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**IN THE
COURT OF APPEALS OF INDIANA**

WILLIAM E. WILSON,)
)
 Appellant,)
)
 vs.) No. 16A01-0603-CV-117
)
 AMY WILSON,)
)
 Appellee.)

APPEAL FROM THE DECATUR CIRCUIT COURT
The Honorable John A. Westhafer, Judge
Cause No. 16C01-0310-DR-303

October 31, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

William Wilson appeals the trial court's division of the marital estate following his and Amy Wilson's dissolution. We remand.

Issue

William raises one issue, which we restate as whether the trial court properly divided the marital estate.

Facts

William and Amy were married on July 30, 1988, and their marriage produced three children. William works as a farmer and assists his father in a snow removal and trucking business. Amy works as a manager at McDonald's.

On October 16, 2003, Amy filed a petition for dissolution.¹ A provisional hearing was scheduled for November 14, 2003, but the parties failed to appear, and it seems as though they briefly reconciled during this time. They then physically separated on June 12, 2005. The trial court held a final hearing on January 10, 2006. On February 20, 2006, the decree of dissolution of marriage was entered. William now appeals the trial court's distribution of the marital estate.

Analysis

At the outset, we observe that Amy has not filed an appellee's brief. In such a situation, we will not develop arguments for her and employ a less stringent standard of

¹ William's statement of facts states that he petitioned for dissolution. See Appellant's Br. p. 1. However, our review of the chronological case summary and petition for dissolution contained in the appendix reveal that Amy filed for the dissolution. See App. pp. 1, 8-9.

review. See Everette v. Everette, 841 N.E.2d 210, 212 (Ind. Ct. App. 2006). Under that standard, we may reverse the trial court if the appellant establishes prima facie error. Id. Prima facie error is error “at first sight, on first appearance, or on the face of it.” Id.

William contends that the trial court abused its discretion when it distributed more than fifty percent of the marital assets to Amy. Before we may fully address this issue, we must first determine whether the trial court properly included in the marital estate a debt with Walters Tire Center. William contends that this debt should not have been included in the couple’s marital estate because Amy incurred it both after she filed the petition for dissolution and after the parties’ subsequent separation. We disagree.

Indiana subscribes to the “one pot” theory for dividing property following the dissolution of a marriage. Bertholet v. Bertholet, 725 N.E.2d 487, 495 (Ind. Ct. App. 2000). As such, Indiana Code Section 31-15-7-4 provides that the marital estate includes all property 1) owned by either spouse before the marriage; 2) acquired by either spouse after the marriage but prior to the final separation of the parties; or 3) acquired by the spouses’ joint efforts. Although Indiana Code Section 31-9-2-46 defines “final separation” as the date of filing of the petition for dissolution of marriage, it is within the trial court’s discretion to set any date between the date of filing the dissolution petition and the date of the final hearing as the date for marital property valuation. See Deckard v. Deckard, 841 N.E.2d 194, 200 (Ind. Ct. App. 2006). “[A] trial court has broad discretion in ascertaining the value of property in a dissolution action and has not abused its discretion if its decision is supported by sufficient evidence and the reasonable

inferences following therefrom.” Thompson v. Thompson, 811 N.E.2d 888, 916 (Ind. Ct. App. 2004), trans. denied.

Here, Amy filed a petition for dissolution on October 16, 2003. It seems that the parties then reconciled briefly but separated on June 12, 2005. Amy incurred the Walters Tire Center debt for necessary repairs made to her vehicle on June 22, 2005. During the January 10, 2006 final hearing in this matter, the trial court admitted evidence related to this debt over William’s objection that the debt was incurred after the parties’ separation. Amy responded: “[I]t’s still a marital asset that required repair work regardless of when it occurred.” Tr. p. 14. On appeal, William changes his argument slightly and contends that the debt should not be included in the marital estate because Amy incurred it after she filed her petition for dissolution. See Appellant’s Br. p. 9. We are not persuaded by either argument.

We are not able to determine the precise date used by the trial court in determining the value of the parties’ property. Nonetheless, given the fact that the trial court included the June 22, 2005 Walters Tire Center debt in the marital “pot,” it is clear that the trial court must have used a date falling sometime between the date on which Amy filed the petition for dissolution and the final hearing. See In re Marriage of Sloss, 526 N.E.2d 1036, 1038-39 (Ind. Ct. App. 1988) (“No finding of fact or conclusion of law specifically indicated the property division valuation date. The trial court may use any date between the final separation and the date of dissolution as the valuation date”). “While it is true that the trial court could have exercised its discretion and considered the date the parties no longer resided together, under the circumstances, it was not an abuse of discretion for

the trial court to refuse to consider that date in dividing the marital property.” Grimes v. Grimes, 722 N.E.2d 374, 377 (Ind. Ct. App. 2000), trans. denied. Inclusion of the Walters Tire Center debt in the marital pot was not error.

With regard to the distribution of property, the decree of dissolution provides:

7. That [William] shall retain all of the farm equipment, the Honda 125 4-wheeler for the use and benefit of [the parties’ daughter], and all personal property currently in his possession. [William] shall also receive all of the popcorn, corn and bean income.

8. That [Amy] shall retain the Chevy Tahoe and all other personal property currently in her possession (with the exception of the Honda 125 4-wheeler).

9. That [Amy] shall pay and be solely responsible for any indebtedness related to the Chevy Tahoe, including the [Walters Tire Center] debt

10. That [William] shall pay and be solely responsible for the following debts . . . :

- A. Loan on the tractor;
- B. 2002 Ag loan;
- C. Loan on JD 4010;
- D. Loan on Polaris 700;
- E. 2005 Ag loan;
- F. Al Weber (rent);
- G. Debt to Decatur County Hospital; and
- H. Repair bill for the Honda 125 4-wheeler.

* * * * *

12. Each party shall pay and be responsible for any debts incurred in their individual names not specifically mentioned herein

App. pp. 6-7. Obviously, the trial court did not assign values to any of the property distributed to the parties in the decree. As best we can determine, the record reveals that the property distributed in the decree is valued approximately as follows.

Property Distributed to William

1.	Farm equipment	\$60,060-\$71,610 ²
2.	Estimated 2005 popcorn crop income	\$33,536
3.	Estimated 2005 corn crop income	\$11,903
4.	Estimated 2005 bean crop income	\$32,022
5.	Honda 125 4-wheeler	value unclear ³
6.	Personal property	\$250-\$2,500 ⁴
7.	Tractor lien	(\$5,408)
8.	2002 Ag loan	(\$39,567)
9.	Loan on JD 4010	(\$14,895)
10.	Loan on Polaris 700	(\$3,045)
11.	2005 Ag loan	(\$65,020)
12.	Decatur County Hospital debt	(\$468)
13.	Repairs to Honda 125 4-wheeler	(value unclear)
14.	Laughery Valley & Ag One loan/ rent to Al Webster	(\$25,020)
15.	Royster-Clark loan	(\$20,452)

Property Distributed to Amy

1.	Chevy Tahoe	\$3,000-\$6,000 ⁵
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² William mentions in the fact section of his appellate brief that although the farming equipment in his possession was appraised at \$71,610, he testified that two pieces of the equipment actually belong to his father and that the actual value of the equipment he owns is \$60,060.

³ The Wilsons' 2004 tax return lists both the cost and elected cost of a "1987 Honda 4 wheeler" as \$1,165. Petitioner's Ex. 8. We assume this is the same 4-wheeler distributed in the decree of dissolution, but we are unable to determine it's depreciated value.

⁴ Amy and William disagree as to the value of the personal property in William's possession.

2.	Lien on Tahoe	(\$4,097)
3.	Walters Tire Center debt	(\$1,087.41)
3.	Personal property	\$2500 ⁶

The parties seem to agree on the value of much of the property, particularly the debts, at issue here. However there is conflicting evidence of several items' values, and some of the discrepancies are quite large. We are unable to find evidence of other items' values. Because the values of so many items in the Wilsons' marital pot are unclear, we are unable to determine whether that pot was divided equally. We therefore remand to the trial court for clarification of the values of the items distributed in the decree.

On remand, we offer some guidance to avoid further disputes and confusion. First, we point out that the trial court has discretion in determining the value of property in a dissolution action. Balicki v. Balicki, 837 N.E.2d 532, 536 (Ind. Ct. App. 2005), trans. denied. "If the trial court's chosen valuation is within the range of values supported by the evidence, the court does not abuse its discretion." Id.

Second, as William correctly argues on appeal, Indiana Code Section 31-15-7-5 provides that an equal division of the marital property is presumed to be just and reasonable. "If the trial court deviates from this presumption, it must state why it did so." Thompson, 811 N.E.2d at 912-13. An unequal division generally occurs when, as

⁵ With regard to this item, too, the parties seem to disagree about its value. Both parties testified they believed the Chevy Tahoe was worth \$3000, but it was appraised at \$6000.

⁶ Although William testified at the final hearing that he believed the personal property in Amy's possession should be valued at \$8,725, in his appellate brief he states, "as to the differences between the parties' opinions as to the value of the personal property in each of the party's possession, such difference must be resolved in Wife's favor." Appellant's Br. p. 9. We therefore use the \$2,500 figure that William concedes we must.

Indiana Code Section 31-15-7-5 contemplates, a party rebuts the presumption by presenting evidence that an equal split would not be just and reasonable. Ind. Code § 31-15-7-5.

Interestingly, in this case both parties requested that the marital estate be equally divided. At the final hearing, Amy testified that, in her answers to William's interrogatories, she stated that she believed the property should be divided "Fifty-fifty," and that she maintained that was the appropriate way to divide the estate. Tr. p. 27. William, too, testified that he desired an equal division of the parties' estate and requested a \$23,366 payment from Amy to even out the distribution of property if the trial court's division of debts, farm equipment, and the like did not achieve an equal split. See Tr. p. 64. We again note that when the trial court deviates from the equal division of marital assets, it is required enter findings related to the factors set forth in Indiana Code Section 31-15-7-5.⁷ Should the trial court deviate from the presumed split in this case,

⁷ The factors enumerated in Indiana Code Section 31-15-7-5 are:

- (1) 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.

we believe such an explanation of that deviation would be particularly important given the parties' mutual desire for an even distribution.

Conclusion

We are unable to ascertain whether the trial court evenly divided the Wilsons' martial estate. For that reason, we remand for clarification and, if necessary, further proceedings consistent with this decision.

Remanded.

SULLIVAN, J., and ROBB, J., concur.

(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.