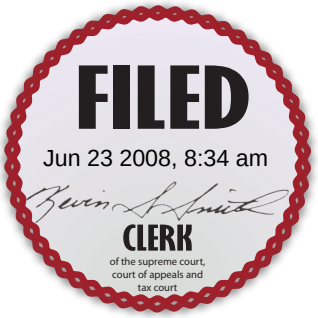

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IN THE COURT OF APPEALS OF INDIANA

GRETA MCKENZIE-CARVER,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 49A04-0711-CV-646
	)	
EDWARD CARVER,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robyn L. Moberly, Judge
Cause No. 49D12-0603-DR-10164

June 23, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Greta McKenzie-Carver ("Wife") appeals the trial court's disposition of property in her dissolution proceedings with Edward Carver ("Husband"). Specifically, Wife argues that the trial court abused its discretion by including the Bank One child support account in the marital pot, in undervaluing the marital residence, and in its division of the marital property. Finding that the trial court acted within its discretion, we affirm.

Facts and Procedural History

Husband and Wife were married on October 28, 2000. They did not have any children together. However, Wife has a child, C., from a former marriage, and C. resided with Husband and Wife during their marriage. During their marriage, C.'s father provided $300.00 per month in court-ordered child support that Husband and Wife deposited into a Bank One account ("Bank One child support account").[1] Husband and Wife also created a 529 College Choice savings account in which monthly transfers of $125.00 were deducted from the Bank One child support account and deposited into the 529 account. Husband and Wife left the balance of funds in the Bank One child support account and provided for C. through other accounts, which contained money provided by both Husband and Wife.

In November 2005 Husband and Wife physically separated, and on March 10, 2006, Husband filed a petition for dissolution of the marriage. At the evidentiary hearing on the dissolution petition, the parties presented conflicting evidence regarding the value of the marital estate. On July 12, 2007, the trial court entered an order dissolving the

[1] In 2004, J.P. Morgan Chase & Company bought Bank One Corporation. Because the trial court refers to this account as a Bank One account, we will refer to it as such.

parties' marriage, which included findings of fact and conclusions thereon. The order provides, in relevant part:

> 6. The Wife has a child by a former marriage and that child resided with the parties during the marriage. During the marriage of the parties, the parties jointly gifted to the wife's son the sum of $6544.00 in a 529 Plan. This amount is not a part of the marital estate, since it was clearly gifted to the child during the marriage, and should be his sole and separate property for his future educational expenses.
>
> 7. The Husband entered the marriage with the following assets valued at $98,882.00 which had been accumulated without assistance or contribution from Wife:
>
> Real Estate (marital residence) $16,335.00 (net equity value)
> Acterna Mutual Fund $36,074.00
> Bank One Account $46,473.00
>
> 8. The remainder of the marital estate was accumulated by the parties during the marriage.
>
> 9. The marital estate is found to be as follows based on the evidence presented at trial:
>
> Total Marital Assets at Date of Filing
>
> House: $110,000.00 - $77,330.00 (mortgage) = $32,670.00 ($16,335.00 equity at time of marriage)
>
> 2004 Saab: $20,505.00 (value) - $13,505.00 (lien) = $7,000
> 2001 Suzuki [Motorcycle] ($3,000.00)
> Disetronic 401k ($2,933.00)
> Roth IRA – Husband ($2,282.00)
> Acterna/Mutual Fund ($48,749.00)
> Bank One Account ($70,680.00)
> Forum Credit Union ($376.00)
> GMAC Savings Plan ($2,520.00)
> 2000 Alero ($10,000.00)
>
> Trinidad Account ($378.00)
> Forum Credit Union ($955.00)
> Roth IRA-Wife ($2,258.00)
> Bank One Account (W) ($12,050.00)

Mass. Mutual ($6,189.00)
Navy Federal C.U. (2) ($1,915.00)
Furniture in W's possession ($1,800.00)
Furniture in H's possession ($4,000.00)

Total Marital Estate ($209,755.00)

10. The Bank One account with a total balance of $70,680.00 at the date of filing has been maintained by Husband after the date of filing and is in his sole name. The Bank One account with a balance of $12,050.00 at the date of filing has been maintained by Wife after the date of filing and is in her sole name or that of her own and her minor child.

11. The Bank One account currently in Wife's name (balance $12,050.00) is found to be a marital asset is [sic] it was accumulated during the course of the marriage by the parties and there was no clear intention that it was a present gift to the Wife's son.

12. Both parties contributed their best efforts toward the accumulation of the marital estate. Each of the parties made more or less than the other during the course of the marriage due to fluctuations in salary. Currently, the Wife earns more than the Husband. The marital estate shall be divided and awarded to the parties as follows:

A. Husband shall be awarded the marital residence, 2004 Saab, 2001 Suzuki Motorcycle, Disetronic 401k, his Roth IRA, Acterna/Mutual Fund in its entirety, his Bank One account, all personal property in his possession and his Forum Credit Union account. Husband shall pay the debt on the marital residences (as more specifically set forth herein) and the debt on the Saab vehicle and shall hold Wife harmless. Husband shall also pay to Wife the sum of $17,500.00 within 7 days.

B. Wife shall be awarded the GMAC Savings Plan, 2000 Alero, Trinidad account, her Forum Credit Union account, her Roth IRA, her Bank One account, Massachusetts Mutual account, all personal property in her possession and her Navy Federal Credit Union accounts (2) and shall receive the sum of $17,500.00 from the Husband's share of assets.

13. As referenced in paragraph 12 hereof, Husband shall pay Wife the sum of $17,500.00 in cash within seven days of the entering of the Decree. With such payment, the division of the total marital estate is an equal division of the assets that were accumulated during the marriage, with Husband receiving the property he brought into the marriage and the 529 account gifted to [C.] during the marriage being confirmed by this court.

> 14. Husband has rebutted the presumption that there should be an equal division of the total marital estate given that approximately half of the total estate was owned by Husband prior to the marriage and was accumulated by Husband without contribution of any kind from Wife. Additionally, at the time of separation and to the date of final hearing, Wife had a better earning capacity than Husband. The Court finds this division to be equitable.

Appellant's App. p. 10-12. Wife now appeals.

Discussion and Decision

On appeal, Wife argues that the trial court erroneously included the Bank One child support account with a balance of $12,050.00 for Wife's son in the marital pot, that it undervalued the marital estate, and that it erred in its division of the marital property.

The disposition of marital assets is committed to the sound discretion of the trial court. *Helm v. Helm*, 873 N.E.2d 83, 89 (Ind. Ct. App. 2007). An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances or the reasonable, probable, and actual deductions to be drawn therefrom. *Id*. An abuse of discretion also occurs when the trial court misinterprets the law or disregards evidence of factors listed in the controlling statute. *Id*. We will reverse a property distribution only if there is no rational basis for the award and, although the circumstances may have justified a different property distribution, we may not substitute our judgment for that of the dissolution court. *Id*. at 89-90.

When disposing of the marital property in this case, the trial court issued findings of fact and conclusions thereon pursuant to Indiana Trial Rule 52(A). When a trial court issues such findings, we apply a two-tiered standard of review. *Granzow v. Granzow*, 855 N.E.2d 680, 683 (Ind. Ct. App. 2006). We first determine whether the record

supports the findings and, second, whether the findings support the judgment. *Id*. The judgment will only be reversed when clearly erroneous, *i.e.*, when the judgment is unsupported by the findings of fact and the conclusions entered upon the findings. *Id*. Findings of fact are clearly erroneous when the record lacks any evidence or reasonable inferences from the evidence to support them. *Id*. To determine whether the findings or judgment are clearly erroneous, we consider only the evidence favorable to the judgment and all reasonable inferences flowing therefrom, and we will not reweigh the evidence or assess witness credibility. *Id*.

I. Bank One Child Support Account

Initially, Wife argues that the trial court abused its discretion by including the Bank One child support account as a marital asset. It is well established that all marital property goes into the marital pot for division, whether it was owned by either spouse prior to the marriage, acquired by either spouse after the marriage and prior to final separation of the parties, or acquired by their joint efforts. Ind. Code § 31-15-7-4(a); *Beard v. Beard*, 758 N.E.2d 1019, 1025 (Ind. Ct. App. 2001), *trans. denied*. This "one-pot" theory ensures that all assets are subject to the trial court's power to divide and award. *Thompson v. Thompson*, 811 N.E.2d 888, 914 (Ind. Ct. App. 2004), *reh'g denied*, *trans. denied*. While the trial court may ultimately determine that a particular asset should be awarded solely to one spouse, it must first include the asset in its consideration of the marital estate to be divided. *Id*.

Wife argues, however, that the Bank One child support account containing $12,050.00 is not "marital property" and should not have been included in the marital

pot. We disagree. Here, Wife received $300.00 per month in child support from C.'s father. Husband and Wife deposited the child support money into the Bank One child support account held jointly by Wife and C.,[2] withdrew a portion of it to deposit into the 529 account for C.'s benefit, and left the remaining balance in the account to accrue interest. Husband and Wife provided for C. through other accounts, which contained money provided by both Husband and Wife. In addition to these facts, there was conflicting testimony regarding the parties' intent for the $12,050.00 balance in the Bank One child support account. Wife testified that "[t]hese were funds that his dad - - for child support, had given for child support, and [Husband] and I agreed that we would put that into a special savings account for [C.] as a gift." Appellant's App. p. 112. Husband, on the other hand, testified that the money in the Bank One child support account "was for [Wife]," *id*. at 66, and "we created [the Bank One child support account] with all three of our names on there, and then we created the 529 for [C.'s] college . . . ." *Id*. After listening to testimony and reviewing the evidence, the trial court determined that the Bank One child support account is "a marital asset is [sic] it was accumulated during the course of the marriage by the parties and there was no clear intention that it was a present gift to the Wife's son." *Id*. at 11. The trial court was in a much better position than we are to assess this evidence, and we will not disturb its judgment. The trial court's

[2] Although Husband maintains that the Bank One child support account was also in his name, the Bank One child support account bank statements contained in the record do not show Husband's name.

determination that the Bank One child support account is "marital property" is not clearly erroneous.[3]

II. Value of Marital Residence

Next, Wife contends that the trial court abused its discretion in its valuation of the marital residence. A trial court has broad discretion in determining the value of property in a dissolution action and has not abused its discretion if its decision is supported by sufficient evidence and reasonable inferences therefrom. *Sanjari v. Sanjari*, 755 N.E.2d 1186, 1191 (Ind. Ct. App. 2001). At the final hearing, Husband testified that research conducted by a realtor indicated that based on properties of similar size that sold in the subdivision in which the marital estate was located, the value of the residence was $104,850.00. Wife had the residence appraised, which estimated its value to be $125,000.00. Thereafter, the trial court determined the value of the marital residence to be $110,000.00.

Wife maintains that the trial court abused its discretion in its valuation of the residence because "Husband's proffered evidence was merely a realtors listing of homes sold in the area," and "[he] had the opportunity to get a valuation done by a qualified expert, but chose not to do so." Appellant's Br. p. 8-9. In other words, Wife argues that because she had the house appraised and Husband did not, the assessed value of the

[3] Wife additionally argues that "the custodial parent is a "trustee" of child support funds, [and that] . . . Appellees misinterpret Indiana law in their conclusion that [Wife] is no longer a "trustee." Appellant Reply Br. p. 1. While we agree that a custodial parent serves as a "trustee" for child support funds under certain circumstances, we do not find it applicable in this case. As stated above, Husband and Wife provided for C. through other accounts, which contained money contributed by both Husband and Wife. Providing for C. in such a way allowed them to leave the balance of the money contained within the Bank One child support account to accrue interest. After considering these facts, the trial court determined that the money that remained in the Bank One child support account was not child support money but rather "marital property." We find nothing improper with this determination.

residence that she provided represented "competent evidence of the marital property and the trial court abused its discretion by undervaluing the marital property despite the expert testimony given by [the appraiser]." *Id*. We disagree. Here, the trial court valued the marital residence at $110,000.00, which was within the range of values supported by the evidence. The trial court did not abuse its discretion in its valuation of the residence.

III. Division of Marital Property

Finally, Wife argues that the trial court erred in its division of the marital property. Specifically, wife contends that the trial court erred "by deviating from the presumptive equal division of marital assets and dividing the marital property unequally." *Id*. at 6.

Indiana Code § 31-15-7-5 provides:

> The court shall presume that an equal division of the marital property between the parties is just and reasonable. However, this presumption may be rebutted by a party who presents relevant evidence, including evidence concerning the following factors, that an equal division would not be just and reasonable:
>
> (5) 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.

In this case, Wife first maintains that

> there was sufficient evidence to show that Husband acquired assets prior to the marriage in an amount a little bit over $98,000.00. However, the trial court found that Wife made contributions, both financial and non-financial, to the marital estate as well. In addition, Wife's funds were commingled with those of Husband to create the joint marital estate. Notwithstanding, all property, whether acquired before or during the marriage is generally included in the marital estate for property division. Husband did not sufficiently rebut the presumption that the marital estate should not be divided equally, nonetheless, the trial court did not divide the $209,755.00 equally and specifically awarded one of the largest marital assets solely to the Husband. Therefore, . . . the trial court committed reversible error by dividing the marital estate in such a way that Husband received 80% of the estate and Wife received 20% of the estate.

Appellant's Br. p. 6 (citations omitted). Wife also maintains that the trial court erred "by awarding the $70,000 Chase Bank account solely to Husband and not dividing it according to the presumptive equal division . . . ." Appellant's App. p. 7. We disagree.

The record reflects that the trial court examined the contribution of each spouse, the economic circumstances of each spouse, the conduct of the parties during the marriage, and the earnings or earning ability of the parties. After assessing this evidence, the trial court determined that Husband had rebutted the presumption that there should be an equal division of the total marital estate given that he entered the marriage with assets equaling $98,882.00 and Wife admitted that he entered with assets. After subtracting $98,882.00 from the marital estate ($209,755.00) and requiring Husband to pay Wife the sum of $17,500.00 in cash within seven days of entering the dissolution decree, the trial court determined that "the division of the total marital estate is an equal division of the assets that were accumulated during the marriage . . . ." *Id*. at 12. "[W]here assets were

acquired prior to marriage, the trial court may achieve a just and reasonable property division by determining the appreciation over the course of the marriage of such assets and dividing the appreciation between the spouses, while setting over to the appropriate spouse the pre-marriage value of the assets at issue." *Doyle v. Doyle*, 756 N.E.2d 576, 579 (Ind. Ct. App. 2001). This is exactly the course of action that the trial court took in dividing the marital estate. Thus, we find that the trial court did not err in following such a method.

Affirmed.

MAY, J., and MATHIAS, J., concur.