MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Timothy Bookwalter, Jr.,
Appellant-Petitioner

v.

Kayla Bookwalter,
Appellee-Respondent

May 6, 2024

Court of Appeals Case No.
23A-DC-1737

Appeal from the Marion Superior Court

The Honorable Beth L. Jansen, Magistrate

Trial Court Cause No.
49D10-2202-DC-001011

Memorandum Decision by Judge Felix
Chief Judge Altice and Judge Crone concur.

Felix, Judge.

Statement of the Case

[1] Timothy Bookwalter, Jr. ("Husband") and Kayla Bookwalter ("Wife") were married for approximately two years before Husband filed for divorce. During the marriage, they had one child together and accumulated assets and debts. Husband and Wife agreed to the value of certain marital property and presented evidence to the trial court about disputed assets and liabilities. After a final hearing, the trial court dissolved the marriage; determined custody, parenting time, and child support; and divided the marital property. Husband presents multiple issues on appeal, which we revise and restate as follows:

1. Whether the trial court clearly erred in determining what property was included in the marital estate;
2. Whether the trial court clearly erred by concluding that an equal division of the marital estate was a just and reasonable result; and
3. Whether the trial court clearly erred in calculating the equalization payment.

[2] We affirm in part and reverse in part.

Facts and Procedural History

[3] Husband and Wife were married on April 1, 2020, and had one child together. The couple lived together at 6206 Limestone Drive (the "Marital Residence") in Indianapolis, Indiana with their child and Husband's two minor children from a previous marriage.

[4] At the beginning of the marriage, Husband worked for Amazon and Wife worked for Lens Crafters. Husband continued working for Amazon throughout the marriage, but Wife stopped working due to complications during her pregnancy. After their child was born, the couple decided Wife should stay home to take care of their child and Husband's children from a prior marriage. During a typical week, Wife would prepare meals for the children, get them ready for school, and drive them wherever they needed to go.

[5] On February 8, 2022, Husband filed a petition for the dissolution of the marriage. Prior to dissolution, the parties stipulated to the value of certain property including the Marital Residence. Husband and Wife stipulated that, at the time Husband filed for dissolution, the Marital Residence was worth $247,600 with $38,726.51 remaining on the mortgage. Throughout the marriage, Wife had provided improvements to the Marital Residence. With the help of her family, Wife purchased new flooring, paint, a garage door, a clothes dryer, a dishwasher, and a deep freezer for the Marital Residence.

[6] On March 15, 2023, the trial court held a final hearing on Husband's petition. Husband testified that he and Wife had discussed a prenuptial agreement, but they never entered a written pre- or postnuptial agreement. Husband then testified that he believed the trial court should set aside his pre-marital equity in the home from the marital estate.

[7] Both Husband and Wife testified about loans they had received from family members. Husband testified he had an outstanding loan from his mother in the

amount of $23,500, but he provided no documentary evidence of this loan. Conversely, Wife testified about a $5,175 loan from her grandmother and provided a promissory note memorializing Wife's duty to pay.

[8] After the hearing, both Husband and Wife submitted proposed orders to the trial court. In his proposed order, Husband asked the trial court to both set aside the pre-marital equity in the marital residence and order an unequal division of the marital property in favor of himself. On June 30, 2023, the trial court issued its decree, which dissolved the marriage, divided the marital property, determined child custody, and determined child support. The relevant findings and conclusions are as follows:

> 12. Wife executed a promissory note with her grandmother, Carolyn Eisele, on January 31, 2022 which resulted in the creation of a marital debt in the amount of $5,175.00. The debt is in Wife's individual name.
>
> * * *
>
> 15. Pursuant to Indiana Code 31-15-7-5 "[t]he 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. . . [sic] (3) The economic circumstances of each spouse at the time of disposition of the property is to become effective . . . (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) final determination of the property rights of the parties."
>
> 16. The Court concludes that, despite the shorter duration of the marriage the other factors the court has considered support an equal division of property. Most importantly, the Court also notes that testimony was provided that a pre-nuptial agreement was considered but never executed. The Court finds Father has not rebutted the presumption that an equal division of the marital property is just and reasonable especially in light of the discussion and opportunity for a pre-nuptial agreement which both parties declined to sign. As such the Court finds an equal division of marital property is just and reasonable.
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> 17. That Father is hereby awarded and vested with sole possession and all right, equity, title, and interest in the Marital Residence . . . .
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> * * *
>
> 27. The Court utilized Respondent's amended Exhibit A with the exception of the valuation of the 2007 Toyota 4Runner as the Court finds [its] value to be $2,000 not $5,843.00. Based upon that change, the Court finds to effectuate an equal division of property, Husband owes an equalization payment in the amount of $131,715.76 to Wife.

Appellant's App. Vol. II at 16–17, 19. The trial court included the entire value of the Marital Residence in the marital estate and omitted Husband's purported loan from his mother from the marital estate.

Discussion and Decision

Standard of Review

[9] We review the trial court's division of marital property for abuse of discretion. *Roetter v. Roetter*, 182 N.E.3d 221, 225 (Ind. 2022) (citing *Luttrell v. Luttrell*, 994 N.E.2d 298, 304–05 (Ind. Ct. App. 2013)). "A trial court abuses its discretion if its decision stands clearly against the logic and effect of the facts or reasonable inferences, if it misinterprets the law, or if it overlooks evidence of applicable statutory factors." *Id.* (citing *Mitchell v. Mitchell*, 875 N.E.2d 320, 323 (Ind. Ct. App. 2007)).

[10] Here, the trial court sua sponte issued findings of fact and conclusions of law on some but not all issues presented, so we will set aside the trial court's decision on those issues only if it is clearly erroneous. *Roetter*, 182 N.E.3d at 225 (quoting *Dunson v. Dunson*, 769 N.E.2d 1120, 1123 (Ind. 2002)). Thus, "we determine whether the evidence supports the findings, and second, whether the findings support the judgment." *Perrill v. Perrill*, 126 N.E.3d 834, 839 (Ind. Ct. App. 2019) (quoting *Carmer v. Carmer*, 45 N.E.3d 512, 516–17 (Ind. Ct. App. 2015)). "Issues not covered by the findings are reviewed under the general judgment standard, which means that, as a reviewing court, we should affirm based on any legal theory that is supported by the evidence." *Boucher v. Doyle*, 228 N.E.3d 520, 524 (Ind. Ct. App. 2024) (citing *Kakollu v. Vadlamudi*, 175 N.E.3d 287, 295 (Ind. Ct. App. 2021)). In reviewing the trial court's division of marital property, "we will neither reweigh evidence nor assess the credibility of witnesses, and 'we will consider only the evidence most favorable to the trial

court's disposition of the marital property.'" *Goodman v. Goodman*, 94 N.E.3d 733, 742 (Ind. Ct. App. 2018) (quoting *O'Connell v. O'Connell*, 889 N.E.2d 1, 10 (Ind. Ct. App. 2008)).

[11] The division of marital property requires a two-step process. *Roetter*, 182 N.E.3d at 226. "First, the trial court must identify the property to include in the marital estate." *Id.* at 226–27 (citing *O'Connell*, 889 N.E.2d at 10). The marital estate includes "both assets and liabilities and encompasses 'all marital property,' whether acquired by a spouse before the marriage or during the marriage or procured by the parties jointly." *Roetter*, 182 N.E.3d at 227 (internal citation omitted) (quoting *Eads v. Eads*, 114 N.E.3d 868, 873 (Ind. Ct. App. 2018)). Second, the trial court "must then distribute the property in a 'just and reasonable' manner." *Id.* at 227 (quoting *O'Connell*, 889 N.E.2d at 10–11).

1. The Trial Court Did Not Clearly Err in Determining the Property to Include in the Marital Estate

[12] Husband argues that the trial court erred in identifying the property in the marital estate subject to division. Husband specifically claims that the trial court erred by including the full value of the Marital Residence and choosing to exclude the loan from his mother.

The Marital Residence

[13] The Marital Residence accounted for a significant majority of the marital assets, and Husband argues that the trial court erred by including the entire value of the Marital Residence as part of the marital estate. Husband owned the home

for approximately 12 years before the couple married, and he argues that the trial court should have excluded the pre-marital equity in the Marital Residence from the portion of the marital estate subject to division.

[14] Husband contends that the trial court was required to apply a coverture fraction to the value of the Marital Residence. The coverture fraction is a tool that trial courts may use to set aside pre-marital assets from the marital estate. *Morey v. Morey*, 49 N.E.3d 1065, 1071 (Ind. Ct. App. 2016).

> If the trial court *determines in its discretion* that a given asset should be segregated from the marital pot for application of the coverture fraction formula, the percentage derived from the formula should be applied to the entire benefit to determine the marital portion of that benefit. Importantly, the pre-marital portion of the benefit is then set aside for the spouse who acquired it, for distribution outside of the division of the assets in the marital pot.

Id. at 1071–72 (emphasis added). Although the trial court may set aside an asset that was acquired before the marriage, it is not required to do so. *McCord v. McCord*, 852 N.E.2d 35, 44 (Ind. Ct. App. 2006). "It is always the burden of the spouse seeking segregation of an asset from the marital estate to prove the grounds for that segregation and the amount to be segregated." *Morey*, 49 N.E.3d at 1073.

[15] Here, the trial court concluded that the Husband did not present sufficient evidence to demonstrate that the pre-marital equity in the Marital Residence should be set aside, and we agree with this conclusion. Husband provided no

evidence as to the value of the Marital Residence at the date of marriage, and he provided no evidence as to the value of the Marital Residence during the marriage. Husband argues that the value of the marital residence increased by $14,847 during the marriage, but this argument is solely based on the amount paid on the mortgage during the marriage. Husband did not carry his burden to prove the pre-marriage equity should be set aside, and we conclude the trial court did not abuse its discretion by declining to apply the coverture fraction. *See Morey*, 49 N.E.3d at 1073.

[16] Husband also argues that the pre-marital equity should be set aside from the marital estate based on an agreement that Husband and Wife made prior to their marriage. Husband points to his following testimony from the hearing:

> Q You've had a significant amount of equity in this home when you guys got married?
>
> A Yes.
>
> Q No pre-marital agreement, nothing- nothing agreed to?
>
> A Uh, she told me she told me she would file a postnup agreement because covid was going on.
>
> Q Okay. So, you verbally discussed an agreement?
>
> A We verbally had an agreement. She said she would never go after (inaudible).

Tr. Vol. II at 54. Husband claims that this testimony "makes clear that before the marriage, [Husband] and [Wife] agreed that she would not be entitled to pre-marital equity in a dissolution proceeding and that they intended to reduce this agreement to writing as a postnuptial agreement." Appellant's Br. at 24.

[17] In contrast, the trial court found that "a pre-nuptial agreement was discussed but never executed," Appellant's App. Vol. II at 17, and the record supports this finding. The law requires both pre- and postnuptial agreements to be reduced to writing. Ind. Code §§ 31-11-3-4, 31-15-2-17. Husband provided no documentary evidence to memorialize any agreement about the Marital Residence. Even if we were persuaded by Husband's characterization of his testimony, the failure to reduce the agreement to writing is dispositive on the issue of whether or not there was an agreement. *See id.* Thus, there was no agreement regarding the Marital Residence.

[18] The record supports the inclusion of the Marital Residence in the marital estate. The evidence indicates that Wife contributed to the value of the Marital Residence during the marriage. Wife's family helped her pay for improvements to the marital residence including new flooring, new paint, a new garage door, a new clothes dryer, a new dishwasher, and a new deep freezer. Further, there are many other factors the trial court could have considered that support an equal division of the marital estate including: Wife taking care of the three children, saving Husband and Wife childcare costs; Wife's contributions to mortgage payments; and Wife's financial situation at the time of dissolution. Husband asks us to rely on the fact that he owned the property for 12 years

prior to the marriage and his testimony about the alleged agreement, but these arguments are merely requests for us to reweigh the evidence, which we will not do. *See Goodman*, 94 N.E.3d at 742. Thus, the evidence supports the finding that the entire value of the Marital Residence was an asset of the marriage subject to division.

Husband's Loan from Mother

[19] Husband claims that the trial court erred in not including in the marital estate the $23,500 loan he had received from his mother. The exclusion of a liability from the marital estate is within the trial court's discretion. *See Bringle v. Bringle*, 150 N.E.3d 1060, 1070 (Ind. Ct. App. 2020).

[20] Husband testified to the existence of loan, and Wife testified that he had mentioned there was a loan. This testimony was the full extent of the evidence related to this loan. Husband did not provide any documentary evidence to demonstrate that the loan existed or that he had an affirmative duty to repay the loan to his mother. Furthermore, Husband testified that he did not want Wife to be responsible for the loan, and he did not include the loan in his proposed marital balance sheet that he provided to the trial court.

[21] Husband argues that the trial court erred in excluding his loan from the marital estate because the trial court included Wife's loan from her grandmother as a liability in the marital estate. Wife's loan was supported by documentary evidence, and the trial court has the discretion to determine which liabilities are included in the marital estate, *see Bringle*, 150 N.E.3d at 1070. Here, the court's

decision to not include Husband's loan in the marital estate could be based upon a lack of evidence that there was a loan, or a lack of evidence regarding the precise amount of the loan, or Husband's own testimony that he did not want it included in the marital estate. Thus, the court did not err by choosing to not include the loan in the marital estate.

2. The Trial Court Did Not Clearly Err by Concluding That an Equal Division of Property Was Just and Reasonable.

[22] Husband challenges the trial court's conclusion that an equal division of property was just and reasonable, and he claims the trial court did not comply with the division of property statute. The trial court begins with a presumption that an equal division of marital property is the just and reasonable result. I.C. § 31-15-7-5. When a party seeks to rebut this presumption, as Husband attempted at the trial court, the party must present

> 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.

Id.

[23] Husband contends that the trial court failed to consider the statutory factors and, instead, reached its conclusion solely on the basis that Husband and Wife failed to execute a prenuptial agreement. In making this argument, Husband "must overcome a strong presumption that the court considered and complied with the applicable statute." *Roetter*, 182 N.E.3d at 227 (quoting *Wanner v. Hutchcroft*, 888 N.E.2d 260, 263 (Ind. Ct. App. 2008)). Husband points to the following conclusion from the trial court's decree:

> 16. The Court concludes that, despite the shorter duration of the marriage the other factors the court has considered support an equal division of property. Most importantly, the Court also

> notes that testimony was provided that a pre-nuptial agreement was considered but never executed. The Court finds Father has not rebutted the presumption that an equal division of the marital property is just and reasonable especially in light of the discussion and opportunity for a pre-nuptial agreement which both parties declined to sign. As such the Court finds an equal division of marital property is just and reasonable.

Appellant's App. Vol. II at 17. Husband claims that this language indicates the trial court relied solely on the lack of a prenuptial agreement to determine that Husband failed to rebut the presumption in favor of an equal division. We cannot agree.

[24] "In dividing marital property, a trial court must consider all of the statutory factors regarding reasonableness, but 'it is not required to explicitly address all of the factors in every case.'" *Israel v. Israel*, 189 N.E.3d 170, 176 (Ind. Ct. App. 2022) (quoting *Rose v. Bozeman*, 113 N.E.3d 1232, 1235 (Ind. Ct. App. 2018)). The record shows that the trial court considered the statutory factors and did not solely rely on the absence of prenuptial agreement in reaching the conclusion to equally divide the property. In its decree, the trial court listed all the factors enumerated in Indiana Code section 31-15-7-5. Further, in the same paragraph where the trial court highlights the lack of a prenuptial agreement, the trial court noted its consideration of "other factors." Appellant's App. Vol. II at 16. Thus, Husband has not overcome the strong presumption that the trial court properly considered and complied with the division of property statute. *See Roetter*, 182 N.E.3d at 227.

3. The Trial Court Erred in Calculating the Equalization Payment

[25] Husband argues that the trial court's findings do not support their conclusion that Wife should be awarded an equalization payment of $131,715.76. We agree, reverse the equalization payment, and order the trial court to correct its order to reflect an equalization payment consistent with the trial court's findings. *See* App. R. 66(C)(7).

[26] The trial court's order included the following relevant findings:

> 8. During the marriage, the parties also used a 2018 Subaru owned by owned by [sic] Husband's father. Although the parties used this vehicle for reliable transport of children, this vehicle was never titled, plated or insured by the parties *therefore it is not a divisible asset to be included in the parties' marital estate as it is owned by Husband's father.*
>
> * * *
>
> 30. That Mother has incurred work related childcare expenses during the pendency of this matter in the amount of $7,310.00. Mother did not offer Father parenting time to defray the costs of the child care, did not consult with Father about selection of child care and did not keep him informed. *The Court now finds that Father is not responsible for any work related childcare expenses incurred by Mother during the pendency of this matter.*
>
> 31. That an Order on child support was not entered until May 12, 2022 in this matter. *The Court now finds Father is not responsible for retroactive child support prior to that date.*

Appellant's App. Vol. II at 15, 19 (emphasis added). Utilizing Wife's Exhibit A, (with certain noted exceptions), the trial court concluded that the net value of the estate was $263,431.52 and determined that Husband owed Wife an equalization payment of $131,715.76.

[27] Wife's Exhibit A is contrary to the trial court's findings. In calculating the value of the marital estate, Exhibit A includes the value of the Subaru, the costs Wife incurred for work-related childcare expenses, and retroactive child support. Thus, the trial court erred in valuing the marital estate and, in turn, erred in calculating the equalization payment Husband owed to Wife.

[28] Husband asks us to remand to the trial court so it can award an equalization payment consistent with the correct value of the marital estate. Had the trial court properly excluded the items enumerated in its findings, the net value of the marital estate would have been $252,225.93. Half of the marital estate is $126,112.97, and the division of marital property resulted in Wife netting liabilities in the amount of $957.20. Therefore, a 50/50 division would require Husband to provide an equalization payment of $127,070.17 to Wife. Indiana Appellate Rule 66(C)(7) gives us the ability to "order correction of a judgment or order." Thus, we invoke Appellate Rule 66(C)(7) and order the trial court to correct its order to reflect an equalization payment of $127,070.17 to be paid to Wife. *See Wortkoetter v. Wortkoetter*, 971 N.E.2d 685, 690 (Ind. Ct. App. 2012).

Conclusion

[29] We conclude that the trial court did not clearly err in its identification and division of marital property. The trial court erred in calculating the equalization payment and we order the trial court to correct its order and issue an equalization payment consistent with its findings.

[30] We affirm in part and reverse in part.

Altice, C.J., and Crone, J., concur.

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