MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Shannon R. Miller,
Appellant-Petitioner,

v.

Steven M. Miller,
Appellee-Respondent.

October 30, 2023

Court of Appeals Case No. 22A-DN-2116

Appeal from the Gibson Superior Court

The Honorable Roman J. Ricker, Magistrate

Trial Court Cause No. 26D01-1903-DN-354

Memorandum Decision by Judge Foley
Judges Vaidik and Tavitas concur.

Foley, Judge.

[1] Following dissolution of the marriage of Shannon R. Miller ("Wife") and Steven M. Miller ("Husband"), Wife appeals the trial court's determinations in its Decree of Dissolution of Marriage. Wife raises the following issues for our review:

> I. Whether the trial court abused its discretion in dividing the marital estate by: (1) crediting Husband with $30,000 in equity in the Marital Real Estate; (2) segregating Husband's 401k from the other marital property and then deviating from a 50/50 division by awarding $115,000.00 to Husband and $65,000.00 to Wife; (3) failing to award Wife any gains and/or losses associated with Husband's 401k; and (4) failing to include certain marital debt in the marital pot for division;
>
> II. Whether the trial court abused its discretion when it: (1) found that Wife committed dissipation by failing to collect rent; (2) denied Wife's request for incapacity maintenance; and (3) denied Wife's request for attorney's fees.

We affirm in part, reverse in part, and remand with instructions.

Facts and Procedural History

[2] Wife and Husband began dating in 2007. At that time, Wife lived in Henderson, Kentucky, and worked as a mortgage closing agent. Husband worked—and still works—as a diesel mechanic[1] and lived on approximately 16.709 acres located in Princeton, Indiana (the "Marital Real Estate").

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[1] Husband began his career in Nashville, Tennessee and then obtained a job with Freightliner in Evansville, Indiana. Freightliner was purchased by Truck Centers. At the time of the dissolution of marriage hearing, Husband had worked for the same company (then Freightliner, now Truck Centers) for eighteen years.

Husband purchased the Marital Real Estate in 2004. During the summer of 2009, Wife and her son from a prior marriage left their home in Kentucky and moved in with Husband. In 2010 and 2011, Husband purchased adjacent parcels of land that added 0.6887 acres and 0.791 acres, respectively, to the Marital Real Estate. On October 15, 2011, Wife and Husband married and there were no children born from the marriage. In 2012 and 2015, Wife and Husband purchased additional parcels of land which brought the total acreage to approximately twenty-one-acres. The Marital Real Estate consisted of the marital residence, two barns, two mobile homes, and pastureland.[2]

[3] Wife held numerous jobs during the marriage. After moving in with Husband, Wife first worked at Princeton Medical, a local veterinary office. Wife then began working as a dog groomer for Bed, Bath & Biscuits while also working as a night shift manager at Taco Bell. In 2016, Wife started her own dog grooming business ("Sweet Dreams"), which eventually began offering a mobile petting zoo and pony parties. Sometime after that, Wife resigned from Bed, Bath, & Biscuits; later, Wife ceased working at Taco Bell to solely focus on Sweet Dreams.

[4] In 2014, Wife was diagnosed with rheumatoid arthritis and referred to Dr. Bell for treatment. Dr. Bell prescribed opioids to alleviate Wife's pain, but she did not use them as prescribed, so Dr. Bell stopped prescribing them. In lieu of the

[2] All of the parcels are subject to one mortgage that is in Husband's name.

opioids, Wife began using marijuana to treat her pain. Wife then received a prescription for Gabapentin from another doctor. Wife continued to suffer from symptoms related to rheumatoid arthritis and eventually applied for social security disability benefits. Wife's application for benefits was approved, and in September of 2016, she began receiving monthly benefits in the sum of $1,213.00.

[5] During the course of the marriage, brothers Floyd "Everett" McCoy and Larry McCoy lived in the two mobile homes on the Marital Real Estate. Everett performed work on the Marital Real Estate in exchange for room and board in one of the mobile homes. Larry McCoy lived in and rented the other mobile home. Larry McCoy's rental payment consisted of $250 per month in addition to also performing work on the property. Wife's adult son still lived in the marital residence, but he never paid rent. On March 16, 2018, the marital residence burned down. It was eventually rebuilt, and substantially expanded with insurance proceeds and a new mortgage.

[6] On March 4, 2019, Wife petitioned to dissolve the marriage. While the dissolution was pending, Wife had exclusive use and possession of the marital residence. Husband paid the mortgage and all the utility bills.

[7] A final dissolution hearing was held on December 14 and 15 of 2021, and on February 23, 2022. At the hearing, Wife requested deviation from the presumptive 50/50 division of the marital estate to a 70/30 division in her favor, spousal maintenance, and attorney's fees. Husband requested that the

trial court segregate and distribute 100% of Husband's 401(k) to Husband, equally divide the remainder of the marital estate, and deny Wife's request for spousal maintenance and attorney's fees.

[8] On June 23, 2022, the trial court issued its decree of dissolution of marriage, as follows: (a) credited Husband $30,000.00 in equity in the Marital Real Estate; (b) segregated Husband's 401(k) from the other marital assets and awarded $115,000.00 to Husband and $65,000.00 to Wife; (c) divided the remainder of the marital estate equally (50/50) between the parties; (d) found that Wife committed dissipation by failing to collect rent on one of the mobile homes; and denied Wife's request for attorney's fees and spousal maintenance. On July 25, 2022, Wife filed a motion to correct error, raising many of the same issues raised on appeal. On August 8, 2022, the trial court granted Wife's request to adjust the amount of post-dissolution coal lease proceeds distributed to Wife on the trial court's marital balance sheet and denied the remainder of Wife's motion. Wife now appeals.

Discussion and Decision

[9] When issues are tried upon the facts by the court without a jury, Trial Rule 52 provides that a trial court "shall find the facts specially and state its conclusion thereon" either "[u]pon its own motion" or upon "the written request of any party filed with the court prior to the admission of evidence." "'Our standard of review on judgments under Trial Rule 52 differs slightly depending upon whether the entry of specific findings and conclusions comes *sua sponte* or upon [written] motion by a party.'" *Trust No. 6011, Lake County Trust Co. v. Heil's*

Haven Condominiums Homeowners Ass'n, 967 N.E. 2d 6, 14 (Ind, Ct. App. 2012) (quoting *Argonaut Ins. Co. v. Jones*, 953 N.E.2d 608, 614 (Ind. Ct. App. 2011), *trans. denied*). On December 13, 2021, Wife filed a motion for findings of fact and conclusions of law. Where a trial court enters specific findings on motion, our standard of review is well established:

> [We] will "not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Ind. Trial Rule 52(A). Under our . . . two-tiered standard of review, we must determine whether the evidence supports the findings and whether those findings support the judgment. We consider the evidence most favorable to the trial court's judgment, and we do not reweigh evidence or reassess the credibility of witnesses. We will find clear error only if the record does not offer facts or inferences to support the trial court's findings or conclusions of law.

Johnson v. Johnson, 181 N.E.3d 364, 371 (Ind. Ct. App. 2021). In addition, this court may affirm "a judgment on any legal theory, whether or not relied upon by the trial court, so long as the trial court's findings are not clearly erroneous and support the theory adopted." *Dow v. Hurst*, 146 N.E.3d 990, 996 (Ind. Ct. App. 2020).

I. Division of the Marital Estate

[10] Wife claims that "the trial court erred and abused its discretion in dividing the marital estate." Appellant's Br. p. 23. Specifically, Wife asserts that there was insufficient evidence to support the trial court's decision to credit Husband with $30,000.00 of equity in the Marital Real Estate. Wife next contends that the

trial court erred when it segregated and divided Husband's 401(k). Finally, Wife argues that the trial court erred when it failed to include certain debts in the marital pot for division.

[11] The division of marital property is within the sound discretion of the trial court, and we will reverse only for an abuse of discretion. *In re Marek*, 47 N.E.3d 1283, 1287 (Ind. Ct. App. 2016), *trans. denied*. "We will reverse a trial court's division of marital property only if there is no rational basis for the award; that is, if the result is clearly against the logic and effect of the facts and circumstances, including the reasonable inferences to be drawn therefrom." *Id.* When we review a claim that the trial court improperly divided marital property, we consider only the evidence most favorable to the trial court's disposition of the property without reweighing evidence or assessing witness credibility. *Id.* at 1288–89. "Although the facts and reasonable inferences might allow for a conclusion different from that reached by the trial court, we will not substitute our judgment for that of the trial court." *Id.* at 1289. Such a case turns on "whether the trial court's division of the marital property was just and reasonable." *Morgal-Henrich v. Henrich*, 970 N.E.2d 207, 210–11 (Ind. Ct. App. 2012).

[12] The division of marital property is a two-step process in Indiana. *Estudillo v. Estudillo*, 956 N.E.2d 1084, 1090 (Ind. Ct. App. 2011). First, the trial court determines what property must be included in the marital estate. *Id.* It is well established that all marital property goes into the marital pot for division, whether it was owned by either spouse before the marriage, acquired by either

spouse after the marriage and before final separation of the parties, or acquired by their joint efforts. Ind. Code § 31-15-7-4(a); *Falatovics v. Falatovics*, 15 N.E.3d 108, 110 (Ind. Ct. App. 2014), *trans. denied*. For purposes of dissolution, property means "all the assets of either party or both parties[.]" Ind. Code § 31-9-2-98(b). This "one pot" theory ensures that all assets are subject to the trial court's power to divide and award. *Carr v. Carr*, 49 N.E.3d 1086, 1089 (Ind. Ct. App. 2016), *trans. denied*. "'The requirement that all marital assets be placed in the marital pot is meant to insure that the trial court first determines that value before endeavoring to divide property.'" *Falatovics*, 15 N.E.3d at 110 (quoting *Montgomery v. Faust*, 910 N.E.2d 234, 238 (Ind. Ct. App. 2009)). "'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.'" *Id.* (quoting *Wanner v. Hutchcroft*, 888 N.E.2d 260, 263 (Ind. Ct. App. 2008)). "[T]he determinative date when identifying marital property subject to division is the date of final separation, in other words, the date the petition for dissolution was filed." *Webb v. Schleutker*, 891 N.E.2d 1144, 1149 (Ind. Ct. App. 2008); *see also Smith*, 854 N.E.2d at 6 ("The marital pot generally closes on the date the dissolution petition is filed.").

[13] After determining what constitutes marital property, the trial court must then divide the marital property under the presumption that an equal split is just and reasonable. Ind. Code § 31-15-7-5. This presumption may be rebutted by a party who presents relevant evidence, including evidence of the following factors, that an equal division would not be just and reasonable:

> (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.
>
> (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.

Id. A challenger 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. *J.M. v. N.M.*, 844 N.E.2d 590, 601 (Ind. Ct. App. 2006), *trans. denied*.

A. Husband's Equity

[14] In dividing the marital estate, the trial court found that "Husband had accrued $30,000.00 in equity on the date of the marriage" and credited Husband for the equity when dividing the marital estate. Appellant's App. Vol. 2 p. 126. On appeal, Wife argues that there was no evidence regarding Husband's equity admitted at trial. We agree. It is unclear how the trial court arrived at that specific amount. Husband testified that Wife did not provide any funds toward the "three parcels of the [Marital Real Estate that] were purchased prior to [the date of marriage,]" and the three warranty deeds for the three parcels were admitted into evidence.[3] Tr. Vol. 3 p. 89. However, the record is devoid of any evidence of the fair market value of the Marital Real Estate, or any mortgage or lien balance, as of the date of the marriage. Our careful review of the record fails to reveal any evidentiary support for the trial court's finding that Husband had $30,000.00 in equity in the Marital Real Estate as of the date of the marriage. Therefore, we reverse and remand with instructions for the trial court to eliminate the credit to Husband of $30,000.00 in equity in the Marital Real Estate.

[3] The warranty deeds describe the consideration for each respective parcel as: (1) $10.00 and other valuable consideration; (2) $1.00 and other valuable consideration; and (3) $10.00 and other valuable consideration. *See* Ex. Vol. 9 pp. 63–64, 72, 73–74.

B. Husband's 401(k)

[15] Wife claims two errors with respect to the trial court's division and valuation of Husband's 401(k). First, Wife claims the trial court committed error when it segregated the 401(k) from the remainder of the marital estate and awarded Husband $115,000.00 and Wife $65,000.00 of the asset.[4] Next, Wife argues that the trial court erred by failing to award Wife any gains realized from the account from the date of valuation up until the date of the decree.

[16] The trial court denied Husband's request to apply a coverture fraction to the 401(k) because Husband failed to present any evidence of the value of the account at the date of marriage. However, the trial court segregated the account from the remainder of the marital property and found that a deviation from the presumption 50/50 division of the asset was warranted "due to [the] short term marriage in relation to the length of contribution from Husband." Appellant's App. Vol. 2 p. 132. Consequently, the trial court distributed approximately 64% of the value to Husband and 36% to Wife.

[17] The trial court's decision to segregate the 401(k) from the remainder of the marital estate and then divide the asset after considering and applying the factors under Indiana Code section 31-15-7-5 to the 401(k) was clearly erroneous and at odds with the statute and the "one-pot" theory. *See Falatovics*, 15 N.E.3d at 110 ("Indiana's 'one pot' theory prohibits the exclusion of any

[4] As of the date of separation, the value of the 401(k) was $180,000.00.

asset in which a party has a vested interest from the scope of the trial court's power to divide and award."). Because the trial court denied Husband's request to apply coverture fraction to that portion of the 401(k) that had accrued prior to the marriage, the 401(k) must be included in the "marital pot" with other marital property. The trial court must then consider the division of the marital property as a whole and whether either party has rebutted the presumption of an equal division.

[18] Wife also argues that the trial court erred when it failed to award Wife any of the gains or losses attributed to the 401(k) after the valuation date, which was the date of the dissolution of marriage filing. Stated differently, Wife argues that the trial court should have valued the account as of the date of the hearing, rather than the date of the filing of the petition, which it used to value the remainder of the marital estate. When valuing the marital assets, the trial court has discretion "to set any date between the date of filing of the dissolution petition and the date of the hearing." *Quillen v. Quillen*, 671 N.E.2d 98, 102–03 (Ind. 1996). Wife fails to cite any legal authority for her position that the trial court erred by valuing the asset as of the date of filing and fails to cite to any evidence in the record as to the value of the asset at the date of the final hearing. Therefore, Wife waives her argument for failure to support it with cogent reasoning and citations to authorities. *See* Ind. Appellate Rule 46(A)(8)(a) (requiring that contentions in appellant's brief be supported by cogent reasoning and citations to authorities, statutes, and the appendix or parts of the record on appeal relied on); *see also Castro v. State Off. of Fam. & Child.*, 842 N.E.2d 367,

373 n.2 (Ind. Ct. App. 2006) (failure to present cogent argument to support a claim that trial court erred in finding that there was a satisfactory plan for the care and treatment of child waives issue for appellate review), *trans. denied*.

[19] Therefore, we reverse, and on remand, the trial court shall include the 401(k) together with all other marital property and then divide the marital property consistent with I.C. 31-15-7-5.

C. Marital Debt

[20] Wife asserts that the trial court erred when it omitted the following debts from the marital pot for division: (i) the $1,500.00 debt on Wife's Jeep; (ii) the outstanding $162.77 AT&T Mobility bill; and (iii) the $640.44 DirectTV bill. Appellant's Br. p. 32. When we review a claim that the trial court improperly divided marital property, we will not reweigh the evidence and must consider only the evidence most favorable to the trial court's disposition of the property. *Love v. Love*, 10 N.E.3d 1005, 1012 (Ind. Ct. App. 2015). Even if the facts and reasonable inferences might allow for a different conclusion, we will not substitute our judgment for that of the trial court. *Id.*

[21] In general, "[w]hile the trial court may decide to award a particular asset solely to one spouse as part of its just and reasonable property division, it must first include the asset in its consideration of the marital estate to be divided." *Falatovics*, 15 N.E.3d at 110. "The systematic exclusion of any marital asset from the marital pot is erroneous." *Id.* In its decree, after acknowledging a number of debts not subject to this appeal, the trial court found "no other

marital debt subject to division." Appellant's App. Vol. 2 p. 134. When Wife filed a motion to correct error requesting that the trial court include the marital debts, the trial court denied the request. "Rulings on motions to correct error are typically reviewable under an abuse of discretion standard." *Boyd v. WHTIV, Inc.*, 997 N.E.2d 1108, 1110 (Ind.Ct.App.2013), *reh'g denied*. Under these circumstances, we reverse "only where the trial court's judgment is clearly against the logic and effect of the facts and circumstances before it or where the trial court errs on a matter of law." *Perkinson v. Perkinson*, 989 N.E.2d 758, 761 (Ind. 2013) (citing *Hawkins v. Cannon*, 826 N.E.2d 658, 663 (Ind.Ct.App.2005), *trans. denied*). However, "we review the matter de novo when the issue on appeal is purely a question of law." *Boyd*, 997 N.E.2d at 1110.

[22] Wife asserts that $1,500.00 is owed to Larry McCoy for the purchase of the Jeep. "Sometime in the fall of 2018[,]" Larry McCoy purchased the Jeep and exchanged it with Husband for a "Chevy pick[-]up and $1,500.00." *Id.* at 93, 205. Larry McCoy testified that he received the Chevy, but not the $1,500.00. *See Id.* No other evidence—such as a written agreement—was presented. Wife also testified that AT&T Mobility was "another one of the household bills that was in [her] name" which was supported by Husband's testimony that AT&T was the phone provider "for both [him] and [Wife's] cell phone" and he was not the administrator on that account. Tr. Vol. 2 p. 55; Tr. Vol. 3 p. 106. The trial court admitted, without objection, evidence of an outstanding $162.77 AT&T Mobility account balance dated April 11, 2017. *See* Ex. Vol. 8 p. 147. Wife also testified that "the DirectTV bill was in her name" when "the

[DirectTV] boxes were burnt and lost" during the house fire in March of 2018. Tr. Vol. 2 pp. 53–54. Wife's testimony was corroborated by Husband's testimony that "[Wife] may have paid [the cable] when she had DirectTV…[d]uring the course of [their] marriage." Tr. Vol. 3 p. 135. DirectTV wanted reimbursement for the destroyed boxes and put the bill in collections—via Credence—since the amount had yet to be paid by Husband.[5] The trial court admitted, without objection, evidence of the $640.44 DirectTV account balance dated October 1, 2019. *See* Ex. Vol. 8 p. 141.

[23] We note that Husband did not dispute any of the testimony nor object to the admission of any of the exhibits regarding the three marital debts at the hearing. Husband's brief also fails to address the debts. The trial court's decree simply fails to address these individual debts despite the fact that they were uncontroverted by Husband at trial. Again, we will not reweigh the evidence and must consider only the evidence most favorable to the trial court's disposition of the property. *See Love*, 10 N.E.3d at 1012. Here, no other testimony or exhibit was presented to dispute the three debts which makes the trial court's "systematic exclusion of [the] marital asset[s] from the marital pot [ ] erroneous." *Id.* Therefore, we remand with instructions for the trial court to include the three debts in the marital estate and divide them between Wife and Husband.

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[5] Wife testified that she "submitted [the collection debt] to Husband previously[,]" but he has not paid it. Tr. Vol. 2 pp. 53–54.

II. Dissipation of Marital Property

[24] Wife contends that the trial court erred when it found that Wife committed dissipation when she ceased charging rent for one of the two mobile homes located on the Marital Real Estate during the pendency of the action. "Generally, our court reviews findings of dissipation under an abuse of discretion standard." *Troyer v. Troyer*, 987 N.E.2d 1130, 1140 (Ind. Ct. App. 2013). "We will reverse only if the trial court's judgment is clearly against the logic and effect of the facts and the reasonable inferences to be drawn from those facts." *Id.* Waste and misuse are the hallmarks of dissipation. *Id.* "Dissipation generally involves the use or diminution of the marital estate for a purpose unrelated to the marriage and does not include the use of marital property to meet routine financial obligations." *Balicki v. Balicki*, 837 N.E.2d 532, 540 (Ind. Ct. App. 2005), *trans. denied*. "The test for dissipation is whether the assets were actually wasted or misused." *Id.* To determine whether dissipation has occurred, we consider the following factors:

> 1. Whether the expenditure benefited the marriage or was made for a purpose entirely unrelated to the marriage;
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> 2. The timing of the transaction;
>
> 3. Whether the expenditure was excessive or de minimis; and
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> 4. Whether the dissipating party intended to hide, deplete, or divert the marital asset.

Hardebeck v. Hardebeck, 917 N.E.2d 694, 700 (Ind. Ct. App. 2009).

[25] The trial court made the following findings regarding dissipation:

> 63. Wife testified that she let . . . Larry McCoy[ ] move in with her to assist around the residence in lieu of rent.
>
> 64. Wife stopped charging rent to the other tenant, Everett McCoy, and allowed him to reside in the marital residence.
>
> 65. During the pendency of the divorce, Wife allowed her adult son and his girlfriend to reside in the home without contributing to any expenses.
>
> 66. This undoubtedly caused an increase to the obligation of Husband for utility payments and dissipated assets in the form of uncharged rent.
>
> 67. Larry McCoy testified that his rent was $250.00 per month which would have resulted in approximately $9,000.00 of dissipated income during the 3 years pendency of this action.
>
> . . . .
>
> 69. This constitutes waste on the part of Wife. "Waste and misuse are the hallmarks of dissipation." Troyer[, 987 N.E.2d at 1140.] Regardless of the relation status between tenant Larry McCoy and Wife, the result is dissipation of rental income and assists the Court in informing considerations of the statutory factors enumerated by I.C. § 31-15-7-5."

Appellant's App. Vol. 2 p. 63. The record reveals that one of the tenants, Everett McCoy, never paid rent. In lieu of rent, he has always "do[ne] some work on the property." Tr. Vol. 2 p. 244. Wife's adult son also lived on the

marital residence, but he never paid rent. *See* Tr. Vol. 3 p. 123. Consequently, we will only focus on Wife's failure to collect rent from Larry McCoy.

[26] Wife contends that she stopped charging Larry McCoy rent because the furnace and central air in the mobile home had ceased working which made the residence uninhabitable. Wife further claims that she did not have money to repair the mobile home, and since she is disabled and needed Larry McCoy's assistance to maintain the property, she allowed him to move into the marital residence. According to Wife, the amount that Larry McCoy paid in rent "was so unimportant that the provisional Order in this case does not even address [Larry] McCoy's rent payments . . . ." Appellant's Br. p. 30. Wife's assertions are an improper invitation for us to reweigh the evidence which we will not do. *See*, *e.g.*, *In re D.J.*, 68 N.E.3d 574, 577–78 (Ind. 2017).

[27] The trial court's determination is not clearly against the logic and effect of the facts and the reasonable inferences to be drawn from those facts. Larry McCoy testified that he only paid rent for "maybe six months or a year" after the dissolution was filed because Wife did not "feel comfortable taking money and asking [him] to help out" around the property even though Larry McCoy had been doing just that prior to the dissolution filing. Tr. Vol. 2 p.203. Larry McCoy testified that he has always worked on the property and paid rent "to offset the fact that [he was] paying very low rent." *Id.* at 218. Although the rent was low, it "represented some additional income [for Wife and Husband]"—additional income that Wife and Husband could have used to alleviate some of their expenses. *Id.* For instance, the income could have been

used to buy a furnace so that the mobile home that Larry McCoy once resided in could be habitable and generate income. Instead, Wife moved Larry McCoy into the marital residence because "[she] did not want to buy a furnace and put [it into the] mobile home or do anything not knowing when [they] were going to go to court and what was going on, if [they] were . . . going to be living there." *Id.* at 35. Even if we were to entertain Wife's rationale for not collecting rent due to the uninhabitable conditions of the mobile home, Wife could have collected rent from Larry McCoy since she was still providing him room and board in the marital residence. Larry McCoy lived in the marital residence rent-free without contributing to any utility bill payments—an "expenditure . . . [that] was made for a purpose entirely unrelated to the marriage." *Hardebeck*, 917 N.E.2d at 700 (this court affirmed a finding of dissipation where wife refused to file joint tax returns out of spite which resulted in Husband paying an additional tax obligation of $8,600.00). Under the circumstances, the trial court could reasonably conclude that Wife's refusal to collect rent from Larry McCoy constituted dissipation. The trial court did not err in its determination.[6]

[6] To the extent that additional expenses were incurred due to Wife's adult son, son's girlfriend and Larry McCoy residing in the marital residence, the trial court's findings are supported by evidence. *See* Tr. Vol. 3 p. 114 (Husband testified that: (1) he was not asked nor informed about son's girlfriend moving into the marital residence; and (2) he did not receive any compensation from the three individuals for the increase in the utility bill payments).

III. Incapacity Maintenance

[28] Wife argues that the trial court erred when it denied her request for incapacity maintenance. Wife requested Husband be ordered to pay Wife the sum of $500.00 per month as incapacity maintenance.

> A trial court's power to award spousal maintenance is wholly within its discretion. The presumption that the court correctly applied the law in making an award of spousal maintenance is one of the strongest presumptions applicable to our consideration of a case on appeal. We will reverse a trial court's decision to award spousal maintenance only when the decision is clearly against the logic and effect of the facts and circumstances of the case.

Barton v. Barton, 47 N.E.3d 368, 375 (Ind. Ct. App. 2015) (internal citations omitted).

[29] "A court may order maintenance in final dissolution of marriage decrees" upon determining:

> a spouse to be physically or mentally *incapacitated to the extent that the ability of the incapacitated spouse to support himself or herself is materially affected*; the court may find that maintenance for the spouse is necessary during the period of incapacity, subject to further order of the court.

I.C. §§ 31-15-7-1(1) &-2(1) (emphasis added). "Such an award is designed to help provide for a spouse's sustenance and support; accordingly, the essential inquiry is whether the incapacitated spouse has the ability to support himself or herself." *Alexander v. Alexander*, 980 N.E.2d 878, 881 (Ind. Ct. App. 2012).

> Because the statute requires findings in order to award maintenance . . . we treat the court's findings as 'special findings' under Indiana Trial Rule 52(a)(3). We will not set aside such findings unless clearly erroneous and give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

Cannon v. Cannon, 758 N.E.2d 524, 526 (Ind. 2001).

[30] As it pertains to spousal maintenance, the trial court made the following extensive findings:

> 17. Wife has a diagnosis of rheumatoid arthritis [ ].
>
> 18. Wife was awarded Social Security Disability.
>
> 19. During the marriage, Wife worked several jobs, including roles at Princeton Veterinary Hospital, Bed[,] Bath [&] Biscuit[s] (animal grooming services), night manager at Taco Bell and found[ed] and is still running Sweet Dreams which includes the services of mobile pet grooming and also providing "pony parties" in which Wife assists in children taking rides on horseback.
>
> 20. Wife testified that she quit Princeton Veterinary Hospital when given the option to resign or be terminated after an indication of deception, on a lie detector test, about her knowledge of theft that had occurred at the business.
>
> 21. An additional witness [ ] testified that she and Wife also worked together as caretakers for an older couple in Illinois during the marriage.
>
> 22. Prior to the marriage, Wife worked in the mortgage/banking industry for 18 years. During the course of the marriage, Wife eventually relinquished all other positions of employment to run Sweet Dreams full time but testified that her business has not yielded a profit since its inception in 2016. Sweet Dreams originally included a mobile petting zoo and horses for children

to ride at parties including the establishment of temporary pens and transport of the animals to the location of the event. Wife testified that the petting zoo animals were eventually sold leaving only the "pony party" and the mobile pet grooming services currently.

23. The Social Security Disability Administration found Wife to have been disabled as of March 22, 2016 and awarded a lump sum of payment to Wife with an ongoing $1249.00 award monthly.

24. The Disability Determination Letter does not specify a diagnosis for which she was deemed disabled and notes that Wife is not prohibited from working and can potentially still receive benefits in the [e]vent she chooses to work . . .[7]

25. This court will accept the finding of disability from the Social Security Administration and note that a separate court has jurisdiction over that finding and this court will decline to re-evaluate or review the finding of the Social Security Administration.

26. During the course of testimony, Husband testified that he was asked to fill out a Third-Party Adult Function Report[8] [ ] and testified that he began to do so but did not complete the form because he was asked to fabricate answers by Wife.

27. The Third-Party Adult Function Report was produced fully completed and was submitted to the Social Security Administration. Husband testified that he first saw the completed version during the discovery phase of this cause of action.

28. Sharon Hampton was produced as a handwriting expert and qualified as such by the Court pursuant to Ind. R. Evid. 702 due to her knowledge, skill, training, and education as testified to and memorialized in her Curriculum Vitae as admitted in [Ex. Vol. 9

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[7] *See* Ex. Vol. 8 pp. 142–45.

[8] *See* Ex. Vol. 9 pp. 76–83.

pp. 114–17]. The Court will also note that Ms. Hampton has been recognized on both the State and Federal courts in other jurisdictions. This Court finds specifically that Ms. Hampton's expert testimony rested upon reliable scientific principles.

29. Ms. Hampton explained in detail . . . that the Wife completed the Third-Party Adult Function Report that Husband testified[ ] he refused to complete.

30. Although Wife denies this allegation, the Court believes after the expert testimony that the Wife did in fact complete the report that was submitted to the Social Security Administration [ ].[9]

31. Multiple witnesses testified that Wife rides four wheelers, go-karts, and works on the property caring for animals.

32. Wife testified that her disability is progressing, and her abilities are drastically decreasing.

33. The Deposition of Dr. Bell, Wife's treating physician, was admitted with no objection.

34. Dr. Bell has been treating Wife since November 2014. Dr. Bell provided Wife's diagnosis of rheumatoid arthritis and suggested Wife has consistently shown active inflammation most of the time.[10]

35. Dr. Bell discontinued prescribing opioids to Wife due to daily marijuana use and mismanagement of opioid prescriptions. Wife then sought a physician for pain management to prescribe Gabapentin.[11]

36. Dr. Bell relied heavily on self-reports when charting [the] course of treatment and specifically that Wife reported consistently that the use of her hands is the most difficult thing

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[9] *See* Ex. Vol. 9 pp. 76–83.

[10] *See* Ex. Vol. 8 pp. 192–250; Ex. Vol. 9 pp. 2–29.

[11] Ex. Vol. 6 pp. 198, 212, 219, 246; Ex. Vol. 9 pp. 185, 204

for her. Exhibit 28 at 174, 178, 180, 182, 184, 186, 188, 190, and 192;[12] [Ex. Vol. 8 p. 226].

37. The Court observed Wife over the course of three separate days of trial and two consecutive days sit for long periods of time without visual discomfort or requesting breaks and all the while feverishly taking notes and organizing documents to assist in the preparation and execution of her case. This observation conflicts with Wife's reporting to physicians that she cannot use her hands but would in fact be consistent with job requirements of mortgage/banking industry which she has prior experience.

38. Wife testified that when visiting family in Iowa she would frequently require breaks since she cannot sit without pain. This is inconsistent with the Court's own observation and the testimony of witnesses who testified they have accompanied Wife to Iowa and the trip is completed with Wife driving without breaks.

39. The Court finds that based upon a pattern of dishonesty displayed by Wife through her testimony and the testimony of others, the Determination letter from Social Services Administration specifically contemplating that Wife may choose to work, and Wife's testimony that she is still running a business that requires a physical component of caring for animals and grooming them, that Wife has not shown that she is physically or mentally, incapacitated to the extent that her ability to support herself is materially affected pursuant to I.C. §[ ]31-1-7-2. The Wife has not met her burden of proof.

40. The nature of Wife's disability was not indicated in the Letter of Disability.

41. Wife has not provided any evidence that her status of disability was periodically reviewed for determination if her award of benefits should continue. Campbell v. Campbell, 118 N.E.3d 817, 819-821.

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[12] We note that the page numbers listed in the trial court's order here do not coincide with the page numbers in Exhibit 28. *See* Ex. Vol. 6 pp. 176–250; Ex. Vol. 7 pp. 2–250; Ex. Vol. 8 pp. 2–140.

> 42. There is a requirement that findings be entered to support incapacity maintenance, but it is the intention of this Court that the findings in this Order, related to incapacitation to the extent Wife's ability to support herself is materially affected pursuant to I.C. §[ ]31-15-7-2, to be considered special findings as it is within the discretion of the Court to award spousal maintenance even if it had found the requirement for incapacity maintenance had been satisfied. *Id.* Wife's claim for spousal maintenance is denied.
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> 43. Further, the Court denies any claim to rehabilitative maintenance under I.C. § 31-15-7-2 and notes that Husband has paid all the obligations toward the [M]arital [Real Estate] which is more than $50,000[.00] for mortgage and utilities, and additional substantial amounts for other obligations during the pendency of this dissolution action for which the Wife had exclusively enjoyed the benefit. The monies paid by Husband during the almost three (3) year pendency of this action should have been a suitable amount of time for Wife to find appropriate employment.

Appellant's App. Vol. 2 pp. 122–26.

[31] Wife does not individually challenge the trial court's findings. Instead, Wife asserts that her health conditions materially affect her ability to work and support herself and directs us to "her testimony and that of her witnesses" as demonstrative of her inability to attain gainful employment. Appellant's Br. p. 38. The trial court acknowledged Wife's disabilities but concluded that Wife's ability to support herself had not been materially affected as a result of her disabilities. Wife's assertions are an improper invitation for us to reweigh the evidence, which we will not do. *See, e.g., In re D.J.*, 68 N.E.3d 574, 577–78 (Ind. 2017).

[32] Wife testified that she is unable to work any other job because how she "feels and how mobile [she] can be" changes daily with some days being "worse than others" due to the constant pain that she is in.[13] Tr. Vol. 2 pp. 146–47. However, there was evidence presented of Wife: (1) riding a four-wheeler on a dirt road; (2) rounding up the animals when they got out; (3) using her hands to fix and mend the fence on the Marital Property; and (4) frequently hosting pony parties. *See* Tr. Vol. 3 pp. 6–7. Wife was observed participating in such activities in 2020, three years after she began receiving her monthly social security disability benefits. Moreover, the trial court found that Wife demonstrated a pattern of dishonesty through her testimony. Not only does the record demonstrate that Wife is capable of doing the physical work necessary to run her Sweet Dreams business, but it also reveals that Wife can support herself through other types of employment. There is ample evidence from which the trial court could conclude that Wife had the capacity to support herself such that an award of spousal maintenance would be improper. The trial court's denial of Wife's request is not clearly erroneous.

IV. Attorney's Fees

[33] Wife challenges the trial court's denial of her request that Husband pay her attorney's fees. "'We review a trial court's award of attorney's fees for an abuse

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[13] To circumvent Wife's pain, Wife was prescribed opioids, but was not taking them as directed so Dr. Bell stopped prescribing them to her. Specifically, Wife testified that she didn't "feel any relief" from the opioids and did not "lik[e] how [they] were[,]" so she stopped taking opioids after "five weeks, maybe six weeks" and resorted to marijuana use to "try to alleviate some of the pain" instead. Tr. Vol. 2 pp. 134–35. Despite her own alternative method to better manage her pain, Wife still claims that she cannot work due to her pain.

of discretion.'" *Minser v. DeKalb Cnty. Plan Comm'n*, 170 N.E.3d 1093, 1102 (Ind. Ct. App. 2021) (quoting *River Ridge Dev. Auth. v. Outfront Media, LLC*, 146 N.E.3d 906, 912 (Ind. 2020)). "'An abuse of discretion occurs when the court's decision either clearly contravenes the logic and effect of the facts and circumstances or misinterprets the law.'" *Id.* "'To make this determination, we review any findings of fact for clear error and any legal conclusions de novo.'" *Id.*

> Generally, Indiana has consistently followed the American Rule in which both parties generally pay their own fees. In the absence of statutory authority or an agreement between the parties to the contrary—or an equitable exception—a prevailing party has no right to recover attorney fees from the opposition.

Id. (quoting *BioConvergence, LLC v. Menefee*, 103 N.E.3d 1141, 1160 (Ind. Ct. App. 2018), *trans. denied*). The party seeking fees carries a "hefty" burden to demonstrate that an exception to the American Rule is warranted. *Id.*

[34] Wife directs us to one of the well-established exceptions outlined in Indiana Code section 31-15-10-1. The statute provides, in relevant part, that "[t]he court periodically may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding" stemming from a dissolution of marriage, including "attorney's fees." I.C. § 31-15-10-1(a).

> In determining whether to award attorney's fees in a dissolution proceeding, trial courts should consider the parties' resources, their economic condition, their ability to engage in gainful employment and earn income, and other factors bearing on the reasonableness of the award. A party's misconduct that directly

> results in additional litigation expenses may also be considered. Consideration of these factors promotes the legislative purpose behind the award of attorney's fees, which is to ensure that a party who would not otherwise be able to afford an attorney is able to retain representation. When one party is in a superior position to pay fees over the other party, an award is proper.

Haggarty v. Haggarty, 176 N.E.3d 234, 251 (Ind. Ct. App. 2021) (quoting *Eads v. Eads*, 114 N.E.3d 868, 879 (Ind. Ct. App. 2018)).

[35] Wife argues that she does not have any ability to pay the $26,610.00 she incurred in legal fees because "her income [is] limited to her monthly social security deposit and occasional funds from grooming pets for approximately $15,000[.00] of annual income." Appellant's Br. pp. 33–34.[14] While it is true that Wife may have limited income due to her disability, as noted by Husband, Wife received approximately $55,000.00 in cash from the coal lease proceeds, approximately $107,124.00 as cash equalization, and approximately $65,000.00 from Husband's 401(k). *See* Appellee's Br. p. 13; *see also* Appellant's App. Vol. 2 pp. 137–38. In addition, Husband paid all expenses associated with the marital residence, allowing Wife to forego those living expenses, during the approximately three years the case was pending. Considering Wife's financial picture as a whole, we cannot say that the trial court abused its discretion by

[14] *See also* Appellant's Reply Br. p. 16 (asserting that "it is undisputed that Wife's income for years has been limited to her monthly social security disability income plus whatever amounts she can earn grooming pets as her health conditions permit").

denying Wife's request for attorney's fees. Thus, we affirm the trial court's denial of Wife's request for attorney's fees.

Conclusion

[36] Based on the foregoing, we affirm the trial court's determination that: (1) Wife committed dissipation by failing to collect rent on one of the mobile homes; (2) Wife is not entitled to incapacity maintenance; and (3) Wife is responsible for her own attorney's fees. We reverse the trial court's decision: (1) crediting Husband with $30,000.00 of equity in the Marital Real Estate; (2) segregating Husband's 401k from the other marital property and then deviating from a 50/50 division by awarding $115,000.00 to Husband and $65,000.00 to Wife; and (3) excluding the three debts in the marital pot for division. We remand with instructions for the trial court to divide the marital estate consistent with this opinion.

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

Vaidik, J., and Tavitas, J., concur.