MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Dawn R. Stoner,
Appellant-Respondent,

v.

Bill C. Nicely, Jr.,
Appellee-Petitioner

December 11, 2023

Court of Appeals Case No. 23A-DN-481

Appeal from the Elkhart Superior Court

The Honorable Stephen R. Bowers, Judge

Trial Court Cause No. 20D02-2011-DN-629

Memorandum Decision by Judge Crone
Judges Riley and Mathias concur.

Crone, Judge.

Case Summary

[1] Dawn R. Stoner (formerly Nicely) (Wife) appeals the decree dissolving her marriage to Bill C. Nicely, Jr. (Husband). She challenges both the valuation of certain assets and the unequal distribution ordered by the trial court. We affirm.

Facts and Procedural History

[2] Husband and Wife were married in 2014. No children were born of the marriage. During the marriage, the parties resided in Goshen in a home (CR 21) that Husband purchased shortly before the parties wed. CR 21 was never "titled in Wife's name." Ex. Vol. 6 at 8. Both parties worked in the recreational vehicle industry, with Husband in management at Forest River, Inc., earning between $120,000 and $170,000 per year, and Wife as a line worker for Keystone RV, earning around $30,000. Tr. Vol. 2 at 227-28, 83.

[3] In November 2020, Husband petitioned for dissolution of marriage, and Wife moved for provisional orders. In March 2021, the trial court issued its provisional orders, which included granting Wife exclusive use and possession of CR 21, requiring Husband to pay the mortgage, insurance, utilities, and taxes thereon, giving each party use of certain vehicles, requiring Husband to maintain Wife on his health insurance, and ordering the parties not to dissipate or damage assets during the pendency of the action. Appellant's App. Vol. 2 at 44-45.

[4] In April 2021, Husband filed a motion to sell CR 21. In May 2021, Wife filed a stipulation that Husband need no longer carry her on his health insurance. The

trial court terminated the health insurance requirement. Thereafter, Wife filed additional motions and disclosures. In June 2021, the trial court held a hearing and at the conclusion of which it issued an order granting Husband's motion to sell CR 21 using a realtor of his choice. That same order directed Husband to make his Chevy Camaro available for appraisal but did not prohibit Husband from driving the Camaro. The order further directed counsel to "work together regarding financial disclosure," required the parties to conduct mediation, and mandated that within seven days the parties "cooperate regarding Husband's retrieval of personal items." *Id*. at 87. In September 2021, CR 21 was sold, and the approximately $200,000 in proceeds were deposited into Husband's counsel's trust account.

[5] Thereafter, a variety of motions[1] were filed, including one requesting an appraisal of a house located on Baugo Xing in Elkhart. The Baugo Xing house had belonged to Husband's mother (Mother) and her husband. Following the death of Mother's husband, in 2018, Mother took legal and financial advice and added Husband's name to the Baugo Xing house's deed as well as to other accounts. Mother then refinanced the Baugo Xing house, received approximately $134,000, paid off the $94,000 existing mortgage, and zeroed out consumer debt. In December 2021, the trial court issued an order directing that

[1] The petition for dissolution was filed in Elkhart Superior Court 1 but was transferred in November 2021 to Elkhart Superior Court 2.

Husband comply with an appraisal of the Baugo Xing house and specifying that Wife pay for the appraisal.

[6] In February 2022, Wife's attorney filed to withdraw as counsel, and the trial court granted the motion. Following evidentiary hearings in April and May of 2022, the trial court entered a "bifurcated decree of dissolution that dissolved the marriage and addressed limited issues related to disposition of the marital estate." *Id*. at 17. The third and final day[2] of the hearing on the dissolution occurred in August 2022.

[7] In February 2023, the trial court issued a lengthy order. The order noted the relatively short duration of the marriage and that each party has the "ability to support themselves in the same fashion as at the time of their marriage." Appealed Order at 11. The order included a $220,000 valuation of the Baugo Xing house; after subtracting the $134,000 refinance, Husband's half interest was determined to be $43,000. Among its thirty-six findings, the trial court valued the household goods at $12,000, with Wife retaining $10,000 and Husband $2,000. *Id*. at 9, 14. The order detailed which assets were brought to the marriage and by whom, who contributed to which expenses, and the conduct of the parties. "[B]ased on the factors stated in I.C. § 31-15-7-5," the trial court concluded that an equal division of assets "would not be just and

[2] Wife represented herself during the evidentiary hearing that spanned three days.

reasonable[.]" *Id*. at 14. Wife was awarded $159,342.49 of the $367,072.05 net total of the marital estate. Wife appeals.

Discussion and Decision

[8] Wife challenges certain asset valuations and the unequal distribution of property. We begin by noting that the trial court entered findings of fact and conclusions thereon pursuant to Indiana Trial Rule 52. Our standard of review in this regard is well settled.

> First, we determine whether the evidence supports the findings and second, whether the findings support the judgment. In deference to the trial court's proximity to the issues, we disturb the judgment only where there is no evidence supporting the findings or the findings fail to support the judgment. We do not reweigh the evidence but consider only the evidence favorable to the trial court's judgment. Challengers must establish that the trial court's findings are clearly erroneous. Findings are clearly erroneous when a review of the record leaves us firmly convinced a mistake has been made. However, while we defer substantially to findings of fact, we do not do so to conclusions of law. Additionally, a judgment is clearly erroneous under Indiana Trial Rule 52 if it relies on an incorrect legal standard. We evaluate questions of law de novo and owe no deference to a trial court's determination of such questions.

Israel v. Israel, 189 N.E.3d 170, 176 (Ind. Ct. App. 2022) (citation omitted), *trans. denied*.

[9] Moreover, "there is a well-established preference in Indiana for granting wide latitude and deference to our trial judges in family law matters." *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016). Appellate courts "are in a poor position

to look at a cold transcript of the record, and conclude that the trial judge, who saw the witnesses, observed their demeanor, and scrutinized their testimony as it came from the witness stand, did not properly understand the significance of the evidence." *Id.* "On appeal it is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by appellant before there is a basis for reversal." *Id*.

Section 1 - The trial court did not abuse its discretion in valuing the marital property.

[10] On appeal, Wife challenges the valuation of the Baugo Xing house and the valuation of personal items belonging to Husband. First, Wife argues that the trial court abused its discretion in assigning a $220,000 value to the Baugo Xing house when Husband valued it at "275,000 plus" and Wife valued it at $252,000. Appellant's Br. at 11, 12.

[11] A trial court has broad discretion in ascertaining the value of property in a dissolution action, and we will not disturb its valuation absent an abuse of that discretion. *Smith v. Smith*, 194 N.E.3d 63, 73 (Ind. Ct. App. 2022). "The trial court does not abuse its discretion if there is sufficient evidence and reasonable inferences therefrom to support the result." *Id*. "In other words, we will not reverse the trial court unless the decision is clearly against the logic and effect of the facts and circumstances before it." *Id*. "We will not reweigh evidence, and we will consider the evidence in a light most favorable to the judgment." *Id.*

[12] Generally speaking, "if the trial court's valuation is within the scope of the evidence, the result is not clearly against the logic and effect of the facts and reasonable inferences before the court." *Webb v. Schleutker*, 891 N.E.2d 1144, 1151 (Ind. Ct. App. 2008). Moreover, the trial court has discretion when valuing the marital assets to set any date between the date of filing the dissolution petition (the final separation date) and the date of the hearing. *Wilson v. Wilson*, 732 N.E.2d 841, 846 (Ind. Ct. App. 2000) (citing *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996)), *trans. denied*.

[13] At the final hearing, when asked if he had attempted to value the Baugo Xing house, Husband testified, "I have not formally attempted it. But if you're asking me what my personal opinion would be, I – it's probably 275 plus; somewhere in that neck of the woods. But I'm not a very learned real estate person either." Tr. Vol. 3 at 15. Husband's estimate was a guess with the qualification that he was not a professional. Husband also offered a loan application completed by Mother when she refinanced the Baugo Xing house in 2018. The application, upon which the lender relied, listed a value of $212,000 for the Baugo Xing house and a 2008 purchase price of $143,000. Ex. Vol. 5 at 9, 11. Wife presented her valuation of the Baugo Xing house as $252,500. Ex. Vol. 6 at 9. The dissolution petition was filed in November 2020, and the final hearing spanned three days in 2022. The trial court's $220,000 valuation was far higher than the house's original price, greater than the house's value just two years before the dissolution petition was filed, less than Husband's admittedly uneducated guess, and less than Wife's proposed value. While a higher number

could have been assigned, the trial court's value for the Baugo Xing house was within the scope of the evidence. Because the value was not clearly against the logic and effect of the facts and reasonable inferences before the trial court, we will not disturb it.[3]

[14] Next, Wife contends that the trial court "erred in valuing the personal property assigned to Husband because the value assigned does not fall within the range of evidence presented." Appellant's Br. at 12. Wife asserts that the $2,000 assigned to Husband accounted only for actual household goods and omitted Husband's guitars, record collection, bar memorabilia, his grandfather's watch, some tools, and a cooking set. We understand Wife's concern but point out some confusion of personal property with household goods.

[15] Regarding household goods, the trial court heard testimony about items in the kitchen, two bedrooms, an office, a living room, and a basement, as well as televisions, stereo equipment, and outdoor furniture. Tr. Vol. 2 at 207-10. While the trial court did not delineate each and every household item, the $12,000 total is within the scope of the evidence. The finding that Husband retained approximately $2,000 of the household goods finds support in the testimony. *Id*. at 210.

[16] While the trial court did not include a separate line item for "personal property" per se, the trial court was clearly struck by the substantial evidence regarding

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[3] Further, we point out that Mother added Husband, not Husband and Wife, to the Baugo Xing deed.

Wife's behavior as to Husband's property. Specifically, the trial court found that Husband "did not have access to" CR 21 after leaving in November 2020 until shortly before it was sold in September 2021 and that Wife "initially refused to give Husband his personal belongings." Appealed Order at 2, 8. The trial court further found that when ordered by the court to turn over Husband's property, Wife returned "much of the property in damaged condition," and that when Husband's attorney forwarded a list of missing property to Wife's counsel, "the items were never turned over to him or accounted for." *Id.* at 8. Additionally, the court found that "[i]mportant family heirlooms were never returned to Husband," that Wife took "most of the parties' household goods when she left CR 21 before the closing," that she damaged items left behind, and that "she left CR 21 a mess for Husband to clean up before the closing" *Id.*

[17] Although Wife denied such malfeasance, the trial court, which heard her denial, determined that other testimony was more credible. To the extent that Husband's aforementioned personal effects were not already included within the household goods calculation, the trial court easily could have conflated them by the number of Husband's personal belongings that were unreturned or damaged. Moreover, the evidence regarding the value of many items was speculative or not clearly presented. For instance, Husband testified that Wife brought some tools to the marriage, Husband had his own, and he had inherited tools from his relatives. Tr. Vol. 2 at 187. Although Husband initially estimated that he might have received eighty percent of the tools, he explained that if "you just loosely use the term 'tools,' uh, that to me, would incorporate

the Rototiller, the power washer, the tractor, uh, the lawn mower tractor. And those are things I did not get back." *Id*. Wife did not provide evidence of the value of the tools. *See* Ex. Vol. 6 at 11. Wife listed the value of the cooking set as "undetermined." *Id.* at 10.

[18] Here, the trial court made a decision that was not clearly against the logic and effect of the imperfect facts and circumstances before it. Wife has not shown that the trial court abused its discretion by not attempting to individually value every single item mentioned even once by either party. Considering the evidence in a light most favorable to the judgment, we cannot say that there is no rational basis for the trial court's valuations.

Section 2 - The trial court's division of the marital estate was not clearly erroneous.

[19] Wife maintains that the trial court's division of the marital estate is clearly erroneous because "the evidence presented does not support the trial court's conclusion that an equal division of the marital estate 'would not be just and reasonable.'" Appellant's Br. at 13 (quoting Appealed Order at 14).

[20] By statute, the trial court must divide the property of the parties in a just and reasonable manner, including the property owned by either spouse prior to the marriage, acquired by either spouse after the marriage and prior to final separation of the parties, or acquired by their joint efforts. *Gish v. Gish*, 111 N.E.3d 1034, 1038 (Ind. Ct. App. 2018) (citing Ind. Code § 31-15-7-4), *trans. denied* (2019). An equal division of marital property is presumed to be just and

reasonable. *Id.* (citing Ind. Code § 31-15-7-5). 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.

Ind. Code § 31-15-7-5. 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*. Moreover, 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." *In re Marek*, 47 N.E.3d 1283, 1287 (Ind. Ct. App. 2016), *trans. denied*.

[21] Wife asserts that in ordering an unequal distribution, the trial court failed to consider all the statutory factors and simultaneously disregarded evidence of the statutory factors. Specifically, she challenges the assignment of the Baugo Xing house to Husband because she claims that she provided labor for it. She also questions the trial court's decision to assign the Ford Ranger to Husband even though she admits that it was a gift. She notes that her name was added to the Ford Ranger title, yet she claims that the vehicle's "de minimis" value "cannot support such a large deviation of the marital estate." Appellant's Br. at 15. Next, she faults the trial court for "fail[ing] to consider the fact that Wife brought" to the marriage approximately $30,000 of equity from her prior home. *Id*. She also challenges the trial court's "reliance only on Husband's financial acquisition" of CR 21 when she "contributed sweat equity" to the house. *Id*. at 16. Citing the disparity in their incomes, Wife takes issue with the trial court's finding that each party can support him/herself. She further asserts that the trial

court's finding that the parties will be in a better financial position after dissolution than before they were wed does not justify an unequal division. Finally, Wife points out that Husband's testimony was the only evidence that she interfered with the sale of CR 21 and damaged, destroyed, or did not return certain belongings of Husband.

[22] At the outset, we point out that the trial court heard evidence over three different days, and such evidence filled three transcript volumes and two exhibit volumes. At the conclusion of the hearing, the trial court took several months before issuing its sixteen-page order. In the end, that order awarded $159,342.49 of the $367,072.05 net total of the marital estate to Wife and the remainder to Husband. Thus, while the trial court's division was not a 50/50 split, its deviation was not unduly lopsided. Rather, Wife's portion of the marital pot equates to 43.4%, while Husband's share is 56.6%.

[23] We are unmoved by Wife's various allegations. First, the trial court found, and the record supports, that neither party contributed to the acquisition of the Baugo Xing house, that Mother purchased it with her husband before his death, that Mother added Husband's name to the title for estate planning purposes, and that any repairs to it "completed by either party were paid for by" Mother. Appealed Order at 11; *See* Tr. Vol. 2 at 241. Likewise, the record supports the finding that Mother gifted the Ford Ranger to Husband. *Id.* at 198-99. As for its value, Husband guessed close to $3,000 but eventually received a trade-in of $4,110. *Id.* at 201-02; Tr. Vol. 3 at 212, 214. Accordingly, we find no error in the trial court's assigning to Husband the $4,110 value for the Ford Ranger.

[24] We are flummoxed by Wife's contention that the trial court did not consider the $30,000 that she brought to the marriage. The trial court's order clearly states that "[a]t or around the time Wife entered the marriage, Wife owned real estate with less than approximately $30,000 in equity[.]" Appealed Order at 11-12. As for the determination regarding the down payment for CR 21, the evidence was conflicting. Husband claimed that he contributed the entire $15,000, while Wife claimed it was through joint efforts. Wife's name was never added to the CR 21 deed, hence she was not obligated under the CR 21 note. The evidence was clear that at some point both parties worked on and paid for various repairs and improvements to the marital home. Tr. Vol. 3 at 16-18. We cannot say that the trial court erred by weighing the evidence and ultimately apportioning the $15,000 in keeping with the parties' relative incomes.

[25] We are similarly perplexed that Wife takes issue with the trial court's finding that each party can support him/herself. Wife points to no evidence that she is incapable of supporting herself. The evidence supports the finding that Wife is able to support herself and that Husband is capable of supporting himself. Even if Wife left the marriage with the prospect of earning less than Husband earns, this alone is not a reason to merit a deviation in favor of Wife, given that Wife entered the ill-fated, relatively short marriage earning much less than Husband. As for the trial court's observation that the parties "will likely be in a better financial position at the time the assets are distributed [than] they were at the time they entered their marriage[,]" Wife has not demonstrated how this factual

observation makes a deviation in favor of Husband somehow erroneous. Appealed Order at 11.

[26] Wife's final complaint that Husband's testimony was the only evidence that she interfered with the sale of CR 21 and damaged, destroyed, or did not return certain belongings of Husband misunderstands our role as an appellate court. We cannot judge credibility or reweigh evidence, and we consider the evidence favorable to the judgment. When Husband testified that the CR 21 sale process was hampered due to Wife's smoking in the house when the buyers specifically requested that not occur, failing to clean up pet stains, and placing wood shims in each doorway, it was the trial court's job to determine how much credence to assign this testimony. The trial court clearly found that testimony compelling and was similarly persuaded by other testimony regarding Wife's actions. The trial court's order provided:

> While this case was pending, Wife destroyed Husband's tangible personal property, such as clothing, sporting goods, and family heirlooms. Wife initially did not allow Husband to return to CR 21 to pack his own belongings. When Husband finally retrieved his belongings, he found his things stuffed in garbage bags. When Husband returned to his mother's home to inspect his personal property, he discovered Wife had cut pockets out of some of his pants and cut the drawstrings to other pants. Four or five suits were missing. Between six and eight sport coats were missing. Husband's shorts and dress slacks were not all returned to him. Multiple pairs of shoes were missing. Special shirts purchased while traveling, racing shirts, bicycle shirts, and Harley-Davidson garage coat were all gone. He received snow pants but not the matching jacket. Husband did not testify to the value of the

> damaged and missing items, although the loss to Husband was likely considerable.
>
> Husband's golf bag and clubs were missing. Husband's jewelry was gone, family picture albums created for him by his son were missing. Husband's collection of concert memorabilia was gone, and his beanbag boards were damaged. His guitar racks and stands were not returned to him.
>
> Additionally, Wife also attempted to purchase a horse for $2,000.00 a few weeks before the parties separated. Wife claims she was a victim of a scam and she did not dissipate the marital assets. The Court does not consider Wife's account credible.

Id. at 12-13.

[27] In sum, the trial court heard evidence on and made thoughtful findings regarding the contribution of each spouse to the acquisition of the property, the extent to which the property was acquired by Husband or Wife before the marriage and/or through inheritance or gift, the economic circumstances of each spouse at the time the disposition of the property would become effective, the conduct of the parties during the marriage as related to the disposition or dissipation of their property, and the earnings or earning ability of the parties as related to a final division of property and the property rights. From our vantage point, we cannot say that the trial court's deviation from the 50/50 presumption was clearly against the logic and effect of the facts and circumstances, including the reasonable inferences to be drawn therefrom. Wife has not demonstrated that there is no rational basis for the award. Finding no error in either the valuation of assets or the division of the marital estate, we affirm.

[28] Affirmed.

Riley, J., and Mathias, J., concur.