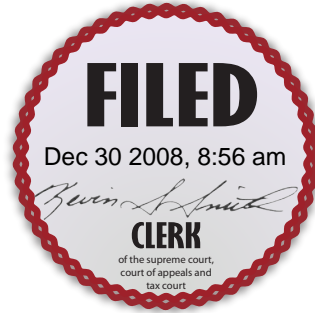


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE:

ATTORNEY FOR APPELLEE:

**SAIFUL SAM ISLAM**  
Terre Haute, Indiana

**KARNE A. WYLE**  
Bloomington, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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SAIFUL SAM ISLAM,  
Appellant-Respondent,

vs.

BRENDA COLLEEN MEADOWS,  
Appellee-Petitioner.

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No. 53A04-0808-CV-496

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APPEAL FROM THE MONROE CIRCUIT COURT  
The Honorable E. Michael Hoff, Judge  
Cause No. 53C08-0701-DR-42

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**December 30, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**DARDEN, Judge**

## STATEMENT OF THE CASE

Saiful Sam Islam (“Father”), pro se,<sup>1</sup> appeals the trial court’s order dissolving his marriage to Brenda Meadows (“Mother”).

We affirm.

## ISSUES

Father purports to raise the following for our review:

1. Whether the trial court abused its discretion in its division of the marital estate.
2. Whether the trial court abused its discretion in failing to include certain assets in the marital estate.
3. Whether the trial court abused its discretion in establishing the visitation order.
4. Whether the trial court abused its discretion in determining child support.

## FACTS

Father and Mother were married on July 25, 1997; their only child, K., was born on June 9, 2004. On January 22, 2007, Mother filed a petition to dissolve the marriage.

The trial court held a final hearing on March 17, 2008. Mother requested special findings of fact and conclusions of law pursuant to Indiana Trial Rule 52. Both parties submitted proposed findings of fact and conclusions of law.

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<sup>1</sup> We note that Father’s brief fails to comply with Indiana Appellate Rule 46(A)(4)-(8). “It is well settled that pro se litigants are held to the same standard as are licensed lawyers.” *Goossens v. Goossens*, 829 N.E.2d 36, 43 (Ind. Ct. App. 2005).

On May 21, 2008, the trial court entered its decree of dissolution. The trial court found, in part, as follows:

Findings Concerning K[.]

\* \* \*

4. [Mother] . . . lives in Bloomington, Indiana. She is an engineer. She works for Cook Pharmaceutical and earns \$67,750.00 per year. She has gross weekly income of \$1,303.00. She pays \$21.23 each week for health insurance for K[.]. She does not have any other children.

5. [Father] . . . now lives in Bloomington, Indiana. He recently moved from Terre Haute, Indiana. He still owns a house in Terre Haute that he bought after the parties separated. He is an engineer. He works for Boston Scientific and earns \$80,017.60 per year. He earns a gross weekly income of \$1,539.00. He pays \$18.74 each week for health insurance for K[.]. He does not have any other children.

6. Daycare for K[.] costs the parties \$110.00 per week. The Father paid this in 2007 through December 12, 2007 pursuant to an agreement between the parties that let him use a tax advantaged account through his employer. His effective cost for day care was \$88.00 per week. The Mother has been paying the day care cost since December 19, 2007. Her employer does not offer a tax advantaged account, so her cost for day care is \$110.00 per week.

7. The Mother has had the legal custody of K[.] since the Agreed Provisional Order entered in this case on March 6, 2007. The Father has had parenting time with K[.] pursuant to that order on alternate weekends, on half of the holidays, and overnight one day each week.

\* \* \*

9. A serious impediment to the parties' relationship and their ability to work together as parents is the Father's use of anger and force against the Mother. Before the parties separated the Father became angry and upset, and he hit the Mother several times . . . . After the separation, in the summer of 2007, the Father again became upset with the Mother . . . . The Father kicked the Mother's legs. . . . The Mother agreed not to pursue

criminal charges against the Father is [sic] he attended anger management counseling. . . . The Father did complete five sessions of anger management counseling and he stated that the sessions helped him.

10. The Mother is afraid of the Father as a result of his anger and violence toward her.

11. A Psychological Evaluation for Custody and Parenting time was done by Lawrence R. Barnhill, Ph.D., as [sic] licensed Health Care Provider in Psychology. Dr. Barnhill provided a written report to the court on November 26, 2007, and he testified at the final hearing.

12. In his report, Dr. Barnhill concluded that both parents appeared to him to be very good parents with a very good bond with K[.]. In his testimony in court, Dr. Barnhill described both parents as warm, supportive and capable. Dr. Barnhill stated that the parents should have joint legal custody of K[.] in order to keep both parents involved with K[.].

13. Dr. Barnhill noted that there were no witnesses to the Father's batteries on the Mother, and Dr. Barnhill discounted the Mother's fear of the Father that resulted from the batteries. Dr. Barnhill seemed surprised that the Mother did not have good words to say about the Father, and that it was hard to get the Mother to comment on matters other than the way the Father treated the Mother during the marriage. Dr. Barnhill made these observations even though he noted that the Father's emails were very demanding . . . . Dr. Barnhill hopes that with a detailed plan in place for K[.] the [F]ather will be less assertive and angry, and the Mother will be less afraid.

14. Dr. Barnhill testified that he would be supportive of a 50/50 split of K[.]'s time between her parents, although he did not think it a good idea to increase the number of times the parents transferred K[.]. He also testified that there is no science to decide whether or not such a division of K[.]'s time is in her best interest. Dr. Barnhill testified that the Father should have easy access to K[.] in daycare, and that there was no reason why K[.] should not spend time with her paternal grandmother instead of in daycare.

\* \* \*

18. The Mother and Father are both of the Muslim religious faith. The Mother converted from Christianity to Islam before she met the Father.

The Mother is not an observant Muslim at this time, but both the Mother and Father intend to raise K[.] in the Muslim faith. The Mother also observes the Christian holidays with her family of origin.

\* \* \*

### Findings Concerning Property/Other Issues

23. The parties divided their personal property between them. Neither party had the property appraised or submitted credible information about value. The court viewed photographs of the property they divided and it appears that each party received personal property of roughly equal value.

24. [Mother] received jewelry from [Father]'s mother at the time the parties were married. The jewelry was not described or appraised. Neither party included the jewelry in their Financial Declarations filed pursuant to the local rule. Neither party included the jewelry on their balance sheets and proposed property divisions. [Father] testified that jewelry still belongs to his mother, and is worth \$25,000.00 to \$35,000.00. [Mother] testified that she intends to keep the jewelry for K[.]

\* \* \*

32. The parties had a financial account with HSBC Direct. The account was in [Father]'s name alone. The account had a balance of \$21,412.47 on January 5, 2007. [Father] withdrew \$11,000.00 from the HSBC account on January 16, 2007 and placed it into a bank account that he controlled.

33. [Father] used about \$7,500.00 from the HSBC Direct account to buy a new Toyota Corolla car on Friday, January 19, 2007. He borrowed the remainder of the purchase price, \$10,287.86, from Toyota Financial Services.

34. [Mother] filed her dissolution petition on Monday, January 22, 2007, three days after [Father] bought his new car. [Father] knew [Mother] intended to file for divorce, and [Father] knew [Mother] objected to his proposed car purchase.

35. Aside from the disputes that are noted above, the parties generally agree about the items that the court must divide, and the value (but not the distribution) of accounts, vehicles and debt.

36. The court finds that the marital estate includes the following property at the following values:

Marital residence sale proceeds	\$31,603.00
HSBC financial account	\$21,412.00
Wife's Baxter 401(k)	\$9,868.00
Husband's Baxter 401(k)	\$16,771.00
2001 Camaro	\$13,500.00
1999 Saturn	\$2,460.00

37. The court finds that the marital estate includes the following debts:

Citi credit card	-\$10,521.00
Chase credit card	-\$10,570.00
Discover credit card	-\$7,761.00
Husband's 401(k) loan	-\$4,841.00
Wife's 401(k) loan	-\$2,142.00

38. [Father] paid \$4,200.00 to Lawrence R. Barnhill, Ph.D. for the preparation of the parenting time report.

### Conclusions

\* \* \*

47. Both the Mother and Father are very involved and committed parents. Both parents are able to properly care for K[.]. K[.] has a close and beneficial relationship with both of them. . . . Both homes are suitable . . . .

48. Both parents are Muslims, although the Mother says she is not now a practicing Muslim. She intends to raise K[.] in the Muslim faith, but to leave decisions about religion to K[.] as K[.] grows older. The Father is a practicing Muslim. There is no dispute between the parties about K[.]'s religious upbringing.

49. . . . The main question about ordering joint custody is whether or not the parents are willing and able to communicate and cooperate in advancing K[.]'s welfare so that it would be in K[.]'s best interest to order joint custody.

\* \* \*

51. The Father's battery of the Mother is relevant to determination of custody, and is relevant to a determination of whether or not joint custody should be ordered. Despite the short shrift that Dr. Barnhill gave to the Father's anger and violence toward the Mother, the Father's treatment of the Mother indicates to the court that the Father seeks to impose his decisions on the Mother. It is not evidence of a willingness to communicate and cooperate . . . .

\* \* \*

54. It is in K[.]'s best interests to have frequent, regular contact with both of her parents. It would be best for her if her parents would actively cooperate with each other to help raise her.

55. The court concludes that an award of joint custody would help to continue the current custody battle into the future, and, if the Mother is given primary physical custody, would encourage the Father to rearm for future rounds. Since the parties agree about religion, and the Father accepts the Mother's choices about doctors and education, joint custody would serve no other purpose.

56. The Mother should be awarded custody of K[.], with extensive parenting time provided for the Father as set out in this order.

57. A Child Support Obligation Worksheet is attached to this order. The court finds that [Father] should receive a credit toward his weekly child support obligation for 140 overnights, even if the actual number of overnights is somewhat more or less from time to time.

\* \* \*

60. Neither party presented evidence about the value of personal property. Each party received personal property of roughly equal value. Each party should retain the personal property that he or she has.

\* \* \*

62. The HSBC account should be valued at its balance of \$21,412.47 before the [Father]'s withdrawal on January 16, 2007. [Father]'s purchase

of the Toyota Corolla on January 19, 2007 should be ignored, even though it occurred shortly before the divorce filing. [Father] should be assigned the HSBC account of \$21,412.47 and anything he subsequently purchased or paid out of those funds, including the Toyota Corolla, should be his property.

63. The parties' property and debts should be assigned to them as set out in the following table:

Item	Value	To Wife	To Husband
Marital residence sale proceeds	\$31,603.00		\$31,603.00
HSBC financial account	\$21,412.00		\$21,412.00
[Mother]'s Baxter 401(k)	\$9,868.00	\$9,868.00	
[Father]'s Baxter 401(k)	\$16,771.00		\$16,771.00
2001 Camaro	\$13,500.00	\$13,500.00	
1999 Saturn	\$1,460.00		\$1,460.00
Citi credit card	-\$10,521.00		-\$10,521.00
Chase credit card	-\$10,570.00		-\$10,570.00
Discover credit card	-\$7,761.00		-\$7,761.00
[Father]'s 401(k) loan	-\$4,841.00		-\$4,841.00
[Mother]'s 401(k) loan	-\$2,142.00	-\$2,142.00	
Totals	\$58,779.00	\$21,226.00	\$37,553.00

64. In order to equalize the division of property between the parties, [Father] should pay [Mother] the sum of \$8,163.50 . . . .

ORDERS

65. The marriage of [Mother] and [Father] is dissolved.

66. [Mother] shall have the legal custody of K[.], born June 9, 2004.

67. [Father] shall have parenting time with K[.] at the following times:

A. On alternate weekends from after school or daycare on Friday until Monday. The Father shall return K[.] to school or daycare Monday morning.



B. Each Wednesday from after school or daycare until Thursday morning. The Father shall have the option to keep K[.] in his home during the day on Thursday so long as K[.] is in daycare, until she starts Kindergarten. If the Father does keep K[.] in his home on Thursday, he shall return K[.] to the Mother by 6:00 p.m. on Thursday.

C. On Holidays pursuant to the Indiana Parenting Time Guidelines for noncustodial parents, with the following exceptions and additions:

i. The Mother shall have K[.] each year for Christmas Eve and Christmas day from after school the day school is dismissed for Winter break until 7:00 p.m. on December 17. The Father shall have K[.] from 7:00 p.m. on December 17 and for as many days as needed to equalize his time with K[.] with the Mother's time with K[.] Any remaining days during the Winter break shall be divided equally between the parties.

ii. The Mother shall have K[.] each year for the Easter weekend from after school or daycare on Friday through Sunday.

iii. The Father shall have K[.] for both of the two EID<sup>[2]</sup> periods of three days that change each year. If an EID holiday and a Christmas or Easter holiday overlap, the parties shall share that overlap time with K[.] equally. If an EID holiday and another Holiday allocated to the Mother under the Parenting Time Guidelines overlap, the Mother will have an equivalent number of make up days with K[.] within thirty (30) days.

iv. Each parent shall have the right to two (2) periods of two (2) consecutive weeks each summer. The vacation periods shall not be interrupted by parenting time for the other parent, notwithstanding the other terms of this order. The vacation periods shall not be scheduled on holidays that are awarded to the other parent, without the consent of the other parent. Each parent shall provide the other parent with a complete itinerary including contact telephone numbers.

68. The Mother shall have K[.] on Holidays pursuant to the Indiana Parenting Time Guidelines for custodial parents, except as otherwise specified in this order.

\* \* \*

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<sup>2</sup> Apparently, EID is an abbreviation for the "two canonical festivals of Islam," Eid al-Fitr and Eid al-adha. See <http://www.britannica.com> (last visited Dec. 9, 2008).

70. [Father] shall pay child support to [Mother] in the weekly amount of \$125.00, beginning January 4, 2008 . . . . [Mother] shall pay the first \$936.00 in uninsured medical expenses for K[.] each calendar year, and [Mother] shall pay 46%, and [Father] shall pay 54%, of any remaining annual medical expense. Both parties shall provide medical insurance for K[.] if the insurance is available from his or her employer at reasonable cost.

71. [Father] shall have a credit of \$396.00 against the child support ordered in this case for his payment of child care expenses for K[.] from October 12, 2007 through December 31, 2007.

\* \* \*

73. [Mother] and [Father] shall each have the property now in his or her possession, and the other property awarded to that party in this order.

(Father's App. 12-23). Father filed a motion to correct error on June 20, 2008, which the trial court denied.

### DECISION

When a party has requested special findings of fact and conclusions of law pursuant to Indiana Trial Rule 52(A), we may affirm the judgment on any legal theory supported by the findings. *Wenzel v. Hopper & Galliher, P.C.*, 779 N.E.2d 30, 36 (Ind. Ct. App. 2002), *trans. denied*. In reviewing the judgment, we first must determine whether the evidence supports the findings, and second, whether the findings support the judgment. *Id.* Findings of fact are clearly erroneous when the record lacks any evidence or reasonable inferences from the evidence to support them. *Id.* The judgment will be reversed if it is clearly erroneous. *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. *Id.* We will not reweigh the evidence or assess witness credibility. *Id.* Even though there is evidence to support it, a judgment is clearly erroneous if the reviewing court's examination of the record leaves it with the firm conviction that a mistake has been made. *Id.* A judgment is clearly erroneous if it applies the wrong legal standard to properly found facts. *Nienaber v. Nienaber*, 787 N.E.2d 450, 454 (Ind. Ct. App. 2003).

Father asserts that “[e]vidences [sic] in the areas of child custody, child support, child visitation and division of properties were against the trial courts [sic] judgment.” Father’s Br. at 23. He also asserts that the proposed findings submitted by his counsel to the trial court “provided incorrect and unrepresented information . . . .” *Id.* Father, however, provides no citation to authority or cogent argument. Accordingly, he has waived these issues. *Smith v. State*, 822 N.E.2d 193, 202-03 (Ind. Ct. App. 2005), *trans. denied*.

Furthermore, we note that Father specifically did not request a transcript of the final hearing, upon which the trial court’s findings of facts and conclusions of law are based. Indiana Appellate Rule 9(F)(4) provides:

The Notice of Appeal shall designate all portions of the Transcript necessary to present fairly and decide the issues on appeal. If the appellant intends to urge on appeal that a finding of fact or conclusion thereon is unsupported by the evidence or is contrary to the evidence, the Notice of Appeal shall request a Transcript of all the evidence.

“[T]he ‘failure to include a transcript works a waiver of any specifications of error which depend upon the evidence.’” *Fields v. Conforti*, 868 N.E.2d 507, 510 (Ind. Ct. App.

2007) (quoting *In re Walker*, 665 N.E.2d 586, 588 (Ind. 1996)). Thus, to the extent Father argues the evidence does not support the trial court's findings, he has waived review of any purported error. *See Fields*, 868 N.E.2d at 510.

Affirmed.

RILEY, J., and VAIDIK, J., concur.