

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Nicholas J. Hursh
Shambaugh, Kast, Beck &
Williams, LLP
Fort Wayne, Indiana

ATTORNEY FOR APPELLEE

Jeffrey M. Heinzmann
Heinzmann Law Office LLC
Fishers, Indiana

IN THE COURT OF APPEALS OF INDIANA

Marcia Nix,
Appellant-Respondent,

v.

Edward Nix,
Appellee-Petitioner

December 8, 2023
Court of Appeals Case No.
23A-DN-1414
Appeal from the
Allen Circuit Court
The Honorable
Wendy W. Davis, Judge
The Honorable
Ashley N. Hand, Magistrate
Trial Court Cause No.
02C01-1707-DN-966

Memorandum Decision by Judge Vaidik
Judges Bradford and Brown concur.

Vaidik, Judge.

Case Summary

- [1] Following the first appeal in this divorce case between Marcia Nix (“Wife”) and Edward Nix (“Husband”), this Court remanded the case to the trial court with instructions to reduce the value of a marital asset. The trial court did so and also removed some liabilities from the marital estate. Wife contends this was error. We agree and therefore reverse and remand.

Facts and Procedural History

- [2] Husband and Wife were married in 1979. During the marriage, Husband and Wife started a business called Outerspace, LLC (“Outerspace”), which owns thirty-three acres, including warehouses, in Auburn. In addition, in 2012 Wife became the sole shareholder in an S corporation called NX Enterprises, Inc. (“NXE”), which is a warehousing, logistics, and plastics-recycling company. NXE does not own any buildings or land and leases property from Outerspace.
- [3] Husband filed for divorce in July 2017. The parties agreed that Wife would be awarded Outerspace in the division of marital assets, and the parties assigned that business a value of \$1.6 million. During the final hearing in 2022, the parties submitted evidence about the value of NXE. Husband submitted an expert’s opinion that NXE was worth \$992,100 as of July 2017; Wife submitted an expert’s opinion that NXE was worth \$470,000 as of December 2018. In addition, one of Husband and Wife’s adult children testified that she offered to

buy NXE for \$4.25 million in June 2017, shortly before Husband filed for divorce.

[4] After the final hearing, the trial court issued a decree of dissolution in which it divided the marital estate equally between the parties. As relevant to the marital assets, the court valued NXE at \$4.25 million “due to the offer to purchase at or near the date of filing” and awarded it to Wife. Appellant’s App. Vol. II p. 53. As relevant to marital liabilities, the court found that there was a “Citizen’s National Bank (Commercial Loan)” for \$930,000 and a “NX Warehousing Credit Card[] #8767” for \$32,303.97 and made Wife responsible for them. *Id.* at 60, 75. Although the court said on one page of the dissolution decree that both the loan and the credit-card debt were “associated with NX Enterprises, Inc.,” *see id.* at 53 (paragraph 20), it said on a different page that the Citizen’s National Bank loan was for Outerspace, *id.* at 51 (paragraph 11). In addition, the “Marital Balance Sheet,” which is an exhibit to the decree, categorizes the “Citizen’s National Bank Commercial Loan” as a “Real Estate” liability. *See id.* at 81. As noted above, NXE does not own any buildings or land.

[5] To effect an equal division of the marital estate, the trial court ordered Wife to pay Husband an equalization payment of \$1,325,036.74. However, the court reduced that amount by \$702,197 based on Wife paying down “marital, business debts and financial obligations during the pendency of the dissolution.” *Id.* at 76. Thus, Wife was ultimately ordered to pay Husband \$622,839.74. Both parties filed motions to correct error, which the court denied.

[6] Wife then appealed to this Court, arguing the trial court erred in valuing NXE at \$4.25 million. We agreed with Wife because the June 2017 “offer to purchase appear[ed] to encompass **both** NXE and Outerspace.” *Nix v. Nix*, 205 N.E.3d 1010, 1012 (Ind. Ct. App. 2023) (“*Nix I*”). We remanded the case to the trial court with the following instructions:

We therefore reverse the decree with respect to the \$4.25 million valuation of NXE and remand with instructions for the court to assign a value to NXE within the range of values put forth by Husband and Wife, namely, between \$470,000 and \$992,100, which is the only competent evidence of the business’s value. **Once the court has chosen a new value for NXE based on that evidence, it shall recalculate the division of marital property accordingly.**

Id. at 1013 (emphasis added).

[7] On remand, the trial court issued an amended decree of dissolution valuing NXE at \$992,100:

3. [T]he Court now amends the Decree of Dissolution of Marriage to reflect the value of NX Enterprises, Inc. at **\$992,100.00 based on the business valuation completed by Husband on April 13, 2021.** The asset is awarded to Wife and the Court provides a new Marital Balance Sheet reflecting the valuation of NX Enterprises, Inc. at \$992,100.00.

4. **Because the business valuation includes the debts associated with NX Enterprises, Inc.,** the Court also removes the NX Warehousing credit card of \$32,303.97 and the Citizen’s National Bank Commercial Loan of \$930,000.00 from the financial obligations associated with NX Enterprises, Inc.

Appellant's App. Vol. II p. 90 (emphases added); *see also id.* at 93 (amended Marital Balance Sheet removing the loan and credit-card debt from the marital liabilities). To maintain an equal division of the marital estate, the court ordered Wife to pay Husband an equalization payment of \$177,238.73. This time, however, the court did not reduce that amount by \$702,197 for the amount Wife paid for "marital, business debts and financial obligations during the pendency of the dissolution."

[8] Wife moved to correct error. Specifically, Wife argued the trial court exceeded the scope of this Court's remand instructions when it (1) removed the Citizen's National Bank loan for \$930,000 and the NX Warehousing credit-card debt of \$32,303.97 from the marital liabilities and (2) did not give her credit for the \$702,197 she paid while the divorce was pending because:

[T]he only discretion the Trial Court had to recalculate the marital property was assigning the value of NXE between \$470,000 and \$992,100 on the Court's balance sheet. All other Orders were to remain in full force and effect as they were not the subject of the appeal or included within Instructions from the Court of Appeals to address as part of its [Opinion].

Id. at 97. Wife also argued the court erred in finding that the Citizen's National Bank loan for \$930,000 and the NX Warehousing credit-card debt of \$32,303.97 were associated with NXE because:

The Court's record, including but not limited to: Volume 3 of 4, pp. 93-95, of the Trial Transcript, as well as other evidence, exhibits, and documentation support that the Citizen's National Bank (Commercial Loan) was associated with Outerspace, LLC,

not NX Enterprises, Inc., as a Real Estate Liability. . . . Further, the evidence, exhibits, and documentation of the Court’s record supports that NX Warehousing was an earlier, separate entity distinct from NX Enterprises, Inc.

Id. Based on her new calculations, Wife claimed that Husband owed her an equalization payment of \$303,913.26 plus \$702,197 for the amount she paid while the divorce was pending, for a total of \$1,006,110.26. Husband filed a response in which he made several arguments, including that Wife’s motion to correct error was “just another attempt” by Wife to deny him his fair share. *Id.* at 102. Notably, he did not respond to Wife’s claim that the loan and credit-card debt were not associated with NXE.

[9] The trial court denied Wife’s motion to correct error as follows:

5. Following the receipt of the Court of Appeals’ decision, the trial court entered the February 24, 2023 Amended Decree valuing NX Enterprises, Inc. at \$992,100.00. Because of [sic] the valuation of NX Enterprises, Inc. was based on the business valuation of \$992,100.00, the Court removed the debt obligations associated with NX Enterprises, Inc. **as those debt obligations would have been encapsulated in the business valuation dated April 13, 2021.**

6. Neither party challenged the original finding [in paragraph 20] that these specific debt obligations of the Chase Credit Card at \$32,303.97 and the Citizen’s National Bank commercial loan of \$930,000.00 were associated with NX Enterprises, Inc. As such, the Court finds that no error was made in the February 24, 2023 Amended Decree.

7. [Wife's] second argument is the Court erred in removing Wife's credits towards the property equalization payment for payments during the provisional period.

8. The Court finds that the decision to award any credits for payments during the provisional period is discretionary. With instructions from the Indiana Court of Appeals to modify the valuation of NX Enterprises, Inc. and then recalculate the marital division, the Court is within its discretion to apply appropriate credits to any property equalization payment. As such, the Court finds no error was made in the February 24, 2023 Amended Decree.

Id. at 105.

[10] Wife now appeals.

Discussion and Decision

[11] Wife argues the trial court exceeded the scope of this Court's remand instructions when it removed the Citizen's National Bank loan for \$930,000 and the NX Warehousing credit-card debt of \$32,303.97 from the marital liabilities. Specifically, Wife claims that "the only discretion the Trial Court had to recalculate the marital property was assigning the value of NX Enterprises, Inc. between \$470,000 and \$992,100 on the Court's balance sheet." Appellant's Br. p. 18. According to Wife, "All other Orders were to remain in full force and effect as they were not the subject of the appeal or included within instructions from the Court of Appeals to address as part of its Opinion." *Id.*

[12] We disagree with the premise of Wife’s argument. In *Nix I*, we remanded this case to the trial court with instructions to “cho[ose] a new value for NXE” between \$470,000 and \$992,100. Valuing a business necessarily includes taking into consideration the assets **and** liabilities of that business. The court had the authority, and indeed the duty, to take a fresh look at NXE’s value (within the specified range) and in doing so could “remove[] the debt obligations associated with” NXE. That is what the court did when it reduced NXE’s value by subtracting the Citizen’s National Bank loan and the NX Warehousing credit-card debt as debts of NXE.

[13] But, as Wife next argues, neither the Citizen’s National Bank loan nor the NX Warehousing credit-card debt was associated with NXE. Husband doesn’t appear to dispute this in his brief. And the trial court didn’t really dispute it either. In its order denying Wife’s motion to correct error, the court explained that paragraph 20 of the original decree—which states that both the loan and the credit-card debt were “associated with NX Enterprises, Inc.”—is not erroneous **not because** the evidence supports that these liabilities were associated with NXE **but because** neither party specifically challenged that finding when they moved to correct error following the issuance of the original decree. While Wife may not have challenged that specific finding in her first motion to correct error, she had a much larger issue to tackle—the court’s valuation of NXE at \$4.25 million. And as already explained above, the court’s original decree was somewhat contradictory as to whether the loan was associated with NXE **or** Outerspace. Once the trial court issued the amended

decree and Marital Balance Sheet to remove the Citizen's National Bank loan of \$930,000 and the NX Warehousing credit-card debt of \$32,303.97, this issue came into sharp focus, and Wife timely challenged it in her second motion to correct error.

[14] Moreover, it doesn't appear that the \$930,000 Citizen's National Bank loan was "encapsulated in the business valuation dated April 13, 2021," as the trial court found. Rather, the business valuation shows that NXE's "Total Liabilities" (as of July 2017) were \$106,612. *See Nix v. Nix*, Cause No. 22A-DN-2108, Petitioner's Ex. Vol. II p. 35. The valuation notes that NXE didn't own buildings or land, as it "lease[d] space from a related entity," and therefore its debt was lower than other businesses in the industry "primarily because the building [was] in another Entity." *Id.* at 36.

[15] The trial court erred when it removed the Citizen's National Bank loan for \$930,000 and the NX Warehousing credit-card debt of \$32,303.97 from the marital liabilities. Because Wife claims these liabilities are not associated with NXE and Husband doesn't dispute that, it was wrong for the court to remove them under the guise that they were already factored into Husband's \$992,100 business valuation for NXE. We therefore remand this case to the trial court with instructions to include these liabilities in the marital estate, which would then increase the "Total Liabilities" and decrease the "Net Worth" of the marital estate on the Marital Balance Sheet. To maintain an equal division of

the marital estate, the trial court will have to recalculate any equalization payment.¹

[16] Reversed and remanded.

Bradford, J, and Brown, J., concur.

¹ Wife also argues the trial court erred by not giving her credit for the \$702,197 she paid while the divorce was pending. Because we are remanding this case with instructions for the trial court to include nearly \$1 million in liabilities in the marital estate (which would affect any equalization payment), we need not address this issue now other than to note that whether and how much to credit Wife for the payments she made while the divorce was pending is discretionary with the court. *See Bojrab v. Bojrab*, 786 N.E.2d 713, 721-22 (Ind. Ct. App. 2003), *summarily aff'd in relevant part*, 810 N.E.2d 1008 (Ind. 2004); *Ellis v. Ellis*, 730 N.E.2d 201, 204-05 (Ind. Ct. App. 2000).