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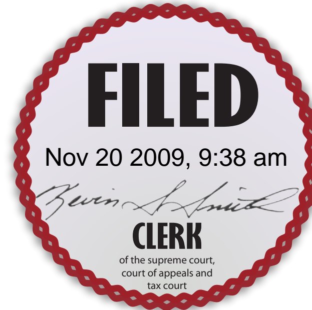

APPELLANT PRO SE:

DONALD W. SNOVER
Carlisle, Indiana

IN THE
COURT OF APPEALS OF INDIANA

DONALD W. SNOVER,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 77A04-0908-CV-475
	)	
LINDA K. SNOVER,	)	
	)	
Appellee.	)	

APPEAL FROM THE SULLIVAN SUPERIOR COURT
The Honorable Robert E. Springer, Judge
The Honorable Ann Smith Mischler, Magistrate
Cause No. 77D01-0804-DR-108

November 20, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

In a prior appeal, Donald W. Snover ("Donald"), acting pro se, challenged the trial court's distribution of property pursuant to the dissolution of his marriage to Linda K. Snover ("Linda"). The trial court had found that Donald had no interest in the marital residence. We found the declaration of lack of interest to be legally incorrect and remanded for the trial court to determine a just and equitable distribution of the marital property, including the marital residence. On remand, the trial court articulated findings with respect to the marital residence and concluded that Donald was not entitled to any of its value. Donald again appeals, acting pro se.[1] We affirm.

Issue

Donald presents the sole issue of whether the trial court abused its discretion by deviating from the statutory presumption that an equal division of assets is just and equitable.

Facts and Procedural History

During the first appeal, this court stated the relevant facts as follows:

> Donald and Linda were married on April 27, 1996. At that time, Linda lived in a house owned by her father; Donald moved into the house just prior to their marriage. For the next eight years, Donald and Linda lived in the house together and paid rent to Linda's father in the amount of $400.00 per month. During that time, Donald worked and provided financially for the family while Linda cared for the home. On May 27, 2004, Linda's father transferred ownership of the property to Linda, only, by a quit-claim deed.

[1] Linda has filed no appellee's brief. When an appellee does not submit a brief, we need not undertake the burden of developing an argument on the appellee's behalf, and "we apply a less stringent standard of review with respect to showings of reversible error." Murfitt v. Murfitt, 809 N.E.2d 332, 333 (Ind. Ct. App. 2004). We will reverse the trial court's judgment if the appellant's brief presents a case of prima facie error, which is an error at first sight, on first appearance, or on the face of it. Id. Where the appellant does not meet this burden, however, we will affirm. Id.

> Linda did not pay any money to purchase the property from her father, and she currently owns the property free of any liens or mortgages.
>
> On May 29, 2004, Donald was arrested and taken to jail. Donald was subsequently convicted of a felony and sentenced to the Department of Correction; he is currently incarcerated at the Wabash Valley Correctional Facility. Since his arrest on May 30, 2004, Donald has not lived in the home or contributed financially to support the home or Linda.
>
> On April 3, 2008, Donald filed a petition for dissolution of his marriage. . . . The trial court held the final hearing on October 30, 2008. At the hearing, the trial court conducted an independent examination of Linda and asked the specific written questions submitted by Donald. Following the hearing, the trial court issued its decree of dissolution, in which it found:
>
>> That the real estate in question was occupied and rented by the parties from April 27, 1996, through May 27, 2004. On May 27, 2004, the property was transferred to [Linda] only from her Father by Quit Claim Deed. On May 29, 2004, [Donald] was incarcerated and has not resided at the residence since said date. Based on the foregoing, the Court finds [Donald] has no interest in said real estate and awards the same to [Linda] free and clear of all claims of [Donald].

Snover v. Snover, No. 77A05-0812-CV-719, slip op. at 2-4 (Ind. Ct. App. June 4, 2009).

Donald's first appeal raised two issues: (1) whether the trial court abused its discretion when it allowed Donald to submit his claim through documentary evidence but denied his request to participate in the final hearing by videoconference; and (2) whether the trial court abused its discretion when it awarded the entire marital residence to Linda. Id. at 2. This court concluded that Donald was able to fully present his claim through his documentary evidence and thus, the trial court did not abuse its discretion by denying his request for participation by videoconference. Id. at 6. However, we found remand to be necessary with respect to the distribution of the marital residence, observing:

In a dissolution action, a trial court must divide the property of the parties, whether owned by either spouse prior to the marriage or acquired by either spouse after the marriage and before the final separation of the parties, or acquired by their joint efforts, in a just and reasonable manner. Ind. Code § 31-15-7-4. In so doing, the trial court "shall presume that an equal division of the marital property between the parties is just and reasonable." Ind. Code § 31-15-7-5. However, the court may consider statutory factors that may rebut the presumption of equal division. Id.; Hill [v. Bolinger, 881 N.E.2d 92, 95 (Ind. Ct. App. 2008), trans. denied.] These factors include: "the contribution of each spouse to the acquisition of the property." Ind. Code § 31-15-7-5(1); the extent to which the property was acquired by one spouse through inheritance or gift, § 31-15-7-5(2); and the conduct of the parties during the marriage as it relates to the disposition or dissipation of their property. § 31-15-7-5(4).

Here, the trial court determined that Donald had "no interest" in the real estate. Appellant's App. at 70. This statement is legally incorrect. The marital pot includes all property held by either spouse as of the date that Donald filed his petition for dissolution and paid the filing fee; this includes the marital residence. Therefore, the trial court was required to distribute the marital residence with a presumption in favor of equal distribution. The trial court's statement that Donald had no interest in the real estate is akin to taking the marital residence out of consideration in the distribution of property. Therefore, the trial court abused its discretion when it found Donald had no interest in the marital residence.

That is not to say that Donald is necessarily entitled to a fifty-fifty split of the real estate's value – or that he is entitled to any value from that property. On the one hand, Donald lived in the residence for only two days after it became marital property and likely contributed little to its value after May 27, 2004. Also, Linda's father gifted the property to her alone. In addition, Donald's criminal activity put the residence at risk of forfeiture. See Ind. Code § 34-24-1-1(a)(5). On the other hand, Donald provided financially for the couple for eight years, during which they paid Linda's father rent to live in the house, and after which they received the house for free. In addition, Donald contributed to the upkeep and maintenance of the house for those eight years.

It is the trial court's responsibility, and not ours, to weigh the evidence and arrive at a just and equitable division of the marital property. However, the trial court's statement that Donald has no interest in the property leads us to believe this did not occur. Therefore, we remand this issue to the trial court to

include the residence in the marital pot and arrive at a just and reasonable distribution.

Snover, slip op. at 7-8. On remand, the trial court entered its "Order Regarding Petitioner's Interest in Marital Residence," which provided as follows:

> This matter having been remanded by the Court [o]f Appeals for the trial court to determine a just and equitable distribution of the marital property, including the marital residence, now determines said marital interest as follows:
>
> 1. The Petitioner lived in the marital residence for only two (2) days after it became marital property. The Respondent's Father gifted the property to the Respondent alone by executing a Quit Claim Deed on May 24, 2004.
> 2. Although the parties paid the Respondent's Father rent for eight (8) years prior to the transfer of the property to the Respondent, and the Petitioner may have provided for the upkeep and maintenance of the property, there was no evidence presented by either party that they were "renting with the option to buy" or had any type of written or oral Contract with the Respondent's Father regarding the marital residence. Thus, the parties were merely renting the property for the eight (8) years prior to the transfer and thus no equity had accured [sic] in the marital residence.
> 3. The Petitioner's criminal activity actually put the marital residence at the risk of forfeiture and having the property titled in the Respondent's name solely may have been the only obstacle that kept the State of Indiana from seeking forfeiture.
> 4. The marital residence has an Assessed value of Eighty-seven Thousand Nine Hundred Dollars ($87,900) as of May 16, 2008, according to the Property Record Card provided by the Respondent at the Final Hearing.
> 5. Since there was no written or oral agreement between the parties and the Respondent's Father, the value of the Petitioner's interest in the property is equivalent to having lived in the residence for two (2) days after it became marital property. The Petitioner did not contribute to the marital residence after May 27, 2004, due to his arrest, incarceration, and subsequent conviction.
>
> Based on the foregoing reasons, the Court finds the Petitioner is not entitled to any value from the marital property.

(App. 8.) This appeal ensued.

Discussion and Decision

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). Even if the facts and reasonable inferences might allow a conclusion different from that reached by the trial court, we will not substitute our judgment for that of the trial court unless its decision is clearly against the logic and effect of the facts and circumstances before it. Perkins v. Harding, 836 N.E.2d 295, 299 (Ind. Ct. App. 2005).

Indiana's "one pot" theory prohibits the exclusion of any asset in which a party has a vested interest from the scope of the trial court's power to divide and award. Hann v. Hann, 655 N.E.2d 566, 569 (Ind. Ct. App. 1995), trans. denied. Accordingly, the systematic exclusion of any marital asset from the marital pot is erroneous, including those attributable to a gift or an inheritance from one spouse's parents. Wallace v. Wallace, 714 N.E.2d 774, 780 (Ind. Ct. App. 1999), trans. denied. However, although the trial court must include all assets in the marital pot, it may ultimately decide to award an asset solely to one spouse as part of its just and reasonable property division. Coffey v. Coffey, 649 N.E.2d 1074, 1077

(Ind. Ct. App. 1995); see also Ind. Code § 31-15-7-5(2)(B) (providing that the trial court may consider as evidence to rebut the presumptive equal distribution "the extent to which the property was acquired by each spouse through inheritance or gift"). Nevertheless, even where the trial court properly sets aside the value of an original gift to one spouse, and the property has appreciated in value, the appreciation of the gift is a divisible marital asset. Cooper v. Cooper, 730 N.E.2d 212, 217 (Ind. Ct. App. 2000).

On remand of this matter, the trial court included the Elkhart residence in the marital pot, but decided to award the full value of that asset to Linda because she acquired the residence as a gift from her father two days before Donald was arrested for possession of methamphetamine. As the trial court observed, there was no evidence that a rent-to-buy agreement preceded the gift. Linda's testimony was that "it was strictly a rental situation." (Tr. 11.) Thus, the trial court could appropriately conclude that Donald's payment of rent for eight years did not contribute to the acquisition of the property. Moreover, any appreciation during the two-day lapse of time between the property acquisition and Donald's incarceration would have been de minimus.

Upon remand, the trial court did not systematically excise a marital asset from the marital estate. Rather, after due consideration, the trial court set aside to Linda the value of an asset acquired by a gift to her shortly before the final marital separation. As such, the trial court did not disregard relevant statutory authority to effect a property division in this marital dissolution action.

Affirmed.

VAIDIK, J., and BRADFORD, J., concur.