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IN THE
COURT OF APPEALS OF INDIANA

IN RE: THE MARRIAGE OF: CRIS RENN,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 27A04-0605-CV-275
	)	
TAMMY L. HUGHES,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE GRANT SUPERIOR COURT
The Honorable Jeffrey Todd, Judge
Cause No. 27D01-0310-DR-587

November 20, 2006

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Cris Renn ("Renn") and Tammy Hughes's ("Hughes") marriage was dissolved in the Grant Superior Court. Renn appeals the court's division of marital assets. On appeal, Renn raises multiple issues, which we consolidate and restate as:

I. Whether the trial court erroneously excluded marital assets from the marital estate and erroneously included debts Hughes incurred after their separation;

II. Whether the trial court erroneously ascertained the value of certain marital debts; and

III. Whether the trial court's unequal division of assets amounted to prima facie error.

We affirm in part, reverse in part, and remand for proceedings consistent with this opinion.

Facts and Procedural History

Renn and Hughes were married on September 9, 2001. Before they were married, Renn owned a home in Peru, Indiana, which he kept until after the marriage ended. Hughes owned a rental home, which is not at issue in this appeal, and a personal home in Marion, Indiana. After they were married, Renn moved into Hughes's personal home in Marion, Indiana, making it their marital residence. They had some marital problems early on and separated on a temporary basis from February of 2003 until June of 2003. Then they separated permanently on September 26, 2003. Hughes filed a petition for dissolution of marriage on October 22, 2003.

The trial court held a hearing on February 25, 2004, at which Renn did not appear. However, Hughes presented evidence at this hearing, and the trial court subsequently ordered the marriage to be dissolved on March 3, 2004. Based on Hughes' testimony, the

trial court also provided for distribution of the parties' assets in its order. Renn then filed a motion for relief from judgment on March 10, 2004, alleging he did not receive notice of the hearing date. After a hearing on the matter, the trial court granted his motion on April 2, 2004, vacating its previous decree of dissolution of marriage.

The trial court held final hearings on April 18, 2005 and November 7, 2005, and issued its Findings of Fact, Conclusions of Law and Order regarding the distribution of the parties' assets on January 6, 2006. In its order, the trial court found that the parties had only lived together for approximately twenty months. The trial court found that Hughes brought "substantial assets" into the marriage, including a twenty-six acre parcel of real estate, her personal home in Marion, Indiana, a $12,000 annuity, and another rental home in Marion, Indiana.

In the record, there is a discrepancy about whether Renn and Hughes intended to buy the twenty-six acres of land together and whether he contributed to its purchase price and monthly mortgage payments. During their marriage Hughes sold five acres of the land and used the proceeds from that sale to buy another home in Marion, Indiana (the "Washington Street property"), which she paid Renn, her husband at the time, to repair. The trial court also found that Renn had brought almost $30,000 of debt into the marriage as well as a mortgage on the home he owned in Peru, Indiana.

The trial court's order lists a number of marital assets, totaling $222,581, as well as a list of marital debts totaling $223,056. Because of the relatively short duration of the marriage, the trial court made an effort to return to each party assets of similar value to those that each brought into the marriage. Each party was awarded the personal property

in his or her possession. Renn was given the funds in escrow from the sale of his home in Peru, Indiana, and Hughes was awarded their marital residence in Marion, as well as the Washington Street property. The trial court refused to include property that Hughes acquired after their separation in the "marital pot," including a property that she bought in Muncie, Indiana (the "Beechwood property"). Additional facts will be provided as necessary.

Standard of Review

Initially, we note that Hughes has failed to file an appellee's brief. In such a case, we need not undertake the burden of developing arguments for Hughes. Butrum v. Roman, 803 N.E.2d 1139, 1142 (Ind. Ct. App. 2004), trans. denied. Applying a less stringent standard of review, we may reverse the trial court if Renn establishes prima facie error. Id. "Prima facie" is defined as "at first sight," "on first appearance," or "on the face of it." Id.

I. Inclusion in the Marital Estate

The division of marital property in Indiana is a two-step process. See Coffey v. Coffey, 649 N.E.2d 1074, 1077 (Ind. Ct. App. 1995). First, the trial court must determine what property and what debts should be included in the marital estate. See Wyzard v. Wyzard, 771 N.E.2d 754, 757 (Ind. Ct. App. 2002) (citing Ind. Code § 31-15-7-4(a) (1998)). Included within the marital estate is all the property acquired by the joint effort of the parties. Id. With certain limited exceptions, this "one-pot" theory specifically prohibits the exclusion of any asset from the scope of the trial court's power to divide and award. Id. (citing Coffey, 649 N.E.2d at 1076). Only property acquired by an individual

spouse after the final separation date is excluded from the marital estate. Coffey, 649 N.E.2d at 1076 (citing Ross v. Ross, 638 N.E.2d 1301, 1303 (Ind. Ct. App. 1994)).

After determining what constitutes marital property, the trial court must then divide the property under the presumption that an equal split is just and reasonable. Ind. Code § 31-15-7-5 (1998). If the trial court deviates from this presumption, it must state why it did so. In re Marriage of Lang, 668 N.E.2d 285, 290 (Ind. Ct. App. 1996). A party who challenges the trial court's division of the marital estate must overcome a strong presumption that the court considered and complied with the applicable statute. Frazier v. Frazier, 737 N.E.2d 1220, 1223 (Ind. Ct. App. 2000) (citations omitted).

Renn contends that the trial court erroneously failed to include the Beechwood property in Muncie, Indiana, in the marital pot. Hughes bought this property in May of 2004, about eight months after they had separated. From the record, it appears that Hughes refinanced their marital residence in Marion, Indiana, and used this money for a down payment on the Beechwood property. In essence, Renn's argument is that the Beechwood property should have been included as a marital asset as it was financed with the equity of their marital residence, which he had spent a substantial amount of time repairing and renovating without compensation. Renn testified that he had insulated the garage, repaired some wiring, dry walled, put in a closet and a new door, built a bookshelf, and helped Hughes to redo the basement. Tr. p. 99-100. Furthermore, Renn argues that the Beechwood property should have been included in the list of marital assets because the mortgage on their marital residence that was used to finance its purchase was included in the list of marital debts.

Generally, the marital pot closes on the date the dissolution petition is filed. Sanjari v. Sanjari, 755 N.E.2d 1186, 1192 (Ind. Ct. App. 2001) (citations omitted). Property acquired by a spouse after the final separation date should be excluded from the marital estate. Maxwell v. Maxwell, 850 N.E.2d 969, 973 (Ind. Ct. App. 2006). We do not find prima facie error that the trial court did not include the Beechwood property in the marital estate, as it was acquired after the date of their final separation and as Hughes was ordered to pay the mortgage on their marital residence in Marion that was used to buy the Beechwood property. Furthermore, the marital residence, which Renn made improvements on, was included in the marital estate and valued at $163,000. Renn's argument concerning whether the trial court properly considered his valuable contributions to their marital home in its order is more appropriately addressed in the analysis that follows regarding the court's division of assets.

Renn further contends that the trial court erroneously included several debts in the marital estate, specifically the second mortgage on their marital residence in Marion, and a second mortgage on the Washington Street property. Renn contends that these were erroneously included as Hughes incurred these debts after the petition for dissolution was filed.

It is true that generally the "marital pot closes on the date the dissolution petition is filed." Sanjari, 755 N.E.2d at 1192. "Therefore, debts incurred by one party after the dissolution petition has been filed are not to be included in the marital pot." Id. However, in this case the trial court did not assign a percentage of the debt to each party. Because the marriage was of such a short term, the trial court assigned debt based on the

parties' perceived obligations before and after the marriage. Both of these mortgages were assigned entirely to Hughes, and any error that the trial court may have made in including these debts in the marital estate did not affect Renn's financial liabilities under the trial court's order. Therefore, we conclude that the inclusion of these two debts amounted to harmless error.

Renn next contends that the trial court erroneously failed to include in the marital estate a Florida timeshare that Hughes received as a gift during the marriage. Indiana law provides that, when dividing property in a dissolution proceeding, the court shall include property owned by either spouse prior to the marriage, acquired by either spouse in his or her own right, or acquired by the joint efforts of the spouses. Ind. Code § 31-15-7-4 (1998). This one-pot theory "specifically prohibits the exclusion of any asset from the scope of the trial court's power to divide and award." Ross, 638 N.E.2d at 1303 (quoting In re Marriage of Dreflak, 181 Ind. App. 651, 656, 393 N.E.2d 773, 776 (1979)). "Indiana case law makes it clear that inherited or gift property is not to be excluded from the marital assets." Swinney v. Swinney, 419 N.E.2d 996, 999 (Ind. Ct. App. 1981), trans. denied.

In Castaneda v. Castaneda, we held that all property of the parties must be included in the marital estate regardless of its source, but "the trial court *may* deviate" from the 50-50 statutory presumption if property was brought separately into the marriage, was never commingled with other marital assets, and was never treated as marital assets. 615 N.E.2d 467, 470 (Ind. Ct. App. 1993) (emphasis added). Trial courts, in their discretion, may also choose to distribute the marital property unequally in favor

of one spouse based on statutorily identified considerations, one of which is property received as a gift. Ind. Code § 31-15-7-5(2)(B) (1998). However, while the trial court may ultimately decide to award an asset solely to one spouse, it must first include the asset in its consideration of the marital estate to be divided. Lulay v. Lulay, 591 N.E.2d 154, 156 (Ind. Ct. App. 1992).

Hughes received the Florida timeshare as a gift from her parents while she was married to Renn. At the final hearing, she testified that she hadn't included it in her compiled list of assets as she believed it was not worth anything. However, she also testified that she paid around $650 a year on the property for taxes and insurance. Tr. p. 74. She further estimated that her parents paid around $7000 for the property in 1990. Id. We agree with Renn that an asset on which one pays $650 a year in taxes and insurance must be of some value. As this timeshare was not listed or mentioned at all in the trial court's final order, we believe that it was overlooked. Therefore, we reverse and remand for the trial court to consider the value of the timeshare and to whom it should be distributed, even if the trial court chooses to deviate from the presumptive 50-50 distribution due to the relatively short term of the marriage involved.

II. Valuation of Marital Assets and Debts

Renn next contends that the trial court erred in calculating the total value of the marital assets in its order and also that the court assigned incorrect values to a few marital assets and debts. A trial court has broad discretion in ascertaining the value of property as well as the value of debts in a dissolution action. Sanjari, 755 N.E.2d at 1191 (citing Reese v. Reese, 671 N.E.2d 187, 191 (Ind. Ct. App. 1996)), trans. denied.

Renn first points out that the trial court's calculations of the marital assets and debts in finding fourteen are incorrect. The trial court found that the marital assets were worth $222,581. However, the correct addition of the assets the court listed in its order is $302,514.10. This is a calculation error of almost $80,000. We further note that the trial court incorrectly added its list of marital debts in the order as well. The trial court found that the marital debts totaled $223,056, and in actuality the marital debts totaled $222,256. This is a difference of about $800.

In Goosens v. Goosens, 829 N.E.2d 36, 39 (Ind. Ct. App. 2005) we held that a mathematical error of $7995.74 was harmless error as the court had, despite this error, divided the marital estate in half between the husband and wife. Here, because of the very short term of marriage and because Hughes came into the marriage with substantially more assets than Renn, the trial court sought to return to each party assets similar in value to those that the party brought into the marriage. Therefore, the trial court did not award each spouse a percentage of the entire marital estate. Consequently, we conclude that despite the calculation error, the trial court's mathematical inaccuracy does not result in prima facie error.

Renn next contends that the trial court erred in not explaining in its findings how it determined the value of each party's personal property. In its order, the trial court listed Hughes' personal property as valued at $22,500 and Renn's personal property valued at $15,300. These numbers do not match the numbers Hughes provided to the court to value her personal property. In fact, Hughes claimed that her personal property was valued at just a little over $3000. Though the transcript references the list of assets and

liabilities that Renn prepared, on appeal he failed to supply us with a copy of his estimations. Therefore, we are unable to tell from the record whether the trial court determined the value of the parties' personal property according to Renn's compilations. In any event, both parties' proposed Findings of Fact and Conclusions of Law propose that Hughes and Renn be awarded the personal property in their possession. This is exactly what the trial court did, and therefore we conclude the trial court did not err.

Renn next contends that the trial court assigned incorrect values to several of the debts that the court's order assigned to him. Specifically, Hughes testified that the Sears credit card had a debt of $54. Tr. p. 237; see also Appellant's App. p. 26. Yet, the trial court's order listed the Sears credit card debt as a value of $1300 and ordered Renn responsible for the debt. From the record, it appears that Renn testified that at the time they separated, he had a debt of $1300 on the Sears credit card. Tr. p. 139. Furthermore, it appears that Hughes has been making payments on his debt on the Sears credit card from the time of their separation. A trial court may select a valuation date any time between the date a petition for dissolution is filed and the date a decree of dissolution is entered. Magee v. Garry-Magee, 833 N.E.2d 1083, 1087 (Ind. Ct. App. 2005) (citations omitted). Therefore, we cannot conclude that the trial court's adoption of the $1300 amount from the time of their separation rather than the more current amount of $54 was prima facie error.

Another discrepancy exists regarding the value of the Grant County State Bank loan, which Renn was also ordered to pay as the money was used to do work on his house in Peru. Hughes testified that the amount currently owed on this loan due to accrued

interest was $6523. Tr. pp. 236-37; see also Appellant's App. p. 26. Renn's testimony was that the original loan was for around $5400 and that interest had been accumulating on that amount. Tr. p. 141-42. Hughes, likewise, testified that the debt was about $5400 when she first took it out. Tr. p. 25. However, the trial court's order, specifically finding fourteen, valued this debt at $10,000. From the record we can find no rationale for this discrepancy and assume that it was a clerical error. We therefore reverse and remand as to this debt for the trial court to either correct this discrepancy or to explain its finding.

III. Division of Assets

Renn next contends that the trial court gave inaccurate and incomplete findings and conclusions adequate to support its grossly unequal division of property. Br. of Appellant at 14. Renn further argues that he is entitled to some of the value of their marital residence in Marion, where he made substantial renovations. He also claims he is entitled to some of the value of the Washington Street property, which he also renovated but for which he was compensated.

Addressing whether the trial court properly deviated from the presumptive equal division of property, we note that Indiana Code section 31-15-7-5 provides that the trial court may divide the property unequally if an equal division would not be just and reasonable. Discussing the meaning of the words "just" and "reasonable" in this context, Judge Shields observed: "The term 'just' invokes a concept of fairness and of not doing wrong to either party; however, 'just and reasonable' does not necessarily mean equal or relatively equal." Swinney, 419 N.E.2d at 998.

In Dahlin v. Dahlin, 397 N.E.2d 606, 608 (Ind. Ct. App. 1979), we held that the "short duration of the marriage, the substantial property and financial contributions of [the husband, and] the extremely limited contribution of [the wife]," *required* an unequal distribution of assets between the parties. We further held in Doyle v. Doyle, that the trial court properly considered the value of the parties' pre-marital assets, when it divided the marital estate at the dissolution hearing. 756 N.E.2d 576, 579 (Ind. Ct. App. 2001).

Here, the trial court found that the parties had lived together as husband and wife for only twenty months. The court also found that Hughes had brought into the marriage assets of substantially greater value than did Renn. The trial court made specific findings regarding Hughes's assets before the marriage in finding number eight. Under these findings, we agree that an equal disposition of the parties' assets would not be just and reasonable as Hughes brought substantially more assets into the marriage while Renn brought at least $30,000 worth of debt that was paid off during the marriage, the parties were married for the short duration of about two years, and the marriage did not produce any children. However, we are compelled to note that the trial court failed to adequately address Renn's contributions before and during their marriage to a few of their properties.

First, we address whether the trial court erred in not awarding Renn any of the value of the Washington Street property. Initially, we note that the trial court did not address the discrepancy on how much financial contribution Renn made to the acquisition of the twenty-six acres, a portion of which were sold during their marriage to finance the purchase of the Washington Street property. Hughes bought the twenty-six

acres for $47,000 in November 1999, while she and Renn were dating. She began selling subdivided lots of the property in April 2000. She sold the first five acres for a net proceeds of $11,259. She sold a second five-acre parcel for a net proceeds of $17,674 in May 2000. Then in January 2001, Hughes sold another ten acres of the land for a profit of $31,421. She sold the final five acres of land in 2002 after she had married Renn. Her profit from this final sale was $16,049, which she used to purchase the Washington Street property on June 12, 2002.

Renn testified that while they were dating in 1999 they had intended to buy the twenty-six acres together and that he had paid her money for the down payment and for mortgage payments. On November 5, 1999, Renn wrote Hughes a check for $2000, with "property" written in the note section. He testified that this was the amount he paid her to help with the down payment. Tr. p. 285. He also subsequently made three payments to her of about $180, which he testified were for half of the monthly mortgage payment on the property. Hughes, however, testified that she could not recall why Renn wrote her these checks, but she knew that they were not for the twenty-six acres.

The trial court made no finding regarding this discrepancy of Renn's financial contribution when it awarded the entire Washington Street property to Hughes. We believe that given the facts presented, the trial court's Findings of Fact and Conclusions of Law did not adequately account for Renn's financial contribution. We find it particularly significant that the Washington Street property was bought during the marriage and that it was bought with proceeds from the sale of property that Renn and Hughes may have jointly bought.

Further substantiating our conclusion is the fact that the trial court did not give significant weight to Renn's reconstruction and remodeling efforts on the Washington Street property during their marriage. Renn testified that he tore out a back section of the building where there was water damage and renovated that entire section of the property. Renn also said that he repaired plumbing leaks, re-did the plumbing upstairs, worked on the furnace several times, installed a fan, repaired the rubber roof, re-hung the gutters, and did other miscellaneous jobs on the property. The property was rented out shortly after his repairs, yet Renn never received any of this income.

Although Renn was in fact compensated for his work from a construction loan with the Grant County State Bank, this does not negate the fact that he contributed to enhancing the value of the property while they were married. The relative significance of Renn's in-kind contribution is not explained by the trial court so as to support its conclusions as to the final property distribution. In Houchens v. Boschert, we upheld the trial court's ruling that a husband was entitled to a portion of the Wife's interest in the company she managed even though he merely worked there as an hourly employee and was not a member of management. 758 N.E.2d 585, 590-91 (Ind. Ct. App. 2001), trans. denied. In Houchens, we wrote:

> Wife makes much of the fact that Husband was an hourly laborer at [her work place] during the marriage, not a part owner or a member of management, and then quit the job shortly before filing for dissolution. Such facts are irrelevant in an age that honors the marital relationship by valuing the contributions of spouses who do not even work outside of the parties' home.

Id. Hughes and Renn bought the Washington Street property during their marriage for investment purposes, specifically to renovate it and rent out the apartments. It may have

made financial sense for the couple to decide to have Renn reimbursed through a construction loan in order to delay incurring the renovation expenses. This was a property that was bought during the marriage for investment purposes, with the proceeds from the sale of property to which Renn may have financially contributed. Because Renn substantially contributed to its value through his reconstruction work, we reverse and remand on this item for the trial court to determine and credit Renn with whatever in-kind contribution the evidence supports, after consideration of payments for his work from the mortgage loan for the property.

Second, as noted above, Renn contends that the trial court should have included the Beechwood property in the marital estate as it was bought with money obtained through a second mortgage on their marital residence in Marion. While the trial court properly did not include the Beechwood property in the marital estate as it was purchased after the date of their final separation, we conclude that the trial court did not adequately consider Renn's possible contribution to the Marion property, which became his home during their marriage. Renn testified that he insulated, repaired wiring, and dry walled the garage; constructed shelving in the garage; remodeled the breeze way area; added a closet; tiled the floor; put in a new door; helped renovate the basement; constructed a pond; re-routed the gutters; installed another hose spigot on the side of the house; ran wiring over to a fire pit; landscaped and seeded the yard; and did several other various jobs on the house. He was not paid for any of this work done on their marital residence. Yet, the trial court neither mentioned nor valued this in kind contribution to the value of their home.

Indiana Code section 31-15-7-5(1) says that a party presenting evidence of the "contribution of each spouse to the acquisition of the property, regardless of whether the contribution was income producing" may rebut the presumption for equal division of the marital property. "The underlying purpose of Indiana Code § 31-15-7-5 is to promote a just and reasonable distribution of marital assets upon the dissolution of a marriage." Doyle, 756 N.E.2d at 580. Certainly, Renn presented evidence of material, in-kind contribution to their marital residence, which necessarily increased its value during their marriage.

Our court has previously established that where assets were acquired prior to marriage, the trial court may achieve a "just and reasonable property division by determining the appreciation over the course of the marriage of such assets and dividing the appreciation between the spouses, while setting over to the appropriate spouse the pre-marriage value of the assets at issue." Doyle, 756 N.E.2d at 579 (citing Newby v. Newby, 734 N.E.2d 663, 669 (Ind. Ct. App. 2000)). We believe that such division is particularly appropriate in a case such as the case currently before us, which was of an even shorter duration. Therefore, we remand this case to the trial court to determine the value of appreciation on the Washington Street property and the parties' marital residence in Marion, Indiana, during their marriage and to divide the value of this appreciation accordingly, after considering the effect, if any, of Renn's compensation for his labor on improvements to each. We further note that the trial court should also consider the appreciation of Renn's residence in Peru, which he brought into the marriage, and Hughes' contribution to its appreciation through the improvements she helped Renn with.

Conclusion

We reverse and remand this case to the trial court to include the Florida timeshare Hughes received as a gift during the marriage and decide how to distribute this property and to reconsider its valuation of the Grant County State Bank loan. We further remand this case for the trial court to reconsider the appreciation during their two-year marriage to the Washington Street property, the marital residence in Marion, Indiana, and Renn's house in Peru, Indiana, and to either divide the value of this appreciation equally between the parties or in a manner that is just and reasonable under Indiana Code section 31-15-7-5.

Affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion.

KIRSCH, C. J., and SHARPNACK, J., concur.