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APPELLANT PRO SE:

DONALD W. SNOVER
Carlisle, Indiana

IN THE
COURT OF APPEALS OF INDIANA

DONALD W. SNOVER,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 77A05-0812-CV-719
	)	
LINDA K. SNOVER,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE SULLIVAN SUPERIOR COURT
The Honorable Thomas E. Johnson, Judge
The Honorable Ann Smith Mischler, Magistrate
Cause No. 77D01-0804-DR-108

June 4, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Donald Snover, acting pro se, appeals the trial court's distribution of property pursuant to the dissolution of his marriage to Linda Snover. For our review, Donald raises two issues, which we reorder and restate as: 1) whether the trial court abused its discretion when it allowed Donald to submit his claim through documentary evidence but denied his request to participate in the final hearing by videoconference; and 2) whether the trial court abused its discretion when it awarded the entire marital residence to Linda. Concluding Donald had sufficient opportunity to participate in the final hearing but that the trial court abused its discretion when it determined Donald had no interest in the marital residence, we remand.

Facts and Procedural History

Donald and Linda were married on April 27, 1996. At that time, Linda lived in a house owned by her father; Donald moved into the house just prior to their marriage. For the next eight years, Donald and Linda lived in the house together and paid rent to Linda's father in the amount of $400.00 per month. During that time, Donald worked and provided financially for the family while Linda cared for the home. On May 27, 2004, Linda's father transferred ownership of the property to Linda, only, by a quit-claim deed. Linda did not pay any money to purchase the property from her father, and she currently owns the property free of any liens or mortgages.

On May 29, 2004, Donald was arrested and taken to jail. Donald was subsequently convicted of a felony and sentenced to the Department of Correction; he is currently

incarcerated at the Wabash Valley Correctional Facility. Since his arrest on May 30, 2004, Donald has not lived in the home or contributed financially to support the home or Linda.

On April 3, 2008, Donald filed a petition for dissolution of his marriage. The trial court set the matter for final hearing on July 10, 2008. Donald failed to appear for the July 10th hearing because he was incarcerated. The trial court issued an order requiring Donald to submit a waiver of final hearing or to object to the court granting summary dissolution of marriage. Donald filed an objection on July 24, 2008, specifying the distribution of the marital residence as the only contested issue and requesting the trial court allow him to participate in the final hearing by videoconference from the prison.

The trial court apparently misconstrued Donald's request to participate via videoconference as a request for a transport order and denied the request in a July 24, 2008 order. In the order the trial court stated: "The Court sets this matter for Final Hearing on August 28, 2008, at 9:00. The Petitioner can hire an attorney to appear at the hearing or can submit his evidence via documentary evidence prior to the Final Hearing date." Appellant's Appendix at 37. On August 12, 2008, Donald filed a motion to continue the final hearing and a motion for videoconference. The trial court granted the continuance, but denied the motion for videoconference without comment. The trial court then reset the final hearing for October 30, 2008.

On October 23, 2008, Donald filed a memorandum of law, written questions for Linda, an affidavit relating facts about the marital residence, and documentary evidence showing the assessed value of the marital residence. The trial court held the final hearing on

October 30, 2008. At the hearing, the trial court conducted an independent examination of Linda and asked the specific written questions submitted by Donald. Following the hearing, the trial court issued its decree of dissolution, in which it found:

> that the real estate in question was occupied and rented by the parties from April 27, 1996, through May 27, 2004. On May 27, 2004, the property was transferred to [Linda] only from her Father by Quit Claim Deed. On May 29, 2004, [Donald] was incarcerated and has not resided at the residence since said date. Based on the foregoing, the Court finds [Donald] has no interest in said real estate and awards the same to [Linda] free and clear of all claims of [Donald].

Id. at 70. Donald now appeals.

Discussion and Decision

I. Standard of Review

Linda failed to file an appellee's brief. When an appellee does not submit a brief, we need not undertake the burden of developing an argument on the appellee's behalf, and "we apply a less stringent standard of review with respect to showings of reversible error." Murfitt v. Murfitt, 809 N.E.2d 332, 333 (Ind. Ct. App. 2004). We will reverse the trial court's judgment if the appellant's brief presents a case of prima facie error, which is an error at first sight, on first appearance, or on the face of it. Id. Where the appellant does not meet this burden, however, we will affirm. Id.

II. Participation in the Final Hearing

Under article 1, section 12 of the Indiana Constitution, a prisoner has a constitutional right to bring a civil action. Id. at 334. However, a prisoner's confinement may make it impossible for him to appear in court and act as his own lawyer just as his confinement may

make it impossible for him to pursue other business in person or to exercise other rights or privileges. See Hill v. Duckworth, 679 N.E.2d 938, 940 (Ind. Ct. App. 1997). Generally, a trial court has no power to secure a prisoner's attendance at or transportation to court, even temporarily, except in connection with matters relating to the case in which he was sentenced. Id. at 939. Nonetheless, a prisoner has other options for prosecuting his civil case, including: trial by telephonic or video conference; securing someone else to represent him at trial, such as a family member; seeking a continuance of the trial until he is released from prison, or submitting the case to the trial court by documentary evidence. Id. at 940 n.1. The trial court has wide discretion to select any of these options after evaluating the prisoner's need to be present against concerns of expense, security, logistics, and docket control. Niksich v. Cotton, 810 N.E.2d 1003, 1008 (Ind. 2004).

The trial court could not issue a transport order to allow Donald to appear in person at the hearing. Donald requested permission to participate in the trial via videoconference, but the trial court denied his request.[1] However, the trial court invited Donald to submit documentary evidence, and Donald accepted the invitation by submitting a memorandum of law, specific written questions for Linda, his sworn testimony in the form of an affidavit, and

[1] The trial court gave no reason for its denial of Donald's request. The trial court has wide discretion to select the most appropriate option for Donald's participation, Niksich, 810 N.E.2d at 1008, and we refrain from speculating about the possible reasons. However, accepting as true Donald's assertion that the Wabash Valley Correctional Center has "Video Conferencing technology, which is routinely used for offenders with legal matters in Sullivan Superior Court," Appellant's App. at 43, it would seem improper for the trial court to deny his request to directly participate in the hearing via videoconference without a valid reason. Murfitt, 809 N.E.2d at 335 ("A trial court should not be able to deprive a prisoner of his constitutional right to maintain a civil action by … ignoring the prisoner's requests for other methods that would allow the prisoner to prosecute from prison.") (quoting Zimmerman v. Hanks, 766 N.E.2d 752, 758 (Ind. Ct. App. 2002)).

documentary evidence. The trial court elicited responses from Linda to each of Donald's written questions. Therefore, Donald did participate, albeit indirectly, in the final hearing.

In addition, Donald has not demonstrated how the trial court's refusal to allow him to directly participate in the hearing prejudiced him. Donald argues that he "was unable to counter any argument made by Linda during the hearing, was unable to cross examine Linda … and was unable to present evidence to rebut or impeach Linda's testimony." Appellant's Brief at 7. We note, however, the facts regarding the marital property are largely uncontested. Both parties agree they rented the property until May 27, 2004, Linda's father deeded the property to Linda only through a quit-claim deed without any payment, the assessed value of the property is $87,900.00, and Donald has not lived in the residence since his arrest on May 29, 2004. As a result, Donald was able to fully present his claim through his documentary evidence, and the trial court did not abuse its discretion by denying Donald's request to participate by videoconference.

III. Division of the Marital Residence

The division of marital property is a matter within the sound discretion of the trial court. Hill v. Bolinger, 881 N.E.2d 92, 94 (Ind. Ct. App. 2008), trans. denied. As a result, we apply a strict standard of review to a trial court's division of marital property in a dissolution action. Id. We review such decisions only for an abuse of discretion, which occurs when the trial court's judgment is clearly against the logic and effect of the facts and the reasonable inferences to be drawn from those facts. Leonard v. Leonard, 877 N.E.2d 896, 900 (Ind. Ct. App. 2007). We may not reweigh evidence or assess the credibility of

witnesses, and we consider only the evidence most favorable to the trial court's disposition of the marital property. Id. In addition, the presumption that the trial court correctly followed the law and made all the proper considerations when dividing the property is one of the strongest presumptions applicable to our considerations on appeal. Hill, 881 N.E.2d at 95. Thus, we will reverse a property distribution only if there is no rational basis for an award. Id.

In a dissolution action, a trial court must divide the property of the parties, whether owned by either spouse prior to the marriage or acquired by either spouse after the marriage and before the final separation of the parties, or acquired by their joint efforts, in a just and reasonable manner. Ind. Code § 31-15-7-4. In so doing, the trial court "shall presume that an equal division of the marital property between the parties is just and reasonable." Ind. Code § 31-15-7-5. However, the court may consider statutory factors that may rebut the presumption of equal division. Id.; Hill, 881 N.E.2d at 95. These factors include: "the contribution of each spouse to the acquisition of the property," Ind. Code § 31-15-7-5(1); the extent to which the property was acquired by one spouse through inheritance or gift, § 31-15-7-5(2); and the conduct of the parties during the marriage as it relates to the disposition or dissipation of their property, § 31-15-7-5(4).

Here, the trial court determined that Donald had "no interest" in the real estate. Appellant's App. at 70. This statement is legally incorrect. The marital pot includes all property held by either spouse as of the date that Donald filed his petition for dissolution and paid the filing fee; this includes the marital residence. Therefore, the trial court was required

to distribute the marital residence with a presumption in favor of equal distribution. The trial court's statement that Donald had no interest in the real estate is akin to taking the marital residence out of consideration in the distribution of property. Therefore, the trial court abused its discretion when it found Donald had no interest in the marital residence.

That is not to say that Donald is necessarily entitled to a fifty-fifty split of the real estate's value – or that he is entitled to any value from the property. On the one hand, Donald lived in the residence for only two days after it became marital property and likely contributed little to its value after May 27, 2004. Also, Linda's father gifted the property to her alone. In addition, Donald's criminal activity put the residence at risk of forfeiture.[2] See Ind. Code § 34-24-1-1(a)(5). On the other hand, Donald provided financially for the couple for eight years, during which they paid Linda's father rent to live in the house, and after which they received the house for free. In addition, Donald contributed to the upkeep and maintenance of the house for those eight years.

It is the trial court's responsibility, and not ours, to weigh the evidence and arrive at a just and equitable division of the marital property. However, the trial court's statement that Donald has no interest in the property leads us to believe this did not occur. Therefore, we remand this issue to the trial court to include the residence in the marital pot and arrive at a just and reasonable distribution. Assuming the trial court can make such a decision in light of the evidence already presented, it need not hold any additional hearings on the issue and may simply revise its order to reflect its findings.

[2] Based on the police report contained in the record, Donald was apparently arrested for possession of and dealing narcotics, including methamphetamine and marijuana.

Conclusion

The trial court did not abuse its discretion when it allowed Donald to submit documentary evidence but denied his request to participate in the final hearing by videoconference. However, the trial court did abuse its discretion when it found Donald had no interest in the marital residence. Therefore, we remand for the trial court to determine a just and equitable distribution of the marital property, including the marital residence.

Remanded.

DARDEN, J., and BAILEY, J., concur.