

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

G. JAYSON MARKSBERRY
Marksberry Law Office
Danville, Indiana

TIMOTHY J. O'HARA
STEVEN M. BADGER
BRYAN H. BABB
Bose McKinney & Evans, LLP
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

M. DALE PALMER,)
)
Appellant-Respondent,)
)
vs.) No. 32A01-1103-DR-108
)
KAY PALMER,)
)
Appellee-Petitioner.)
)

APPEAL FROM THE HENDRICKS SUPERIOR COURT
The Honorable David H. Coleman, Judge
The Honorable G. Thomas Gray, Special Judge
Cause No. 32D02-0507-DR-103

December 13, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Dale Palmer (“Husband”) appeals the trial court’s property division in his dissolution proceedings with Kay Palmer (“Wife”). Upon review of Husband’s claims, we conclude that the trial court did not err in denying Husband’s motions to continue and motion to dismiss, and in dividing the marital estate. We affirm.

Facts and Procedural History

This case involves a pattern of dishonest and defiant conduct by Husband, which in effect tied the trial court’s hands when dividing the marital estate. Husband and Wife were married in 1973. No children were born of the marriage. Husband worked as an attorney and Wife occasionally worked in Husband’s law office. The parties maintained their marital residence in Avon, Indiana, and spent winters at their vacation home in Fort Myers, Florida. Over the course of the marriage, the parties cultivated a marital estate worth more than nine million dollars. The most significant marital assets are two European financial entities created by Husband, the Pakama Foundation and the International Research Council Foundation, both of which are organized under the laws of Lichtenstein.

After more than thirty years of marriage, Wife petitioned for dissolution on July 8, 2005. Husband then cross-petitioned for dissolution. Husband’s cross-petition requested that the trial court grant an “absolute dissolution of marriage” and sought distribution of the marital estate as would be “just and reasonable under the circumstances and pursuant to Indiana law.” Appellant’s App. p. 82.

The trial court held a preliminary hearing in November 2005 and scheduled a final hearing for October 2006. Shortly after the preliminary hearing, the parties submitted, and the court approved, a preliminary order restraining Husband and Wife from “transferring, encumbering, concealing, selling[,] or otherwise disposing of any joint property or assets of the marriage except in the usual course of business or for the necessities of life, without the written consent of the parties or the permission of the court.” Appellee’s App. p. 3. The order also required the parties to cooperate and exchange information and documents regarding the assets and liabilities of the marriage.

After several continuances and delay due to discovery issues, the trial court, on its own motion, set a hearing for September 2007. Wife testified that after filing for dissolution she discovered that certain marital assets had disappeared. She testified that she discovered that some of these assets had been “sent to Zurich to a bank account.” Tr. p. 24. She expressed confusion regarding the existence and location of numerous marital assets, stating that Husband had always handled their investments and that she trusted him in this regard because he was an attorney. *Id.* at 25. Wife also indicated that she was struggling to pay living expenses as the dissolution proceedings continued.

When asked by the trial court about the existence of assets held offshore, Husband indicated he lost his memory after a “double stroke.” *Id.* at 83. He testified, however, that he recalled Wife had “opened an account in Switzerland.”¹ *Id.* He also testified that he had transferred marital funds to a “permanent trust” to support scientific endeavors,

¹ The trial court found that contrary to Husband’s testimony, Wife had never visited any banks in Switzerland. *See* Appellant’s App. p. 35.

but that he had no documentation establishing the existence of such a trust.² *Id.* at 84. The trial court ordered Husband to make available to Wife all income, interest, or other distributions from any of the parties' financial accounts and ordered the parties to consult with an expert in Swiss banking law. *Id.* at 121.

Two months later, in November 2007, Wife filed a verified motion to enforce the restraining order and rule to show cause, alleging that Husband had attempted to dispose of real estate owned by one of the parties' joint business ventures, a company known as Mark IV. The trial court issued an order restraining Husband from disposing of any asset belonging to Mark IV.

In early 2008, Wife filed a verified petition for contempt, alleging that Husband refused to distribute to Wife all income, interest, or other distributions from the parties' financial accounts and refused to exchange information and documents regarding the assets and liabilities of the marriage. At an emergency hearing on Wife's petition, additional information emerged regarding Husband's foreign financial dealings.

James Collins, a friend of Husband, testified that Husband had shown him a slip of paper showing amounts denominated in Swiss francs. After hearing Mr. Collins' testimony, the trial court asked Husband, who denied having any such paper. The court then instructed Husband's counsel to look inside Husband's wallet. Inside the wallet, counsel located and produced a slip of paper showing balances as of December 31, 2007, for the "Pakama Foundation" and "International Research Council (IRC) Foundation"

² This is one of the initial references to what is later called "Noetics," "Harmonic Science Institute (HSI)" or the "Institute." For ease of reference, we refer to the entity as HSI. Though the parties disputed the purpose and legitimacy of HSI, the trial court found that HSI is a not-for-profit corporation created by Husband, which "purports to engage in research into contacting alternative planes of existence, including the dead." Appellant's App. p. 49.

totaling “USD \$5,151,596.” Tr. p. 145; *See* Petitioner’s Ex. 2. Faced with discovery of this document, Husband confirmed the Foundations’ value as of December 2007.

At the conclusion of the hearing, the trial court ordered Husband and Wife to appear in court one week later. Husband did not appear on that date. Husband’s counsel informed the trial court that Husband was in Florida and sought a continuance of the proceedings. The court denied the request and issued a body attachment. Husband never again personally appeared before the trial court.

In late 2009, the trial court ordered Husband to designate Wife as the beneficiary of the Foundations.³ The court issued a show cause order regarding Husband’s attempted sale of the marital residence. Appellee’s App. p. 104. The court also ordered Husband, who had relocated to São Paulo, Brazil, to appear at the final hearing, scheduled for October 29, 2009, and show cause why he should not be held in contempt for further violations of the court’s preliminary order.

One day before the final hearing and more than four years after Wife commenced dissolution proceedings, Husband filed a motion to dismiss for lack of jurisdiction. Husband also requested a continuation of the final hearing. The trial court denied both

³ At this time, Wife also filed a request to enforce the court’s restraining order with respect to Husband’s financial account at Colonial Bank. *See* Appellee’s App. p. 106. On appeal, Husband contends that the trial court erred by freezing his personal account at Colonial Bank, which he allegedly used to deposit social security payments. Wife indeed sought to restrict Husband from making withdrawals from his Colonial Bank account. However, Wife withdrew her motion to this effect on October 29, 2009, upon learning that Husband used the account for the sole purpose of depositing social security checks, which she described as non-marital funds. *Id.* at 122. Thus Husband’s contention that the trial court erred by freezing this account is without factual basis.

In a similar context, Husband states that the trial court erroneously froze HSI’s bank accounts, which he claims remain frozen. *Id.* at 106. While the trial court did enter an order regarding HSI, counsel for HSI later appeared and sought modification of the trial court’s order, which the court granted. *Id.* at 66. Given that HSI has lodged no complaint regarding the modified order and is not a party to this appeal, there is no basis for error.

motions. The final hearing progressed in segments on numerous dates. During this time period, Husband requested two additional continuances, claiming that his poor health, a result of a stroke and cardiac surgery in 2003, and a kidney transplant in 2006, prevented him from being physically present at the hearing.⁴ The trial court allowed Husband one continuance but denied his request for another. *See Appellant's App.* p. 15, 16.

After the final hearing, the parties submitted proposed findings of fact and conclusions of law. The trial court entered its decree of dissolution on June 21, 2010. In total, the trial court entered 213 findings of fact and 60 conclusions of law describing the unique factual circumstances pertaining to division of the marital estate.

The trial court began its order by addressing the most significant asset of the marriage, the Foundations, and explained that Wife had no knowledge of the Foundations before the dissolution proceedings began. The court described Husband's attempts to keep the Foundations hidden by giving false and misleading testimony throughout the proceedings. Despite the fact that Husband transferred more than five million dollars of marital funds to the Foundations, the trial court noted that Husband possessed exclusive control and authority over them. As primary beneficiary, Husband was the only person who could exert control over them—only Husband could name beneficiaries, authorize withdrawals, or obtain information about the Foundations. The court emphasized the fact that Husband had disregarded its order to name Wife as a beneficiary of the Foundations, and Wife therefore had no access to their funds. The court also explained that Husband had transferred marital assets to HSI without Wife's knowledge or consent. Specifically,

⁴ Husband provided this medical history in an English translation of a neuropsychological evaluation of him written in Portuguese. The original report was not submitted. *See Appellant's App.* p. 110-16.

Husband purchased a vehicle and a condominium, which he transferred to HSI. Husband also contributed securities worth approximately \$750,000 to HSI.⁵

Describing Husband's conduct during the pendency of dissolution proceedings as "obdurate, unyielding[,] and defiant," the trial court listed the numerous court orders Husband had ignored. Appellant's App. p. 52. Husband failed to abide by the court's order restraining him from transferring, encumbering, concealing, selling, or otherwise disposing of joint property or assets of the marriage by attempting to sell assets related to the Mark IV Company as well as the marital residence. The court also found that Husband refused to cooperate or exchange information and documents regarding assets of the marriage with Wife, most notably information regarding the Foundations, which hindered Wife's ability to determine the full extent of the marital estate. The court sanctioned Husband for this particular failure by excluding the testimony of Jeffrey Donovan regarding tax calculations for the Foundations, explaining that the calculations were based upon information Husband had steadfastly refused to provide to Wife. Husband also failed to turn over interest payments, income or any other distributions from marital accounts to Wife. In addition, Husband left the jurisdiction in March 2008 and failed to appear as ordered from that time forward.

In contemplating division of the marital estate, the trial court summarized the unusual challenge presented by Husband's conduct, naming "Husband's defiance of court orders, his flight first from Indiana and then to South America, and the complete and exclusive control he garnered for himself in the Foundations" as factors complicating the

⁵ When Wife learned of the purchase of the condominium for HSI, she asked Husband what funds he used to purchase it. Husband falsely informed her that Christian Bernard, Imperator of the Rosicrucian Order, had donated to HSI. *See* Appellant's App. p. 49.

court's task. *Id.* at 64. Regarding the Foundations, the court expressed misgivings regarding Husband's proposal that the trial court grant Wife one-half of their value. Given Husband's previous defiance of the court's order to name Wife as beneficiary of the Foundations, the court concluded it would be "sheer folly . . . to believe Husband would comply with a final order requiring him to transfer a beneficial interest in the Foundations to Wife." *Id.* Thus, the trial court was confident that only assets located in the United States would be transferred to Wife. However, the court expressed dissatisfaction with this result, noting that the greater portion of the marital estate—the funds used to create the Foundations—remained in Husband's exclusive control, unavailable for distribution to Wife.

The trial court concluded that an equal distribution of the marital estate was proper; noting that Husband had presented no evidence that such division was not just and reasonable as required by statute. *Id.* at 48. Because the court was unable to ensure Husband's compliance with orders regarding the Foundations, the court awarded Husband the total value of the Foundations as well as certain other domestic assets. The trial court determined that the Foundations should be valued as of December 31, 2007, at the value Husband admitted at that time—\$5,151,596—and that any tax liability pertaining to the Foundations should be borne by Husband alone. The value of Husband's distribution of the marital assets was \$5,849,457.48. *Id.* Wife's distribution of the marital assets, comprised primarily of domestically-held assets, had a value of \$3,280,666.74. *Id.* To equalize the parties, the trial court ordered Husband to pay Wife \$1,284,395.37 within thirty days. *Id.* at 49.

Husband filed a motion to correct error, which the trial court denied. Husband now appeals.

Discussion and Decision

On appeal, Husband raises multiple issues which we revise and restate as: (I) whether the trial court erred in concluding that Husband had waived his challenge to the Indiana residency requirements and that Wife nonetheless satisfied those requirements; (II) whether the trial court erred in denying Husband's motions to continue; (III) whether the trial court erred in determining the assets and liabilities of the marriage, particularly as it relates to the Foundations; and (IV) whether the trial court erred in dividing the marital estate.

I. Jurisdiction

Husband contends that the trial court erred in denying his motion to dismiss for lack of jurisdiction, as he claims Wife did not meet the relevant residency requirements when she filed for dissolution in Indiana.

The standard of review of a trial court's jurisdictional ruling "is a function of what occurred in the trial court and is dependent upon: (i) whether the trial court resolved disputed facts; and (ii) if the trial court resolved disputed facts, whether it conducted an evidentiary hearing or ruled on a paper record." *H.D. v. BHC Meadows Hosp.*, 884 N.E.2d 849, 852 (Ind. Ct. App. 2008), *trans. denied*. Where, as here, the facts before the trial court were disputed and the trial court held an evidentiary hearing, we give the court's factual findings and judgment deference. *Eichstadt v. Frisch's Rests., Inc.*, 879 N.E.2d 1207, 1209 (Ind. Ct. App. 2008).

The trial court entered findings of fact and conclusions of law regarding Husband's objection to jurisdiction. When a trial court has made findings of fact, we employ a two-tier standard of review: whether the evidence supports the findings of fact and whether the findings of fact support the conclusions thereon. *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997). We will set aside findings only if they are clearly erroneous. *Id.* "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." *Id.* To determine that a finding or conclusion is clearly erroneous, an appellate court's review must leave it with the firm conviction that a mistake has been made. *Id.* We consider only the evidence favorable to the judgment and do not reweigh evidence or assess witness credibility. *Hurt v. Hurt*, 920 N.E.2d 688, 691 (Ind. Ct. App. 2010).

The trial court correctly concluded that Husband waived his argument with regard to jurisdiction. "A party shall be estopped from challenging a trial court's jurisdiction where the party has voluntarily availed itself or sought the benefits of the court's jurisdiction." *Kondamuri v. Kondamuri*, 799 N.E.2d 1153, 1159 (Ind. Ct. App. 2003), *trans. denied*. By filing his cross-petition for dissolution, in which he requested that the court grant him an "absolute dissolution of marriage," Husband invited the result he now challenges. He has therefore waived his claim. Because we prefer to decide cases on their merits, however, we nonetheless examine Husband's argument.

In support of his claim that Wife did not meet the relevant residency requirements at the time she petitioned for dissolution in Indiana, Husband directs our attention to various portions of Wife's testimony. Specifically, he notes that Wife stated that she

filed a 2004 tax return listing the parties' Florida residence as her address, the parties registered a vehicle in Florida in 2004, and she voted in the 2004 general election in Florida. Wife also testified that she had lived at her Avon address for more than twenty years, had an Indiana driver's license, received mail at her Avon address, and voted in Indiana in every year other than 2004. Tr. p. 416, 542-43. Regarding the parties' Florida property, Wife reiterated that it was "a winter place to be," but neither party lived there year-round. *Id.* at 542-43. Having heard this evidence, the trial court concluded that Wife "is, and at all relevant times has been, a resident of Hendricks County, State of Indiana," thus satisfying the residency requirements. Appellant's App. p. 27. We view Husband's argument to the contrary as an invitation to reweigh evidence, which we will not do.

II. Motions for Continuance

Husband argues that the trial court erred in denying his motions to continue. He contends that his poor health prevented him from adequately assisting in his own defense, and the denial of his motions to continue therefore denied him due process of law.

Indiana Trial Rule 53.5 provides, "Upon motion, trial may be postponed or continued in the discretion of the court, and shall be allowed upon a showing of good cause established by affidavit or other evidence." We review a trial court's decision to grant or deny a motion to continue for an abuse of discretion, and there is a strong presumption that the trial court properly exercised its discretion. *Gunashekar v. Grose*, 915 N.E.2d 953, 955 (Ind. 2009). An abuse of discretion may be found when the moving party has shown good cause for granting the motion. *Thompson v. Thompson*, 811

N.E.2d 888, 907 (Ind. Ct. App. 2004), *reh'g denied, trans. denied*. However, no abuse of discretion will be found when the moving party has not demonstrated that he was prejudiced by the denial. *Id.* at 908.

Husband argues that he asserted good cause to warrant the granting of his motion for a continuance. We disagree. Husband requested a continuance because he claimed he was unable to be present at scheduled hearings due to medical problems. Notably, at the time he made this claim, Husband had failed to appear at any court proceeding for more than two years and resided in São Paulo, Brazil. In denying Husband's motion, the trial court cited Husband's repeated misconduct and noncompliance with court orders, which had resulted in substantial delay—more than four years had elapsed since the action had commenced. The court determined that granting Husband's motion would result in inequitable additional delay. We cannot say, in light of Husband's conduct, that the trial court erred in denying Husband's motions to continue.

Further, by reciting his physical ailments, Husband does not establish that the trial court's ruling prejudiced him. In fact, the record suggests that Husband was an active participant throughout the proceedings, despite his decision to remain outside the trial court's jurisdiction. Jeffrey Donovan testified that Husband assisted him in gathering financial information regarding the Foundations. Tr. p. 685. Further, Husband's counsel, when requesting continuances, described Husband's health and at times including related documentation, indicating counsel was in contact with Husband. *See* Appellant's App. p. 105, 108; Tr. p. 380. We therefore conclude that Husband communicated with his

counsel and provided remote assistance while proceedings were ongoing. The trial court did not abuse its discretion in denying Husband's motions to continue.

III. Determining Assets and Liabilities

Husband contends that the trial court erred in determining the assets and liabilities of the marriage. More specifically, he claims that calculations of tax liability regarding the Foundations, provided by his accountant, Jeffrey Donovan, were erroneously excluded by the court.⁶ Husband also argues that the trial court erred in selecting the valuation date for the Foundations.

A. Testimony of Jeffrey Donovan

Husband argues that the trial court erred in excluding tax liability calculations provided by Jeffrey Donovan as a sanction against Husband. Husband argues that this was error because Donovan was essential to the presentation of his case and further, that the trial court should have allowed the testimony because the relevant evidentiary requirements were satisfied. Though Husband correctly characterizes the exclusion of Donovan as a sanction, he fails to address the dispositive issue; that is, whether his conduct served as the basis for such sanction. We find that it did.

A trial court enjoys broad discretion in determining the appropriate sanctions for a party's failure to comply with discovery orders. *Smith v. Smith*, 854 N.E.2d 1, 4 (Ind. Ct.

⁶ In addition, Husband claims that the trial court failed to allocate this tax liability and that he was entitled to "an offset for the tax . . . for the parties' activity relating to the European funds." Husband continues, "The court could also have allocated an equal share of the tax liability to each party's allocations . . ." Appellant's Br. p. 23. In fact, the trial court did allocate the tax liability—to Husband alone. The court explained that the liability, which stemmed from failure to report the Foundations' income, resulted from Husband's attempts to hide the existence of the Foundations. See Appellant's App. p. 41-42. Beyond asserting his entitlement to an offset, Husband does not challenge the court's allocation of this liability. Appellant's Br. p. 23. We do not find this bare argument persuasive.

App. 2006). Absent clear error and resulting prejudice, the trial court's determinations with respect to violations and sanctions should not be overturned. *Id.* One sanction available in cases where a party fails to comply with discovery orders is a bar of evidence. *See* Ind. Trial Rule 37(B)(2)(b).

The trial court excluded Donovan's testimony regarding tax implications for the Foundations because Donovan based his calculation on information Husband had continuously refused to make available to Wife, despite a court order requiring him to do so. Husband's unsupported contention that the sanction was "too harsh" is not persuasive. Appellant's Br. p. 21. The trial court did not abuse its discretion by excluding Donovan's testimony.⁷

B. Valuation Date

Husband contends that the trial court erred in valuing the Foundations. He argues that the proper date for their valuation is December 31, 2008, rather than the December 31, 2007, date used by the court.

A trial court has broad discretion in ascertaining the value of property in a dissolution action, and the court's valuation will only be disturbed for an abuse of discretion. *Trabucco v. Trabucco*, 944 N.E.2d 544, 557 (Ind. Ct. App. 2011), *trans. denied*; *see also Knotts v. Knotts*, 693 N.E.2d 962, 968 (Ind. Ct. App. 1998), *trans. denied*. Marital assets may be valued *at any date between the date of filing and the date*

⁷ Husband alleges that the trial court physically excluded Donovan from the courtroom on October 29, 2009, Appellant's Br. p. 19-20, but he provides no citation to the record for this assertion. Wife directs our attention to the parties' agreement that expert witnesses were allowed to remain in the courtroom. *Id.* at 43, Tr. p. 399. Without specific citation from Husband we must conclude, as does Wife, that if Donovan left the courtroom, he did so of his own accord and not at the trial court's direction.

of the hearing.” *Bertholet v. Bertholet*, 725 N.E.2d 487, 497 (Ind. Ct. App. 2000) (emphasis added). “The selection of the valuation date for any particular marital asset has the effect of allocating the risk of change in the value of that asset between the date of valuation and date of the hearing.” *Quillen v. Quillen*, 671 N.E.2d 98, 103 (Ind. 1996).⁸

The trial court concluded that Husband presented no evidence regarding the values of the Foundations at the time of the final hearing, or as to any date since December 31, 2008. As to Husband’s offer of a December 31, 2008, valuation date, the court noted that the financial markets were in the midst of a severe downturn at that time but had since recovered. Again citing Husband’s defiance of court orders and refusal to provide information regarding the Foundations, the trial court stated that Husband should not benefit from the lower December 31, 2008, valuation. The court explained, “In light of Husband’s control and beneficial use of the assets during the proceedings, the December 31, 2007, valuations should be used for distribution purposes in this matter, or a total valuation of both Foundations of \$5,151,598.00. That \$5,151,598.00 valuation was admitted by Husband” Appellant’s App. p. 59.

Husband offers no convincing challenge to the trial court’s reasoning. Instead, Husband simply asserts that he was not responsible for the external market forces that led to the significant decline in value of the Foundations from December 2007 to December 2008. This may indeed be true. Nevertheless, we have held that when one spouse

⁸ Husband attempts to distinguish *Quillen* and *Knotts* from this case. This undertaking is not persuasive. For example, Husband claims that *Quillen* is distinguishable because it involved the valuation of a tangible asset as opposed to an “investment vehicle.” Appellant’s Br. p. 17. Husband does not explain, however, why that factual distinction should render the case inapplicable. Further, when discussing *Knotts*, Husband relies on unbinding dicta. *Id.* at 18.

controls a financial asset, a trial court may charge that spouse with the risk of a financial loss, even when the decline in value of that asset was due to forces outside the parties' control, such as a decline in the stock market. *Trabucco*, 944 N.E.2d at 559. Husband clearly had exclusive control of the Foundations. The trial court did not abuse its discretion in selecting December 31, 2007, as a valuation date for the Foundations.

IV. Equal Division of the Marital Estate

Husband claims that the equalization payment ordered by the trial court was not a just and reasonable distribution of property. He also argues that the trial court failed to consider the statutory factors that govern division of the marital estate and that those factors support a division in his favor.

Husband argues that the trial court erred in ordering him to make an equalization payment to Wife in the amount of \$1,284,395.37. We have held that a trial court may make its division of the marital estate by awarding to one spouse the bulk of the physical assets while awarding the other spouse a money award representing a portion of those physical assets. *Neffle v. Neffle*, 483 N.E.2d 767, 769 (Ind. Ct. App. 1985) *reh'g denied, trans. denied*. As Wife accurately notes, an equalization judgment may be particularly appropriate where one party expresses an unwillingness to comply with court orders regarding marital property in their control. *Id.* at 769.

Husband sets forth recycled arguments in disputing the equalization payment. He renews his challenges to the trial court's treatment of tax liabilities and valuation of the Foundations. Having already affirmed the trial court's action in those contexts, we conclude that the trial court did not err in ordering Husband to make an equalization

payment to Wife for \$1,284,395.37.

Importantly, the trial court's use of an equalization payment stems from the circumstances surrounding the Foundations, namely Wife's lack of knowledge regarding them and Husband's exclusive control over them. Husband argues that the court committed clear error in finding that Wife was excluded from the majority of the parties' financial decisions, particularly those involving the Foundations. In support of this argument, Husband claims that Wife had "unfettered access [to] the parties' finances and property interests." Appellant's Br. p. 14. Husband also argues that Wife gave contradictory testimony regarding her knowledge of the Foundations. *Id.* This brief argument amounts to nothing more than an invitation to reweigh the evidence, which we are not at liberty to do.

Husband also argues that the trial court failed to consider the statutory factors that govern division of the marital estate and that those factors support a division in his favor. *See* Appellant's App. p. 24. This is contrary to the express written findings of the trial court. *Id.* at 62-64, 66-67. Again, Husband invites us to reweigh the evidence by arguing that he should have received more than fifty percent of the marital estate, which we may not do. Notably, in his proposed findings of fact and conclusions of law, Husband conceded the propriety of an equal division stating, "[T]here is no basis to deviate from the statutorily presumed equal division of the marital estate." *Id.* at 131.

We note, though not addressed by Husband, the alternative justification for division provided by the trial court, which is based upon the court's finding that Husband dissipated marital assets: "Even if Husband's arguments regarding the value of the assets

in the Foundation[s] and the liabilities . . . had merit (and they do not), the Court concludes that a deviation from the presumption of the 50-50 split would be warranted.” *Id.* at 62. Husband dissipated and secreted marital assets by transferring substantial amounts of money into the Foundations for his personal use. Husband acted without Wife’s consent or knowledge, and he denied Wife access to the Foundations’ funds upon their discovery. Husband’s total dissipation of assets with regard to the Foundations and HSI is approximately six million dollars. The trial court did not err in concluding that in the alternative, an unequal distribution was appropriate based upon Husband dissipation of marital assets.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.