



### Case Summary and Issue

Molly C. Wilson appeals the trial court's order dissolving her marriage and distributing marital property. On appeal, she raises the sole issue of whether the trial court erred in awarding the retirement account of her then-husband entirely to him. Concluding the trial court did not abuse its discretion, we affirm.

### Facts and Procedural History

Molly and Charles W. Wilson married in April 1991 and separated in November 2008. During their marriage they had two children, one born February 27, 1995, and the other born February 13, 2002. In November 2008, Charles discovered Molly had begun a relationship with a male inmate at the prison where she worked. She spoke with the inmate daily via her cellular phone and he mailed letters to the family home indicating the two planned to marry upon his release within the next few months. While the inmate was still in prison, Molly wired him a total of over \$500 from the Wilsons' joint bank account over the course of several transactions. Charles and Molly separated in late November 2008, and soon after, Molly was fired for cause for engaging in misconduct with a different inmate.

On December 2, 2008, the trial court held a provisional hearing regarding child custody, property distribution, and other matters. Appearing pro se, Molly sought and the trial court granted her provisional possession of the Wilsons' 2008 Dodge Ram truck. The trial court also ordered she make all scheduled payments on the truck loan at least until the final hearing. The trial court granted Charles provisional physical custody of their children and possession of the marital home. Because Charles was employed and Molly was not, he

was also ordered to pay all debts and bills except for that owing on the truck provisionally granted to Molly. Molly received parenting time, her personal possessions, and three days to vacate the home. The trial court also entered a temporary restraining order prohibiting Molly from giving money to any inmates and also prohibiting her from allowing any contact between the inmate who had mailed her letters and the children.

At the final hearing in late 2009, Charles and Molly presented the trial court with several partial compilations of the value of marital assets. Each party entered into evidence a proposed division of assets and debts. The proposed divisions differ not only in their valuations of major items, such as the marital home and several vehicles, but also in what items were included.

By the time of the final hearing, Charles had worked for Jasper Engines and Transmissions (“Jasper”) for twenty-five years. He ascended ranks through the company, becoming a low-level supervisor after about five years, and now exercises various responsibilities including direct supervision of fifteen employees and advisory support for about one hundred and fifty others. Jasper has also paid for his continuing professional education. Throughout his employment, his retirement account has grown to over \$52,000.

Molly testified at the final hearing that she planned on remaining unemployed while caring for the home and her children upon marrying Michael Boggan, who owns a tree and debris removal business.

The trial court ordered the following: custody of the children to Charles; parenting time with some restrictions for Molly; Molly shall pay child support to Charles; Charles shall

maintain health and dental insurance for the children, and each shall pay a specified percentage of any uninsured expenses; Charles may claim the children as dependents for state and federal income tax purposes; Charles shall receive the marital home and be responsible for the two accompanying mortgages; Charles shall receive the Grand Am and accompanying loan; Charles shall receive the Harley and accompanying loan; Charles shall receive all personal property and fixtures in his possession; Molly shall receive items Charles purportedly already delivered to her and several other specific items; Charles shall pay the parties' debts on the Mastercard, Visa, Discover, and Best Buy credit cards and "any remaining deficiency indebtedness" for the Dodge Ram truck; each party shall pay their own medical bills; Molly shall receive the tanning bed and accompanying loan; "[b]ecause the husband is taking on almost all of the martial [sic] debt he shall receive his Jasper Engine[s] and Transmission[s] Pension in its entirety"; Charles shall receive the entire insurance reimbursement check for a destroyed hot tub; Charles shall pay Molly "for her one-half of the parties['] state and federal tax refunds" and a lab testing fee "for a total cash equalization" between the parties; Charles shall be the custodian of the children's bank accounts; and Charles and Molly shall split their cellular phone lines and pay for their own usage to date. Appellant's Appendix at 11-13.

Molly now appeals. Additional facts will be supplied as appropriate.

## Discussion and Decision

### I. Standard of Review

We apply a clearly erroneous or abuse of discretion standard of review to property division upon dissolution of marriage. Chase v. Chase, 690 N.E.2d 753, 755 (Ind. Ct. App. 1998). A party challenging the property division must overcome the presumption that the trial court made all proper considerations and complied with the law, which is “one of the strongest presumptions applicable to our consideration on appeal.” Wilson v. Wilson, 732 N.E.2d 841, 844 (Ind. Ct. App. 2000), trans. denied. “We will reverse a property distribution only if there is no rational basis for the award; that is, if the result reached is clearly against the logic and effect of the facts and circumstances before the court, including the reasonable inferences to be drawn therefrom.” Id. We will not reweigh the evidence or assess the credibility of witnesses, and we consider only the evidence most favorable to the trial court’s decision. Chase, 690 N.E.2d at 755. The trial court’s disposition is considered “as a whole, not item by item.” In re Marriage of Snemis, 575 N.E.2d 650, 653 (Ind. Ct. App. 1991). Even if “the same circumstances may have justified a different property distribution[,] [we cannot] substitute our judgment for that of the divorce court.” Wilson, 732 N.E.2d at 844.

## II. Equal Division of Property

Indiana Code section 31-15-7-5 provides that a trial court “shall presume that an equal division of the marital property between the parties is just and reasonable. However, this presumption may be rebutted by a party who presents relevant evidence . . . .” Id. If a trial court finds sufficient evidence to deviate from the statutory presumption of equal division, it must enter findings explaining its reasoning. Kirkman v. Kirkman, 555 N.E.2d 1293, 1294 (Ind. 1990).

On appeal Molly takes issue only with the trial court's award of Charles's pension entirely to him. Molly argues Charles did not present sufficient evidence to rebut the presumption of equal division and the trial court thereby erred in deviating from this presumption.

Molly correctly points out that the trial court did not expressly state it was operating under the presumption of equal division. However, the trial court's order as a whole demonstrates it followed the statutory presumption of equal division. See Snemis, 575 N.E.2d at 653 (stating we consider the order as a whole).

At the final hearing, the trial court heard testimony from Charles, Molly, Boggan, and Molly's eldest daughter (an adult who was born prior to Charles and Molly's marriage). The trial court weighed the various documents entered into evidence and the conflicting testimony of witnesses. Charles was awarded personal property and fixtures in his possession, and Molly was awarded numerous specific items that she requested, some of which Charles volunteered to give her, and items already in her possession. In addition to the trial court's explicit designation of each item of property and debt, the following statements indicate the trial court's intention and belief that the order, as a whole, effectuated an equal division:

7. . . . Each party is responsible for and shall hold the other harmless on their own medical bills.

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9. Because the husband is taking on almost all of the martial [sic] debt he shall receive his Jasper Engine[s] and Transmission[s] Pension in its entirety.

10. . . . [T]he wife shall receive \$2895.00 for her one-half of the parties['] state and federal tax refunds plus \$98.00 for the lab testing fee for a total cash equalization from the husband to the wife . . . .

11. In dividing the marital property and debt this Court considered that this has been a long term marriage but that the husband has taken on most of the

debt, the wife failed to pay for the Dodge Ram as ordered provisionally by the Court resulting in the husband paying virtually all of the provisional expenses, the wife has dissipated marital assets, and the husband is paying the living expenses of the minor children of the parties.

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Appellant's App. at 12-13.

Charles was awarded the marital home but also the mortgage debts for almost the entire value. Charles was allotted almost all of the family debt – for various vehicles, credit cards, medical bills, and the bank loan for the truck that was repossessed when Molly did not make the payments as provisionally ordered. There was conflicting evidence as to the value of these debts, and likewise conflicting evidence regarding the value of the assets. The trial court's order demonstrates its weighing of that evidence, assessment of the credibility of witnesses, and intent to effectuate equal division including allocation of the outstanding debt on the Dodge Ram truck.

We pause to discuss further the Dodge Ram truck loan because a disagreement over its value forms the basis for much of Molly's argument that the trial court's division is not equal. At the final hearing, Charles listed the debt for the truck loan as \$38,893.61, but conceded during his testimony that following repossession and sale, the debt owed is "like [\$]17,000 some." Transcript of Final Hearing at 72. The difference between the amount he listed and the amount he conceded is nearly \$22,000. Although this is a relatively large difference, the trial court apparently considered this concession and the value of this debt and allocated to Charles "any remaining deficiency indebtedness" for this loan. Appellant's App. at 12. The trial court determined that allocating to Charles the remaining debt made the

overall division approximately equal. Accordingly, we do not find the trial court abused its discretion in awarding the entire pension account to Charles as part of and to effectuate equal division.

Molly next argues the trial court erred in failing to state its reasoning for deviation from the presumption of equal division. It is well-settled that “express trial court findings will not be compelled for insubstantial deviations from precise mathematical equality.” Kirkman, 555 N.E.2d at 1294. In determining whether a deviation from precise mathematical equality is substantial enough to trigger the requirement of an explanation, we consider, on a case-by-case basis, the degree of the deviation and the size of the marital estate to be divided. Hoskins v. Hoskins, 611 N.E.2d 178, 180 (Ind. Ct. App. 1993). As mentioned, the parties entered conflicting evidence regarding the size of the marital estate. The trial court was not required to and did not enter specific findings as to the size of the marital estate, and did not state the amount of any deviation from precise mathematical equality. However, as we concluded above, the trial court order demonstrates a clear intent and effectuation of approximate equal division including the relative value of the outstanding loan on the truck. Accordingly, we conclude the trial court was not required to explain any deviation from precise mathematical equality.

Finally, Molly argues a retirement account is unique in that even if awarding it solely to Charles would have been appropriate as to its amount, the nature of a pension – particularly, exemption from creditors’ claims – makes it such that the pension should have been divided equally (even if doing so would call for the trial court to assign more of the

marital debt to Molly). We disagree. Although Molly did receive a debt for the tanning bed, which she estimates to be \$1,000 or less, and any of her own medical bills (for which no debt is apparent), Charles received tens of thousands of dollars in debt in addition to approximately \$140,000 of debt for the marital home. For this reason, awarding Charles the entire pension and accompanying protection from creditors seems reasonable and consistent with an equal division of marital assets. Further, aside from a statute indicating a pension's protection from creditors, Molly makes no argument supported by legal authority for this proposed special treatment of pension accounts in the division of marital property. Therefore, the trial court did not abuse its discretion by awarding the pension solely to Charles.

#### Conclusion

The trial court weighed the evidence and assessed the credibility of witnesses and, following the statutory presumption of equal division, determined that awarding Charles's entire retirement account to him would effectuate an equal division. Any disparity was not significant enough to trigger the requirement for the trial court to state its reasons for each distribution decision or any deviation from precise mathematical equality. Following the statutory presumption, the trial court did not abuse its discretion, and we therefore affirm.

Affirmed.

RILEY, J., and BROWN, J., concur.