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IN THE COURT OF APPEALS OF INDIANA

IN RE: THE MARRIAGE OF:	)	
LAUREN PEASE,	)	
Appellant-Petitioner,	)	
vs.	)	No. 18A05-1010-DR-671
EDWARD PEASE,	)	
Appellee-Respondent.	)	

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable John M. Feick, Judge
Cause No. 18C04-0803-DR-41

July 25, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

On appeal, Appellant-Petitioner Lauren Pease ("Wife") challenges the trial court's division of the marital estate following the dissolution of her marriage to Appellee-Respondent Edward Pease ("Husband"). Specifically, Wife argues that the trial court abused its discretion in excluding Husband's Public Employee Retirement Fund ("PERF") account and a longevity bonus allegedly received by Husband from the marital estate. Wife also argues that the trial court abused its discretion in ordering each party to pay its own attorney's fees. We affirm.

FACTS AND PROCEDURAL HISTORY

Husband and Wife were married on July 15, 1999. There were no children born of their marriage. Throughout the marriage, each party maintained separate property interests and bank accounts, and purchased items on his or her own behalf.

On March 28, 2008, Wife petitioned for dissolution of the parties' marriage. The trial court issued an order dissolving the parties' marriage on May 19, 2010. The May 19, 2010 order, which did not contain a division of the parties' assets and liabilities, indicated that the division of the parties' assets and liabilities "shall be hereafter addressed by the court." Appellant's App. pp. 7-8. The trial court conducted a hearing on the division of the parties' assets and liabilities on August 24, 2010. On September 24, 2010, the trial court issued an order dividing the parties' assets, and providing that each party would be responsible for its own attorney's fees. This appeal follows.

DISCUSSION AND DECISION

I. Division of Assets

Wife contends that the trial court abused its discretion in dividing the parties' assets. Specifically, Wife argues that the trial court abused its discretion in excluding Husband's PERF account and "longevity bonus" from the marital estate.

> The disposition of marital assets is an exercise of the trial court's sound discretion. *Hatten v. Hatten*, 825 N.E.2d 791, 794 (Ind. Ct. App. 2005), *trans. denied*. We review a claim that the trial court improperly divided marital property for an abuse of discretion. *Id*. In doing so, we consider the evidence most favorable to the trial court's disposition of the property, without reweighing the evidence or assessing the credibility of witnesses. *Id*. Although a different conclusion might be reached in light of the facts and circumstances, we will not substitute our judgment for that of the trial court. *Id*.

Eye v. Eye, 849 N.E.2d 698, 701 (Ind. Ct. App. 2006). At Husband's request, the trial court issued findings of fact and conclusions of law.

> We review a trial court's findings to determine if they are clearly erroneous, but review its conclusions de novo, even where the trial court labels them as findings. *Fobar v. Vonderahe*, 771 N.E.2d 57, 59 (Ind. 2002). "An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or if the trial court has misinterpreted the law or disregards evidence of factors listed in the controlling statute." *Hatten*, 825 N.E.2d at 794.

Id.

A. PERF Account

Wife argues that Husband's PERF account should have been considered to be marital property. Review of the record reveals, however, that the trial court did indeed consider Husband's PERF account to be a marital asset, and that the trial court ultimately awarded the full value of the PERF account to Husband. We will therefore consider Wife's argument on appeal to be a challenge to the propriety of the trial court's disposition of Husband's PERF account.

In the instant matter, the trial court determined that in 2008 Wife earned approximately $56,000, while Husband earned approximately $39,000. The trial court also determined that as of the date of separation, Husband had some interest in a PERF account, and Wife had some interest in teacher retirement funds. The trial court further determined that both parties had accumulated real estate in their respective names, maintained their respective expenses, and that there was no evidence that either party attempted to comingle any assets. In addition, Wife indicated during the August 24, 2010 hearing that she believed that each party should be awarded his or her respective property.[1] Recognizing the apparently complete separation of the parties' assets and liabilities, the trial court awarded Wife the real estate listed in her name, her retirement benefits, and any personal property, including certain paintings and glasswork. Likewise, the trial court awarded Husband the real estate listed in his name, his retirement benefits, and any personal property, including automobiles, maintenance and repair tools, guns, gunsmith tools, and hobby and automobile parts.

In challenging the trial court's division of the parties' assets on appeal, Wife argues that the above division of the parties' assets resulted in an unequal division of the parties'

[1] The record indicates that Wife's real estate interest was of greater value than Husband's real estate interest, but that Husband's personal property interest was of greater value than Wife's personal property interest.

assets in favor of Husband because the trial court did not divide the value of Husband's PERF account between the parties.[2] In support, Wife claims that Husband's PERF account gained nearly $20,000 in value during the parties' marriage, and that this amount should therefore be divided between the parties. *See Huber v. Huber*, 586 N.E.2d 887, 889 (Ind. Ct. App. 1992) (providing that all assets including various pension interests are to be considered marital property subject to division). Husband, however, disputes Wife's claim that his PERF account gained nearly $20,000 in value during the parties' marriage, and asserts that as of 2008, the total value of his PERF account earned during his entire eighteen years of public employment was approximately $24,000. Upon review, we, like the trial court, are unable to determine the exact value of Husband's PERF account, including the amount earned during the parties' nine-year marriage. Likewise, we are unable to determine the value of Wife's retirement benefits. As a result, we cannot say that the trial court abused its discretion in awarding each party the full value of his or her respective retirement benefits.

B. "Longevity Bonus"

Wife also argues that the "longevity bonus" received by Husband should have been considered to be marital property. However, to the extent that Wife argues that the trial court abused its discretion in failing to consider the "longevity bonus" received by Husband as a marital asset, we observe that the trial court appears to have considered the "longevity bonus" in considering the marital assets. The trial court noted that the so-called "longevity bonus" was included in Husband's annual income, and that the trial court would consider the value

[2] Wife does not challenge the division of the parties' individual real estate or personal property interests.

of the "longevity bonus" in considering the parties' respective incomes. Wife presents no evidence on appeal suggesting that the so-called "longevity bonus" was not included in and considered as a portion of Husband's annual income. Accordingly, Wife has failed to prove that the trial court abused its discretion in this regard.

II. Attorney's Fees

Wife also contends that the trial court abused its discretion in denying her request for 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).

Wife argues that the trial court abused its discretion in denying her request for attorney's fees because Husband caused numerous continuances that resulted in the delay of final resolution of the instant matter. However, even assuming that these continuances and delays should be attributed to Husband, we observe that the record does not indicate that the alleged continuances and delays were the result of any misconduct by Husband. The trial court considered the parties' economic conditions and determined that Wife earned approximately $17,000 more than Husband in 2008. The trial court was required to consider this disparity in the parties' incomes in deciding whether to order Husband to pay a portion of Wife's attorney's fees. *See id.* (providing that the trial court must consider the resources and economic conditions of the parties when determining whether to award attorney's fees). Accordingly, in light of the lack of evidence suggesting that any of the continuances or delays in resolving the instant matter are attributable to misconduct by Husband together with the disparity between the parties' incomes in 2008, we conclude that the trial court did not abuse its discretion in denying Wife's request for attorney's fees.

The judgment of the trial court is affirmed.

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