MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Edward P. Grimmer,
Appellant-Respondent,

v.

Denise A. Grimmer,
Appellee-Petitioner.

September 28, 2022

Court of Appeals Case No. 21A-DN-1861

Appeal from the Porter Superior Court

The Honorable Michael J. Drenth, Special Judge

Trial Court Cause No. 64D02-1806-DN-5217

Mathias, Judge.

[1] Edward Grimmer ("Husband") appeals the Porter Superior Court's final decree dissolving his marriage to Denise Grimmer ("Wife"). Husband presents four issues for our review, which we consolidate and restate as three issues:

I. Whether the arbitrator's findings and conclusions regarding a child support arrearage owing from Wife's first husband are void.

II. Whether the trial court erred when it granted partial summary judgment for Wife on the issue of whether the child support arrearage owing from Wife's first husband was a marital asset.

III. Whether the trial court's property division is supported by the evidence and consistent with Indiana law.

[2] We affirm.

Facts and Procedural History

[3] Husband and Wife were married July 15, 2006. They did not have children together, but each had two daughters from a prior marriage. During the parties' marriage, Husband was employed as an attorney, and he earned income from, among other things, his interests in various family businesses, which he had inherited prior to the parties' marriage. Wife was employed for some time during the marriage, but she became a "full-time homemaker" in 2013. Tr. p. 13. In 2018, Wife filed a petition for dissolution of the marriage.

[4] On January 30, 2020, Wife filed a motion for partial summary judgment on the issue of whether her first husband's child support arrearage, totaling approximately $200,000, was a marital asset. Wife alleged that the "uncollected and probably uncollectible child support arrearages owed by the Wife's first husband are a mere expectancy, speculative and contingent in nature, and do not constitute a vested marital asset and are not subject to division in the Wife's

current divorce from her second husband." Appellant's App. Vol. 2, p. 77. In support, Wife stated that she had not received a payment toward the arrearage since 2015 and she did not even know whether her first husband was alive or dead. The trial court granted Wife's motion.

[5] After the trial court ordered the parties to mediation, they "agreed to convert" the mediator to an arbitrator. Appellant's App. Vol. 2, p. 196. Thereafter, the arbitrator issued the rules of arbitration, which included the following rule: "All prior rulings, decisions and findings of the trial court shall be binding upon the parties and the Arbitrator, with the exception provided in Paragraph 7 herein." *Id.* at 204 (paragraph 7 governed the submission of new exhibits). Thus, the arbitrator was bound by the trial court's partial summary judgment for Wife on the issue of the child support arrearage.

[6] During a two-day evidentiary hearing, Husband proffered his Exhibit 53, which was a "statement of attorney fee award" showing that Wife's first husband owes Husband $38,042.78 for attorney's fees in Husband's attempt to collect on the first husband's arrearage. Ex. Vol. 9, p. 144-45. Wife objected to that exhibit, and the following colloquy ensued:

> [Wife's counsel]: Exhibit 53 has to do with attorney fee judgment awards in the child support arrearage matter that the arbitrator has already found that we're not dealing with today.
>
> THE ARBITRATOR: Okay.
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> [Wife's counsel]: So I have no understanding or can understand how that could possibly come into evidence.

[Husband]: I'm making my record. I think the Court heard and I believe that the arbitrator, by declaring it final, committed error. But in addition to that, that was an asset I discovered when responding to partial summary judgment of petitioner to exclude support arrearage judgments. And finding that, I found—I got my memory refreshed that I had obtained a couple of attorney fees judgments in the pursuit of some of those judgments that remains an asset that was acquired in my name during the course of the marriage.

* * *

[Wife's counsel]: It is my opinion that like the alleged child support arrearages, how they are not an asset of the marriage, not subject to division, I think the [attorney's fee] judgments would be the same. However, I think that [Husband] may have committed invited error because should the arbitrator not include the child support arrearages but include only the judgment for attorney fees and put them on his side of the balance sheet, I think that he would no longer have the right to complain. So I don't believe that they're an asset. I don't believe that they're relevant to this proceeding. I believe that we have -- you know, the ruling has been that it will not be dealt with. But if opposing counsel insists, I believe that he does so at his own peril.

THE ARBITRATOR: As far as I'm concerned, it's already been decided about the child support arrearage. If [Husband] and his counsel decide that they want to add an additional $38,000 into the marital pot subject to at a minimum an equal division, I think I would be wrong not to accept his offer to include it.

[Wife's counsel]: And I would just note for the record that his Exhibit 76 also includes the child support judgments that the Court has already ruled are not part of the marital estate.

THE ARBITRATOR: Okay. All right.

Tr. pp. 87-90.

[7] The arbitrator then agreed to include the $38,042.78 as a marital asset subject to division. But the arbitrator also agreed to strike Husband's proffered Exhibit 76, which included Wife's first husband's child support arrearage total, noting that "that [issue] has already been decided upon by the Court in the case management conference in the supplemental rules of arbitration." *Id.* at 90. Husband then remarked, "Note for the Court that I'm not inviting error. I'm inviting the Court the opportunity to correct error. . . . I'm making my record about the support arrearages judgments being under law part of the marital [estate]." *Id.* at 90-91.

[8] Thereafter, Husband made an "offer of proof" regarding the child support arrearage as follows:

> I'm going to make an offer of proof because *I think it's the opportunity for the Court, the Arbitrator, to correct error*. Otherwise, you create error. But nonetheless, all the evidence that was designated for summary judgment was uncontroverted. Petitioner filed nothing in support of her—made no designation of record evidence. She did however file an Exhibit A, which was my calculation that had been with the FDF on child support. I filed timely, upon extension, record evidence, an affidavit and exhibits. No reply was made. No effort to even designate further was made. Therefore, the facts and material are uncontroverted, that the judgments were obtained in [Wife's] name, during coverture, by joint efforts: Both my legal efforts and my financial contributions, which continued—my financial contributions. And those criteria, certainly—and argument was made in summary judgment that the judgments were taken in [Wife's] name in a fiduciary capacity. And I cited the case law that those

> judgments transition from fiduciary capacity over to personal capacity if the deficit has been covered, and the deficit was covered. . . . The record is uncontroverted. And the Court drew inferences in favor of the [summary judgment movant], which is contrary to law, and failed to enter judgment upon the uncontroverted facts which were deposited. *So it was error, and [I] ask the Court to reconsider that—the Arbitrator to reconsider that*.

Id. at 144-46 (emphases added).

[9] After the hearing, the arbitrator issued his findings and conclusions and awarded Wife 55% of the marital estate, with 45% to Husband.[1] The arbitrator found in relevant part as follows:

> 72. One of the most contested issues during the pendency of this case was a legal issue: whether the approximate $200,000.00 in past-due child support arrearages owed by the Wife's first husband constituted a vested marital asset subject to division in the parties' divorce.
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> 73. During the parties' marriage, the Husband (who is an attorney) represented the Wife in various post-decree matters involving her ex-husband (who was the father of the Wife's two children and who was chronically behind in his child support obligation). Four child support arrearage judgments were awarded against the Wife's ex-husband and there were two accompanying judgments for attorney's fees awarded directly to the Husband. All of those judgments remain essentially

[1] The parties have not included in their briefs or record on appeal the breakdown of the final division of the marital estate. However, we found the information in the Odyssey Case Management System. The marital estate totaled $1,358,025.48, and the trial court ordered Husband to pay to Wife an equalization payment of $114,716.29.

uncollected and uncollectible to date, despite diligent efforts to collect on the part of the Husband. Some of the child support judgments are now well over ten years old, in fact some are approaching twenty years old.

74. The Court notes that the Husband identified the child support arrearages on his Financial Declaration Form as a marital asset. Although he listed the child support arrearages, the Husband failed to initially disclose the corresponding judgments for attorney's fees which he had been awarded (until an amendment to his Financial Declaration Form almost two years later).

75. To narrow this issue and/or resolve this matter, the Wife filed a Motion for Partial Summary Judgment, explaining that child support arrearages from her prior marriage were not vested marital property in this divorce. The Court granted the Wife's Motion for Partial Summary Judgment, finding that there was no genuine issue of material fact and that the Wife was entitled to judgment as a matter of law. In the "Order on Case Management Conference and Amendments to Rules of Arbitration" entered by the Court on June 3, 2021, for purposes of the Arbitration proceeding, all prior rulings, decisions and findings of the Court were again determined to be binding on the parties, including the prior summary judgment rulings. As such, this issue was not relitigated during the Arbitration proceeding, but the Husband made an offer of proof and the Wife responded to that offer of proof.

76. During his offer of proof, the Husband made the same arguments which he had made in his Objection to the Wife's Motion for Partial Summary Judgment. The Husband's arguments are once again rejected.

77. The prior Order of the Court on the Wife's Motion for Partial Summary Judgment is hereby reaffirmed. In this case, the uncollected and probably uncollectible child support arrearages from the Wife's previous marriage are a mere expectancy and are

not vested marital property subject to division. Indeed, the child support arrearages in this case are merely an indefinite contingent liability and the preponderance of the evidence fails to establish that this obligation will ever actually be paid.

78. . . . [T]he child support arrearages in this case are speculative and are not marital property. They do not meet the probability standard required to appear on the parties' marital balance sheet.

79. By statute, judgments are considered satisfied after twenty years. Ind. Code § 34-11-2-12. As the child support judgments in this case were originally entered in March 2008, April 2009, July 2011, and June 2014; this presumption begins to go into effect within the next seven (7) years. Thus, even if the child support arrearages would be collectible sometime in the future, they certainly become uncollectible starting in 2028.

80. These child support arrearages on paper total over $200,000.00, but neither party presented credible evidence as to their actual value and there is no evidence in the Record as to their actual value. Clearly, given their history of uncollectibility, those judgments are not worth $200,000.00, other than on paper.

81. Although the Husband, a lawyer who practiced family law, made a concerted effort to collect on the child support judgments during the parties' marriage, not a penny had been collected in years and the child support arrearages may never be paid. The Wife testified that the whereabouts of her ex-husband were unknown and according to social security records, he was not drawing social security. Accordingly, the probability of ever collecting on those judgments is questionable and indeed remote. After weighing all of the facts and circumstances, it is found and determined that the actual value of these judgments to be de minimus.

82. It is determined and found that, even if these child support

> arrearages had in fact been vested marital property subject to division, a deviation from the statutory presumption of an equal division was just and reasonable and those child support arrearages would have been awarded in their entirety to the Wife at zero value.

Appellant's App. Vol. 2, pp. 52-55. On July 29, 2021, the trial court adopted the arbitrator's findings and conclusions and entered the final dissolution decree. This appeal ensued.

Discussion and Decision

Issue One: Arbitrator's Authority

[10] Husband first contends that the arbitrator exceeded his authority when he reconsidered the issue of whether the child support arrearage was a vested marital asset. Husband points out that, under the rules of arbitration adopted by the trial court, the arbitrator was bound by the trial court's ruling on Wife's motion for partial summary judgment. Accordingly, Husband asserts that the arbitrator's findings on that issue are void. Wife argues that Husband invited any error, and we must agree with Wife.

[11] The invited-error doctrine is based on the doctrine of estoppel and forbids a party from taking advantage of an error that he commits, invites, or which is the natural consequence of her own neglect or misconduct. *In re J.C.*, 142 N.E.3d 427, 432 (Ind. 2020). Where a party invites the error, he cannot take advantage of that error. *Id.* In short, invited error is not reversible error. *Id.*

[12] Here, Husband clearly and unequivocally asked the arbitrator to reconsider the trial court's partial summary judgment for Wife on the arrearage issue. Thus, he cannot now complain that the arbitrator made findings and conclusions on that issue.

Issue Two: Summary Judgment

[13] Husband next contends that the trial court erred when it granted Wife's motion for partial summary judgment on the child support arrearage issue. Our standard of review is well settled. As our Supreme Court has made clear, "[w]e review summary judgment de novo, applying the same standard as the trial court." *G&G Oil Co. v. Cont'l W. Ins. Co.*, 165 N.E.3d 82, 86 (Ind. 2021). "Indiana's distinctive summary judgment standard imposes a heavy factual burden on the movant." *Siner v. Kindred Hosp. Ltd. P'ship*, 51 N.E.3d 1184, 1187 (Ind. 2016). We draw all reasonable inferences in favor of the nonmoving party and affirm summary judgment only "if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Id.* (quoting Ind. Trial Rule 56(C)). And we "give careful scrutiny to assure that the losing party is not improperly prevented from having its day in court." *Id.* (quoting *Tankersley v. Parkview Hosp., Inc.*, 791 N.E.2d 201, 203 (Ind. 2003)).

[14] Husband argues that Wife had a vested interest in the child support arrearage, as the amounts owed were reduced to judgments awarded to her. Accordingly, he asserts that the $200,000 arrearage was required to be included in the marital estate. Wife, however, contends that the actual value of the arrearage is "too

speculative to be deemed a vested marital asset." Appellee's Br. at 40. And, in any event, Wife asserts that any error in excluding the arrearage from the marital estate was harmless because the trial court valued the arrearage at zero. We must agree with Wife on this latter point.

[15] Not every error in the division of marital assets warrants reversal. *Elkins v. Elkins*, 763 N.E.2d 482, 487 (Ind. Ct. App. 2002). Here, in response to Husband's request that the arbitrator "reconsider" the trial court's partial summary judgment for Wife on the arrearage issue, the arbitrator agreed that the arrearage was not a vested marital asset and "reaffirmed" the trial court. Appellant's App. Vol. 2, p. 53. But the arbitrator also found, in the alternative, that "even if these child support arrearages had in fact been vested marital property subject to division, a deviation from the statutory presumption of an equal division was just and reasonable and those child support arrearages would have been awarded in their entirety to the Wife at zero value." *Id.* at 55.

[16] That valuation is supported by the arbitrator's findings that, "given their history of uncollectibility, those judgments are not worth $200,000.00, other than on paper," and that "the probability of ever collecting on those judgments is questionable and indeed remote." *Id.* The trial court adopted the arbitrator's findings and conclusions. Thus, we hold that, because the arrearage judgments have no value, any error in their exclusion from the marital estate is harmless. *See, e.g.*, *Elkins*, 763 N.E.2d at 487 (holding error in including child support arrearage in marital estate was harmless where the difference in marital division was *de minimis*).

[17] Still, Husband maintains that the court's alternative finding on the valuation of the arrearage is invalid because it is mere "surplusage" and "directly contradicts the previous finding that neither party had introduced evidence of the actual value of the Arrearage Judgments." Reply Br. at 23. We cannot agree. First, the finding in the alternative was appropriate in light of Husband's request to reconsider the trial court's partial summary judgment order and the parties' arguments regarding the arrearage's uncollectibility. Thus, the finding was not mere surplusage. Second, while the trial court found that "neither party presented credible evidence as to [the arrearage judgments'] actual value," that same finding noted that the judgments were only worth $200,000 "on paper." Appellant's App., Vol. 2, pp. 54-55. The arbitrator clearly used the phrase "actual value" to distinguish it from its value "on paper." The arbitrator went on to note Husband's testimony regarding his "concerted effort" to collect on the arrearage judgments over the course of several years and Wife's testimony that she did not have contact information for her first husband and that he was not drawing any social security. *Id.* at 55. We reject Husband's assertion that the findings are fatally inconsistent.[2]

[18] In sum, if the trial court erred when it found that the arrearage judgments were not vested marital property and entered partial summary judgment for Wife,

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[2] In any event, it is well settled that, to the extent that the judgment is based on erroneous findings, those findings are not fatal to the judgment if the remaining valid findings and conclusions support the judgment. *J.M. v. N.M.*, 844 N.E.2d 590, 599 (Ind. Ct. App. 2006)

any error was harmless because the court ultimately found, in the alternative, that the arrearage judgments had no value.[3]

Issue Three: Division of Marital Estate

[19] Finally, Husband contends that the trial court "should further reconsider the entire property division on remand because it failed to consider [his] earning capacity" and "misapplied the law in considering [his] request to factor tax consequences into the market value of certain marital assets." Appellant's Br. at 28. We address each contention in turn.

[20] Consistent with the statutory mandate, the Arbitrator made findings of fact and conclusions of law. *J.M. v. N.M.*, 844 N.E.2d 590, 599 (Ind. Ct. App. 2006) (citing Ind. Code § 34-57-5-7), *trans. denied*. These were then entered as a judgment by the trial court. *Id.* When findings of fact and conclusions of law are entered by the trial court, we will not set aside the judgment unless it is clearly erroneous; that is, unless we are definitely and firmly convinced the trial court committed error. *Id.*

> The findings must disclose a valid basis for the legal result reached in the judgment, and the evidence presented must support each of the specific findings. We defer to the trial court when such evidence conflicts. We will neither reweigh the evidence nor reassess the credibility of the witnesses before the court. Rather, we will affirm if there is sufficient evidence of probative value to support the decision, viewing the evidence in

[3] To the extent Husband contends that the evidence shows that the arrearage judgments *are* collectable, he merely asks that we reweigh the evidence, which we cannot do on appeal.

> the light most favorable to the judgment and the reasonable inferences drawn therefrom. To the extent that the judgment is based on erroneous findings, those findings are superfluous and are not fatal to the judgment if the remaining valid findings and conclusions support the judgment.

Id. (quoting *Lasater v. Lasater*, 809 N.E.2d 380, 396-97 (Ind. Ct. App. 2004)).

Husband's Earning Capacity

[21] Husband argues that the trial court "erred in determining [the] property division when it failed to make specific findings regarding Husband's earning ability." Appellant's Br. at 28. Specifically, Husband asserts that, although the court found that the parties had "disparate income earning ability," the court "issued findings only regarding Wife's future earning ability." *Id.* at 29. Husband acknowledges that the trial court "addressed the valuation of Husband's law practice" but he points out that it "had gone defunct since the date of filing" the dissolution petition. *Id.* And Husband asserts that the court "omitted" findings regarding "Husband's specific earning ability . . . despite Husband's testimony that his age and health condition prevented him from returning to the practice of law." *Id.*

[22] Contrary to Husband's argument, the trial court made specific findings regarding his earning ability. Husband does not challenge the trial court's findings that: in 2017, Husband's adjusted gross income was $246,053 from his law practice, his investments, and his "inherited businesses"; Husband "voluntarily closed his law office" but he "has kept his law license active and has not placed his law license in retirement status"; and Husband "receives

additional income from his monthly Social Security checks, intermittent payments from his family properties, and payments for legal work completed in previous years." Appellant's App., Vol. 2, pp. 42-55. Husband's contention on this issue is without merit.

Tax Consequences

[23] Husband contends that "the Arbitrator misapplied the law regarding tax consequences as they affected the value of Husband's ownership interests in the inherited family businesses." Appellant's Br. at 29. At the final hearing, Husband testified that his interest in certain inherited family businesses should be given a "zero value . . . because they're premarital and inherited." Tr. p. 115. Further, Husband argued in relevant part that the businesses had no "marketable value" because the "tax consequences" of a potential sale were "significant[.]" *Id.* at 114.

[24] The trial court found in relevant part as follows:

> 32. The Husband has requested that the [inherited family businesses] be valued at zero because of the anticipated huge tax liabilities associated with a future sale of those properties. However, only those tax consequences which necessarily arise from the ordered distribution are to be taken into account when dividing marital property. *Harlan v. Harlan*, 544 N.E.2d 553 (Ind. Ct. App. 1989). Considering [the] future tax consequence of an asset as part of a marital property distribution is an abuse of discretion since transfer pursuant to a divorce is not a taxable event and the potential future disposition of the asset is remote and not a direct consequence of the property disposition itself. *DeHaan v. DeHaan*, 572 N.E.2d 1315, 1327 (Ind. Ct. App. 1991).

> 33. Even without considering the future, speculative tax consequences associated with the [inherited family businesses], the Husband's premarital and inherited or gifted property are factors which weigh in the Husband's favor.

Appellant's App., Vol. 2, p. 41.

[25] Husband argues that the trial court "misconstrued Husband's argument regarding tax liabilities." Appellant's Br. at 30. He maintains that, rather than asking the court to account for "speculative future tax consequences that resulted from the property disposition," he argued to the trial court that it should consider "how the tax liabilities imposed by the present condition of the properties owned by the businesses affected the market value of the business interests under then-current conditions." *Id.* Husband's argument attempts to make a distinction without a significant difference. Without any evidence that any of the properties owned by the family businesses were about to be sold, Husband's testimony regarding possible tax consequences was irrelevant. The trial court did not err when it rejected Husband's testimony that his interest in the inherited family businesses had no value.

[26] In sum, Husband has not shown that the trial court erred when it divided the marital estate.

Conclusion

[27] We hold that, because Husband asked the arbitrator to reconsider the trial court's entry of partial summary judgment for wife, Husband has invited the arbitrator's alleged error in making findings and conclusions on that issue.

Further, any error in the trial court's grant of partial summary judgment for Wife was harmless. And Finally, Husband has not demonstrated any error in the trial court's division of the marital estate.

[28] Affirmed.

May, J., and Brown, J., concur.