Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

DAVID P. MATSEY
Osan & Patton, LLP
Valparaiso, Indiana

ATTORNEY FOR APPELLEE:

DEBRA LYNCH DUBOVICH
Levy & Dubovich
Highland, Indiana

FILED
Jun 23 2011, 9:46 am
CLERK
of the supreme court, court of appeals and tax court

IN THE
COURT OF APPEALS OF INDIANA

IN RE THE MATTER OF: HATALA DISSOLUTION	)	
JAMES HATALA,	)	
Appellant-Petitioner,	)	
vs.	)	No. 64A03-1011-DR-555
SALLY HATALA,	)	
Appellee-Respondent.	)	

APPEAL FROM THE PORTER SUPERIOR COURT
The Honorable Roger V. Bradford, Judge
The Honorable James A. Johnson, Magistrate
Cause No. 64D01-0505-DR-4106

June 23, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Petitioner James Hatala ("Husband") appeals following the entry of the trial court's Findings of Fact, Conclusions of Law, and Dissolution Decree ("Decree"). Specifically, Husband contends that the trial court (1) erred in its wholesale adoption of Appellee-Respondent Sally Hatala's ("Wife") tendered proposed findings; (2) abused its discretion in including certain property in the marital estate; (3) abused its discretion in valuing certain property in the marital estate; (4) erred in dividing the marital estate between the parties; and (5) abused its discretion in ordering him to pay $15,705.31 of Wife's attorney's fees. We affirm in part, reverse in part, and remand with instructions.

FACTS AND PROCEDUDRAL HISTORY

Husband and Wife were married on October 15, 1977. The parties are the parents of two adult children. During the course of the parties' marriage, Husband worked on the family farm and outside the home as an electrician. Wife worked as a stay-at-home mother and assisted with the family farm. Wife also cared for Husband's elderly mother and aunt. Husband filed a petition seeking to dissolve the parties' marriage on May 7, 2005. Wife subsequently filed a counter-petition for dissolution of the parties' marriage. At the time Husband filed the dissolution petition, the marital estate included substantial real property interests, many of which were inherited from Husband's family.

On October 13, 2005, the trial court entered a provisional order which included maintenance payments to Wife in the amount of $328 per week. The maintenance payments terminated on June 25, 2007, per the parties' agreement. The parties participated in mediation in February and July of 2009. Through mediation, the parties reach an oral

agreement regarding division of their assets, but Husband subsequently refused to sign the final written version.

The trial court conducted a two-day hearing on July 13-14, 2010, at the conclusion of which it took the matter under advisement. The parties tendered proposed findings and conclusions. On October 1, 2010, the trial court issued the Decree. This appeal follows.

DISCUSSION AND DECISION

I. Standard of Review

Husband requested findings of fact and conclusions of law pursuant to Indiana Trial Rule 52(A), which prohibits a reviewing court on appeal from setting aside the trial court's judgment "unless clearly erroneous." *In re Marriage of Nickels*, 834 N.E.2d 1091, 1095 (Ind. Ct. App. 2005). The court on appeal is to give due regard to the opportunity of the trial court to judge the credibility of the witnesses. *Id*.

> When reviewing the trial court's findings of fact and conclusions thereon, we apply a two-tiered standard of review. *W & W Equip. Co. v. Mink*, 568 N.E.2d 564, 569 (Ind. Ct. App. 1991), *reh'g denied, trans. denied.* First, we consider whether the evidence supports the findings. In determining whether findings are clearly erroneous, we construe the findings liberally in support of the judgment. *Citizens Progress Co. v. James O. Held & Co.*, 438 N.E.2d 1016, 1022 (Ind. Ct. App. 1982). The findings are clearly erroneous only when a review of the record leaves us firmly convinced a mistake has been made. *Cooper v. Calandro*, 581 N.E.2d 443, 444-445 (Ind. Ct. App. 1991), *reh'g denied, trans. denied.*
>
> Next, we determine whether the findings support the judgment. A judgment is clearly erroneous when unsupported by the findings of fact and conclusions thereon. *DeHaan v. DeHaan*, 572 N.E.2d 1315, 1320 (Ind. Ct. App. 1991), *reh'g denied, trans. denied.* In applying this standard, we neither reweigh the evidence nor judge the credibility of the witnesses. *Donavan v. Ivy Knoll Apts. Partnership*, 537 N.E.2d 47, 50 (Ind. Ct. App. 1989). Rather, we consider the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. *Id.* Finally, we must affirm the judgment of

> the trial court unless the evidence points incontrovertibly to an opposite conclusion. *Id.*

Scott v. Scott, 668 N.E.2d 691, 695 (Ind. Ct. App. 1996).

II. Adoption of Wife's Proposed Findings and Conclusions

Husband contends that the trial court's wholesale adoption of Wife's proposed findings was error.

> Trial Rule 52(C) encourages trial courts to request that parties submit proposed findings of fact and conclusions of law and it is not uncommon or per se improper for a trial court to enter findings that are verbatim reproductions of submissions by the prevailing party. *Clark v. Crowe*, 778 N.E.2d 835, 841 n. 3 (Ind. Ct. App. 2002) (citing *A.F. v. Marion County Office of Family & Children*, 762 N.E.2d 1244, 1249 (Ind. Ct. App. 2002), *trans. denied*). When a party prepares proposed findings, they [sic] "should take great care to insure that the findings are sufficient to form a proper factual basis for the ultimate conclusions of the trial court." *Marathon Oil Co. v. Collins*, 744 N.E.2d 474, 477 n. 2 (Ind. Ct. App. 2001) (citing *Maloblocki v. Maloblocki*, 646 N.E.2d 358, 361 (Ind. Ct. App. 1995)). Moreover, "the trial court should remember that when it signs one party's findings, it is ultimately responsible for their correctness." *Id*. As noted by this court in *Clark*, we urge trial courts to scrutinize parties' submissions for mischaracterized testimony and legal argument rather than the findings of fact and conclusions of law as contemplated by the rule. 778 N.E.2d at 841 n. 3.
>
> We encourage such scrutiny for good reason. As our supreme court has observed, the practice of accepting verbatim a party's proposed findings of fact "weakens our confidence as an appellate court that the findings are the result of considered judgment by the trial court." *Cook v. Whitsell-Sherman*, 796 N.E.2d 271, 273 n. 1 (Ind. 2003) (citing *Prowell v. State*, 741 N.E.2d 704, 708-09 (Ind. 2001)). However, as the court also noted, verbatim reproductions of a party's submissions are not uncommon, as "[t]he trial courts of this state are faced with an enormous volume of cases and few have the law clerks and other resources that would be available in a more perfect world to help craft more elegant trial court findings and legal reasoning." *Prowell*, 741 N.E.2d at 708. The need to keep the docket moving is properly a high priority for our trial bench. *Id*. at 709. For this reason, the practice of adopting a party's proposed findings is not prohibited. *Id*.

Hardebeck v. Hardebeck, 917 N.E.2d 694, 698 (Ind. Ct. App. 2009).

Here, Husband contends that "it is evident that the [trial] court failed to scrutinize [Wife's] proposed findings" because the Decree includes a mathematical error that is also found in Wife's proposed findings and amounts to the wholesale adoption of Wife's proposed findings. Appellant's Br. p. 8. Husband further argues that "there is no way to fairly fix" the trial court's failure to properly scrutinize Wife's proposed findings. Appellant's App. p. 10. Thus, Husband contends that the instant matter should be remanded to the trial court for "new findings." Appellant's App. p. 10.

Husband acknowledges that the wholesale adoption of one party's proposed findings of fact is not error per se. *In re Marriage of Nickels*, 834 N.E.2d at 1096. Moreover, a cursory review of the Decree and Wife's proposed findings reveal myriad differences between the two which demonstrates that the court did not adopt Wife's proposed findings verbatim. While these changes do not appear to be significant in substance, they indicate that the trial court scrutinized the proposed findings and made changes to address what it deemed to be deficiencies or inaccuracies. *See Hardebeck*, 917 N.E.2d at 699. The trial court's adoption of the majority of Wife's proposed findings is not, in and of itself, error. *See id.*

In arguing that the trial court failed to appropriately scrutinize Wife's proposed findings, Husband argues that the trial court erroneously copied an alleged mathematical error from Wife's proposed findings and adopted it as its own. Husband also claims that the trial court's failure to appropriately scrutinize Wife's proposed findings is evident because the trial court accepted Wife's valuation for three pieces of property in the marital estate.

Husband contests these valuations.[1] However, the mere fact that the trial court accepted Wife's proposed calculations and value for the pieces of property at issue does not, in and of itself, suggest that the trial court failed to scrutinize the proposed findings and consider the substantial evidence relating to the value of these specific pieces of property. Again, the Decree contains numerous changes from Wife's proposed findings which indicate that the trial court scrutinized the proposed findings and made changes to address what it deemed to be deficiencies or inaccuracies. Upon review, we conclude that Husband has not shown that the trial court's adoption of Wife's proposed findings, with revisions, constituted error or resulted in an unfair or biased proceeding. As such, the trial court's adoption of Wife's proposed findings of fact and conclusions thereon was not error. *See Hardebeck*, 917 N.E.2d at 699; *In re Marriage of Nickels*, 834 N.E.2d at 1096.

III. Inclusion of Property in Marital Estate

Husband next contends that although the trial court properly included the inheritances that he received prior to the final separation in the marital estate, the trial court abused its discretion in not setting aside any of the inheritances over to him.

> It is well-established in Indiana that all marital property goes into the marital pot for division, whether it was owned by either spouse prior to the marriage, acquired by either spouse after the marriage and prior to 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 insures 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*. While the trial court may ultimately determine that a particular asset should be awarded solely to one spouse, it must first include the asset in its consideration of the marital estate to be divided. *Id*.

[1] We will discuss Husband's specific claims relating to the alleged mathematical miscalculation and the contested valuations below.

Hill v. Hill, 863 N.E.2d 456, 460 (Ind. Ct. App. 2007). Marital property includes property that one or both parties acquired through inheritance. *Castaneda v. Castaneda*, 615 N.E.2d 467, 469 (Ind. Ct. App. 1993).

While Husband argues that the trial court abused its discretion in not setting aside "at least a portion" of the inherited property, Husband does not specify which inherited property or how much inherited property he believes the trial court should have set aside to him. Further, while Indiana Code section 31-15-7-4 provides that a dissolution court "shall divide the property in a just and reasonable manner," it does not require that property inherited by one party prior to or during the parties' marriage be set aside to that party upon dissolution. Because marital property includes property that one or both parties acquired through inheritance prior to or during the course of the marriage, we conclude that the trial court did not abuse its discretion in including the property inherited by Husband prior to and during the course of his marriage to Wife in the marital estate. *See Castaneda*, 615 N.E.2d at 469.

IV. Valuation of Assets

Husband also contends that the trial court abused its discretion in valuing and dividing the parties' assets. When the trial court engages in valuing assets in the course of acting on a dissolution action, it has broad discretion and its valuation will only be disturbed for an abuse of that discretion. *In re Marriage of Nickels*, 834 N.E.2d at 1095. So long as there is sufficient evidence and reasonable inferences to support the valuation, an abuse of discretion does not occur. *Id*. Moreover, the Indiana Supreme Court has held that it is within the trial court's discretion to value the marital assets at any date between the date of filing the

dissolution petition and the date of the hearing. *Bertholet v. Bertholet*, 725 N.E.2d 487, 497 (Ind. Ct. App. 2000) (citing *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996)). We will not weigh the evidence and will consider the evidence in the light most favorable to the judgment. *In re Marriage of Nickels*, 834 N.E.2d at 1095. Although the facts and reasonable inferences might allow for a different conclusion, we will not substitute our judgment for that of the trial court. *Id*. (quotation omitted).

A. $5000 Credit

Husband challenges the methodology used by the trial court in awarding him a $5000 reimbursement for post-separation monies advanced to Wife. In awarding the reimbursement to Husband, the trial court subtracted the $5000 from Wife's side of the balance sheet and added the $5000 to Husband's side of the balance sheet, effectively taking the money from Wife and awarding it to Husband. Husband argues that this method resulted in an improper "swing and a loss to [Husband] of $10,000." Appellant's Br. p. 9. Upon review, we determine that Husband's argument is misplaced as the evidence indicates that the trial court's methods do not result in a $10,000 loss, but rather a $5000 credit to Husband. As a result, we conclude that the trial court did not abuse its discretion in this regard. *See In re Marriage of Nickels*, 834 N.E.2d at 1095.

B. Savings Bonds

Husband also challenges the trial court's valuation of certain savings bonds held by the parties. Specifically, Husband argues that the trial court should have valued the savings bonds at the time of the parties' October 2005 separation, rather than October in of 2009.

Husband does not provide any legal authority in support of his argument and fails to acknowledge the Indiana Supreme Court precedent providing that it is within the trial court's discretion to value the marital assets at any date between the date of filing the dissolution petition and the date of the hearing. *See Bertholet*, 725 N.E.2d at 497 (citing *Quillen*, 671 N.E.2d at 102). Here, the trial court was provided with the value of the savings bonds as of October of 2009, which was between the date that Husband filed the dissolution petition and the date of the July 13-14, 2010 hearing. The trial court acted within its discretion in basing its valuation of the savings bonds upon the bonds' October 2009 value. *See id*.

C. Boyer Purchase

Husband challenges the trial court's valuation of the assets included in the marital estate relating to funds received from the sale of certain land which the parties refer to as the "Boyer Purchase." In making this challenge, Husband acknowledges that he received one-sixth of his one-third interest in the property prior to separation, and that proceeds relating to that one-sixth interest should be included in the marital estate. Husband claims, however, that he did not receive his additional one-sixth interest in the property until after the date of the parties' separation, and thus proceeds relating to the additional one-sixth interest should not be included in the marital estate.

The trial court found that the marital pot included $214,065 in funds received from the Boyer Purchase. Husband admitted at the hearing that without further in-depth review, he could not say with certainty what portion, if any, of the $214,065 represented funds received in connection to the one-sixth interest in the property that he acquired post-separation.

Husband's challenge to the valuation of the assets relating to the Boyer Purchase appear to be nothing more than an invitation for this court to reweigh the evidence before the trial court, which we will not do. *See Scott*, 668 N.E.2d at 695. As a result, we conclude that Husband has failed to prove that any of the proceeds included in the Decree were connected to his additional one-sixth interest in the property that he received post-separation. Thus, we further conclude that the trial court did not abuse its discretion in this regard.

D. Roof Repair

Husband claims that the trial court failed to consider the $8,100 post-separation roof repair in valuing the marital residence. The trial court found that the parties had already equally divided the marital residence per the parties' mediation agreement. According to the mediation agreement, Husband was awarded the marital residence with Wife being awarded one half of the appraised value. Husband does not specifically challenge the trial court's finding regarding the marital residence but argues that the trial court failed to consider the effect the subsequent $8,100 post-separation roof repair would have on the appraisal price. Husband, however, did not present any evidence suggesting that the roof repair would have had any impact whatsoever on the appraisal price. Husband's claim effectively amounts for an invitation for this court to reweigh the evidence, which again, we decline. *See Scott*, 668 N.E.2d at 695. Accordingly, we conclude that Husband has failed to prove that the trial court abused its discretion in this regard.

E. Condemnation Settlement

Husband challenges the trial court's valuation of proceeds received after the State of Indiana purchased certain parcels of land in which Husband owned a partial interest by eminent domain. The record indicates that the gross proceeds from the condemnation settlements amounted to $326,500. Respondent's Exs. 5 & 6. However, with respect to these proceeds, Husband and his brother, Michael, who held the remaining interest in the parcels, were obligated to pay $163,250 in attorney's fees, $134,791 to satisfy an IRS tax lien, and $28,459 to an individual named Marilyn Rupp. Respondent's Exs. 5 & 6. After satisfying these obligations, Husband and Michael were left with no proceeds from the condemnation settlements. Upon review, we find nothing in the record supports the trial court's valuation of the proceeds from the condemnation settlements. Accordingly, we conclude that the trial court abused its discretion in awarding each party a $26,437.50 interest in the proceeds from the condemnation settlements. *See In re Marriage of Nickels*, 834 N.E.2d at 1095 (evaluating abuse of discretion for valuation purposes according to whether there was sufficient evidence to support the valuation).

V. Division of Assets

Husband additionally contends that the trial court erred in dividing the parties' assets. Again, when reviewing the trial court's findings of fact and conclusions thereon, we apply a two-tiered standard of review, considering first, whether the evidence supports the trial court's findings, and second, whether the findings support the trial court's judgment. *Scott*, 668 N.E.2d at 695. We will not set aside the judgment of the trial court unless it is clearly erroneous. *In re Marriage of Nickels*, 834 N.E.2d at 1095.

A. Mathematical Miscalculation

Husband argues that the trial court's division of the marital estate is clearly erroneous because it includes a mathematical miscalculation that in effect makes the trial court's intended fifty-fifty division of the marital estate impossible. Specifically, Husband argues that there is a $28,979 difference between the trial court's stated award to Husband and the sum of the assets awarded to Husband. Wife concedes that the Decree appears to include a mathematical miscalculation, but argues that the miscalculation "is insignificant and results in merely harmless error." Appellee's Br. p. 29. Our review reveals that the Decree does appear to include a miscalculation of the sum of the assets awarded to Husband. However, we are unable to accurately determine the effect that the apparent mathematical miscalculation has on the trial court's stated intention to divide the marital estate "fifty-fifty" because our review also suggests that the trial court also miscalculated the sum of the assets awarded to Wife. Accordingly, we remand to the trial court to recalculate its division of the parties' marital assets and to determine what effect, if any, the recalculation has on the trial court's intended 50-50 division of the marital estate.

VI. Attorney's Fees

Husband last contends that the trial court abused its discretion in ordering him to pay $15,705.31 of Wife's attorney's fees. Indiana Code section 31-15-10-1 provides:

> (a) The court periodically may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this article and for attorney's fees and mediation services, including amounts for legal services provided and costs incurred before the commencement of the proceedings or after the entry of judgment.
> (b) The court may order the amount to be paid directly to the attorney, who

> may enforce the order in the attorney's own name.

See Thompson v. Thompson, 811 N.E.2d 888, 927 (Ind. Ct. App. 2004).

> We review a trial court's decision to award attorney fees in connection with a dissolution decree for an abuse of discretion. When making such an award, the trial court must consider the resources of the parties, their economic conditions, the ability of the parties to engage in gainful employment, to earn adequate income, and other factors that are pertinent to the reasonableness of the award. Consideration of these factors further the legislative purpose behind the award of attorney fees, which is to provide access to an attorney to a party in a dissolution proceeding who would not otherwise be able to afford one.
>
> Misconduct that results in further litigation expenses may be properly taken into account in the trial court's decision to award attorney fees. The trial court need not give its reasons for its decision to award attorney fees.

Id. at 927-28 (citations and quotation omitted).

In arguing that the trial court abused its discretion in ordering him to pay $15,705.31 of Wife's attorney's fees, Husband claims that Wife should be required to pay her own attorney's fees because Wife received a substantial settlement from the parties' divorce and earns $25 per hour as a registered nurse. The trial court, however, found that (1) Husband's economic circumstances far exceed Wife's economic circumstances as is evidenced by a substantial post-dissolution inheritance that he received from his mother's estate; (2) Husband's earning potential exceeds Wife's because Husband has a greater income and Wife is limited in her ability to work because of medical impairments; and (3) Husband's refusal to sign the mediation agreement that was previously agreed to by the parties was unwarranted.

With respect to the trial court's finding that Husband's refusal to sign the mediation agreement was unwarranted, we note that generally, evidence relating to mediation is not admissible and should not be considered by the trial court in subsequent trial proceedings.

See Indiana Evidence Rule 408. Upon review, we observe that while Husband does not deny Wife's claim that he refused to sign the mediation agreement that the parties allegedly agreed to, he does not explicitly concede that he refused to do so. In addition, we are unable to determine the circumstances relating to Husband's alleged refusal to sign the mediation agreement. Thus, despite Husband's failure to challenge these specific findings or argue that these findings do not support the judgment of the trial court, we conclude that the trial court abused its discretion in considering Husband's alleged refusal to sign the mediation agreement that Wife claims the parties previously agreed to. Accordingly, we reverse the trial court's determination regarding attorney's fees, and remand to the trial court to determine, without considering Husband's alleged refusal to sign the mediation agreement, whether Husband should be ordered to pay a portion of Wife's attorney's fees.

CONCLUSION

In sum, we conclude that the trial court did not (1) err in adopting Wife's proposed findings with revisions; (2) abuse its discretion in including the property inherited by Husband prior to and during the course of his marriage to Wife in the marital pot; (3) abuse its discretion in imposing the $5000 credit in Husband's favor; or (4) abuse its discretion in valuing the parties' savings bonds, the Boyer Purchase, and the roof repair. However, we conclude that the trial court abused its discretion in valuing the proceeds from the condemnation settlements and that the trial court's division of the parties' marital assets is clearly erroneous because of the apparent mathematical miscalculation in the Decree. We also conclude that the trial court abused its discretion in considering Husband's alleged

refusal to sign the previously agreed to mediation agreement in ordering Husband to pay $15,705.31 of Wife's attorney's fees. Accordingly, we remand to the trial court to revalue the proceeds from the condemnation settlements at zero, to recalculate its division of the parties' marital assets, to determine what effect, if any, this recalculation has on the alleged intended fifty-fifty division of the marital estate, to recalculate what amount of Wife's attorney's fees, if any, that Husband should be obligated to pay, and to amend the Decree accordingly.

The judgment of the trial court is affirmed in part, reversed in part, and remanded with instructions.

BAKER, J., and MAY, J., concur.