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ATTORNEY FOR APPELLANT:

ARIC J. RUTKOWSKI
Zappia, Zappia & Stipp
South Bend, Indiana

ATTORNEY FOR APPELLEE:

WILLIAM L. WILSON
Anderson, Agostino & Keller, P.C.
South Bend, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

JOHN L. OLIVE,

Appellant,

vs.

SHEILA A. GIVENS,

Appellee.

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No. 71A05-0702-CV-119

APPEAL FROM THE ST. JOSEPH CIRCUIT COURT
The Honorable Michael G. Gotsch, Judge
Cause No. 71C01-0510-PL-305

July 16, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

John Olive appeals the trial court's judgment on Sheila Givens' Complaint for Partition of Real Estate and Accounting. He raises a single issue for our review, namely, whether the trial court's conclusion that he should receive one-quarter of the value of the parties' personal property is clearly erroneous.

We affirm.

FACTS AND PROCEDURAL HISTORY

On October 21, 2005, Givens filed her complaint for partition of real estate and accounting. On May 3, 2006, Olive filed a Counterclaim for Reimbursement of Insurance Proceeds and for Civil Conversion as well as a Motion for Escrow of Insurance Proceeds Pending Adjudication. Following a trial, on December 4 the court entered the following undisputed Findings of Fact:

1. In October, 1988, the parties jointly purchased real property at a tax sale conducted by the Auditor of St. Joseph County, Indiana.
2. When this real property was not timely redeemed by the previous record owners, the Auditor of St. Joseph County issued a deed to "Sheila Givens and John L. Olive" on October 19, 1989.
3. The parties' real property is more commonly known as 1821 Nash Street, South Bend
4. From October 1989 until May 2004, the parties cohabitated in the house located on [the] subject real estate.
5. The parties shared the cost of property taxes, utilities, groceries, and other household expenses. Givens paid her portion of these expenses from her full-time employment income; Olive paid his portion of these expenses from his disability income and part-time employment income.
6. On May 16, 2004, the house and its contents were damaged by fire.

7. Following the fire, Olive moved into an apartment at Maple Lane Apartments and Givens moved into the home of her mother.

8. The parties had purchased a homeowners insurance policy through Auto-Owners Insurance Company (hereinafter “Insurance Company”).

9. Initially, the parties agreed to have New Life Restorations, Inc. (hereinafter “New Life”), perform repairs on the house, but Olive later unilaterally decided to perform the work himself. Givens acquiesced in that decision and Olive received the sum of \$46,834.97 . . . from the Insurance Company to repair the house.

10. . . . Givens received the sum of \$47,945.00 [from the Insurance Company] Givens asserts that she had provided the vast majority of the contents of the house and these payments represented reimbursement for her losses.

* * *

12. New Life conducted an inventory of the household contents damaged by the fire. . . .

13. Although Givens asserted at trial (and in her final argument) that she owned the “vast majority” of the contents, the inventory demonstrates that Olive owned a significant portion of the contents of the house. Based on the testimony and the evidence, this Court determines that Olive owned approximately one-quarter of the contents of the house.

Appellant’s App. at 6-7.

The court then concluded as follows:

7. The testimony and evidence conclusively demonstrate that, at a minimum, Givens and Olive evenly contributed to the purchase and maintenance of the subject real estate. Accordingly, this Court concludes that Givens has an equitable interest in the subject real estate.

8. Likewise, Olive contributed to the purchase of personal property that became the contents of the house. However, as noted in Finding No. 13, supra[], Givens acquired a greater share of the household contents.

* * *

10. To avoid unjust enrichment by either party, Olive should receive one-quarter of the value of the contents of the house and Givens should receive one-half of the value of the subject real estate.

Id. at 8. This appeal ensued.

DISCUSSION AND DECISION

Olive's only argument on appeal is that the trial court's order was clearly erroneous in requiring "the real estate . . . to be sold and the proceeds equally divided but allowing for an unequal division of the insurance proceeds for the damaged or destroyed personal property." Appellant's Brief at 4. When, as here, the trial court enters specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. Anthony v. Ind. Farmers Mut. Ins. Group, 846 N.E.2d 248, 252 (Ind. Ct. App. 2006). First, we consider whether the evidence supports the findings. Id. In doing so, we liberally construe the findings in support of the judgment, and determine whether the findings are clearly erroneous. Id. "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." Nieto v. Kezy, 846 N.E.2d 327, 332 (Ind. Ct. App. 2006) (quotation and citation omitted).

The second step in our review is to determine whether the findings support the judgment. Anthony, 846 N.E.2d at 252. If a judgment relies on an incorrect standard, it is clearly erroneous. Nieto, 846 N.E.2d at 332. We do not defer to the trial court's conclusions of law. Id. at 333. We do not reweigh the evidence and must consider the evidence most favorable to the judgment with all reasonable inferences drawn in favor of the judgment. Id.

Here, the evidence supports the trial court's finding that Olive owned approximately one-quarter of the parties' personal property but one-half of the real property. As the court noted, New Life conducted an inventory of the household contents. That inventory demonstrated that Givens owned 75% of the parties' personal property, while Olive owned 25% of that property. And the parties do not dispute that they each owned one-half of the real property.

Olive's claim is apparently based on the premise that all assets, whether real or personal, must have been owned equally. But the trial court's conclusion is supported by its findings "[b]ased on the testimony and the evidence." See Appellant's App. at 7. Indeed, in dividing the parties' personal property, the court specifically referred to Finding Number 13, in which the court had determined that the New Life inventory supported a 75-25 split. We cannot say that the trial court's findings or conclusions thereon are clearly erroneous.

Nonetheless, Olive maintains that this court "should look to the equities." Appellant's Brief at 5. But that is what the trial court did. As such, we agree with Givens that "Olive wants this Court to either reweigh the evidence or re-try the case," both of which we cannot do.

Affirmed.

RILEY, J., and BARNES, J., concur.