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IN THE
COURT OF APPEALS OF INDIANA

TIMOTHY S. EGNEW,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 32A01-0907-CV-347
	)	
PUREY R. EGNEW,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE HENDRICKS SUPERIOR COURT
The Honorable David H. Coleman, Judge
Cause No. 32D02-0711-DR-133

January 14, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Timothy S. Egnew ("Husband") challenges the trial court's decree dissolving his marriage to Purdey R. Egnew ("Wife").

We affirm.

ISSUE

Whether the trial court improperly included, improperly valued, and improperly divided certain assets in the marital estate.

FACTS

Husband and Wife began dating in high school. In approximately July of 1996, Wife became pregnant. Husband and Wife graduated from high school in May of 1997, and their first child was born on May 24, 1997. After graduation, Husband enrolled in a nine-month accelerated program at a technical institute and earned an associate's degree. Wife also enrolled in college, but dropped out during her second semester due to child care provider problems. Husband and Wife married on June 27, 1998.

During the marriage, Wife frequently expressed her desire to earn a college degree and to pursue a law degree. Although she enrolled in a few correspondence courses in 2004, she could not manage both her academic course load and her homemaking duties, which included raising three children under four years of age. Wife and Husband jointly agreed that she should leave school to raise their children and maintain their household.

Occasionally, during the marriage, Wife managed to work outside the home at part-time jobs, earning little more than $1,500.00 per year on average. At the time of the final hearing, Wife was earning minimum wage, for an annual salary of approximately $16,819.80. Husband, on the other hand, was the primary wage earner during the marriage, and grossed wages of approximately $127,000.00 in 2008 at Hitachi Data Systems. He also "accumulated a 401(k) account at [Hitachi], which had a date of filing value of $71,907.00 and a former 401(k) rollover from his prior employer that had a date of filing value of $13,796.00." (Order 6). Wife has no retirement accounts.

In 2004, Husband and Wife purchased a plot of land and began to build a new marital residence. The new home was projected to cost approximately $452,000.00. Construction was halted on or around October 1, 2006, when the parties separated. The bank took possession of the new home by way of a deed in lieu of foreclosure.

In the fall of 2007, Wife filed for Chapter 7 bankruptcy to discharge the debts in her name.[1] The bankruptcy court granted wife a discharge in bankruptcy regarding debts that were jointly or solely in her name, except the outstanding debt on the parties' Dodge caravan and the original marital residence, which she reaffirmed. As a result, she successfully discharged any liability that she had as a result of the debts held in her name, the deed in lieu of foreclosure, and any joint marital debt, excepting the outstanding debt on the parties' Dodge Grand Caravan and the original marital residence.

[1] Wife's voluntary petition for bankruptcy included some credit card indebtedness in excess of $25,000.00 that was solely in her name.

Also, in the fall of 2007, Husband negotiated a compromised payment regarding the credit cards held either jointly or in his name and, thereby, secured debt forgiveness from creditors. (Order 5). Husband later testified that in October of 2007, he had borrowed $20,000.00 from his family's business, Egnew Farms, to pay off the credit card indebtedness of the parties. As a result of the creditors' debt forgiveness, Husband had to declare additional income of $14,119.00 on his 2007 tax return and, consequently, had to pay taxes resulting from the debt compromise in 2007.

On November 16, 2007, Wife filed her petition for dissolution of the marriage. On February 8, 2008, the trial court issued a provisional order, wherein, *inter alia*, it ordered Husband to pay child support in the amount of $485.00 per week.

Before the final hearing, Husband and Wife stipulated to the following terms: (1) that the parties would share joint legal custody of the parties' four minor children, but that Wife would have sole physical custody; (2) that Husband would have parenting time pursuant to the Indiana Parenting Time Guidelines; (3) that Husband would pay $485.00 per week in child support; (4) that the personal property, including vehicles and bank accounts, had been divided to the mutual satisfaction of the parties; and (5) that Wife would retain possession of the marital residence.

On February 12, 2009, the trial court conducted a final hearing to address final property settlement, asset valuation, educational rehabilitative maintenance, tax exemption allocation concerns, debt allocation, child support arrearage, and future allocation of unpaid medical bills. On March 16, 2009, the trial court issued its findings

of fact and conclusions of law and decree of dissolution, wherein it found, *inter alia*, that the presumptive equal division of the marital estate would not be just and equitable. The trial court's conclusions of law were as follows:

CONCLUSIONS OF LAW

> 27. Pursuant to Indiana Code § 31-15-7-5, the court is to presume an equal division of marital property, but this presumption shall be rebutted by a party who presents relevant evidence of statutory factors herein.
>
> 28. One of those factors is the contribution of each spouse to the acquisition of property [regardless of] whether the contribution was income producing.
>
> 29. The court concludes that there was an interruption in the education of the Petitioner that occurred during the marriage as a result of homemaking or childcare responsibilities and that the parties both agreed that despite the expressed wishes of the Petitioner to get a college education, this process be interrupted and has been sporadic as a result of her homemaking responsibilities. Pursuant to I.C. § 31-15-7-2, the petitioner is eligible for educational rehabilitative maintenance.
>
> 30. The court further concludes that the earning capacity of each spouse is significantly unequal in that the social security wages for the Respondent in 2008 were in excess of $127,000.00 and the parties agreed and stipulated to a child support worksheet that shows 90% income differential to the Respondent and the Petitioner was imputed minimum wage.
>
> 31. The court further concludes that based on the fact that the Petitioner has completed two years of college, the Respondent should pay rehabilitative maintenance to the Petitioner not to exceed a period of two (2) years from the date of finalization of this matter.
>
> 32. The Respondent shall pay to the Petitioner $200.00 per week for 104 weeks beginning April 1, 2009.
>
> 33. The Respondent has a child support arrearage of $3,066.00 which was accumulated and has been in existence for over a year at this time.

34. This sum shall be paid within 180 days of date of this order.

35. The Petitioner and the Respondent did not have any of the personal property appraised nor did the Petitioner or the Respondent have the Longaberger baskets of the Petitioner appraised which the Respondent asserts has a value in excess of $11,000.00.

36. The court does not find either party qualified to estimate the value of these properties and therefore assesses no value to them.

37. Pursuant to Indiana Code I.C. § 31-15-7-4, the court finds that the Petitioner has rebutted the 50/50 presumptive split in that she provided non-monetary contributions to the preservation of marital assets, she should have possession of the marital residence for custody of the minor children and the earning capacities of the Petitioner and the Respondent are grossly different.

38. Based on Indiana Code § 31-15-7-6, the court concludes that there is little or no marital property of significant monetary value at the time of final separation.

39. As a result thereof, the court awards a money judgment to the Petitioner in the amount of 55% of the value of the retirement accounts of the Respondent as of the date of filing which were $71,907.00 in the Hitachi 401(k) and $13,769.00 in the Van Ausdall & Farrar 401(k) for a total retirement package of $85,676.00.

40. The court concludes that the Petitioner should receive a money judgment in the amount of $47,121.80 out of the retirement accounts of the Respondent which judgment shall be satisfied by a Qualified Domestic Relations Order out of these two accounts until the $47,121.80 judgment is satisfied.

41. Said Qualified Domestic Relations Order is to be prepared by counsel for the Petitioner with the cooperation of the Respondent.

42. The Respondent shall be entitled to claim all four of the parties' minor children on his 2008 tax returns.

43. Thereafter, commencing income year 2009, the Petitioner and Respondent shall divide evenly the parties' minor children for tax

> exemption purposes with the Petitioner claiming the two youngest minor children and the Respondent claiming the two oldest minor children.
>
> 44. The claiming of the minor children by the Respondent shall be contingent upon him being current on child support as of December 31st of the tax year being claimed.
> 45. The court approves the stipulations of the parties and makes them the order of this court and each party shall maintain possession of all personal property in their possession including their respective vehicles and bank accounts.
>
> 46. The Respondent shall execute a Quitclaim Deed within thirty (30) days of approval of this agreement by the court vesting sole and exclusive title in the marital residence in the Petitioner.
>
> 47. Each party shall pay any and all debt incurred in their name alone.
>
> 48. The Petitioner shall pay the debts on Petitioner's Exhibit 11.
>
> * * *
>
> 51. The Respondent shall pay attorney fees to counsel for the Petitioner . . . .

(Order 6-9). Husband now appeals.[2]

DECISION

Husband asserts that the trial court improperly included, improperly valued, and improperly divided certain assets and debts in the marital estate and that several of its findings are clearly erroneous.

[2] Wife filed no appellee's brief. When an appellee fails to submit a brief, we do not undertake the burden of developing arguments for the appellee, but instead, applying a less stringent standard of review, may reverse the trial court if the appellant establishes *prima facie* error. *Thurman v. Thurman*, 777 N.E.2d 41, 42 (Ind. Ct. App. 2002). *Prima facie* error is "error at first sight, on first appearance, or on the face of it." *Van Wieren v. Van Wieren*, 858 N.E.2d 216, 221 (Ind. Ct. App. 2006).

We initially note that because the trial court issued findings of fact and conclusions of law pursuant to Indiana Trial Rule 52, we must, therefore, apply the following two-tiered standard of review:

> First, we determine whether the evidence supports the findings and second, whether the findings support the judgment. In deference to the trial court's proximity to the issues, we disturb the judgment only where there is no evidence supporting the findings or the findings fail to support the judgment. We do not reweigh the evidence, but consider only the evidence favorable to the trial court's judgment. Challengers must establish that the trial court's findings are clearly erroneous. Findings are clearly erroneous when a review of the record leaves us firmly convinced [that] a mistake has been made. However, while we defer substantially to findings of fact, we do not do so to conclusions of law. Additionally, a judgment is clearly erroneous under Indiana Trial Rule 52 if it relies on an incorrect legal standard. We evaluate questions of law de novo and owe no deference to a trial court's determination of such questions.

Carmichael v. Siegel, 754 N.E.2d 619, 625 (Ind. Ct. App. 2001) (citations omitted).

The division of marital assets lies within the sound discretion of the trial court, and we will reverse only for an abuse of that discretion. *J.M. v. J.M.*, 844 N.E.2d 590, 602 (Ind. Ct. App. 2006). An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, including the reasonable inferences to be drawn therefrom. *Daugherty v. Daugherty*, 816 N.E.2d 1180, 1187 (Ind. Ct. App. 2004). "We will reverse a property distribution only if there is no rational basis for the award, and, although the circumstances may have justified a different property distribution, we may not substitute our judgment for that of the dissolution court." *Helm v. Helm,* 873 N.E.2d 83, 90-91 (Ind. Ct. App. 2007) (quoting *Augspurger v. Hudson,* 802 N.E.2d 503, 512 (Ind. Ct. App. 2004)).

All property, whether acquired before or during the marriage is included in the marital estate for property division. *Larkins v. Larkins*, 685 N.E.2d 88, 91 (Ind. Ct. App. 1997). Trial courts must divide marital property in a dissolution action in a just and reasonable manner. Ind. Code § 31-15-7-4. An equal division of marital property is presumed to be just and equitable. I.C. § 31-15-7-5. Trial courts may deviate from an equal distribution, provided that they consider the following statutory factors delineated in Indiana Code section 31-15-7-5: (1) the contribution of each spouse in the acquisition of the property, regardless of whether the contribution was income-producing; (2) the extent to which the property was acquired before the marriage or through inheritance or gift; (3) the economic circumstances of each spouse at the time the disposition of the property is to become effective; (4) the conduct of the parties during the marriage regarding their use of the property; and (5) the earning abilities of each party. *Id*. If the trial court deviates from an equal division, it must state the reasons for doing so. *Helm*, 873 N.E.2d at 91.

1. Allocation of Marital Debt

Husband argues that despite Wife's discharge of her debts in bankruptcy, the trial court should have set off to him a larger portion of the parties' assets to account for the $20,000.00 loan that he had to make to pay the negotiated credit card indebtedness compromise.[3] He argues that the trial court's failure to set off additional assets to him to

[3] Husband also challenges, as clear error, the trial court's finding that he failed to produce a promissory note for the $20,000.00 loan from his family's business. He directs our attention to Respondent's Exhibit D, sub-exhibit Z, and we acknowledge that what appears to be a promissory note appears therein. We

achieve a more fair distribution of the parties' joint indebtedness constituted clear error. We disagree.

In determining that a deviation from the presumptive equal division of marital assets and debts was warranted, the trial court considered evidence of (1) Wife's contribution to the acquisition of property regardless of whether the contribution was income-producing; and (2) the significant disparity between the parties' respective earning capacities. I.C. § 31-15-7-5.

The evidence established that despite Wife's educational and professional aspirations to earn a bachelor's degree and to pursue a law degree, she and Husband agreed that she would drop out of college to become a full-time homemaker and subsequent caregiver to the parties' four children. Wife's suspension of her education to become a full-time caregiver for the parties' oldest child and to manage of the parties' household at the time, enabled Husband to focus all of his energies on completing the accelerated academic requirements for attaining his associate's degree, "which he [subsequently] used . . . to support the family." (Order 3).

Thus, while Wife cared for the parties' four children and managed the parties' household over the ensuing years , Husband was able to earn a good salary and amass retirement savings accounts, whereas Wife had none. As the primary wage earner, Husband earned gross wages in excess of $127,000.00 in 2008; Wife, on the other hand,

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decline to find clear error, however, finding this to be a question of credibility and noting that we give "substantial weight" to the trial court's conclusions regarding the credibility of witnesses. *MacLafferty v. MacLafferty*, 829 N.E.2d 938, 940-41 (Ind. 2005).

with no post-secondary education,[4] only earned minimal wages and grossed approximately $16,819.80. In concluding that Wife had rebutted the presumptive equal division, the trial court noted the vast disparity -- a "90% income differential" -- between Husband and Wife's earning capacities. (Order 6).

In light of the foregoing, the trial court's decision not to award to Husband a larger share of the marital estate to compensate him for the $20,000.00 that he allegedly borrowed to cover the joint-indebtedness of the parties is not clearly against the logic and effect of the evidence before it; thus, we find no abuse of discretion.

2. Marital Residence and Personal Property

Next, Husband argues that the trial court "failed to acknowledge [in its findings] that Wife was awarded possession of the marital residence," and failed to include the value of the house in the marital pot for division. Husband's Br. at 11. We disagree.

The trial court's relevant findings and conclusions with respect to the marital residence to Wife are as follows:

> 37. Pursuant to Indiana Code section 31-15-7-4, the court finds that [Wife] has rebutted the 50/50 presumptive split in that she provided non-monetary contributions to the preservation of marital assets, she should have possession of the marital residence for custody of the minor children and the earning capacities of [Wife] and [Husband] are grossly different.
>
> * * *
>
> 46. [Husband] shall execute a Quitclaim Deed within thirty (30) days of approval of this agreement by the court vesting sole and exclusive title in the marital residence in [Wife].

[4] Although Wife took a few correspondence courses, "it became very difficult for her to pursue her post high school formal education plans while performing her homemaking responsibilities." (Order 4).

(Order 7, 9) (emphasis added).

In determining that Wife had rebutted the presumptive equal division of marital property, the trial court specifically considered the following statutory factors:

> (1) The contribution of each spouse to the acquisition of the property, regardless of whether the contribution was income producing.
>
> . . .
>
> (3) The economic circumstances of each spouse at the time the disposition of the property is to become effective, <u>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</u>.
>
> . . .
>
> (5) The earnings or earning ability of the parties . . . .

I.C. § 31-15-7-5 (emphasis added).

As regards statutory factor (1), Wife abandoned her academic and professional aspirations by agreement of the parties to become a full-time homemaker and caregiver to the parties' children and household, and enabled Husband to attain his academic degree and to earn a six-figure salary. Next, pursuant to statutory factor (3), after Husband and Wife stipulated that Wife should be awarded sole physical custody of the parties' four minor children, the trial court considered the relative economic circumstances of the parties and deemed it appropriate to award the marital residence to Wife "for custody of the minor children," as expressly contemplated under Indiana Code § 31-15-7-5. (Order 7). Lastly, with respect to statutory factor (5), which pertains to the parties' respective earnings or earning abilities, the record reveals that at the time of the final hearing, Wife

was earning minimum wage, while Husband earned gross income of approximately $127,000.00 in 2008.

Given Wife's contributions to the household; the gross disparity between their earning abilities; by stipulation of the parties, the desirability of awarding possession of the marital residence to Wife for the shelter and care of the parties' four minor children; and Wife's dire financial circumstances, we find no clear error from the trial court's finding that she should be awarded possession of the marital residence.[5]

3. Failure to Consider Marital Debt Discharged in Bankruptcy

Husband argues that the trial court's failure to equitably divide the joint debts between the parties or to set off to him a greater share of the marital estate in its division of the marital estate constituted an abuse of discretion. Specifically, he asserts that Wife's September 2007 bankruptcy filing discharged debts held solely in her name, "causing debt to shift to [him]." Husband's Br. at 12. He also asserts that the trial court failed to account for the fact that, in 2007, Wife filed her tax return separately and received a tax refund of $1,818.00, while he had to pay approximately $3,600.00 in taxes. For the reasons already discussed at length above, we find no clear error. The evidence reveals that the parties were separated as of October 1, 2006, and the trial court did not enter a provisional order until February 8, 2008. We find no abuse of discretion from the

[5] Husband also challenges, as clear error, the trial court's "fail[ure] to address the value of" his personal belongings, which he valued at $1,150.00, in its findings. Husband's Br. at 7. We decline to address this issue, because the trial court's finding 1(f) provides that "[t]he [parties] stipulated that the personal property had been divided to the mutual satisfaction of the parties . . . ." (Order 2).

trial court's decision not to consider potential tax implications for transactions occurring approximately two years before the court was called upon to intervene.

Husband bears the burden of making his case. Indiana courts have recognized the supremacy of the federal courts in matters related to bankruptcy proceedings; thus, whether a debt is discharged is left to the sole discretion of the bankruptcy court. *Hammes v. Brumley*, 659 N.E.2d 1021, 1027 (Ind. 1995); *Strohmier v. Strohmier*, 839 N.E.2d 234, 236 (Ind. Ct. App. 2005). Although states have concurrent jurisdiction to determine what constitutes a nondischargable maintenance and support obligation, there is no claim here that the disputed debt falls within this category. *Id.*

Nor has Husband demonstrated that the debts were somehow attributable to profligate or wanton spending by Wife. Wife merely discharged debts in her name by bankruptcy. Not only is such a lawful course of action, but, given (1) the staggering 90% income differential between the parties; (2) Wife's limited earning capacity; (3) her lack of post-secondary education; (4) the looming prospect of a divorce; and (5) Wife's inability to rely upon Husband's income in the future, her decision to discharge debts in bankruptcy may have been the most prudent course of action available to her. Husband, on the other hand, was in a much more favorable financial position than Wife and elected to negotiate a compromise or debt forgiveness arrangement with his creditors, thereby, receiving the benefit of the forgiveness of a portion of his outstanding debt obligations. We find no clear error.

4. Failure to Account for Stock Market Decline in Distribution of Funds from Father's 401(k) Retirement Accounts

Husband argues that the trial court abused its discretion in its distribution of funds from his retirement accounts. Specifically, he argues that the trial court erred in awarding to Wife a monetary judgment in the amount of 55%, or $47, 121.80, of the value of his 401(k) plans as valued on the date of filing of the petition for dissolution as opposed to the date of final hearing. We disagree.

We initially note that a trial court's disposition is to be considered as a whole, not item by item. *Fobar v. Vonderahe*, 771 N.E.2d 57, 59 (Ind. 2002). In that vein, we turn to the trial court's relevant findings:

> 37. Pursuant to Indiana Code § 31-15-7-4, the court finds that the Petitioner has rebutted the 50/50 presumptive split in that she provided non-monetary contributions to the preservation of marital assets, she should have possession of the marital residence for custody of the minor children and the earning capacities of the Petitioner and the Respondent are grossly different.
>
> 38. Based on Indiana Code § 31-15-7-6, the court concludes that there is little or no marital property of significant monetary value at the time of final separation.
>
> 39. As a result thereof, the court awards a money judgment to the Petitioner in the amount of 55% of the value of the retirement accounts of the Respondent as of the date of filing which were $71,907.00 in the Hitachi 401(k) and $13,769.00 in the Van Ausdall & Farrar 401(k) for a total retirement package of $85,676.00.
>
> 40. The court concludes that the Petitioner should receive a money judgment in the amount of $47,121.80 out of the retirement accounts of the Respondent which judgment shall be satisfied by a Qualified Domestic Relations Order out of these two accounts until the $47,121.80 judgment is satisfied.

(Order 7-8) (emphasis added).

In support of his argument that the trial court abused its discretion in ordering the distribution of funds from the 401(k) plans in payment of the monetary judgment, Husband directs our attention to *Ehle v. Ehle*, 737 N.E.2d 429 (Ind. Ct. App. 2000); *Beike v. Beike*, 805 N.E.2d 1265 (Ind. Ct. App. 2004); and *Case v. Case*, 794 N.E.2d 514 (Ind. Ct. App. 2003). His reliance upon *Ehle and Beike* is misplaced, however, because in those cases, the parties -- whether by stipulation or by settlement agreement -- had agreed as to the specific manner in which the retirement assets at issue would be distributed. Such is not the case here.

Case, however, gives us pause. In *Case*, the wife appealed the trial court's order granting the husband's verified petition for modification and adjusting the dissolution decree to account for a decline in the value of Husband's 401(k) plan. In distributing the marital assets, the trial court found that the wife had rebutted the presumptive equal division of the marital estate and awarded to her and the husband, respectively, lump-sum allocations of $50,000.00 and $48,389.00 of the value of the 401(k) plan.

Approximately six weeks after the trial court issued its order of dissolution, the husband moved to modify the decree because the value of the 401(k) plan had diminished from approximately $90,389.48 to $67,266.00. He argued that the modification was warranted inasmuch as the decree could not be executed as written. He argued further that the parties should share both the risks and rewards associated with investing in the

stock market. In granting the husband's motion, the trial court observed that the diminution in value was neither caused nor attributable to his conduct, but rather, occurred due to independent market forces. Accordingly, acknowledging the unfairness of ordering the husband alone to suffer the consequences of investing in the stock market, the trial court ordered that the wife receive 55.31% of the value of the 401(k) plan.

In affirming, on appeal, the trial court's judgment, a panel of this court noted the the decree lacked express language regarding the allocation of risk and noted that such "risks of losses" and "rewards of growth" were inherent in investment plans. *Case,* 794 N.E.2d at 518 (citing *Niccum,* 734 N.E.2d at 640). Acknowledging "the principle that both parties to a dissolution are to share in the rewards and risks associated with an investment plan that is a marital asset," and concluding that wife would have received a windfall from the decree as written, while husband would suffer an unfair penalty, the panel upheld the trial court's modification of the decree. *Id.*

Although certain similarities exist between *Case* and the instant facts, we observe a critical distinction between the stated objectives of the respective trial court judges. In *Case,* the trial court acknowledged the wife's limited education and earning ability and concluded that she had rebutted the presumptive equal division, but expressly stated that it did not intend to give her an award "anywhere approaching 60%" of the value of the 401(k) plan. *Id*. at 515. Such is not the case here, where the trial court was hard-pressed to find a source of assets with which to effect its desired distribution.

In the instant case, citing Wife's non-monetary contributions to the preservation of marital assets and the gross disparity between the parties' education and earning capacities of the parties, the trial court concluded that Wife had rebutted the presumptive equal division; however, it expressly bemoaned the lack of "marital property of significant monetary value at the time of final separation" with which to effect its desired distribution. (Order 7). "As a result thereof," the trial court, in its sound discretion, deliberately endeavored to effect its desired distribution by awarding to Wife a monetary judgment to be set off or paid out of the 401(k) plans -- the parties' sole asset of significant value[6] -- selecting the date of the filing of Wife's petition for dissolution as the valuation date. (Order 7). *See Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996) ("[A] trial court has discretion when valuing marital assets to set any date between the date of filing the dissolution petition and the date of the hearing.").

In awarding to Wife a "mone[tary] judgment in the amount of $47,121.80 [to be paid] out of the retirement accounts of the Respondent," the trial court effected a just and equitable distribution of the marital estate due to the fact that Wife had rebutted the presumptive equal division and was, in the court's sound discretion, entitled to 55% of the value of the 401(k) plans at the time of the filing of the petition for dissolution of the marriage. Based upon the foregoing, we find no abuse of discretion.

5. Failure to Assess Value to Wife's Longaberger Baskets

[6] The 401(k) plans appear to be the parties' sole asset of significant monetary value with the exception of the marital residence.

Lastly, Husband asserts that the trial court's finding that neither party was "qualified to estimate the value of [Wife's] Longaberger basket collection] and therefore" assessing no value to them was clearly erroneous. We disagree.

At the final hearing, Wife attributed a $2,000.00 value to the baskets, while Husband valued them at $11,000.00. The trial court noted the arbitrariness of the parties' respective valuations in its findings as follows:

> 35. [Wife] and [Husband] did not have any of the personal property appraised nor did [Wife] or [Husband] have the Longaberger baskets . . . appraised which [baskets Husband] asserts ha[ve] a value in excess of $11,000.00.
> 36. The court does not find either party qualified to estimate the value of these properties and therefore assesses no value to them.

(Order 7).

Husband argues that "[t]he parties agreed that the baskets had value, but simply disagreed on the dollar amount" and that "[a]t the least, the court could have awarded the Wife's low assessment of $2,000, rather than nothing at all." Husband's Br. at 15.

Although we find this argument to be persuasive, given the extent to which the Indiana Code section 31-15-7-5 statutory factors weigh heavily in Wife's favor, we cannot say that the trial court's refusal to assign some dollar value to the Longaberger baskets was clear error.

Affirmed.[7]

MATHIAS, J., concurs.

ROBB, J., concurs in result without separate opinion.

[7] We find it highly irregular that the record as presented to us contains no list of the marital assets indicating exactly which property was placed into the marital pot and how said property was divided between the parties. It is unclear whether this omission is an oversight by Husband or by the trial court. It is the responsibility of the party appealing the trial court's judgment to present us with a record that will support his arguments.