] Pursuant to Wife's Trial Rule 52 request, the trial court entered findings of fact and conclusions of law. Therefore, we apply a two-tiered standard of review: first, whether the evidence supports the findings, and second, whether the findings of fact support the judgment. *Hamilton v. Hamilton*, 103 N.E.3d 690, 694 (Ind. Ct. App. 2018), *trans. denied*. We will set aside findings only if they are clearly erroneous, which occurs if the record contains no facts to support them

either directly or by inference. *Id*. To determine that a trial court's findings or conclusions are clearly erroneous, this court's review of the evidence must leave it with the firm conviction that a mistake has been made. *Campbell v. Campbell*, 993 N.E.2d 205, 209 (Ind. Ct. App. 2013), *trans. denied*.

[11] When our court reviews family matters, we grant latitude and deference to our trial judges. *Anselm v. Anselm*, 146 N.E.3d 1042, 1046 (Ind. Ct. App. 2020), *trans. denied*.

> Appellate deference to the determinations of our trial court judges, especially in domestic relations matters, is warranted because of their unique, direct interactions with the parties face-to-face, often over an extended period of time. Thus enabled to assess credibility and character through both factual testimony and intuitive discernment, our trial judges are in a superior position to ascertain information and apply common sense, particularly in the determination of the best interests of the involved children.

Best v. Best, 941 N.E.2d 499, 502 (Ind. 2011). "It is not enough on appeal that the evidence might support some other conclusion; rather, the evidence must positively require the result sought by the appellant." *Hamilton*, 103 N.E.3d at 694. "Accordingly, we will not substitute our own judgment if any evidence or legitimate inferences support the trial court's judgment." *Id.*

Proposed Findings of Fact and Conclusions of Law

[12] Wife initially argues that the trial court erred when it issued the decree of dissolution on May 26, 2023, which was prior to the June 16, 2023, deadline

the court gave the parties to file their proposed findings of fact and conclusions of law. Wife observes that, in their pre-trial stipulations, the parties agreed to waive final argument at the hearing because they wished to file proposed orders. *See* Tr. p. 229. Wife claims she was prejudiced because the trial court issued the decree after that waiver and before the deadline for filing proposed orders had passed. Appellant's Br. at 16.

[13] Wife cannot establish prejudice simply because she was not given the opportunity to present additional argument to the court, either in the form of a closing argument or a proposed order. Wife requested Trial Rule 52 findings of fact, and the trial court issued them accordingly. While we agree with Wife that better practice would have been for the trial court itself to follow the deadline it had given the parties for proposed findings, Wife has not provided our court with any authority to support her argument that the trial court was *requird* to wait to issue its decree until the deadline to file proposed findings had passed. We therefore cannot say the court abused its discretion by issuing the final decree on May 26.

The Value of Wife's Business

[14] Wife argues that the trial court abused its discretion when it valued her business. A trial court has broad discretion in valuing marital assets, and its valuation will only be disturbed for an abuse of discretion. *Leonard v. Leonard*, 877 N.E.2d 896, 900 (Ind. Ct. App. 2007). A trial court does not abuse its discretion if sufficient evidence and reasonable inferences exist to support the

valuation. *Id*. "'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.'" *Alexander v. Alexander*, 927 N.E.2d 926, 935 (Ind. Ct. App. 2010) (quoting *Houchens v. Boschert*, 758 N.E.2d 585, 590 (Ind. Ct. App. 2001), *trans. denied*), *trans. denied*.

[15] The trial court assigned a value of $160,000 to Wife's retail business, The Bent Fork. Wife argues that she presented evidence that the liquidated inventory of the business was worth $84,824.25. Husband's proposed valuation of Wife's business was $123,000 based on Wife's initial estimate of the market value of her inventory. Appellant's Vol. 2, p. 30. Therefore, Wife contends that the trial court's $160,000 valuation was outside the range of values supported by the evidence.

[16] The parties' accountant testified that, for the relevant tax year, the "ending inventory was [worth] $105,790.00," which represented the value if the inventory was "sold and liquidated." Tr. p. 11. The accountant also testified that there was no additional goodwill or other income she would attribute to the business. *Id*. Wife testified that she initially prices her retail items with a fifty percent markup.[1] Tr. p. 112. But she also explained that there is a cost for

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[1] On cross-examination, Husband's attorney attempted to get Wife to agree that her inventory totaling $105,790 would be worth $150,000 when it was marked up by fifty percent for sale. Wife did not agree because many items are sold at less than the initial fifty percent markup price and there is a cost associated with selling the items. Tr. p. 112. In his brief, Husband relies on counsel's question to attempt to support the trial court's business valuation. But counsel's question is not evidence.

selling items, such as credit card processing fees, and the fact that many items are eventually sold on sale or clearance. *Id*.

[17] We agree with Wife that the trial court's $160,000 valuation of her business was not within the range of the evidence presented by the parties. And the trial court did not make findings of fact to explain its valuation. *See* Appellant's App. p. 16. Therefore, we reverse the trial court's valuation of the business and remand this case to the trial court to determine a value to Wife's business that is supported by the evidence and recalculate the equalization judgment accordingly.

Division of the Marital Estate

[18] The division of marital property is within the sound discretion of the trial court, and we will reverse only for an abuse of discretion. *In re Marek*, 47 N.E.3d 1283, 1287 (Ind. Ct. App. 2016), *trans. denied*. "We will reverse a trial court's division of marital property only if there is no rational basis for the award; that is, if the result is clearly against the logic and effect of the facts and circumstances, including the reasonable inferences to be drawn therefrom." *Id*. When we review a claim that the trial court improperly divided marital property, we consider only the evidence most favorable to the trial court's disposition of the property without reweighing evidence or assessing witness credibility. *Id*. at 1288–89. "Although the facts and reasonable inferences might allow for a conclusion different from that reached by the trial court, we will not substitute our judgment for that of the trial court." *Id*. at 1289.

[19] It is well-settled that, in a dissolution action, 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—goes into the marital pot for division. Ind. Code § 31-15-7-4(a); *Falatovics v. Falatovics*, 15 N.E.3d 108, 110 (Ind. Ct. App. 2014). For purposes of dissolution, property means "all the assets of either party or both parties[.]" I.C. § 31-9-2-98(b). This "one pot" theory ensures that all assets are subject to the trial court's power to divide and award. *Carr v. Carr*, 49 N.E.3d 1086, 1089 (Ind. Ct. App. 2016), *trans. denied*.

[20] Indiana Code section 31-15-7-4 provides the trial court shall divide the property of the parties in a just and reasonable manner, whether that property was owned by either spouse before the marriage, acquired by either spouse in his or her own right after the marriage and before the final separation, or acquired by their joint efforts. "The court shall presume that an equal division of the marital property between the parties is just and reasonable." I.C. § 31-15-7-5. This presumption may be rebutted if a party presents evidence that an equal division would not be just and reasonable, including evidence of 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.

The appellant must overcome a strong presumption that the court considered and complied with the applicable statutes, and that presumption is one of the strongest presumptions applicable to our consideration on appeal. *Augspurger v. Hudson,* 802 N.E.2d 503, 512 (Ind. Ct. App. 2004).

[21] Wife requested that the trial court award her fifty-five percent of the marital estate. In her appeal, she continues to argue that she should have been awarded fifty-five percent of the marital estate, and the trial court abused its discretion when it split the marital estate equally between the parties. In support of her argument, she cites Husband's superior earning ability, evidence that Husband dissipated marital assets, and the fact that Wife is required to refinance the marital residence at a higher interest rate to retain the property.

[22] The trial court considered the disparity in the parties' incomes and concluded that the disparity did not rebut the presumption of an equal division of the marital estate. Moreover, Wife's business has been in operation for twenty

years and she claimed income of approximately $75,000 per year based on running her business. Wife and her father also own the building where the business is located, and the business pays rent to Wife. In addition, Husband's pre-COVID-19 pandemic income enabled the parties to accumulate significant marital assets. Both parties made significant expenditures during the provisional period, and the trial court was presented with exhibits and testimony concerning the parties' spending habits while the dissolution was pending. Furthermore, Wife enjoyed exclusive use of the marital residence for over two years after the date she filed for dissolution. The trial court considered the totality of this evidence and concluded that an equal division of the marital residence was just and reasonable. We cannot conclude that the court abused its discretion in that regard.

Child Support Calculation

[23] Next, Wife argues that the trial court abused its discretion when it calculated the parties' child support obligations. Specifically, Wife claims that the trial court should have imputed income to Husband when it calculated his child support obligation. A trial court's calculation of a child support obligation is presumptively valid and will be reversed only if it is clearly erroneous or contrary to law. *Young v. Young*, 891 N.E.2d 1045, 1047 (Ind. 2008). A decision is clearly erroneous if it is clearly against the logic and effect of the facts and circumstances before the trial court. *Id.* In conducting our review, we will not reweigh the evidence and will consider only the evidence most favorable to the judgment. *Saalfrank v. Saalfrank*, 899 N.E.2d 671, 674 (Ind. Ct. App. 2008).

[24] The Indiana Child Support Guidelines provide that a parent's child support obligation is based upon his or her weekly gross income, which is defined as "actual weekly gross income of the parent if employed to full capacity, potential income if unemployed or underemployed, and the value of 'in-kind' benefits received by the parent." Ind. Child Support Guideline 3(A)(1). Regarding imputing potential income, the Guidelines provide:

> If a court finds a parent is voluntarily unemployed or underemployed without just cause, child support shall be calculated based on a determination of potential income. A determination of potential income shall be made by determining employment potential and probable earnings level based on the obligor's employment and earnings history, occupational qualifications, educational attainment, literacy, age, health, criminal record or other employment barriers, prevailing job opportunities, and earnings levels in the community.

Child Supp. G. 3(A)(3). Moreover, our court has held that "child support orders cannot be used to force parents to work to their full economic potential or make their career decisions based strictly upon the size of potential paychecks." *In re Paternity of E.M.P.*, 722 N.E.2d 349, 351-52 (Ind. Ct. App. 2000).

[25] In the past, Husband has earned up to $300,000 per year. In 2020, Husband's base salary was more than $190,000. However, during the COVID-19 pandemic, Husband was laid off from his job. Husband was unemployed for several months thereafter. Wife did not present any evidence that Husband was laid off or unemployed due to any fault of his own.

[26] When Wife filed her petition for dissolution in 2022, Husband was employed and earning $150,000 annually as his base salary. On the date of the final hearing, Husband had obtained a new job with a base salary of $120,000 annually. Husband's income could increase if he earns bonuses. Husband testified that he obtained new employment at Shockwave Medical because his previous employer required him to be on call twenty-four hours per day, seven days per week. Tr. p. 140. Husband feared that his employment with his prior company would interfere with his parenting time. *Id*. at 141. For this reason, he found new employment.

[27] Wife's argument that the trial court should have utilized Husband's 2020 income when calculating his child support obligation is unreasonable. Husband provided an appropriate reason for obtaining new employment in 2023: flexibility to enjoy parenting time with his children.

[28] For these reasons, the court did not abuse its discretion when it denied Wife's request to impute income to Husband and used Husband's current salary to calculate his child support obligation. Importantly, "[c]ommencing with calendar year ending in 2023," the trial court ordered Husband to:

> On or before January 30 submit to [Wife] a copy of his 1099 or W2 as proof of all bonuses and employee reimbursements he has received during the course of that year. Father's proof of his irregular income shall be accompanied with a check in the [amount] of 13% of said irregular income. . . .

> The .13% number was derived by the Court through the use of an example set forth in the Indiana Child Support Guidelines as a means of computing irregular income.

Appellant's App. p. 20. Wife complains that Husband's payment of his additional child support obligation based on his irregular income will be delayed until year's end. But the trial court did not abuse its discretion when it determined that Husband's additional child support obligation should be calculated by utilizing the tax documents he will receive annually.

[29] Wife also argues that the trial court abused its discretion when it failed to order the parties to share the children's extraordinary expenses. Wife claims that Child Support Guideline 8 requires the trial court to order the parents to "pay their pro rata share of these expenses." Child Supp. G. 8. In pertinent part, that guideline provides:

> The economic data used in developing the Child Support Guideline Schedules do not include components related to those expenses of an "optional" nature such as costs related to summer camp, soccer leagues, scouting and the like. When both parents agree that the child(ren) may participate in optional activities, the parents should pay their pro rata share of these expenses from line 2 of the Child Support Obligation Worksheet. In the absence of an agreement relating to such expenses, assigning responsibility for the costs should take into account factors such as each parent's ability to pay, which parent is encouraging the activity, whether the child(ren) has/have historically participated in the activity, and the reasons a parent encourages or opposes participation in the activity. If the parents or the court determine that the child(ren) may participate in optional activities, the method of sharing the expenses shall be set forth in the entry.

Id. The guideline provides guidance to both the child's parents and the trial court concerning the apportionment of expenses related to optional activities. While we do not agree with Wife's claim that the guideline *requires* the trial court to issue an order relating to the children's extraordinary expenses, the parties presented evidence concerning the children's extraordinary expenses during the hearing, yet the court's findings and conclusion make no mention of them. Therefore, on remand, we instruct the trial court to amend its decree to include a provision that addresses payment of the parties' children's extraordinary expenses.

Attorney Fees

[30] Finally, Wife argues that the trial court abused its discretion when it failed to award her reasonable attorney fees. The trial court's decision concerning an award of attorney's fees is reviewed for an abuse of discretion. *Minser v. DeKalb Cnty. Plan Comm'n*, 170 N.E.3d 1093, 1102 (Ind. Ct. App. 2021). "An abuse of discretion occurs when the court's decision either clearly contravenes the logic and effect of the facts and circumstances or misinterprets the law." *Id*.

[31] Typically, under the American Rule, both parties pay their own fees. *Id*. "In the absence of statutory authority or an agreement between the parties to the contrary—or an equitable exception—a prevailing party has no right to recover attorney fees from the opposition." *Id*. (citation omitted).

[32] Indiana Code section 31-15-10-1 provides, in relevant part, that "[t]he court periodically may order a party to pay a reasonable amount for the cost to the

other party of maintaining or defending any proceeding" stemming from a dissolution of marriage, including "attorney's fees." I.C. § 31-15-10-1(a).

> "In determining whether to award attorney's fees in a dissolution proceeding, 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. A party's misconduct that directly results in additional litigation expenses may also be considered. Consideration of these factors promotes the legislative purpose behind the award of attorney's fees, which is to ensure that a party who would not otherwise be able to afford an attorney is able to retain representation. When one party is in a superior position to pay fees over the other party, an award is proper."

Haggarty v. Haggarty, 176 N.E.3d 234, 251 (Ind. Ct. App. 2021) (quoting *Eads v. Eads*, 114 N.E.3d 868, 879 (Ind. Ct. App. 2018)).

[33] The trial court ordered the parties to pay their own attorney fees. Once again, Wife cites Husband's superior earnings and earning ability to argue that the court should have awarded attorney fees to her. Wife also argues that Husband violated the terms of the provisional orders. However, Wife does not claim that Husband's conduct in that regard caused her to incur additional attorney fees. In response to Wife's argument, Husband observes that, during the provisional period, Wife utilized funds in the parties' joint accounts to pay her business expenses and other personal expenses, including expenses for multiple vacations, a wine club membership, and her jewelry and clothing purchases. Husband deposited most of the funds held in the joint accounts that Wife used for her personal benefit.

[34] For all of these reasons, we conclude that Wife has not persuaded us that the trial court abused its discretion when it ordered the parties to pay their own attorney fees.

[35] Husband also claims that Wife's appeal was taken in bad faith, and therefore, he is entitled to appellate attorney fees. "Our discretion to award attorney fees under Indiana Appellate Rule 66(E) is limited, however, to instances when an appeal is permeated with meritlessness, bad faith, frivolity, harassment, vexatiousness, or purpose of delay." *Thacker v. Wentzel*, 797 N.E.2d 342, 346 (Ind. Ct. App. 2003). We do not agree with Husband's assessment of Wife's appeal. Indeed, Wife has prevailed in part on appeal. Accordingly, we decline to award Husband appellate attorney fees.

Conclusion

[36] We agree with Wife that the trial court abused its discretion when it valued her business, and we remand this case to the court with instructions for the court to determine a value for the business that is supported by the evidence and to adjust the equalization judgment accordingly. On remand, we also instruct the trial court to amend its decree to address payment of the parties' children's extraordinary expenses. In all other respects, we affirm the trial court's decree of dissolution.

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

Tavitas, J., and Weissmann, J., concur.

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