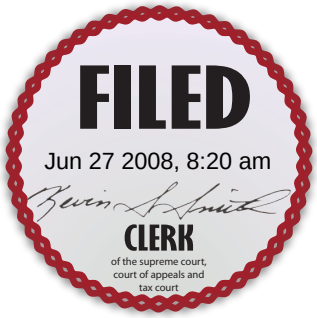

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IN THE
COURT OF APPEALS OF INDIANA

IN RE THE MARRIAGE OF:	)	
	)	
JEFFREY LEE,	)	
	)	
Appellant-Respondent,	)	
	)	
and	)	No. 70A04-0710-CV-567
	)	
MONICA LEE,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE RUSH SUPERIOR COURT
The Honorable Brian D. Hill, Judge
Cause No. 70D01-0603-DR-31

June 27, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

The marriage of Appellant-Respondent Jeffrey Lee ("Jeffrey") and Appellee-Petitioner Monica Lee ("Monica") was dissolved on July 24, 2007. Jeffrey now appeals the division of marital property and child support award. We affirm.

Issues

Jeffrey presents three issues for our review:

I. Whether Lee Machine, Inc. was erroneously valued due to the exclusion of a liability;

II. Whether the division of the marital estate is clearly erroneous due to the erroneous business valuation and omission of a vehicle; and

III. Whether the child support order is clearly erroneous because Jeffrey's income was overstated and his parenting time credit was understated.

Facts and Procedural History

The parties were married on July 20, 1996. They had two children, G.L., born January 6, 2001, and S.L., born September 26, 2003. On March 7, 2006, Monica petitioned to dissolve the marriage.

The trial court conducted a final hearing on May 30 and 31, June 1, and July 10, 2007. On July 24, 2007, the trial court issued its findings of fact, conclusions of law, and order dissolving the marriage, dividing the marital estate, awarding physical custody of the parties' children to Monica, and ordering that Jeffrey pay child support. Jeffrey filed a motion to correct error, in part alleging newly discovered evidence, which motion was denied. He now appeals.

Discussion and Decision

I. & II. Business Valuation – Property Division

A. Standard of Review – Property Division

The distribution of marital property is committed to the sound discretion of the trial court. Breeden v. Breeden, 678 N.E.2d 423, 427 (Ind. Ct. App. 1997). However, Indiana Code Section 31-15-7-5 creates a rebuttable presumption that an equal division of the marital property of the parties is just and reasonable. Akers v. Akers, 729 N.E.2d 1029, 1033 (Ind. Ct. App. 2000). A party who challenges the trial court's division of marital property must overcome a strong presumption that the court considered and complied with the applicable statute. In re Marriage of Bartley, 712 N.E.2d 537, 542 (Ind. Ct. App. 1999).

When, as here, the trial court finds the facts specially and states its conclusions thereon pursuant to Indiana Trial Rule 52, the court on appeal shall not set aside the findings or judgment unless clearly erroneous. State Farm Mut. Auto Ins. Co. v. Leybman, 777 N.E.2d 763, 765 (Ind. Ct. App. 2002), trans. denied. We review the judgment by determining, first, whether the evidence supports the findings and, second, whether the findings support the judgment. Evans v. Med. and Prof'l Collection Servs, Inc., 741 N.E.2d 795, 797 (Ind. Ct. App. 2001). We consider only the evidence favorable to the judgment and all reasonable inferences flowing therefrom, and we neither reweigh the evidence nor assess witness credibility. Id. However, appellate courts owe no deference to trial court determinations deemed questions of law. GKN Co. v. Magness, 744 N.E.2d 397, 401 (Ind. 2001).

B. Analysis – Valuation and Distribution

During the parties' marriage, Jeffrey became self-employed as the owner and operator of Lee Machine, Inc., a machine shop. At the final hearing, Monica presented the testimony of John Seale, CPA regarding his valuation of the business. Seale testified that he had relied in part upon an asset appraisal conducted by Ron Roland, and also upon information regarding accounts receivable provided by Jeffrey in response to a court order. Due to inadequate discovery responses, Seale had to estimate accounts payable. Seale opined that the net asset value[1] of Lee Machine, Inc. was $81,769.00.

Jeffrey did not present expert witness testimony, but attempted to introduce a document stating that the "forced liquidation value" of Lee Machine, Inc. assets was $36,500.00. (Respondent's Proposed Ex. F.) The trial court excluded the document as hearsay. During his testimony, Jeffrey challenged Monica's business appraisal in two aspects. First, he opined that a Daewoo milling machine valued at $58,500.00 was over-valued because it cost only $50,000.00. Second, he noted that the appraisal referred to milling machines as drill presses.

The trial court found that certain property included within the business appraisal actually belonged to an employee, and valued Lee Machine, Inc. at $80,814.00 (including accounts receivable of $71,000.00).

On appeal, Jeffrey claims that Lee Machine, Inc. was over-valued by $58,500.00 because of the inclusion of the Daewoo milling machine without a corresponding liability. He asserts that the actual value of Lee Machine, Inc. is $22,314.00.

Valuation. The trial court's valuation of Lee Machine, Inc. at $80,814.00 was within the range of evidence presented. Although Jeffrey now complains that the appraised amount was inflated because of excluded debt, he did not make this claim at the final hearing. The trial court had before it only Monica's proposed valuation, in response to which Jeffrey offered inadmissible hearsay. When a party fails to introduce admissible evidence as to the value of marital property, that party is estopped from predicating appellate error on the valuation. See Galloway v. Galloway, 855 N.E.2d 302, 306 (Ind. Ct. App. 2006).

Distribution. Indiana Code Section 31-15-7-5 governs the distribution of marital property and provides in relevant part: "The court shall presume that an equal division of the marital property between the parties is just and reasonable." Accordingly, Indiana Code Section 31-15-7-5 requires the trial court to presume that an equal division of marital property is just and reasonable, absent relevant evidence to rebut the presumption. Capehart v. Capehart, 705 N.E.2d 533, 536 (Ind. Ct. App. 1999), trans. denied.

Here, the trial court accepted Monica's valuation of assets and attempted to divide the marital estate equally. The trial court awarded Monica her 401(k) (valued at $49,176), a Ford Explorer (valued at $9,000) and joint accounts (valued at $905). Jeffrey was awarded Lee Machine, Inc. (valued at $80,814), a snowmobile (valued at $2,000), an Ameritrade account (valued at $2,375) and a checking account (valued at $1,172). Marital debt consisting of one-half a line of credit secured in the name of Lee Machine, Inc. was divided equally. Monica was to pay Capitol One $4,000. Jeffrey was to pay the debts of Lee

[1] This method of business valuation does not include a determination of the value of goodwill.

Machine, Inc. (the other one-half of the line of credit and a $30,000 loan from his father to Lee Machine, Inc.).[2]

Jeffrey claims that this resulted in a substantial deviation from the presumptive 50/50 split. His primary contention is that the erroneous valuation of Lee Machine, Inc. (achieved by omission of debt) resulted in a windfall to Monica despite the trial court's intent to divide the marital estate equally. As we have previously observed, Jeffrey did not demonstrate that Lee Machine, Inc. was erroneously valued.

Normally, a business valuation would be derived after examination of both the company's assets and liabilities. Here, Seale's examination was hampered. To the extent that some debt may have been excluded from the business valuation and resulted in an unequal allocation of debt to Jeffrey, we observe that Jeffrey was in the best position to prevent the inequity. After the separation, he was in complete control of the company's assets and records. He was subject to a court order to disclose fully and accurately the extent of the company's accounts payable as well as accounts receivable. The trial court found that Jeffrey was uncooperative in discovery, contemptuous, and liable for attorney's fees.

Furthermore, Jeffrey had the opportunity to present evidence as to the value of Lee Machine, Inc. including all liabilities. He did not testify as to his opinion of its value, taking into account specific liabilities. Nor did he offer expert testimony in this regard.

Secondarily, Jeffrey observes that the trial court's written order does not result in a 50/50 split because the trial court did not specifically award to either party a Ford truck

[2] The marital residence was to be sold or auctioned and the parties were to be equally responsible for the expected deficiency.

(listed on Petitioner's Exhibit 16 as having a proposed value of $11,830). Monica concedes that the trial court did not specifically award this vehicle. However, she points out, without contradiction from Jeffrey, that this vehicle has always remained in Jeffrey's possession. Monica disclaims any interest in the vehicle and agrees that it should remain in Jeffrey's possession without any equalization payment by him.

Taking into account the Ford truck valued at $11,830, the assets are divided as follows:

Monica		Jeffrey	
		Ford Truck	11,830
401(k)	49,176	Lee Machine	80,814
Explorer	9,000	Snowmobile	2,000
Checking/Savings	905	Ameritrade	2,375
Personal Property	7,190[3]	Checking	1,172
	66,271		98,191

It appears that the $30,000 loan from Jeffrey's father was treated as a debt for which Jeffrey was personally liable (thus reducing his net asset share to $68,191). The line-of-credit personal debt was allocated equally and Monica was to pay the Capitol One debt, apparently a post-separation debt. The remaining debt was the portion of the line-of-credit attributable to the operation of Lee Machine, Inc. Because Lee Machine, Inc. was the debtor of record for that line of credit, and Seale estimated corporate accounts payable, presumably an appropriate amount was included as an account payable during valuation. Jeffrey received Lee Machine, Inc. inclusive of assets and liabilities and having a net asset value of $80,814.

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[3] The trial court found that personal property retained by Jeffrey had been acquired by him after the separation, and was his separate property rather than marital property.

Jeffrey has failed to establish that the trial court erroneously awarded Monica more than one-half of the marital estate.

III. Child Support Order

Jeffrey was ordered to pay $85 per week until the beginning of the next school term. At that time, childcare costs would decrease and Jeffrey was to pay $60 per week as support for the two children. He argues that his child support should be reduced because it was calculated based upon an overstated income of $45,106 when it should be $24,840, the amount reported by Lee Machine, Inc. on its 2006 tax return as officer compensation.

The calculation of a parent's income for child support purposes is more inclusive than the calculation for income tax purposes. Clark v. Madden, 725 N.E.2d 100, 107 (Ind. Ct. App. 2000). Indiana Child Support Guideline 3(A)(2) provides that weekly gross income from operation of a business "is defined as gross receipts minus ordinary and necessary expenses." These expenditures may include a reasonable yearly deduction for necessary capital expenditures. Id. The trial court is to carefully review income and expenses from the operation of a business and restrict deductions to reasonable out-of-pocket expenditures necessary to produce income. Id. The trial court is vested with discretion in this regard and its calculation of child support is presumed valid. Thompson v. Thompson, 811 N.E.2d 888, 923 (Ind. Ct. App. 2004), trans. denied.

Here, the trial court calculated Jeffrey's income by including the $24,840 officer compensation, $3,000 paid by Lee Machine, Inc. on Jeffrey's behalf (specifically, snowmobile payments) and $17,266 as an add-back of a depreciation deduction claimed by the corporation. Jeffrey does not explain why it was improper for the trial court to consider

sums paid on his behalf by the corporation as his personal income. Nor does he explain why it is improper for the trial court to add back the depreciation deduction of Lee Machine, Inc. in order to determine the reasonable out-of-pocket expense necessary to produce income. Finally, Jeffrey did not submit to the trial court an accounting of his ordinary and necessary expenses to generate income. Thus, he is unable to demonstrate clear error. See Williamson v. Williamson, 825 N.E.2d 33, 44 (Ind. Ct. App. 2005) (holding that self-employed father who based his income argument on tax returns but failed to submit to the trial court a calculation of his gross receipts minus ordinary and necessary expenses did not show clear error in the imputation of income).

Jeffrey also contends that when the trial court determined his child support arrearage, he was given inadequate credit for his parenting time. He argues that he had the children one-half of the time during the marital separation and thus should have 182 days parenting time credit rather than 160. This would have resulted in a de minimis reduction in Jeffrey's child support arrearage. However, he did not provide a child support worksheet for the relevant time period or object to Monica's worksheet on the basis that he had cared for the children more days than was reflected thereon. This Court will not reduce a child support award based upon invited error. See Batterman v. Bender, 809 N.E.2d 410, 412 (Ind. Ct. App. 2004) (concluding that a party may not take advantage of an error that he commits, invites, or which is the natural consequence of his own neglect).

Conclusion

With regard to the valuation and division of the marital estate, the evidence of record supports the findings of the trial court and the findings support the judgment. As such, the

property distribution order is not clearly erroneous. Likewise, the child support order is not clearly erroneous.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.