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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE THE MARRIAGE OF:
VALDIS J. MINKIS,

Appellant-Respondent,

vs.

SHERRY J. MINKIS,

Appellee-Petitioner.

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No. 32A01-1005-DR-272

APPEAL FROM THE HENDRICKS SUPERIOR COURT
The Honorable David H. Coleman, Judge
Cause No. 32D02-0801-DR-10

September 14, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Valdis Minkis (“Husband”) appeals the trial court’s property division in his dissolution proceedings with Sherry Minkis (“Wife”). Husband argues that the trial court abused its discretion in ordering an unequal division of the marital property. Finding that the trial court did not abuse its discretion, we affirm.

Facts and Procedural History

Husband and Wife were married in 1993 and have three children. When the parties married, Wife owned and was employed as a chiropractor with Georgetown Chiropractic and Husband was the owner of a construction company called Minkis Construction Company (“MCC”). Throughout the marriage, both Husband and Wife worked at MCC, with Wife focusing on the company’s business and administrative functions and Husband overseeing construction.

In 1998, Wife sold her interest in Georgetown Chiropractic. The sale proceeds were transferred to a joint savings account. The parties later agreed to remove \$85,000 from the savings account and invest it in MCC. MCC was successful, and as time passed, the parties expanded their business by acquiring investment properties. By 2007 however, the parties’ business and personal relationship had begun to deteriorate. Husband vacated the corporate offices of MCC, and the parties agreed they would not draw any additional salaries from the company. In December 2007, Wife filed a petition for dissolution.

The parties reached an agreement regarding custody, child support, and parenting time. Pursuant to the agreement, Wife was awarded primary physical custody of the

children. The parties presented evidence regarding the marital assets at hearings throughout 2008 and into 2009. During this time period, Husband established a new construction company and began work as a salaried employee for Habitat for Humanity. Husband did not work in any capacity with MCC at this time. Wife, meanwhile, continued working at MCC. She received no compensation for this work. Wife also continued to work part-time as a chiropractor and at her church.

The final hearing regarding division of the marital assets was held in August 2009. The trial court granted Husband's request for special findings of fact and conclusions of law. In total, the trial court entered 142 findings of fact and 13 conclusions of law, which provide in pertinent part:

11. As of the date of the marriage, in July of 1993, Wife assumed an active role in MCC and began performing ongoing duties for MCC. Both parties agree MCC has essentially two (2) sides, management and construction. Wife has been and continues to focus primarily on the management side, while Husband has focused primarily on the construction side.

13. In the mid 1990's, when MCC suffered a cash flow problem, Wife invested her chiropractic earnings and became a 50/50 shareholder in MCC. (Wife Deposition, 73, 75). During the marriage, Wife also sold her pre-marital chiropractic business and placed the proceeds into the parties' joint savings account. By agreement, the parties removed Eighty Five Thousand Dollars (\$85,000.00) from this account and invested it into MCC, to allow the company to secure bonding, show liquidity, add needed equipment and provide for its employees. (Trial Testimony, Wife)

14. It is undisputed that in 1999 Wife became the majority owner of MCC, in order to provide MCC an edge in public bid work due to its certification as a WBE. ("Women Owned Business Enterprise") (Trial Testimony, Wife). At the time Wife assumed the majority position, she continued to assume additional responsibilities and duties within MCC. By this time, Wife was the business manager, sales manager, contract acquisitions contact, the contact for all legal and CPA meetings, government meetings, and continued in her role assisting operational and field management as well. (Trial Testimony, Wife; Wife Deposition 75-76)

20. Both the businesses, the economy and the party's marriage became increasingly strained in 2007, and in the winter of 2007, Husband informed wife he was vacating the corporate offices of MCC, and removed business operations to a separate location not available to Wife. The parties by agreement suspended their MCC draws in 2007, due to cash flow and economy issues. This corporate action was taken prior to the divorce being filed.

106. It is undisputed that including floating liens and potential personal guarantees and short sale from MCC and the parties' assets in liquidation, that the parties collectively are exposed to indebtedness exceeding the sum of \$2.3 million to creditors, primarily IBT.

112. Wife continues to work at MCC, without pay, to attempt to preserve the family assets by protecting them from bankruptcy and does not get a paycheck from the corporation. While Wife reserved for herself for 2008 a \$32,000 salary and a salary of \$10,000 for 2009, these salaries were not paid to Wife and the funds are not available in the cash flow to pay same. (Trial Testimony, Wife)

119. It was undisputed that Wife contributed significant earnings from her premarital sale of her chiropractic practice, and ongoing earnings during the marriage, to MCC.

120. The Court finds for dissolution purposes that Wife's contribution to the marriage is sufficient to rebut the presumption of equal division. It is significant that Wife has continued to work to manage the business for no pay, and has unlimited personal guarantee, Husband has \$750,000.00 guarantee, overall, and Wife has an additional amount of exposure to the level of \$1.6 million more than Husband (with 2.3 million in debt to IBT). Wife is 70% exposed, Husband is 30% exposed.

125. Wife testified that there was a pattern through the marriage which continued in the divorce and it was undisputed that while this case was pending, Husband had varied sources of income, he liquidated his retirement, and he spent \$5,200.00 on a dating service, \$3,500.00 for cosmetic procedures, trips out of town, and a \$1,000.00 bicycle. (Deposition of Wife, 10-13)

126. Husband also admittedly has expended funds over the course of the marriage for non marital purposes, such as drugs and alcohol over the internet. (PH, 4-24-2008) (Wife Deposition 53)

127. The marital estate should be awarded to Wife. The right to reside in the marital residence was not contested. The court has considered the desirability of awarding the marital residence to the Wife with residential custody of the children, and the value of the children residing in the marital residence.

132. The net distribution of the marital assets is: \$629,063.40 to Wife and \$342,666.04 to Husband.

Appellant's App. p. 22-24, 45-49, 51. Husband then filed a motion to correct errors. The order was denied. Husband now appeals.

Discussion and Decision

Husband contends that the trial court abused its discretion by ordering an unequal division of the marital assets. By statute, the trial court must divide the property of the parties in a just and reasonable manner, including property owned by either spouse before the marriage, acquired by either spouse after the marriage and before final separation of the parties, or acquired by their joint efforts. Ind. Code § 31-15-7-4(a), (b). An equal division of the marital property is presumed to be just and reasonable. *Id.* § 31-15-7-5. This presumption may be rebutted by a party who presents relevant evidence, including evidence of the following factors, that an equal division would not be just and reasonable:

(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.

Id. The division of marital assets is a matter within the sound discretion of the trial court. *Webb v. Schleutker*, 891 N.E.2d 1144, 1153 (Ind Ct. App. 2008). When a party challenges the trial court's division of marital property, she must overcome a strong presumption that the court considered and complied with the applicable statute, and that presumption is one of the strongest presumptions applicable to our consideration on appeal. *Id.* When we review a claim that the trial court improperly divided marital property, we must decide whether the trial court's decision constitutes an abuse of discretion, considering only the evidence most favorable to the court's disposition of the property, without reweighing the evidence or assessing the credibility of witnesses. *Id.* 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 court has misinterpreted the law or disregarded evidence of factors listed in the controlling statute. *Id.* 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.* at 1154.

While a trial court is not required to explicitly address all factors set forth in Indiana Code section 31-15-7-5, a court should not rely on a single factor in determining

that an unequal division of marital assets is proper. *Helm v. Helm*, 873 N.E.2d 83, 90 (Ind. Ct. App. 2007). Here, the trial court found that the presumption in favor of equal division was rebutted by Wife’s contribution to the marriage, noting as significant her continued work at MCC for no pay, her unlimited personal guarantee, and her debt exposure. Appellant’s App. p. 48.

At the outset and close of his brief, Husband contests the trial court’s finding that Wife contributed to the marriage. Initially, Husband argues that the only evidence of Wife’s contribution to the marriage—specifically her economic contribution to MCC—was Wife’s testimony. We have held that a court may make a finding based upon the testimony of a single witness and that the credibility of that witness is for the trial court to assess. *See Newby v. Newby*, 734 N.E.2d 663, 667 (Ind. Ct. App. 2000). Here, the court heard Wife’s testimony and assessed her credibility, noting that Husband did not dispute Wife’s contribution to MCC at trial. Appellant’s App. p. 47. Husband cannot contest the trial court’s finding that Wife contributed to the marriage simply because Wife was the sole witness to so testify.

In the same vein, Husband argues the finding that “wife (Sherry) contributed significant . . . ongoing earnings during the marriage to Minkis Construction Company,” was not supported by the transcript of the proceedings. Appellant’s Br. p. 11. We note that in full, the trial court’s finding reads:

It was undisputed that Wife contributed *significant earnings* from her premarital sale of her chiropractic practice, and *ongoing earnings* during the marriage, to MCC.

Appellant's App. p. 47 (emphasis added). The record supports the court's finding that Wife contributed ongoing earnings to MCC during the parties' marriage. While the parties were married, in addition to working for MCC, Wife worked part-time as a chiropractor. *Id.* at 23. This added income benefited the marriage, and in turn, the parties' business ventures, which included MCC. We conclude that the trial court did not err in determining that Wife contributed ongoing earnings to MCC while the parties were married.

Husband proceeds to argue that an unequal distribution was inappropriate because Wife was in a superior economic position at the time of trial. Husband states that Wife was earning a \$52,000 salary from MCC as well as income from part-time chiropractic work. Husband goes on to state that "due to his slightly lower percentage of stock ownership," he was earning a lower income than Wife at the time of trial. Appellant's Br. p. 7. It appears Husband is referring to his stock ownership in MCC and corresponding salary. However, the record clearly indicates that neither party had received a salary from MCC since 2007. Appellant's App. p. 24. In making this argument, Husband also fails to account for his salary from his position at Habitat for Humanity, which he held at the time of trial. We find no evidence to support Husband's claim that Wife was in a superior economic position at the time of trial.

Husband next argues that the court improperly considered Wife's post-separation debt in ordering an unequal division of property. Husband states, "Therefore, debts incurred by one party after the dissolution petition has been filed . . . are not to be included in the marital pot." Appellant's Br. p. 10; *see also Fuehrer v. Fuehrer*, 651

N.E.2d 1171, 1173 (Ind. Ct. App. 1995), *trans. denied*. However, the trial court did not include Wife’s post-separation debt within the marital estate; rather, the court considered Wife’s post-separation debt when determining whether an unequal division of property was appropriate. In making this determination, a trial court is free to consider “the economic circumstances of each spouse at the time the disposition of the property is to become effective” I.C. § 31-15-7-5(3). Wife’s post-separation debt—specifically the additional guarantees assumed by Wife for the purpose of restructuring the parties’ businesses—relates directly to her economic circumstances at the time the trial court was to divide the marital estate. As such, it was not an improper consideration for the trial court.

Husband also argues that the trial court misinterpreted the time of Wife’s sale of Georgetown Chiropractic. Indeed, the court referred to the “*premarital sale* of her chiropractic practice” in paragraph 119 of its order. Appellant’s App. p. 47 (emphasis added). However, paragraphs 8 and 13 state that Wife brought her chiropractic practice into the marriage. *Id.* at 21, 22. Wife also testified that she sold the practice five years after the parties married. Tr. p. 423. In his motion to correct errors, Husband did not identify or seek correction of the court’s characterization of the sale as premarital. It is therefore apparent that paragraph 119 of the trial court’s order contains a scrivener’s error that did not affect the court’s division of the marital assets.

Husband makes an additional argument regarding the marital residence. Specifically he states, “Appellant concedes that it is within the trial court’s discretion to award the marital residence to the wife due to her primary physical custody of the

children. The appellee's custody of the minor children is not, however, justification for an unequal distribution of marital property." Appellant's Br. p. 7. While the court considered the "desirability of awarding the marital residence to the Wife with residential custody of the children, and the value of the children residing in the marital residence," there is no evidence that the court relied on Wife's custody of the children in determining that the presumption of an equal division had been rebutted.

Husband's final argument concerns dissipation. Specifically, he argues that certain expenditures were improperly considered by the trial court because they occurred after the divorce petition had been filed. He also claims the expenditures were reasonable. Dissipation of marital assets includes frivolous and unjustified spending of marital assets. *Goodman v. Goodman*, 754 N.E.2d 595, 598 (Ind. Ct. App. 2001). The test for dissipation is whether the assets were actually wasted or misused. *Id.* Dissipation generally involves the use or diminution of the marital estate for a purpose unrelated to the marriage and does not include the use of marital property to meet routine financial obligations. *Coyle v. Coyle*, 671 N.E.2d 938, 943 (Ind. Ct. App. 1996). Trial courts must consider evidence of both pre- and post-separation dissipation. *Sloss v. Sloss*, 526 N.E.2d 1036, 1040 (Ind. Ct. App. 1988).

The court found that during the marriage and while dissolution proceedings were ongoing, Husband liquidated his retirement, spent \$5,200.00 on a dating service, \$3,500.00 for cosmetic procedures, trips out of town, and a \$1,000.00 bicycle. Appellant's App. p. 48. Husband also admitted that over the course of the marriage he used funds for non-marital purchases of alcohol and drugs over the internet. *Id.* at 49; Tr.

p. 67-73. We find that the trial court did not err by considering these pre- and post-separation expenditures.

Husband's contention that these expenditures were not wasteful, but rather reasonable, must be viewed as an invitation to reweigh the evidence and judge the credibility of witnesses, which we will not do. We conclude that the trial court did not abuse its discretion by considering Husband's dissipation of marital assets during the pendency of dissolution proceedings.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.