

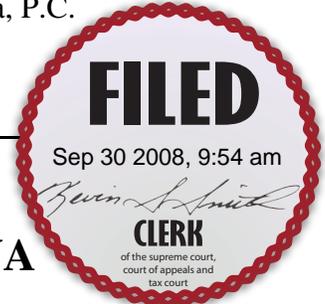
Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

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**IN THE
COURT OF APPEALS OF INDIANA**

KIRBY T. HOBBS,

Appellant-Respondent,

vs.

TIANA L. HOBBS,¹

Appellee-Petitioner.

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No. 17A03-0806-CV-297

APPEAL FROM THE DEKALB CIRCUIT COURT
The Honorable Kirk Carpenter, Judge
Cause No. 17C01-0606-DR-72

September 30, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

¹ We note that the documents before us contain a discrepancy in the spelling of Appellee's name. We have chosen to use Tiana, based upon Appellee's signature on her petition for dissolution.

Case Summary

Kirby T. Hobbs (“Husband”) appeals the trial court’s denial of his motion to correct error filed subsequent to its dissolution decree awarding Tiana L. Hobbs (“Wife”) one half of the marital estate. Wife asserts that she is entitled to reasonable appellate attorney’s fees. We affirm the trial court’s disposition of the property and remand for a determination of appellate attorney’s fees.

Issues

We restate the issues as follows:

- I. Did the trial court abuse its discretion in awarding one-half of the marital estate to Wife?
- II. Is Wife entitled to appellate attorney’s fees?

Facts and Procedural History

Husband and Wife married on October 13, 2001. They lived together until December 19, 2005, and had no children. On June 13, 2006, Wife petitioned to dissolve the marriage, and the trial court found this date to be the legal date of final separation of the parties.

Before the marriage, while Wife was living with her parents, Husband and Wife decided to build their marital home. Husband purchased a seven-and-three-quarter-acre tract of land from Wife’s grandmother. Both the deed and the mortgage were in Husband’s name only. The property was not held for sale to the public and was set aside according to the grandmother’s wishes that her granddaughter use it for her marital residence. During the one and one-half years that the home was under construction, Husband and Wife lived rent-free with Wife’s parents. After they moved into their home, Husband had the deed re-drawn in

both Husband's and Wife's names. When the couple separated, Wife moved back in with her mother, and Husband remained in the marital home.

Before and during the marriage, Wife worked part-time as a hair stylist and earned approximately \$9,000.00 annually. The couple intended to have children and to have Wife work part-time from a salon in her home. Wife contributed financially to the marriage by purchasing groceries, furniture, and other decorative items for the home and by paying her monthly vehicle payment. She also contributed to daily maintenance and operation of the home.

Husband worked full-time during the marriage and earned between \$55,000.00 and \$62,000.00 per year. He paid the couple's bills and paid the mortgage and most of their other debt from his income.

On November 16, 2007, the trial court issued its decree of dissolution of marriage. As part of the decree, the trial court ordered that the marital property be distributed equally and awarded each spouse one-half of the marital estate. On December 14, 2007, Husband filed a motion to correct error. The trial court denied Husband's motion on March 14, 2008, following a hearing held that day. This appeal ensued. Additional facts will be provided as necessary.

Discussion and Decision

I. Division of Marital Property

Husband contends that the trial court abused its discretion by awarding Wife one-half of the marital estate. We review a challenge to the trial court's division of marital property for abuse of discretion. *Goodman v. Goodman*, 754 N.E.2d 595, 599 (Ind. Ct. App. 2001).

We will reverse only if its judgment is clearly against the logic and effect of the facts and the reasonable inferences to be drawn from those facts. *Id.* We neither reweigh evidence nor judge witness credibility; rather, we consider only the evidence favorable to the trial court's disposition of the property. *Hendricks v. Hendricks*, 784 N.E.2d 1024, 1027 (Ind. Ct. App. 2003). Even if facts and reasonable inferences might allow for a different conclusion, we will not substitute our judgment for that of the trial court. *Id.*

According to Indiana Code Section 31-15-7-4, the trial court shall divide the property in a just and reasonable manner. An equal division of marital property is presumed to be just and reasonable. Ind. Code § 31-15-7-5.

However, this presumption may be rebutted by a party who presents relevant evidence, including evidence concerning 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. (emphases added). The party challenging the trial court's property division order "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.” *Hendricks*, 784 N.E.2d at 1027.

Husband asserts that the facts of this case rebut the presumption in favor of equal division of marital property. He relies on *Dahlin v. Dahlin*, 397 N.E.2d 606 (Ind. Ct. App. 1979), in which we reversed the trial court’s equal division of property where the marriage lasted less than four years, the couple had no children, and the husband had contributed substantially more to the couple’s financial obligations during the marriage. However, the *Dahlin* court also relied on the fact that the husband was facing “imminent retirement on a modest pension.” *Id.* at 608. There is no such indication in the present case.

Husband also contends that the trial court overemphasized the couple’s intent to have children and thus excused Wife’s relatively meager financial contributions. The trial court referenced this intent to procreate only as it pertained to the nature of each spouse’s contribution to the home. Instead of emphasizing the intent to have children, the court emphasized the fact that the couple’s most valuable asset, the marital residence, had originated in Wife’s family and that Wife’s contributions were more operational than financial in nature:

16. The above referenced real estate was purchased by [Husband] shortly prior to the marriage from [Wife’s] grandmother when the parties were planning for marriage and [Wife’s] grandmother set aside land for each grandchild to purchase to build a home and *the sale to [Husband] would not have occurred but for the pending marriage to [Wife]*.

17. [Husband] later deeded the real estate to himself and [Wife] jointly.

....

19. [Husband] contributed more financially to the marriage *but [Wife] cared for the home* and this plan was consistent with their plan for the marriage looking forward to them bearing children with [Wife] staying home most of the time to raise the children.

....
22. The Court considers the property and home thereon as a commingled asset subject to division.

Appellant's App. at 7-8 (emphases added). The evidence that Husband and Wife resided with Wife's parents rent-free for the one and a-half-years during which their home was under construction lends further support to the trial court's disposition of the property. Husband has failed to rebut the presumption that equal division of the marital property was fair and reasonable. Thus, we conclude that the trial court acted within its discretion in awarding Wife one-half of the marital estate.

II. Appellate Attorney's Fees

Wife contends that she is entitled to recover from Husband her reasonable attorney's fees incurred in defending this appeal. Indiana Code Section 31-15-10-1(a) authorizes a trial court to award attorney's fees in dissolution cases:

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 entry of judgment.

This statute has been held to include proceedings on appeal. *Thompson v. Thompson*, 811 N.E.2d 888, 929 (Ind. Ct. App. 2004), *trans. denied* (2005).

A trial court has broad discretion in awarding attorney's fees and may consider the responsibility of the parties in incurring the attorney's fees. *Mason v. Mason*, 775 N.E.2d 706, 711 (Ind. Ct. App. 2002), *trans. denied* (2003). The trial court may also consider the parties' resources and financial earning abilities, as well as any other factors that bear on the reasonableness of the award. *Thompson v. Thompson*, 868 N.E.2d 862, 870 (Ind. Ct. App.

2007). Here, the trial court ordered Husband to contribute toward Wife's attorney's fees incurred during the lower court proceedings. Appellant's App. at 13. The trial court retains jurisdiction to award appellate attorney's fees even after the perfection of this appeal. *Thompson*, 811 N.E.2d at 929. We therefore remand this case to the trial court to determine whether appellate attorney's fees should be awarded and in what amount.

Affirmed and remanded.

KIRSCH, J., and VAIDIK, J., concur.