

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Shannon Kaye Kasinger Clark,
Appellant-Respondent,

v.

John Gail Clark, IV,
Appellee-Petitioner.

October 13, 2023

Court of Appeals Case No.
23A-DC-696

Appeal from the Daviess Circuit
Court

The Honorable Gregory A. Smith,
Judge

Trial Court Cause No.
14C01-2006-DC-328

Memorandum Decision by Judge Riley.
Judges Bradford and Weissmann concur.

Riley, Judge.

STATEMENT OF THE CASE

- [1] Appellant-Respondent, Shannon Kasinger Clark (Wife), appeals following the trial court's denial of her motion to correct error pertaining to the Second Amended Decree of Dissolution dividing the marital estate with Appellee-Petitioner, John Gail Clark, IV (Husband).
- [2] We affirm in part, reverse in part, and remand with instruction.

ISSUE

- [3] Wife presents this court with two issues, one of which we address and which we restate as: Whether the trial court ordered Wife to make an \$104,968.77 equalization payment to Husband.

FACTS AND PROCEDURAL HISTORY

- [4] Prior to her marriage to Husband, Wife acquired three retirement accounts through her employment, namely, a pension through the Federal Employees Retirement System (FERS Pension), a FERS Supplement (FERS Supplement) which would pay Wife a supplemental income if she retired between the ages of fifty-seven and sixty-two, and a Thrift Savings Plan (TSP). On August 16, 2014, Husband and Wife married. During the marriage, the parties acquired assets and real estate, including the marital home in Loogootee, Indiana. Husband also inherited a sum of money and acquired two retirement accounts through his employment.

[5] On May 20, 2020, the parties separated, and on June 10, 2020, Husband filed a petition for dissolution of marriage. On March 8, 2022, and June 1, 2022, the trial court held evidentiary hearings on Husband's petition. Although the parties did not enter into a formal written stipulation, both Husband's and Wife's proposed divisions of the marital estate only included the portions of Wife's retirement accounts earned during the marriage for division.

[6] On July 22, 2022, the trial court entered its Decree of Dissolution (Decree) in which the trial court generally adopted Husband's proposed division of the marital assets, with some adjustments. Wife received the marital home, and each party received his and her own retirement accounts. Although the trial court considered Wife's FERS Pension and Supplement as part of the marital estate, it applied a coverture fraction¹ of 36.11% to Wife's FERS Pension and Supplement and only included the portions of those accounts earned during the marriage in its computation of the marital estate for division purposes. The trial court awarded the non-marital and the marital portions of Wife's retirement accounts to her. The trial court found that the division of the marital pot was unequal and that "in order to arrive at a more equitable division after setting aside the non-marital portions of [the] pensions [sic] and [Husband's] inheritance of \$33,574," it ordered Wife to make an equalization payment to

¹ A coverture fraction is a method a trial court may use to distribute pension or retirement plan benefits between the earning and non-earning spouses by multiplying the value of the benefit by a fraction, the numerator of which is the period of time during which the marriage existed while the benefit right was accruing and the denominator of which is the total period during which the benefit right accrued. *Smith v. Smith*, 194 N.E.3d 63, 68 n.2 (Ind. Ct. App. 2022).

Husband of \$74,783.83. (Appellant's App. Vol. II, p. 46). The trial court calculated the equalization payment by subtracting Husband's inheritance and Husband's allotted half of the home equity value, which it mistakenly calculated as \$40,867.63, from Husband's proposed equalization payment of \$108,357.83.

[7] On August 18, 2022, Husband filed a motion to correct error in which he requested correction of the home equity valuation and presented a new proposed balance sheet which he contended was in line with the valuations and property division detailed in the Decree. According to Husband's new proposed balance sheet, the net value of the marital estate was \$857,759.86, and the trial court's division of assets had resulted in a pre-equalization award of \$244,177.37 to Husband and \$613,582.49 to Wife. Applying a presumptive 50/50 split and adjusting for the various awards outlined in the Decree, Husband argued that he was owed an equalization payment of \$167,915.56.

[8] On August 30, 2022, the trial court granted Husband's motion to correct error and entered its Amended Decree of Dissolution (Amended Decree). The trial court corrected the home equity valuation and made other proposed adjustments. The trial court essentially divided the marital estate in the same manner as it had previously but concluded that Wife owed Husband an equalization payment of \$146,634.94.

[9] On September 2, 2022, Wife filed a motion to vacate the Amended Decree and a statement in opposition to Husband's motion to correct error. On September

2, 2022, the trial court stayed the Amended Decree, stayed Wife's timeline for filing a motion to correct error pertaining to the Amended Decree, and set a hearing on Husband's motion to correct error for October 3, 2022. Despite the trial court's stay, on September 29, 2022, Wife filed a motion to correct error pertaining to the Amended Decree. On October 3, 2022, the trial court held a non-evidentiary telephonic hearing on the parties' motions to correct error. On October 28, 2022, Wife filed an amended motion to correct error reciting various purported errors and omissions in the Amended Decree. On November 28, 2022, Husband filed his response to Wife's amended motion to correct error. On January 12, 2023, the trial court held a hearing on Wife's amended motion to correct error.

[10] On February 9, 2023, the trial court entered its Second Amended Decree of Dissolution (Second Amended Decree). For this latest decree, the trial court valued the equity in the marital home at \$76,135.23, which it awarded to Wife, but the court ordered Wife to pay Husband an equity equalization payment of \$38,067.62 for his share. As to the parties' retirement accounts, the trial court applied the same coverture fraction to Wife's FERS Pension and Supplement as it had used in its previous Decrees, and this time it calculated what portion of Wife's TSP had accumulated during the marriage by subtracting the value of the TSP on the date of the parties' marriage from its date-of-separation valuation. The trial court deviated in its division of Wife's FERS Pension, FERS Supplement, and TSP in that, where it had previously awarded both the

non-marital and marital portions of those assets to Wife, it now divided the marital portion of the benefits between the parties.

[11] In addition, in the Second Amended Decree, the trial court awarded Husband his \$33,574 inheritance and his retirement accounts “in recognition that [Wife] is receiving the entire pre-marital value of her FERS Pension and her FERS Supplement if she so elects.” (Appellant’s App. Vol. II, p. 23). The trial court entered the following relevant finding and conclusion:

21. The [c]ourt finds that a 50/50 division is fair and equitable. However, in order to arrive at a more equitable division after setting aside the non-marital portions of [Wife’s] FERS pensions [sic] and [Husband’s] inheritance of \$33,574 and his [retirement] accounts, *[Wife] would owe to [Husband]* an additional cash equalization payment [of] \$66,901.15 plus his one-half of the equity of \$38,067.62. For a total cash and equity equalization payment of \$104,968.77, as demonstrated by the [court’s] Marital Balance Sheet attached hereto as Exhibit “A”.

(Appellant’s App. Vol. II, p. 31) (emphasis added). The trial court’s Marital Balance Sheet, attached to the Second Amended Decree as Exhibit “A”, showed values of \$38,067.62 for half of the home equity and \$33,574 for the inheritance in Husband’s column. The total net marital estate was valued at \$827,986.55, with an overall net asset distribution to Husband of \$518,962.04 and to Wife of \$309,024.51. In contradiction to Paragraph 21 set forth above, the trial court’s Marital Balance Sheet provided that a 50/50 split would result in each party receiving \$413,993.28 and that *Husband was to pay Wife* an \$104,968.77 equalization payment.

[12] On March 10, 2023, Wife filed a motion to correct error pertaining to the Second Amended Decree arguing in relevant part that the pre-marital portions of her FERS benefits and TSP were non-marital assets which should not have been factored into the trial court's calculation of an equalization payment. Thus, while Wife acknowledged that she owed \$38,067.62 to Husband for the marital home equity, she argued that the court's award of an additional \$66,901.15 was in error.

[13] On March 14, 2023, the trial court entered an order denying Wife's motion to correct error. The trial court found that the portions of Wife's retirement accounts that had accrued prior to the marriage were marital assets that were potentially subject to division. The trial court concluded that

[t]he valuation and division are in the discretion of the [c]ourt following the presumption of an equal division and the discretion to use a coverture fraction formula on such vested assets that in essence recognizes what was earned during the years of marriage and what was earned prior to or outside of the years of marriage. The [c]ourt has included all of each parties' respective pension benefits in the marital pot but divided them using the coverture fraction formula for [Wife's] pension benefits that divides the benefits based only [on] what was earned during the marriage. [Husband] was awarded his pension benefits and savings account in arriving at an equal division.

(Appellant's App. Vol. II, p. 106). In denying Wife's motion to correct error, the trial court did not specifically address the equalization payment.

[14] Wife now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

[15] Wife argues that the trial court erred when it ordered her to pay Husband an equalization payment of \$104,968.77. The parties did not request that the trial court enter special findings of fact and conclusions thereon pursuant to Indiana Trial Rule 52. We have recently summarized our standard of review where a trial court has entered sua sponte findings of fact and conclusions of law thereon as follows:

Where the trial court enters specific findings sua sponte, the findings control our review and the judgment only as to the issues those specific findings cover. Where there are no specific findings, a general judgment standard applies and we may affirm on any legal theory supported by the evidence adduced at trial. Moreover, in reviewing findings of fact and conclusions of law, we apply a two-tiered standard of review by first determining whether the evidence supports the findings and then whether the findings support the judgment. The trial court's findings and judgment will be set aside only if they are clearly erroneous. Findings are clearly erroneous when the record contains no facts to support them either directly or by inference. A judgment is clearly erroneous if it applies the wrong legal standard to properly found facts. To determine that a finding or conclusion is clearly erroneous, our review of the evidence must leave us with the firm conviction that a mistake has been made.

Wolfe v. Agro, 163 N.E.3d 913, 921-22 (Ind. Ct. App. 2021) (citations and quotations omitted), *trans. denied*. In addition, Wife appeals following the denial of her motion to correct error pertaining to the Second Amended Decree. We generally review a ruling on a motion to correct error for an abuse of discretion, which only occurs 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.” *Berg v. Berg*, 170 N.E.3d 224, 227 (Ind. 2021) (quoting *Perkinson v. Perkinson*, 989 N.E.2d 758, 761 (Ind. 2013)).

[16] Wife contends that the trial court properly awarded her all the non-marital portions of her retirement accounts and divided the marital portion of those assets between the parties. Wife does not otherwise dispute the division of the marital estate. Wife argues that the trial court’s Marital Balance Sheet accurately states the parties’ assets, imposes a 50/50 split, and accurately shows that Husband owes her an equalization payment of \$104,968.77. Thus, Wife essentially asserts that the trial court made a scrivener’s error, possibly as an artifact of one of the previous Decrees, in ordering her to pay the equalization payment rather than Husband. For his part, Husband acknowledges that the trial court’s Marital Balance Sheet indicates that he is to pay Wife the equalization payment, yet he asserts that, nevertheless, the trial court ultimately ordered Wife to pay him \$104,968.77 and that it acted within its considerable discretion when it did so. While not arguing that the trial court abused its discretion in dividing the marital estate, Husband contends that the trial court could have divided the entire value of Wife’s retirement accounts instead of only the marital portions, and that, in the event that had occurred, Wife would have owed him a \$237,187.82 equalization payment instead of the \$104,968.77 that he contends the court did order Wife to pay.

[17] After having examined the Second Amended Decree, the Marital Balance Sheet attached to the Second Amended Decree, and the order denying Wife’s motion

to correct error pertaining to the Second Amended Decree, we are firmly convinced that a mistake has been made in the form of the written judgment in this case. In its Second Amended Decree, the trial court found that an equal split of the marital estate is “fair and equitable” but then indicated that it was actually ordering an unequal split to “arrive at a more equitable division after setting aside the non-marital portions of [Wife’s] FERS pensions [sic] and [Husband’s] inheritance of \$33,574 and his [retirement] accounts[.]” (Appellant’s App. Vol. II, p. 31). The trial court indicated that it was ordering Wife to pay an equalization payment consisting of \$66,901.15 plus Husband’s one-half of the home equity of \$38,067.62. However, Husband’s portion of the home equity and his inheritance were already credited to him in the Marital Balance Sheet, and the Marital Balance Sheet itself, which the trial court expressly referenced in entering its Second Amended Decree, showed that Husband was to pay Wife the equalization payment of \$104,968.77, not vice versa. In addition, in denying Wife’s motion to correct error, the trial court observed both that “[Wife] failed to carry her burden of rebutting the presumption of equal distribution” but also that Husband “was awarded his pension benefits and saving account in arriving at an equal division.” (Appellant’s App. Vol. II, pp. 105-06). In its order denying Wife’s motion to correct error, the trial court did not explicitly address the equalization payment.

[18] Given these inconsistencies in the Second Amended Decree itself and within the trial court’s own interpretation of the Second Amended Decree, it is unclear to us which party is to pay the equalization payment. However, Wife does not

offer us any applicable legal authority showing that a trial court abuses its discretion by dividing part of a non-marital retirement account benefit after applying a coverture fraction, and Husband does not argue on appeal that the trial court could not have, within its discretion, divided the marital estate consistent with the Marital Balance Sheet. Neither party argues that the trial court's findings of fact cannot support the other party's position. Therefore, the parties have waived those issues for our consideration. *See* Ind. Appellate Rule 46(A)(8)(a); *Wilkes v. Celadon Group, Inc.*, 177 N.E.3d 786, 790 (Ind. 2021) (“To avoid waiver on appeal, a party must develop a cogent argument.”). We also reject as waived Husband's implication that Wife's entire retirement account benefits should have been divided, a position that is inconsistent with his trial arguments. *See id.* (concluding that an issue offered for the first time on appeal was waived). Accordingly, we remand to the trial court for clarification of its Second Amended Decree as to which of the parties is to pay the \$104,968.77 equalization payment.²

CONCLUSION

[19] Based on the foregoing, we hold that remand is necessary so that the trial court may clarify its Second Amended Decree as to which party must pay the equalization payment, and we remand for that purpose.

² Wife argues for the revision of certain language that the trial court ordered should be included in the COAP. We decline to address this issue.

[20] Affirmed in part, reversed in part, and remanded with instruction.

[21] Bradford, J. and Weissmann, J. concur