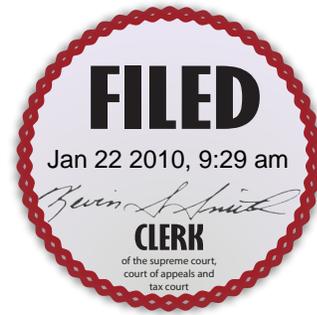


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**IN THE
COURT OF APPEALS OF INDIANA**

TANYA ALTON,)
)
Appellant-Respondent,)
)
vs.) No. 82A05-0903-CV-161
)
MATTHEW ALTON)
)
Appellee-Petitioner.)

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Terrell R. Maurer, Judge
Cause No. 82D04-0709-DR-895

January 22, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Tanya Alton (Tanya) appeals from the trial court's grant of Matthew Alton's (Matthew) motion to correct error, in which the trial court altered the distribution of marital assets set forth in its final dissolution decree based upon post-dissolution evidence submitted during the motion to correct error hearing. Wife presents one issue for our review: Did the trial court err in granting Matthew's motion to correct error?

We affirm.

Tanya and Matthew were married on July 1, 1994, and on September 17, 2007, Matthew filed a petition to dissolve the marriage. No children were born of the marriage. After several continuances, the trial court held a final evidentiary hearing on the dissolution petition on September 22, 2008. At the time of the final hearing, Tanya was self-employed providing cosmetic services such as manicures and pedicures and Matthew was employed as a conductor with CSX Railroad. The parties presented evidence showing that during the marriage they accumulated marital property and incurred no marital debt. Based on the evidence, the trial court concluded that an equal division of the marital property was just and reasonable. The court entered its order setting forth its equal division of marital assets.

At issue in this appeal is the trial court's distribution of two individual retirement accounts (IRA) held solely in Matthew's name. During the final hearing, both parties submitted evidence that as of the date of the filing of the dissolution petition Matthew's Principal IRA was valued at \$36,194.00 and that his Edward Jones IRA was valued at \$29,917.00. In its distribution of marital assets, the trial court adopted the values of the IRAs submitted by the parties. The court then ordered that Matthew transfer the entire amount in

the Principal IRA (i.e., \$36,194.00) to Tanya and that Matthew retain the entire amount in the Edward Jones IRA (i.e., \$29,917.00). After taking into account the value of personal property awarded to each party, the value of stock awarded to Matthew, and the amounts of the IRAs awarded, the trial court ordered Matthew to pay Tanya a property equalization payment of \$3540.00 within thirty days of the final hearing.

On October 22, 2008, Matthew filed a Motion to Correct Error. Tanya objected thereto and on November 10, 2008, filed an information for contempt based upon Matthew's failure to pay the property equalization payment within the time period set by the court. The court held hearings on the pending motions on December 8, 2008 and February 19, 2009. During the December 8 hearing, Matthew submitted statements showing a decrease in the values of his Principal and Edward Jones IRAs from the date-of-separation values both parties had previously submitted to the court. As noted above, during the final hearing the parties informed the court that as of the date of the filing of the dissolution action (September 17, 2007), the Principal IRA was valued at \$36,194.00. During the motion to correct error hearing, Matthew presented evidence that showed that as of March 31, 2008 (during the pendency of the proceedings), the ending account value for the Principal IRA was \$33,815.45 and three weeks after the final hearing, the Principal IRA had an account value of \$24,847.21. By December 5, 2008, the value of the Principal IRA had fallen to \$18,494.60. Matthew's evidence also showed that his Edward Jones IRA has suffered a similar decline in value. The date-of separation value (i.e., as of September 17, 2007) submitted to the court by both parties for the Edward Jones IRA was \$29,917.00. Matthew's evidence during the

motion to correct error hearing showed that as of March 31, 2008, the value of the Edward Jones IRA had fallen to \$27,584.37. By October 2008, this account was further reduced to \$20,938.00, and as of December 5, 2008, the Edward Jones IRA was valued at \$17,889.00. Matthew argued that it was unfair that he bear the risk of loss during the pendency of the proceedings especially since the decline in the value of his IRAs was due to market forces, not any fault attributable to him. Matthew further pointed out that given the decrease in value, the trial court's distribution of marital property was not equal.

During the second motion to correct error hearing held on February 19, the parties submitted additional evidence that reflected the values of the IRAs on or about the date of the final hearing. With regard to the Principal IRA, statements reflected its value as of September 22, 2008 (the date of the final hearing) as \$31,509.62. A statement for the Edward Jones IRA reflected its value as of September 26, 2008 (four days after the final hearing) as \$24,517.01. During the hearing, the trial court noted it had not made a mistake in its distribution of marital property in that it had adopted the evidence presented at the final hearing showing the date-of-separation values of the IRAs. The trial court reiterated, however, that its intention was to divide the marital property evenly. The trial court found it "unfair to saddle the Husband with the whole responsibility of the stocks falling in value from the time of the exhibit that [it] had at the time [it] made [its] ruling and the time of the Final Decree." *Transcript of February 18, 2009 MCE Hearing* at 13. The trial court therefore granted Matthew's motion to correct error and adjusted its distribution of marital assets to achieve an equal distribution. Specifically, the court ordered the parties to equally

divide the IRAs using the values submitted during the February 19 hearing that reflected the values of those accounts as of the date of the final dissolution hearing. The court ordered Matthew to complete the transfer to Tanya by the end of that week. The court also adjusted Matthew's property equalization payment to be \$3,137.31 and ordered that it be paid from Matthew's share of proceeds from the sale of the marital residence. Tanya appeals the trial court's decision altering its final distribution of marital assets, specifically with regard to the division of the IRAs.

“A trial court is vested with broad discretion to determine whether it will grant or deny a motion to correct errors.” *Carter-McMahon v. McMahon*, 815 N.E.2d 170, 174 (Ind. Ct. App. 2004). “A trial court has abused its discretion only if its decision is clearly against the logic and effect of the facts and circumstances before the court or the reasonable inferences therefrom.” *Id.*

On appeal, Tanya argues that the trial court erred in considering post-dissolution evidence and in dividing Matthew's IRAs at post-dissolution values. We begin by noting that a trial court is afforded broad discretion when valuing marital assets to set any date between the date of filing the dissolution petition and the date of the hearing. *Quillen v. Quillen*, 671 N.E.2d 98 (Ind. 1996). “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. We entrust this allocation to the discretion of the trial court.” *Id.* at 103.

Here, the trial court made clear during the final dissolution hearing that it intended an equal division of marital property. The court reiterated its intent at the motion to correct error hearing. The decrease in the value of Matthew's IRAs, however, made an equal allocation impossible insofar as the trial court based its division of assets on the date-of-separation values. The inequity stems from the manner in which the trial court initially divided the IRAs, i.e., the trial court set over to Tanya the entire value of the Principal IRA and left to Matthew the value of the Edward Jones IRA. The trial court's division of marital property did not account for the decrease in value of the IRAs during the pendency of the proceedings. Given the varying decreases in value of both IRAs during the pendency of the proceedings, the manner in which the trial court divided the assets, i.e., setting over the entire value of one IRA to Tanya and the other to Matthew, ultimately rendered an unequal division of marital property, which was contrary to the court's stated intent.

At the motion-to-correct-error hearing, the trial court found it unfair to "saddle" Matthew with the entire risk of loss during this time period. *Transcript* at 13. The trial court thus altered its final distribution of marital property to achieve its intended goal of an equal division. Specifically, the court ordered that the parties should "equally divide" each of Matthew's two IRAs and that Tanya's portion (and, therefore Matthew's portion) were be to calculated "as of the date of the final dissolution dated September 22, 2008, plus or minus any gains or losses." *Appendix* at 29. Choosing the date of the final hearing as the date on which to value the IRAs was a decision well within its discretion of the trial court. *See Quillen v. Quillen*, 671 N.E.2d 98. The trial court's alteration of its final distribution of

marital property was consistent with and helped the court achieve its stated intention of equally dividing the marital property. We do not find any error in the trial court's consideration of evidence regarding the value of Matthew's IRAs during the motion to correct error hearing or its alteration of its distribution in order to achieve an equal division of marital property.

Tanya also argues that the trial court erred in considering post-dissolution values of Matthew's IRAs. In this vein, Tanya argues that Matthew had complete control over the IRAs and even testified that she told Matthew to adjust his investments to a more conservative strategy until the divorce was complete. Tanya further argues that had Matthew transferred the value in the Principal IRA in a timely manner that the decline in value would not have been nearly as significant because she claims she would have invested the money more conservatively.

We first note that at no point did Tanya seek assistance from the court in protecting the value of the IRAs. Further, at no point did Tanya request the court to order Matthew to transfer her interest in the IRA following the final dissolution decree. We can find no fault with the trial court for not acting in the absence of a request.

Furthermore, we find Tanya's argument to be without merit insofar as the trial court did not consider post-dissolution values. In its oral statements at the motion to correct error hearing and in its order granting Matthew's motion to correct error, the court made clear that it was considering only the values at the time of (or as near as practicable to) the final dissolution hearing. Indeed, the trial court did not have jurisdiction to consider post-

dissolution values of the IRAs. *See Quillen v. Quillen*, 671 N.E.2d 98. Consistent with its stated intention to equally divide the marital property, in distributing the IRAs, the trial court awarded Tanya and Matthew equal fifty-percent interests in each IRA account. The court did not award Tanya a sum-certain, i.e., a cash payment equivalent to fifty-percent of the value of the IRA accounts. Rather, Tanya received a fifty-percent interest in each IRA account, as did Matthew. Although the IRAs decreased significantly in value by the time of the court's ruling on the motion to correct error hearing, it remains that the trial court properly awarded each party a fifty-percent interest therein. The losses are equally shared by both parties. The manner in which the trial court adjusted its final distribution ensured that the division of the marital estate remained equal regardless of the value of the IRAs at the time Matthew transfers to Tanya her fifty percent interest.¹

Judgment affirmed.

NAJAM, J., and BRADFORD, J., concur.

¹ Likely intending to limit damage from further declines in the value of the IRAs, the trial court gave Matthew two days after the motion to correct error hearing to transfer to Tanya her interests in the IRAs. Upon the transfer of her interest, Tanya and Matthew can separately manage their interests as they see fit.