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**IN THE  
COURT OF APPEALS OF INDIANA**

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JOHN L. CHRISTOS, )  
 )  
Appellant-Respondent, )  
 )  
vs. ) No. 64A03-0911-CV-552  
 )  
ALEXIA CHRISTOS, )  
 )  
Appellee-Petitioner. )

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APPEAL FROM THE PORTER SUPERIOR COURT  
The Honorable James V. Tsoutsouris, Temporary Judge  
Cause No. 64D01-0711-DR-11109

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**April 21, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

John L. Christos (“John”) appeals from the trial court’s division of marital property in the dissolution of his marriage to Alexia Christos (“Alexia”). John raises two issues that we consolidate and restate as: whether the trial court abused its discretion by omitting items from the net marital estate.

We affirm in part, reverse in part and remand.

### **FACTS AND PROCEDURAL HISTORY**

In this action for dissolution of marriage, the parties resolved the issues involving child support, custody, and parenting time through mediation and a hearing separate from a subsequent hearing concerning the division of marital assets. The subject of this appeal is the trial court’s findings of fact, conclusions thereon, and order dividing those marital assets.

During the hearing to determine the division of marital assets, John presented evidence concerning a promissory note executed by him to his parents in the principal sum of \$220,000.00 plus interest at 6.50% per annum. At the time of the final hearing, the balance due on the note, including principal and interest, was \$311,722.00. John had purchased a restaurant during the marriage, and his father guaranteed the loan necessary for that purchase. John testified that his business began to fail in early 2007, and he had to sell it for a loss in May of 2007. John’s father ultimately satisfied the guarantee to the bank by refinancing that obligation and was currently paying \$4,000.00 per month on the loan. He testified at the hearing that he expected John to repay him at some point on the promissory note even though he had yet to receive payment.

John maintained payments on the parties’ credit card debt and also paid the guardian

ad litem fees. After the hearing regarding child support, custody, and parenting time, and pursuant to an agreement between the parties, John paid \$3,500.00 to Alexia by a check for \$2,500.00 dated July 14, 2009, and another check for \$1,000.00 dated July 31, 2009. John included that payment to Alexia in his proposed division of marital assets as a credit against her share of the marital estate. The real estate owned by the parties had a net value of approximately \$202,427.94.

After giving John and Alexia time to submit proposed findings of fact and conclusions thereon, the trial court issued its order dividing the marital estate. The trial court found the net marital estate to be \$382,606.79, found that an unequal division of the marital estate was necessary, awarding 45% to John and 55% to Alexia. The trial court ordered John to surrender to Alexia 55% of each of the IRA accounts and to pay to her the remaining balance of her share of the marital estate within sixty days of the order to effectuate the division of the marital estate. John now appeals.

## **DISCUSSION AND DECISION**

### **Standard of Review**

Generally, when, as here, a trial court enters findings of fact and conclusions thereon pursuant to Ind. Trial Rule 52(A), we apply a two-tiered standard of review; we determine first whether the evidence supports the findings, and second, whether the findings support the judgment. *Davis v. Davis*, 889 N.E.2d 374, 379 (Ind. Ct. App. 2008). 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. *Id.* We do not reweigh

the evidence, but consider only the evidence favorable to the trial court's judgment. *Id.* Those appealing the trial court's judgment must establish that the findings are clearly erroneous. *Id.* Findings are clearly erroneous when a review of the record leaves us firmly convinced that a mistake has been made. *Id.* We do not defer to conclusions of law, however, and evaluate them *de novo*. *Id.*

We initially note that Alexia has failed to file an appellee's brief. In those situations we need not undertake the burden of developing arguments for the appellee. *Butrum v. Roman*, 803 N.E.2d 1139, 1142 (Ind. Ct. App. 2004). Applying a less stringent standard of review, we may reverse the trial court if the appellant establishes prima facie error. *Id.* Prima facie error is defined as "at first sight, on first appearance, or on the face of it." *Willard v. Peak*, 834 N.E.2d 220, 223 (Ind. Ct. App. 2005).

### **I. Abuse of Discretion**

John does not challenge the trial court's decision to deviate from the presumptive equal division of the marital estate. Instead, John argues that the trial court abused its discretion by failing to include the commercial liability owed to his father as a marital debt when arriving at the net marital estate and by failing to credit the \$3,500.00 payment John made to Alexia prior to the final hearing against her share of the net marital estate.

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. *Nornes v. Nornes*, 884 N.E.2d 886, 888 (Ind. Ct. App. 2008). An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances presented. *Id.* When we review a

challenge to the trial court's division of marital property, we may not reweigh the evidence or assess the credibility of witnesses, and we will consider only the evidence most favorable to the trial court's disposition of marital property. *Id.*

Although John presented evidence that he paid \$3,500.00 to Alexia prior to the final hearing, the trial court did not make a finding regarding the payment and did not credit the payment against Alexia's share of the net marital estate. Although John argues on appeal that the payment was made pursuant to an agreement negotiated by counsel, he fails to present any evidence of such agreement or its terms. Accordingly, we affirm the trial court's decision in this regard.

In regard to the commercial liability, John argues that the trial court abused its discretion by finding that, during John and Alexia's marriage, John executed a promissory note to his father regarding the loan for the restaurant, but failing to include that commercial liability owed to John's father in the marital estate.

It is well-established that all marital property goes into the marital pot for division, whether it was owned by either spouse before the marriage, acquired by either spouse after the marriage and before final separation of the parties, or acquired by their joint efforts. Ind. Code § 31-15-7-4(a); *Beard v. Beard*, 758 N.E.2d 1019, 1025 (Ind. Ct. App. 2001), *trans. denied*. This "one-pot" theory ensures that all assets are subject to the trial court's power to divide and award. *Thompson v. Thompson*, 811 N.E.2d 888, 914 (Ind. Ct. App. 2004), *trans. denied*. Marital property also includes both assets and liabilities. *Capehart v. Capehart*, 705 N.E.2d 533, 536 (Ind. Ct. App. 1999), *trans. denied*. The trial court has no authority to

exclude or set aside marital property, but must divide all property. *Moore v. Moore*, 695 N.E.2d 1004, 1010 (Ind. Ct. App. 1998).

We find that there is evidence in the record that John executed the promissory note, his father did not forgive that debt, and John's father was paying \$4,000.00 per month on a loan he obtained after John's restaurant failed in order to satisfy his obligations as guarantor of John's loan for the restaurant. The trial court abused its discretion by failing to include John's commercial liability to his father in the marital estate.

We remand this matter to the trial court with instructions to redivide the marital estate to include the indebtedness owed to John's father and his spouse in the marital estate.

Affirmed in part, reversed in part and remanded.

FRIEDLANDER, J., and ROBB, J., concur.