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**IN THE
COURT OF APPEALS OF INDIANA**

RANDY E. BAXTER,
Appellant-Appellant,

vs.

AMY S. BAXTER,
Appellee-Appellee.

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No. 55A05-0605-CV-244

APPEAL FROM THE MORGAN SUPERIOR COURT
The Honorable G. Thomas Gray, Judge
Cause No. 55D01-0501-DR-29

December 19, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Randy Baxter (“Husband”) challenges the trial court’s dissolution decree which ended his marriage to Amy Baxter (“Wife”). He raises a single issue for our review, namely, whether the trial court erred when it concluded that the couple has \$78,000 in equity in the marital home.

We reverse and remand with instructions.

FACTS AND PROCEDURAL HISTORY

Husband and Wife were married in 1996. In 2005, Husband filed a petition for dissolution of marriage. At the final hearing, the parties informed the court that they had agreed on the division of the majority of the marital assets. In particular, the parties agreed that Husband would retain the parties’ real estate, including the marital residence, and would be responsible for all debt associated with the real estate. In addition, the parties agreed that Husband would retain the parties’ business, Baxter’s Market. But the parties asked the dissolution court to decide three unresolved issues, including the division of equity in the marital residence.¹

Husband testified, and Wife agreed, that the marital residence has an appraised value of \$400,000. In 2004, the parties refinanced their existing \$270,000 mortgage into a \$348,000 mortgage. After paying the original mortgage, Husband used the excess \$78,000 in cash to pay off debts associated with Baxter’s Market. In addition, the parties had previously borrowed \$50,000 from Husband’s mother to help pay for constructing the marital residence, and in April 2005, Husband took out a second mortgage in the amount of \$50,000 to pay her back.

¹ Neither party appeals the dissolution court’s resolution of the other two issues.

During the final hearing, Wife testified that the second mortgage Husband obtained in April 2005 should not be considered marital debt, but the dissolution court disagreed. Instead, the dissolution court concluded that Wife was entitled to one-half of the \$78,000 in home equity used to pay off the Baxter's Market debt in 2004. Specifically, the dissolution court found and concluded:

The Court does find, however, that when Randy E. Baxter refinanced the Baxter [] home, in October 2004, he paid off an existing mortgage at that time of \$270,000, and received \$348,000 in the refinancing. The Court finds, by Randy E. Baxter's testimony, that he used the \$78,000 to pay towards debt associated with the real estate and business located on State Road 44, Martinsville, Indiana, commonly known as Baxter's Market. The Court finds that since Randy E. Baxter shall have all right, title, and interest in that business and the real estate, the Court finds that the \$78,000 was not used and put into the marital residence. The Court further finds that there is \$78,000 worth of equity in the real estate, therefore, Amy S. Baxter is entitled to 1/2 of the \$78,000 amount. Therefore, Amy S. Baxter shall have a judgment against Randy E. Baxter in the amount of \$39,000. . . .

Appellant's App. at 59.

Husband filed a motion to correct error, alleging in relevant part that the dissolution court erred when it awarded Wife \$39,000. The dissolution court denied that motion in relevant part. This appeal ensued.

DISCUSSION AND DECISION

Standard of Review

In Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996), our supreme court set out the applicable standard of review:

The trial court's findings were entered pursuant to Ind. Trial Rule 52(A) which prohibits a reviewing court on appeal from setting aside the trial court's judgment "unless clearly erroneous." The court on appeal is further required to give "due regard . . . to the opportunity of the trial court to judge the credibility of the witnesses." When a trial court has made

special findings of fact, as it did in this case, its judgment is clearly erroneous only if (i) its findings of fact do not support its conclusions of law or (ii) its conclusions of law do not support its judgment. Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.

When reviewing valuation decisions of trial courts in dissolution actions, a similar standard of review has been enunciated: that the trial court has broad discretion in ascertaining the value of property in a dissolution action, and its valuation will not be disturbed absent an abuse of that discretion. The trial court does not abuse its discretion if there is sufficient evidence and reasonable inferences therefrom to support the result. In other words, we will not reverse the trial court unless the decision is clearly against the logic and effect of the facts and circumstances before it. A reviewing court will not weigh evidence, but will consider the evidence in a light most favorable to the judgment.

(Internal citations omitted).

Husband contends that the evidence does not support the dissolution court's finding that there exists \$78,000 in equity in the marital residence. As such, Husband maintains that the \$39,000 award to Wife is clearly erroneous. We must agree.

Again, at the final hearing, the parties informed the dissolution court that they had agreed on the division of the majority of the marital property.² For instance, the parties agreed that Husband would receive the parties' real estate and Baxter's Market. During the hearing, the undisputed evidence showed that after refinancing the mortgage on the marital residence in 2004, Husband used \$78,000 of equity to pay off debts related to Baxter's Market. Wife testified that she was aware of that transaction.³ In addition, the parties owed Husband's mother \$50,000 for a loan they had obtained to help construct

² Neither party introduced into evidence the value of the property they had already divided by agreement, so there is no way to determine the percentage awarded to each.

³ There is no suggestion that Husband dissipated assets.

the marital residence. As a result, at the time of the final hearing, the parties had \$2,000 in equity in the marital residence.⁴

At the conclusion of the hearing, the dissolution court stated that it felt that the use of the \$78,000 in equity in the marital residence to pay off the business debt constituted “voodoo economics” and an “economic fiction.” Transcript at 75. Accordingly, the court imputed \$78,000 worth of equity in the marital residence and awarded Wife one-half of that amount. In essence, the dissolution court decided that it was unfair for Husband to benefit from the use of the home equity to pay off business debt and leave Wife with almost no home equity.

But “[m]oney used to satisfy marital debts prior to dissolution is not marital property subject to division.” Hitchcox v. Hitchcox, 693 N.E.2d 629, 631 (Ind. Ct. App. 1998) (citing Quillen, 671 N.E.2d at 100). Marital property includes both assets and liabilities. See Finley v. Finley, 422 N.E.2d 289, 295 (Ind. Ct. App. 1981) (marital property subject to division means “net assets,” that is, assets minus liabilities). Here, during the parties’ marriage, Baxter’s Market was a marital asset and the debt associated with that business was marital debt. When Husband used \$78,000 worth of home equity to pay off the Baxter’s Market debt in 2004, the marriage was intact. At the final hearing, in its division of property the trial court recaptured and imputed the \$78,000 as “equity” in the marital residence. But the \$78,000 had been spent and was neither a marital asset nor a marital debt. Thus, that sum was not marital property subject to division.

⁴ The undisputed evidence shows that the house appraised at \$400,000, and the amount of debt owed on the mortgage was \$348,000. In addition, again, the parties owed Husband’s mother \$50,000 for a loan used to construct the house.

We hold that the evidence does not support the dissolution court's finding that the parties have \$78,000 in equity in the marital residence. The court found that in addition to the \$348,000 mortgage debt on the marital residence, the parties owe \$50,000 to Husband's mother, which "shall be applied towards the debt on the marital residence." Appellant's App. at 59. Because the marital residence appraised at \$400,000, the total equity in the house is \$2,000. We reverse the dissolution court's \$39,000 award to Wife and remand with instructions to split the \$2,000 home equity equally between the parties.

Reversed and remanded with instructions.

MAY, J., and MATHIAS, J., concur.