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.

FILED
Oct 06 2011, 8:36 am
CLERK
of the supreme court, court of appeals and tax court

ATTORNEY FOR APPELLANT:

ELDEN E. STOOPS, JR.
Law Offices of Elden E. Stoops, Jr.
North Manchester, Indiana

ATTORNEY FOR APPELLEE:

CHRISTOPHER D. KEHLER
Kehler Law Firm, PC
Warsaw, Indiana

IN THE
COURT OF APPEALS OF INDIANA

ADAM L. SHULL,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 43A03-1103-DR-104
	)	
MARI E. SHULL,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE KOSCIUSKO CIRCUIT COURT
The Honorable Rex L. Reed, Judge
Cause No. 43C01-1010-DR-542

October 6, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issue

Adam Shull ("Husband") appeals the trial court's distribution of marital property in the dissolution of his marriage with Mari Shull ("Wife"). Husband raises one issue for our review, which we restate as whether the trial court abused its discretion in equally distributing property inherited by Husband. Concluding the trial court did not abuse its discretion, we affirm.

Facts and Procedural History

In October of 1999, Husband's grandmother passed away and Husband inherited interests in three parcels of farm land totaling approximately 80 acres. One of the parcels had a home. Two of the parcels were transferred to Husband and his brother as tenants in common, and one was transferred to Husband, his brother, and his father as tenants in common. In 2000, Husband married Wife, who had not yet graduated from high school. Although it was not the reason for their marriage, inheriting a home and potentially income-producing farm land enabled Husband and Wife to marry sooner than they would have otherwise. During the course of their marriage, Husband and Wife lived primarily in the house Husband inherited from his grandmother, and they had two children together. Both worked and received income during their marriage, and, although these points are not undisputed or clear, evidence suggests they received some amount of income from the farm land and invested an unknown amount of money into the house by making improvements.

In 2010, Wife filed a petition for dissolution of marriage, and in January of 2011, the trial court entered its judgment dissolving the marriage and made the following pertinent findings of fact and conclusions of law:

> 2. The parties were married on June 10, 2000.
> * * *
> 4. There were two (2) children born to the marriage, ...
> * * *
> 8. Based upon the stipulation and agreement of the parties, the Court finds and concludes that it is in the best interest of the minor children that their legal custody be shared by [Wife] and [Husband], with primary physical custody of the minor children being awarded to [Wife].
> * * *
> 10. Pursuant to the Indiana Child Support Guidelines . . ., the Court finds and concludes as follows: [Husband] has weekly gross income of $437.00 . . . . [Wife] has weekly gross income of $460.00 . . . .
> * * *
> 15. That a dispute exists as to the disposition of interests in real estate titled in the name of [Husband], which interest [Husband] contends should be set aside to him as it represents an inheritance from his deceased grandmother. The Court notes that the entitlement to the interest in real estate accrued upon the death of [Husband's] grandmother on October 28, 1999, although the actual physical possession of the interest in real estate was held in trust and not distributed to [Husband] until some time thereafter. To be noted is that the ownership of the interest in real estate was held at the time [Wife] and [Husband] were married, that they have been married [sic] in excess of ten (10) years and have two (2) dependent minor children. Further, it does appear that both [Wife] and [Husband] contributed equally to the maintenance of the household, and accordingly, the interest in the three parcels of real estate hereinafter described is deemed a marital asset.
> * * *
> 19. Indiana Code Section 31-15-7-5 mandates this Court to presume that an equal division of the marital property between the parties is just and reasonable. The Court finds that an equal division of the property is appropriate . . . .

Appendix of Appellee at 6-11.[1] Husband filed a motion to correct error, which the trial court denied. Husband now appeals.

Discussion and Decision

I. Standard of Review

The distribution of marital assets is a matter within the sound discretion of the trial court. England v. England, 865 N.E.2d 644, 648 (Ind. Ct. App. 2007), trans. denied. We will not reweigh evidence or assess the credibility of witnesses and will consider the evidence in the light most favorable to the judgment. Id. Even if the circumstances may have justified a different distribution, we may not substitute our judgment for that of the trial court. Id. Reversal is merited only where the trial court's decision is clearly against the logic and effect of the facts and circumstances before the trial court. Castaneda v. Castaneda, 615 N.E.2d 467, 470 (Ind. Ct. App. 1993).

II. Property Distribution

Indiana Code section 31-15-7-4(a) provides that all property is subject to division in an action for dissolution of marriage. Indiana Code section 31-15-7-5 provides a rebuttable presumption of equal division of marital property unless a party presents relevant evidence demonstrating "that an equal division would not be just and reasonable." The statute further provides the following five factors to be considered in making this determination:

> (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

[1] We thank the appellee for filing an appendix but remind the appellant that pursuant to Indiana Appellate Rule 49(A), an appellant "shall" file an appendix with its brief.

(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.

Ind. Code § 31-15-7-5. A party challenging the trial court's property division must overcome a strong presumption that the court complied with the statute and considered the evidence on each of the statutory factors. England, 865 N.E.2d at 648. Although a trial court must consider all of the statutory factors, it is not required to explicitly address all of the factors in every case. Montgomery v. Faust, 910 N.E.2d 234, 239 (Ind. Ct. App. 2009).

Husband argues the trial court did not give proper consideration to these statutory factors and an equal distribution of the farm land is not just and reasonable. Assessing the trial court's findings and conclusions and the circumstances before the trial court and recognizing our standard of review, we disagree. First, Husband argues he was the sole contributor in the acquisition of the property by virtue of being an heir. Even assuming this constitutes a "contribution" for the purposes of the statute, the trial court's findings and conclusions explicitly noted Husband's position that he feels the real estate should be set aside to him because he inherited it from his grandmother. We infer the trial court considered that Wife in no way contributed to the acquisition of the property. Second, based on the same assertion in the findings and conclusions it is clear the trial court considered that the real estate was acquired by Husband through an inheritance prior to the marriage. Third,

although it was in the context of determining child support obligations, the trial court considered the relatively equal economic circumstances of Husband and Wife.

Fourth, while the court did not provide any findings or conclusions suggesting either party disposed of or dissipated marital property during the marriage, the record is void of anything leading us to believe either party did so. Thus, there was nothing for the trial court to consider regarding this factor. Fifth, as discussed above, the trial court observed the earnings of the parties. Although it did so in the context of child support obligations, the trial court did so nonetheless, and as discussed above, the trial court is not required to explicitly address all of the statutory factors. Further, where Husband earns $437 per week and Wife earns $460 per week, the reasonableness of the statutory presumption of equal division is not upset.

In addition to considering the five factors from Indiana Code section 31-15-7-5, the trial court also found relevant the facts that Husband and Wife were married for more than ten years, have two children, and appear to have contributed equally to the maintenance of the household. The trial court considered all factors relevant to the circumstances of Husband and Wife, and we infer from the trial court's findings and conclusions that the trial court duly considered the five factors listed in Indiana Code section 31-15-7-5. The trial court is not required to explicitly address each statutory factor, and the trial court's distribution was not clearly against the logic and effects of the facts and circumstances that were before it.

Conclusion

The trial court properly considered the relevant factors. Husband has failed to meet his burden of overcoming the statutory presumption of equal distribution of marital property. The trial court's judgment was not clearly against the logic and effect of the facts and circumstances that were before it. We therefore affirm.

Affirmed.

BARNES, J., and BRADFORD, J., concur.