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IN THE
COURT OF APPEALS OF INDIANA

WAYNE J. THEISING,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 62A05-0812-CV-703
	)	
DEANNE THEISING,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE PERRY CIRCUIT COURT
The Honorable Lucy Goffinet, Judge
The Honorable Karen A. Werner, Magistrate
Cause No. 62C01-0710-DR-530

July 30, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-petitioner Wayne J. Theising appeals the trial court's order dissolving the marriage of Wayne and appellee-respondent Deanne Theising. Wayne argues that the trial court erred by awarding the value of the equity of the marital residence at the time of the marriage to Wayne but dividing the remaining equity equally between Wayne and Deanne. Finding no error, we affirm.

FACTS

Wayne and Deanne were married on February 28, 2003, and no children were born of the marriage. After they were married, Wayne and Deanne opened joint checking and savings accounts, into which both parties deposited "a good portion" of their weekly paychecks, less some spending money they kept out each week. Appellant's Br. p. 3, Appellee's Br. p. iii. Deanne also deposited inheritance income, annuity payments, and funds received after her first divorce into those joint accounts. Wayne and Deanne both worked for Gohmann Asphalt Construction before and during the marriage; Wayne was a foreman and Deanne was a laborer. Over the four-year period between 2003 and 2007, Deanne earned a total of $120,695.94 in salary and unemployment compensation, and Wayne earned a total of approximately $263,000 in salary. Wayne paid the household bills by writing checks out of the couple's joint checking account.

At the time they were married, Wayne owned a home in Saint Croix. The home's fair market value at that time was $60,000, with outstanding indebtedness of $47,461, such that the equity in the home on the date of the marriage was $12,539. That home became the couple's marital residence. Beginning in 2005 or 2006, Wayne began remodeling and renovating portions of the home. The improvements were done by

Wayne and his friends, and Deanne assisted financially and with physical labor. During the marriage, Wayne paid the mortgage payments and occasionally made extra principal payments from the couple's joint checking account.

On October 11, 2007, Wayne filed a petition for dissolution of marriage. Following a hearing, the trial court entered a decree of dissolution that divided the marital estate. Among other things, the trial court found that the value of the marital residence on the date Wayne filed the petition was $100,000, with an outstanding mortgage balance of $19,339.19. The trial court ordered that Wayne would be the sole owner of the marital residence and credited him $12,539, representing the value of equity in the home on the date the couple were married. The trial court ordered the remaining equity in the home—$68,121.09—be divided equally between Wayne and Deanne. Wayne now appeals.

DISCUSSION AND DECISION

The division of marital assets is within the trial court's discretion, and we will reverse only for an abuse of that discretion. O'Connell v. O'Connell, 889 N.E.2d 1, 10 (Ind. Ct. App. 2008). The challenger must overcome a strong presumption that the trial court considered and complied with the applicable statute, and that presumption is one of the strongest available on appeal. Id. In reviewing the trial court's division, we will neither reweigh the evidence nor assess witness credibility; instead, we will consider only the evidence most favorable to the trial court's disposition of the marital property. Id.

All marital property, including property owned by either spouse before marriage, goes into the "marital pot" for division." Id. at 11; see also Ind. Code § 31-15-7-4(a). After determining what property must be included in the marital estate, the trial court

must divide the marital property, with a presumption that an equal division is just and reasonable. O'Connell, 889 N.E.2d at 10-11. This presumption may be rebutted by a party who presents evidence that an equal division would not be just and reasonable, with the following factors being relevant:

> (1) The contribution of each spouse to the acquisition of the property, regardless of whether the contribution was income producing.
>
> (2) The extent to which the property was acquired by each spouse:
>
> (A) before the marriage; or
>
> (B) through inheritance or gift.
>
> (3) The economic circumstances of each spouse at the time the disposition of the property is to become effective, including the desirability of awarding the family residence or the right to dwell in the family residence for such periods as the court considers just to the spouse having custody of any children.
>
> (4) The conduct of the parties during the marriage as related to the disposition or dissipation of their property.
>
> (5) The earnings or earning ability of the parties as related to:
>
> (A) a final division of property; and
>
> (B) a final determination of the property rights of the parties.

I.C. § 31-15-7-5. If there were assets that were acquired before marriage, "'[t]he trial court may achieve a just and reasonable property division by determining the appreciation over the course of the marriage of such assets and dividing the appreciation between the spouses, while setting over to the appropriate spouse the pre-marriage value of the assets at issue.'" O'Connell, 889 N.E.2d at 11 (quoting Doyle v. Doyle, 756 N.E.2d 576, 579 (Ind. Ct. App. 2001)).

Here, the trial court held a two-day hearing, heard extensive testimony from both sides, and considered numerous exhibits introduced by both parties. The trial court first determined what property was in the marital estate and then divided it. Wayne's only argument centers on the marital estate; in all other respects, he believes the trial court's division to have been appropriate. On appeal, however, we must consider the trial court's disposition of marital assets "as a whole, not item by item." Perkins v. Harding, 836 N.E.2d 295, 298 (Ind. Ct. App. 2005).

The trial court set aside to Wayne certain assets that were owned by him before the marriage, a savings account, his pension, certain household goods and furnishings, and the cash value of his life insurance policy. It set aside to Deanne her pension, a camper, and certain household goods and furnishings. Having divided and totaled the value of the assets, the trial court ordered Wayne to make an equalization payment of $40,330.56 to Deanne so that the final division was just and reasonable. It was reasonable for the trial court to have concluded that Wayne did not present sufficient evidence rebutting the presumption of an overall equal division—and indeed, he very nearly concedes that point on appeal. See Appellant's Br. p. 15 (stating that Wayne "has no argument with the court's distribution of the remaining assets of the parties nor the values attributed to any of them which is on a 50/50 basis").

As to the marital residence itself, we note that the trial court awarded to Wayne the value of the home's equity at the time he and Deanne were married. The remaining equity in the home at the time of dissolution, which would have included mortgage payments and appreciation, was divided equally between the parties. As noted above,

Wayne made the mortgage and principal payments out of the parties' joint checking account to which Deanne regularly contributed. Furthermore, Deanne contributed financially and physically to the home's renovation. Under these circumstances, we do not find that the trial court erred by equally dividing the post-marriage equity of the home between the parties. See Doyle, 756 N.E.2d at 579 (holding that even where the trial court properly sets aside the premarital value of assets to one spouse, the appreciation over the course of the marriage is a divisible marital asset).

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and RILEY, J., concur.