MEMORANDUM DECISION

ATTORNEYS FOR APPELLANT

James L. McCaslin
Nancy A. McCaslin
McCaslin & McCaslin
Elkhart, Indiana

ATTORNEY FOR APPELLEE

Donald R. Shuler
Barkes, Kolbus, Rife & Shuler, LLP
Goshen, Indiana

IN THE COURT OF APPEALS OF INDIANA

Donald Brown,
Appellant-Respondent,

v.

Jassica Brown,
Appellee-Petitioner.

November 28, 2023

Court of Appeals Case No. 23A-DC-887

Appeal from the Elkhart Circuit Court

The Honorable Michael A. Christofeno, Judge

Trial Court Cause No. 20C01-2007-DC-392

Memorandum Decision by Judge Bradford
Judges Vaidik and Brown concur.

Bradford, Judge.

Case Summary

[1] On July 27, 2020, Jassica Brown ("Wife") filed a petition to dissolve her marriage to Donald Brown ("Husband"). The trial court issued an order dissolving the parties' marriage and dividing their assets on March 24, 2023. Husband contends that the trial court abused its discretion in awarding Wife an unequal distribution of the parties' marital assets. For her part, Wife contends that the trial court did not abuse its discretion in this regard. We affirm.

Facts and Procedural History

[2] The parties married on April 29, 2013, and are the parents of one child. During the course of the parties' marriage, Wife worked as a teacher. Husband, a disabled veteran, did not work, although he entered into various business ventures, none of which were profitable.

[3] Wife initiated divorce proceedings on July 27, 2020. After attempts at mediation failed, the trial court conducted an evidentiary hearing over the course of two days on December 19, 2022 and January 4, 2023. The trial court entered an order dissolving the parties' marriage and dividing the parties' assets and liabilities on March 24, 2023. In this order, the trial court ordered Wife to make a payment in the amount of $6782.50 to Husband in order to achieve an equal distribution of the parties' net marital assets.

Discussion and Decision

[4] Husband challenges the trial court's division of the marital estate on appeal. In doing so, he argues that the trial court abused its discretion in determining that an unequal distribution of the marital estate was just and reasonable.

> The division of marital assets lies within the trial court's discretion, and as such, we reverse only on a showing that the court has abused its discretion. An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. In conducting our review, we neither reweigh evidence nor reassess witness credibility; rather, we consider only the evidence most favorable to the trial court's disposition.

Bock v. Bock, 116 N.E.3d 1124, 1130 (Ind. Ct. App. 2018) (internal citations omitted).

[5] With regard to the division of a marital estate, Indiana Code section 31-15-7-5 provides as follows:

> The court shall presume that an equal division of the marital property between the parties is just and reasonable. However, this presumption may be rebutted by a party who presents relevant evidence, including evidence concerning 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.

"Per the statute, a trial court starts with the presumptive fifty/fifty division of marital assets and then determines whether the presumption has been rebutted by relevant evidence indicating that an equal division would not be just and reasonable." *Bock*, 116 N.E.3d at 1130. "If the court deviates from the presumptive equal division, it must state its reasons for that deviation in its findings and judgment." *Id.*

[6] In dividing the parties' marital estate, the trial court ordered as follows:

> 28. Pursuant to the disposition of marital assets and marital debts as set forth in this Decree of Dissolution of Marriage, the Court determines the following as to each party. The Wife was awarded assets totaling $300,817.00 and assigned debts totaling $285,718.00. The Wife therefore was awarded net assets in the amount of $15,099.00. The Husband was awarded marital assets totaling $30,491.00 and assigned marital debt totaling $28,957.00. Accordingly, the Husband was awarded net assets in the amount of $1,534.00. The difference in the net assets awarded to each spouse is $13,565.00. The Wife must therefore pay to the Husband the sum of $6,782.50 in order to have a just

> and reasonable division of the marital assets and marital debts of the parties.
>
> 29. To accomplish a just and reasonable division [of] the parties' marital assets and marital debts, the Husband is awarded a judgment against the Wife in the amount of $6,782.50.

Appellant's App. Vol. II p. 26. In arguing that the trial court abused its discretion in dividing the marital estate, Husband raises three claims of error: the trial court abused its discretion in awarding the marital residence to Wife, the trial court abused its discretion in failing to include an Edward Jones IRA in the marital estate, and the trial court abused its discretion in failing to divide the liability for his student loans between him and Wife.

I. Marital Residence

[7] Husband argues that the trial court abused its discretion in awarding Wife the marital residence, which was valued at $330,000.00. Specifically, he asserts that "an unequal distribution of the marital home was not reasonable or just." Appellant's Br. p. 26. In making this assertion, Husband admits that he had not contributed any funds to the acquisition of the marital home, but nonetheless claims that the $58,000.00 proceeds used by Wife as a downpayment on the marital home "should not have been set aside as a credit for Wife." Appellant's Br. p. 28.

[8] In awarding the marital home to Wife and giving her credit for the proceeds she used as a downpayment, the trial court found as follows:

> At trial, the Court found the Wife's testimony to be more credible than that of the Husband. In particular, the Court finds the testimony of the Wife as to the facts and circumstances surrounding the purchase of 205 Clairmont to be more credible than the testimony of the Husband. The Court finds that the Wife sufficiently rebutted the presumption of an equal division of the marital residence. From the testimony of the Wife, it is clear that the Wife made substantially all of the contribution as to the acquisition of the new house and real estate at 205 Clairmont. It is also clear from the Wife's testimony that she made all of the mortgage payments and paid all of the real estate taxes owing on the marital residence. From her testimony, it is also clear that she owned the home at 227 Clairmont prior to the marriage of the parties and that the Wife used the net proceeds from the sale of her prior home to purchase the new home and real estate at 205 Clairmont. Further, it is clear from the Wife's testimony that she paid the cost to purchase the lot at 205 Clairmont. Finally, it is clear from the Wife's testimony that the Husband made little to no contribution in the acquisition of 205 Clairmont.

Appellant's App. Vol. II pp. 17–18.

[9] As the trial court indicated, the record demonstrates that Wife had supplied the full downpayment, paid all other costs associated with purchasing and building the home, and unilaterally undertook the mortgage encumbrance. She was also the sole party that had paid the mortgage and property taxes. In fact, while the parties appear to have benefited from a veteran's property-tax credit after Wife added Husband to the deed, the record contains no indication that Husband had ever made any financial contribution to the purchase, payment, or upkeep of the home beyond purchasing a $3000.00 shed for the back yard. The trial court properly considered the fact that Wife had solely contributed the financial

resources and accepted the debt associated with the mortgage when awarding her both the marital home and a credit for the $58,000.00 proceeds used to secure the marital home, most of which were premarital funds attributable to Wife. *See* Ind. Code § 31-15-7-5(1) (providing that when determining whether an unequal division would be just and reasonable, a trial court may consider the contribution of each spouse to the acquisition of the property).

[10] Husband further argues that the trial court should not have considered the economic circumstances of the parties or the fact that the parties' child would reside in the home with Wife when awarding the marital residence to Wife. Indiana Code section 31-15-7-5(3) provides that a trial court can consider 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 … to the spouse having custody of any children." Husband asserts that the trial court erred in considering this factor in favor of Wife because he and Wife share physical and legal custody of their child. While the parties may share custody of their child, the record reveals that Wife has continued to live in the marital home with her four children following her separation from Husband. In addition, the parties' economic circumstances are such that Wife was, and continues to be, solely responsible for all mortgage and property-tax encumbrances associated with the home. It was not improper or unreasonable for the trial court to have considered these facts.

[11] Husband also argues that an unequal distribution of the marital home in favor of Wife was unjustified given his status as a disabled veteran. Husband appears to take issue with the trial court's statement that he had refused to work despite being capable to do so, pointing to the fact that he had worked on various business ventures during the parties' marriage despite acknowledging that none of the ventures ever made a profit or were income-producing. Husband claims that the parties' tax returns indicated that he had attempted to produce income and, as such, the trial court "should not have deviated from the reasonable and just 50/50 division of the marital asset in favor of an unequal distribution that was not justified or reasonable." Appellant's Br. p. 33.

[12] We disagree with Husband's assertion that the trial court abused its discretion in awarding the marital home to Wife. The trial court's decision was supported by ample evidence in the record indicating that Wife had been solely responsible for the expenses related to the purchase of and tax encumbrance on the marital home. Wife continued to bear the financial burden and live in the marital home with her four children, one of whom she shared with Husband, after the dissolution of the parties' marriage. Given the overwhelming evidence indicating that Wife had made all payments and undertook all financial burdens associated with the marital residence, we cannot say that the trial court abused its discretion in awarding the marital home to Wife. *See Keller v. Keller*, 639 N.E.2d 372, 374 (Ind. Ct. App. 1994) ("Where the trial court has determined that a party opposing an equal division has met his or her burden under the

statute and the trial court adequately records its reasons based on the evidence for an unequal division, we will affirm the trial court's decision."), *trans. denied*.

II. Edward Jones IRA

[13] Husband argues that because all marital property "goes into the marital pot" for division, *see Beard v. Beard*, 758 N.E.2d 1019, 1025 (Ind. Ct. App. 2001), *trans. denied*, the trial court abused its discretion by failing to include Wife's IRA in the marital estate. Wife argues, however, that the trial court did include the account in the marital estate.

[14] In support, Wife points to the trial court's dissolution order, which provides as follows:

> Except as set forth herein, each party is hereby awarded the sole and exclusive ownership of any and all intangible assets including but not limited to bank accounts, certificates of deposit, life insurance policies, 401k plans, individual retirement accounts, profit sharing and retirement plans, and other funds which may exist in his or her individual name, as awarded to them here, free of any claim from the other party.

Appellant's App. Vol. II pp. 24–25. The record demonstrates that the parties had discussed the IRA as part of the marital estate with the parties telling the trial court that "[w]e also agreed that Wife's Edward Jones IRA, the growth during the marriage, was $7,831.00. And [that] would be awarded to [Wife]." Tr. Vol. II p. 61. We agree with Wife that the record supports the inference that the trial court included Wife's IRA in the marital estate, awarding it to Wife. Husband asserts that the trial court's order does not reflect that the

$7831.00 growth of the account was divided between the parties. However, given the parties' stated agreement that the growth of the IRA would be awarded to Wife, we cannot say that the trial court abused its discretion in this regard. *See generally, Carmer v. Carmer*, 45 N.E.3d 512, 520 (Ind. Ct. App. 2015) (providing that the trial court did not abuse its discretion by awarding property pursuant to the parties' agreement).

III. Student Loans

[15] Husband last argues that the trial court "was inconsistent in determining the liability of the student loans." Appellant's Br. p. 34. Specifically, he asserts that payment of his loans "should be partly assumed by Wife because the debts were marital" and that "Wife's loans should remain her responsibility as they were premarital debts." Appellant's Br. pp. 34–35. Thus, he claims that the "issue of the loans should be remanded to the trial court for a just and reasonable division of Husband's liability for the loans." Appellant's Br. p. 35. Wife contends that the trial court appropriately ordered that the parties were responsible for their respective remaining student-loan debt.

[16] In splitting the parties' debts in an effort to reach an overall equal distribution of the net assets of the marital estate, the trial court indicated that each party would be responsible for their own remaining student-loan debt. As Husband points out in his reply brief, the student-loan debt assigned to Wife was greater than that assigned to him. We are unconvinced by Husband's assertion that Wife should have been held responsible for a portion of his student-loan debt

because "his education had benefits to the family." Appellant's Reply Br. p. 10. The same can undoubtedly be said of Wife's education, regardless of the fact that her education was completed, and the associated costs incurred, prior to the parties' marriage. Husband has failed to convince us that the trial court abused its discretion in this regard.

[17] The judgment of the trial court is affirmed.

Vaidik, J., and Brown, J., concur.