MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Robert A. Gordon,
Appellant-Petitioner,

v.

Michelle B. Tackitt,
Appellee-Respondent.

December 19, 2022

Court of Appeals Case No. 22A-DC-775

Appeal from the Madison Circuit Court

The Honorable David A. Happe, Judge

Trial Court Cause No. 48C04-1711-DC-669

Mathias, Judge.

[1] Robert Gordon ("Husband") appeals the Madison Circuit Court's final decree dissolving his marriage to Michelle Tackitt ("Wife"). Husband presents three issues for our review, which we consolidate and restate as two issues:

I. Whether the trial court abused its discretion when it divided the marital estate.

II. Whether the trial court erred when it calculated his child support obligation.

[2] Wife raises a single issue on cross-appeal, namely, whether the trial court erred when it denied Wife's request that Husband contribute to their daughter's college expenses.

[3] We affirm in part, reverse in part, and remand with instructions.

Facts and Procedural History

[4] Husband and Wife have one child together, T.G. ("Daughter"), who was born in December 1999.[1] The parties married in May 2005. In August 2005, the parties bought a residence and a nineteen-acre horse farm in Elwood. Wife started a horse rescue operation on the farm. During the marriage, Husband was employed as a welder, earning between $80,000 and $100,000 per year, and Wife was unemployed. But Wife helped pay bills out of distributions she received from a trust set up by her grandfather, Sylvan W. Tackitt ("the trust").

[5] In September 2017, an incident between Husband and Daughter led Wife to ask Husband to leave the marital home, and he complied. The State later charged

[1] Husband adopted Daughter, who is Wife's biological child from a prior relationship.

Husband with child seduction. On November 9, Husband filed a petition for dissolution of the marriage.

[6] At the final evidentiary hearing in November 2021, the parties submitted evidence to show the respective values of their personal and real property. The parties agreed that they had equity in the marital residence in the amount of $54,818.23, and they generally agreed on the values of the personal property they each kept upon separating. The parties disagreed, however, on the value of Wife's interest in the trust.

[7] Lorne Aubin, an Old National Bank representative, testified that the trust was created in October 2007 and had three beneficiaries, including Wife. As of January 2, 2018, the trust was valued at $1,147,974.52, and Wife had a 25% interest. Aubin testified that, "per the trust articles," Wife was "supposed to receive a quarter of the [trust] assets sometime in January of 2018." Tr. p. 10. And while he did not have the "records in front of [him]," he assumed that it "would be a correct statement" to say that Wife received $286,993.63 in January 2018. *Id.* at 11. Aubin testified further that Wife now has a "separate trust," and Wife testified that she uses distributions from that trust to pay living expenses. *Id.* at 10, 24. The trial court found that, as of the date of the final hearing, Wife's separate trust had a balance of "approximately $36,000." Appellant's App. Vol. 2, p. 121. And Wife submitted an exhibit stating that "[i]t is currently dwindling to nothing because of the amount she has to pull from it currently." Ex. p. 135.

[8] Husband testified that, due to the criminal charge filed against him, he was fired from his job in September 2021. Husband testified that he was looking for new employment. He was ultimately acquitted of child seduction. Husband also testified that he currently lives with his girlfriend and their young daughter.

[9] At the conclusion of the evidentiary hearing, the trial court invited the parties to submit additional evidence regarding the value of Wife's trust. The trial court also instructed the parties to submit "revised [marital estate] balance sheets that support the evidence and statements" of their respective positions. Tr. p. 111. The parties generally agreed that the marital estate consisted of: the marital residence; Wife's Ford truck; a trailer; household furnishings and appliances; six horses; Wife's interest in the trust; and the parties' respective personal property. Without the trust interest, the total value of the marital estate, including the parties' equity in the marital residence, was approximately $62,000.[2]

[10] The trial court subsequently issued its order and found and concluded in relevant part as follows:

> **Treatment of Wife's interest in Sylvan W. Tackitt Trust**
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> 6. A major source of disagreement between the parties is the treatment of Wife's interest in the Sylvan W. Tackitt Trust. Wife requests that her interest be excluded from the marital estate, and

[2] This is just an estimate, as the trial court did not issue a balance sheet with the final decree.

Husband takes the position that it is a marital asset subject to division.

* * *

8. An employee of Old National Bank, Trustee Lorne Aubin, testified at the final hearing that prior to division of the original trust estate, on December 31, 2017[,] the market value of all trust assets was $1,147,974.52. Wife's portion would have been worth $286,993.63 on that date. Shortly thereafter, the majority of Wife's portion of the trust was partitioned and paid to her.

9. As of the date of hearing on November 22, 2021, the remaining balance of Wife's trust estate was approximately $36,000. Trustee Aubin was unable to offer details as to the amounts and timing of trust payments to Wife in the meantime. Such values would be readily ascertainable through the bank's documentation, but he had received a subpoena so close in time to the hearing that he had not had sufficient time to retrieve the records.

* * *

11. There is a paucity of evidence in the record of what became of trust payments made to Wife. Wife testified that her income was much less than Husband's, and that she used her trust income to support the cost of living for herself and the parties' daughter after separation. This included maintaining and paying debt on homes owned by her.

12. In her updated financial declaration, Wife reports no sizable liquid assets that would constitute any remainder of trust assets paid to her in cash. The Court presumes that much of the trust payments to Wife were consumed in paying for the ordinary costs of daily living and attorney fees over the duration of this long-pending dissolution. To the extent that these trust payments

> remain in the marital estate, they are in the form of property which will be divided separately herein.
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> 14. To the extent that Wife has an interest in any property remaining in the trust and not yet disbursed to her, the Court finds that because this interest was acquired solely through inheritance or gift through Wife's family, and denominated in her individual name for her sole benefit, and also due to Wife's lower earning ability, that it shall be set over entirely to Wife.

Appellant's App. Vol. 2, pp. 121-23. In addition, the trial court denied Wife's request that Husband contribute to Daughter's college expenses, and the trial court ordered Husband to pay to Wife his child support arrearage in the amount of $11,400. Finally, the trial court awarded to Husband all of his personal property, and the court awarded to Wife the remainder of the marital estate, including the marital residence and related debt. This appeal ensued.

Discussion and Decision

Issue One: Division of Marital Estate

[11] Husband first contends that the trial court abused its discretion when it awarded almost the entire marital estate to Wife. In particular, he asserts that the trial court awarded Wife "99.5%" of the marital estate "without stating any reasons for such a significant deviation." Appellant's Br. at 14. Husband maintains that, had the trial court properly considered the statutory factors relevant to a division of the marital estate, it would have divided the marital estate equally.

[12] It is well settled that

> [t]he division of marital assets lies within the sound discretion of the trial court, and we will reverse only for an abuse of discretion. When a party challenges the trial court's division of marital property, he must overcome a strong presumption that the court considered and complied with the applicable statute, and that presumption is one of the strongest presumptions applicable to our consideration on appeal. We may not reweigh the evidence or assess the credibility of the witnesses, and we will consider only the evidence most favorable to the trial court's disposition of the marital property. Although the facts and reasonable inferences might allow for a different conclusion, we will not substitute our judgment for that of the trial court.

Hartley v. Hartley, 862 N.E.2d 274, 285 (Ind. Ct. App. 2007) (quoting *DeSalle v. Gentry*, 818 N.E.2d 40, 44 (Ind. Ct. App. 2004)). Indiana law requires that marital property be divided in a "just and reasonable manner" and provides for the statutory presumption that "an equal division of the marital property between the parties is just and reasonable." *Id.* (citing Ind. Code § 31–15–7–5). This presumption may be rebutted, however, by relevant evidence that an equal division would not be just and reasonable. *See id.* If the trial court determines that a party opposing an equal division has met his or her burden under the statute, the trial court must state its reasons for deviating from the presumption of an equal division in its findings and judgment. *Id.*

[13] Here, with respect to Wife's interest in the trust, the trial court found that, "because this interest was acquired solely through inheritance or gift through Wife's family, and denominated in her individual name for her sole benefit, and

also due to Wife's lower earning ability, that it shall be set over entirely to Wife." Appellant's App. Vol. 2, p. 123. The trial court did not, however, explain its reasons for awarding the remainder of the marital estate, other than Husband's personal property, to Wife. In particular, the trial court awarded the parties' equity in the marital residence to Wife, as well as her personal vehicle, trailer, and horses. The trial court did not provide a spreadsheet of the distribution of marital assets, and it did not, therefore, assign specific percentages to the parties. But the decree is clear that, regardless of the value assigned to Wife's interest in the trust, Husband received less than ten percent of the marital estate.

[14] Again, it is well settled that a trial court must *state* its reasons for deviating from the presumption of an equal division in its findings and judgment. *See Hartley*, 862 N.E.2d at 285. Here, other than setting over Wife's interest in the trust to Wife, the trial court did not state any reasons for also setting over the majority of the remaining marital assets to Wife. We agree with Husband that the trial court did not adequately explain its deviation from an equal distribution of the marital estate.

[15] In essence, Wife argues that we can *infer* that the trial court awarded Wife the equity in the marital estate because a "gift or forgiven loan of [Wife's] grandfather represented all but $14,000 of the equity [in the marital residence] at the time the parties separated." Appellee's Br. at 9. And Wife states that "[t]he only proceeds of trust payments were in the form of tangible assets that were then set over to [Wife] *for the same reason* in the division of assets." *Id.* at 13

(emphasis added). But the trial court did not state any reason for setting over those "tangible assets" purchased with trust proceeds. While the trial court acknowledged that some of the trust distributions might "remain in the marital estate," the court merely stated that "they are in the form of property which will be divided separately herein." Appellant's App. Vol. 2, p. 122. Then, in the section of the decree entitled "Division of Property," the trial court did not state *any* reasons for its unequal division of the marital estate. In sum, contrary to Wife's contention on appeal, the court did not state that Wife would be awarded the bulk of the marital estate in light of her inheritance.

[16] On remand, the trial court shall reconsider each of the five factors in Indiana Code Section 31-15-7-5 and state its reasons for any deviation from the presumed equal division of the marital estate.[3] We remind the trial court that "a consideration of 'whether the property was acquired by one of the parties through inheritance or gift is only one of the five factors a court should review,'" and that "'[b]y focusing only upon one factor when others are present, a trial court runs the risk of dividing a marital estate in an unreasonable manner.'" *Eye v. Eye*, 849 N.E.2d 698, 704 (Ind. Ct. App. 2006) (quoting *Wallace v. Wallace*, 714 N.E.2d 774, 780 (Ind. Ct. App. 1999), *trans. denied*). While the trial court may, in its discretion, award the majority of the marital

[3] We note that Husband has waived any argument that Wife dissipated marital assets, as he did not make that argument to the trial court.

estate to Wife on remand, it must state its reasons for doing so. *See, e.g.*, *Fobar v. Vonderahe*, 771 N.E.2d 57, 59 (Ind. 2002).

Issue Two: Child Support

[17] Husband next contends that the trial court erred when it calculated his child support arrearage. A trial court's calculation of child support is presumptively valid. *Young v. Young*, 891 N.E.2d 1045, 1047 (Ind. 2008). We will reverse a trial court's decision in child support matters only if it is clearly erroneous or contrary to law. *Id.* (citing Ind. Trial Rule 52(A)). A decision is clearly erroneous if it is clearly against the logic and effect of the facts and circumstances that were before the trial court. *Id.*

[18] Husband maintains that the trial court erred when it calculated his income, and he asserts that the court erred when it did not give him a credit for supporting his subsequent-born child. But Husband's contentions amount to a request that we reweigh the evidence, which we cannot do. Husband testified that, during the relevant time period, he earned between $80,000 and $100,000 per year. The trial court calculated Husband's child support obligation based on his earnings of $1,750 per week, or $91,000 per year. Thus, the evidence supports the trial court's calculation of Husband's income.

[19] With respect to his alleged subsequent-born child, Husband testified that she was born in 2018, and, in his financial declaration submitted to the trial court, he stated that he spent $100 per month to support that child. But Husband did

not submit a child support worksheet or otherwise ask the trial court for a credit for his subsequent-born child, and he cannot now complain.

[20] However, Husband also contends that, in calculating his child support arrearage, the trial court miscalculated the number of weeks between the date the dissolution petition was filed and the date of Daughter's emancipation, and Wife agrees. Thus, on remand, the trial court shall recalculate Husband's child support arrearage based on fifty-seven weeks from the date of the dissolution petition to Daughter's nineteenth birthday.[4]

Cross-Appeal

[21] Finally, Wife contends that the trial court erred when it denied her request that Husband contribute to Daughter's college expenses. This Court has held that, "[a]lthough a parent is under no absolute legal duty to provide a college education for his children, a court may nevertheless order a parent to pay part or all of such costs when appropriate." *Eppler v. Eppler*, 837 N.E.2d 167, 177 (Ind. Ct. App. 2005) (citations omitted).

[22] As relevant here, Indiana Code Section 31-16-6-6 provides that a parent requesting that another parent contribute to college expenses must file with the trial court and provide to each party a notice of that request between the child's

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[4] Husband contends that there were 56.6 weeks between the date of the dissolution petition and Daughter's nineteenth birthday, but Wife contends that there were fifty-eight weeks during that period. We calculate 7.5 weeks from November 9 until December 31, 2017, and another 49.5 weeks from January 1 to December 14, 2018, for a total of fifty-seven weeks.

seventeenth and nineteenth birthdays. Here, the trial court found in relevant part that "Wife first put higher education expenses at issue on April 2, 2019, when she filed 'Respondent's Request for College Expenses,'" which was more than four months after Daughter's nineteenth birthday. Appellant's App. Vol. 2, p. 123. For that reason, the trial court denied Wife's request.

[23] In her cross-appeal, Wife maintains that, in his petition for dissolution, Husband asked that the trial court issue a "child-related order." Appellant's App. Vol. 2, p. 15. Thus, she asserts that

> [t]he issue of child support in all respects was before the court. The fact that [Wife] did not file a request for [college] expenses until after the daughter of the parties turned 19 should not alter the fact that child support, including higher education, was an issue before the court from the start of the case as part of the child-related order sought by [Husband].

Appellee's Br. at 17.

[24] Wife's contention on this issue is not well taken. Indiana Code Section 31-16-6-6 requires specific notice that Wife did not timely provide. The trial court did not err when it denied Wife's request that Husband contribute to Daughter's college expenses.

Conclusion

[25] We hold that the trial court abused its discretion when it did not adequately state its reasons for the unequal division of the marital estate. On remand, the trial court shall consider each of the relevant statutory factors and state its

reasons for any deviation from the presumptive equal division. Also on remand, the trial court shall recalculate Husband's child support arrearage based on fifty-seven weeks between the date of the dissolution petition and Daughter's nineteenth birthday. Finally, the trial court did not err when it denied Wife's request that Husband contribute to Daughter's college expenses.

[26] Affirmed in part, reversed in part, and remanded with instructions.

Robb, J., and Foley, J., concur.