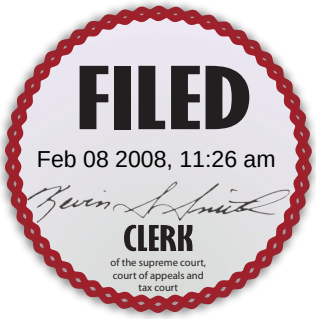

ATTORNEY FOR APPELLANT:

JOHN D. BODINE
Sullivan, Indiana

ATTORNEY FOR APPELLEE:

CHOU-IL LEE
Modesitt Law Offices, P.C.
Terre Haute, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN RE: THE MARRIAGE OF	)	
STEVEN B. SEXTON and	)	
DEBORAH L. SEXTON,	)	
	)	
STEVEN B. SEXTON,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 11A04-0612-CV-716
	)	
DEBORAH L. SEXTON,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE CLAY SUPERIOR COURT
The Honorable Matthew Headley, Special Judge
Cause No. 11D01-0311-DR-468

February 8, 2008

MEMORANDUM DECISION ON REHEARING - NOT FOR PUBLICATION

MAY, Judge

Steven B. Sexton petitions for rehearing of our decision affirming the division of marital property pursuant to his divorce from Deborah L. Sexton. We grant rehearing for the limited purpose of explaining why we decline to address an issue Steven raises on rehearing.

In his Appellant's Brief, Steven raised two issues: whether the equal division of marital assets was an abuse of discretion, and

> [w]hether the trial court erred and committed an abuse of discretion by including in the marital estate certain disputed pension/retirement benefits of Appellant ("Husband") without evidence from which the court could reasonably conclude that such pension/retirement benefits constituted "Property" for purposes of IC 31-15 or determine the value of such benefits for purposes of distribution.

(Appellant's Br. at 15) (emphasis removed). In accordance with his issue statement, we reviewed the evidence in the record and found it sufficient to support the trial court's finding Steven's retirement benefits were marital property.[1]

On rehearing, Steven asserts:

> Whether the trial court [sic] inclusion of the Husband's interest in the plan without specifically concluding that such interest was "vested" within the meaning of Section 411 of the Internal Revenue Code and constituted "property" within the meaning of IC 31-9-2-98(b)(2) and/or specifically articulating and setting forth findings of fact that support such conclusion was error.

(Rehearing Br. at 5) (emphasis and title capitalization removed). Whether the evidence is sufficient to support the trial court's findings is an issue distinct from whether the trial court's findings pursuant to a party's request were sufficient under Trial Rule 52. A party may not raise an issue for the first time on rehearing. *See Ind. State Bd. Of Health*

[1] We decline Steven's request to again review that evidence on rehearing.

Facility Adm'r v. Werner, 846 N.E.2d 669, 672 (Ind. Ct. App. 2006), *trans. denied* 860 N.E.2d 591 (Ind. 2006).

Steven's Appellant's Brief included the following sentences near the end of his sufficiency of the evidence argument:

> The trial court could not, without abusing its' [sic] discretion, determine that the Plan was a marital asset without first determining that Husband's interest in the Plan was vested within the meaning of IC 31-9-2-98(2) and Section 411 of the Internal Revenue Code. Absent such a finding, whether the Plan or account was in existence was irrelevant. The trial court wholly failed to make any findings whatsoever that Husband's pension/retirement benefits under the Plan were so vested. (App 12-14)

(Appellant's Br. at 19.) In addition, his Conclusion provided:

> In fact, the Court failed to find that it was so vested. Without such a finding there is no basis for determining that such benefits are "property" within the meaning of IC 31-15-2-2 or constitute part of the marital assets.

(*Id.* at 23.) Those five sentences, with no citation to authority, were inadequate to alert either Deborah or us that Steven was raising a separate issue. *See* Ind. Appellate Rule 46(A)(8) (argument requires citation to authority); *Carter v. Indianapolis Power & Light Co.*, 837 N.E.2d 509, 514 (Ind. Ct. App. 2005) (finding issue waived for appeal where party failed to site the record or authority to support its argument), *reh'g denied*, *trans. denied* 860 N.E.2d 586 (Ind. 2006).

Steven's Reply Brief argued Deborah's Appellee's Brief "wholly ignores . . . the deficiencies of the trial court's Findings Of Fact And Conclusion Thereon." (Reply Br. at 2.) It also included multiple pages of argument, along with citation to authority, explaining why the court's findings were inadequate when a party had requested specific findings of fact and conclusions of law pursuant to Trial Rule 52. (*See id.* at 3, 6-8.)

Because Steven failed to adequately raise the issue in his initial brief, we were not surprised Deborah did not respond to it.

Nevertheless, we should have explicitly noted in our memorandum opinion that we did not address the sufficiency of the trial court's findings under Trial Rule 52 because Steven purported to raise that issue for the first time in his Reply Brief. An Appellant may not raise new issues in a reply brief. Ind. App. R. 46(C). Accordingly, Steven waived this issue. *See Monroe Guar. Ins. Co. v. Magwerks Corp.*, 829 N.E.2d 968, 977 (Ind. 2005) ("The law is well settled that grounds for error may only be framed in an appellant's initial brief and if addressed for the first time in the reply brief, they are waived.").

We grant rehearing to explain why the issue Steven asserted in his Petition for Rehearing regarding the adequacy of the court's findings under Trial Rule 52 was waived for appeal, and we affirm our memorandum opinion in all other respects.

SHARPNACK, J., and BAILEY, J., concur.