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IN THE
COURT OF APPEALS OF INDIANA

SUSAN KIRK,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 52A02-1005-DR-594
	)	
AARON KIRK,	)	
	)	
Appellee-Petitioner.	)	
	)	

APPEAL FROM THE MIAMI SUPERIOR COURT
The Honorable J. David Grund, Judge
The Honorable Robert R. McCallen, III, Special Judge
Cause No. 52D01-0711-DR-428

December 9, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

After the trial court dissolved the marriage of Susan Kirk ("Wife") and Aaron Kirk ("Husband"), Wife filed several post-judgment motions raising various issues. We conclude that the trial court did not abuse its discretion in denying Wife's request for a continuance and that the trial judge did not err in not recusing himself during the final hearing. Further concluding that the trial court did not err in excluding an alleged debt from the marital property or abuse its discretion in valuing and dividing that marital property, we affirm.

Facts and Procedural History

Husband and Wife were married in December 2004. Nearly three years later in November 2007, Husband, by counsel, filed a petition for dissolution of marriage. After three continuances by Wife, one continuance by agreement of the parties, and two continuances by Husband, the final hearing was set for March 26, 2009.

Wife's attorney withdrew five weeks before the final hearing, and Wife did not obtain new counsel. One week before the hearing, Wife received discovery responses, including a personal property appraisal, from Husband. Husband never received any discovery responses from Wife. Two days before the hearing, Wife, *pro se*, filed an unverified letter with the court requesting a continuance until September 2009:

> [Husband] & his attorney have had in their posses[s]ion since mid-October 2008 appraisals and such needed for me to have time to go over as they have.
>
> I respectfully request as much time as they have had.

Appellant's App. p. 19. She did not serve Husband with the request. The court denied the request the next day. At the hearing, at which Husband appeared with counsel and Wife appeared *pro se*, the court explained that it denied Wife's request because the case had been pending since 2007 and both parties had already been granted multiple continuances:

> I did receive your request for continuance and I did review the Court's Chronological Case Summary and have found that you, either yourself or by counsel, have had at least an equal amount of continuances as [Husband] did. Had there been a disparity in the amount of continuances granted previously then I might have been more inclined to grant your request. But in this situation it's been going on since 2007 and each party has had an equal amount of continuances basically so I think it's time to proceed forward.

Tr. Mar. 26, 2009, p. 16.[1]

During direct examination of Husband, Judge J. David Grund interrupted and went off the record. When the hearing continued, Judge Grund stated that he had disclosed to the parties that a member of the court staff was Husband's cousin, had asked the parties whether they were comfortable with him presiding over the case, and had received confirmation from both parties that they were comfortable with him doing so:

> BY THE COURT: Okay we're back on the record. The Court had requested a brief recess. Um and it has occurred to me uh … that there was a dissolution before the Court, the Court Administrator had mentioned that she had . . . a cousin that . . . had a divorce before the Court. Came to me, I recalled that during the initial stages of the proceeding and asked for a recess to discuss that with [Husband]'s counsel and [Wife]. After discussing that with both parties I said that I have never met [Husband], did not know him and know nothing about the case and asked whether both parties were comfortable with the Court continuing the proceedings. I believe they've indicated that they are. Is that correct Mr. Guenin [Husband's counsel]?

[1] We refer to the transcript of the dissolution hearing as "Tr. Mar. 26, 2009" and the transcript of the hearing on Wife's post-judgment motions as "Tr. Apr. 1, 2010."

> BY MR. GUENIN: Uh yes Your Honor.
> BY THE COURT: And is that correct [Husband]?
> BY [HUSBAND]: Yes.
> BY THE COURT: And [Wife] is that correct?
> BY [WIFE]: Yes.

Id. at 28-29.

During the hearing, Husband admitted that he brought few assets into the marriage. He testified, however, that his paychecks were deposited into the parties' joint checking account, which was used to pay bills. Husband also testified that although Wife told him she makes payments to her mother for the mortgage on the marital residence, he has since discovered that there is no official mortgage on the marital residence.

Husband offered and the trial court admitted an exhibit listing the assets and liabilities of the marriage, Husband's proposed values of those assets and liabilities, and Husband's proposed distribution. Petitioner's Ex. 4. Husband testified on direct that he deviated from some of the appraised values for certain items in the exhibit because he disagreed with some of the appraised values:

> Q All right. So [the appraisal] was something that was done back in October [2008] and since that time you have determined that some of the items on [the appraiser's] personal property list are not what you would expect the value of these actually to be in the open market is that correct?
> A Correct.

Tr. Mar. 26, 2009, p. 34. The appraised values were not offered into evidence, and neither party called the appraiser to testify.

The trial court took the matter under advisement and ordered each party to submit a proposed decree of dissolution within thirty days. Husband timely submitted his

proposed decree. Wife timely submitted financial information but her proposed decree was one day late.

The trial court issued an order in June 2009 dissolving the marriage and dividing the marital property in a manner that gave Wife 58% and Husband 42% of the marital property. The trial court included findings in support of its decision:

> 1. Financial Contribution: It was undisputed that Husband consistently contributed his check each week to the payment of obligations incurred on behalf of the parties. The Wife acknowledged that she is the one that [sic] handled the finances of the parties during the course of the marriage.
>
> 2. Valuations of Property: The Wife testified that she had very few disagreements with the valuations assigned to the personal property items and that she had no disagreement with the values placed on the real estate.
>
> a) Missing Property Items: There were a number of items that were identified as "missing" by Husband. Each of those items were [sic] in fact last seen in possession of the Wife. The Wife had no explanation as to where they went or how they were lost or became missing. There was no evidence of either claims against insurance companies or stolen property reports filed with law enforcement agencies.
>
> * * * * *
>
> 3. Use of Real Estate During Pendency: The Court further notes that the Wife has had exclusive possession of the real estate through the pendency of this Dissolution of Marriage. She has had a male friend living with her and assisting her with the expenses, whereas Husband has been required to go out and secure living arrangements away from the marital residence.
>
> 4. Employment of the Parties: It appears currently that [W]ife is marginally employed as a part-time bartender at the De'Ja'Vu – Nightclub, and for nine hours a week, stocking magazines at drug stores. Husband has continued to be regularly and gainfully employed through out [sic] the course of the marriage. There appears to have been some evidence that Wife is capable of

> generating money by sell [sic] of items on E-Bay, sales through Longaberger, Cookie Lee Jewelry, collectables, Boyd's Bears, etc. She also testified that she is also able to sell exotic cats at between $250.00 and $300.00 a piece.

Appellant's App. p. 13, 15.

Wife obtained counsel and filed a motion to correct error, motion to reopen the case and present additional evidence, and motion for relief from judgment. The motion to correct error challenged the court's determination of the marital property and the value and distribution of those items. The motion to reopen the case and present additional evidence asserted that Wife should be permitted to present additional evidence because she did not receive Husband's discovery responses until one week before the hearing and because she was ill and under the influence of medication at the time of the hearing. The motion for relief from judgment stated that the court denied Wife's motion for continuance even though she received discovery responses from Husband one week before the hearing. It also alleged that had Wife known that Judge Grund's "long-time secretary and current staff member is [Husband]'s cousin," she "would have objected to, and does object to," Judge Grund remaining on the case. *Id.* at 25.

After a hearing on the request for recusal in Wife's motion for relief from judgment, Judge Grund issued an order in December 2009 recusing himself:

> [Wife] requests the Court to recuse due to a staff member being a cousin of [Husband]. While the Court does not believe that a recusal is mandatory in this particular situation, in an effort to avoid any appearance of impropriety the Court now grants [Wife]'s Request for Recusal.

Id. at 16.

Judge Robert R. McCallen, III, was selected as a special judge. At a hearing in April 2010, Wife testified about, among other things, Husband's cousin. She stated that in April 2009, either when she filed her financial information with the court on April 24 or when she filed her proposed decree on April 28, she came face to face with the court administrator and realized that the court administrator was Husband's cousin Debbie. She further testified that Husband and Debbie are "very close" and that Debbie worked for Judge Grund when he was a practicing attorney. Tr. Apr. 1, 2010, p. 14.

Judge McCallen issued an order denying Wife's motions. Wife now appeals.

Discussion and Decision

Wife contends that the trial court abused its discretion in denying her request for a continuance and that Judge Grund erred in not recusing himself earlier in the proceedings. Wife further contends that the trial court erred in excluding an alleged debt from the marital property and abused its discretion in valuing and dividing that marital property.

As an initial matter, Husband contends that the cursory nature of Wife's arguments on appeal waives all issues. Specifically, he states, "[Wife]'s issues and arguments should be waived for failure to cite supportive authority, failure to cite the appendix or parts of the record on appeal, and failure to make a cogent argument." Appellee's Br. p. 6. A party generally waives any issue for which it fails to develop a cogent argument or support with adequate citation to authority and portions of the record. *See* Ind. Appellate Rule 46(A)(8)(a); *Spaulding v. Harris*, 914 N.E.2d 820, 833 (Ind. Ct.

App. 2009), *reh'g denied*, *trans. denied*. Although Wife's arguments could have been more thorough, we find they present a cogent argument and decline to waive all issues.

I. Request for Continuance

Wife first contends that the trial court abused its discretion in denying her request for a continuance.

Indiana Trial Rule 53.5 provides, "Upon motion, trial may be postponed or continued in the discretion of the court, and shall be allowed upon a showing of good cause established by affidavit or other evidence." A trial court's decision to grant or deny a motion to continue a trial date is reviewed for an abuse of discretion, and there is a strong presumption that the trial court properly exercised its discretion. *Gunashekar v. Grose*, 915 N.E.2d 953, 955 (Ind. 2009). An abuse of discretion may be found in the denial of a motion for continuance when the moving party has shown good cause for granting the motion. *Thompson v. Thompson*, 811 N.E.2d 888, 907-08 (Ind. Ct. App. 2004), *reh'g denied*, *trans. denied*. However, no abuse of discretion will be found when the moving party has not demonstrated that he or she was prejudiced by the denial. *Id.* at 908.

Wife argues, "Clearly, the lack of response to [Wife]'s discovery requests until one (1) week before the final hearing constituted good cause for the continuance of the final hearing. This is especially true in light of the fact that [Wife] was proceeding pro se at that time." Appellant's Br. p. 8. As to prejudice, Wife argues that she "was forced to proceed to the final hearing, without counsel and unprepared to rebut the evidence submitted by [Husband] regarding the assets and liabilities of the parties." *Id.* at 9.

Wife requested the continuance two days before the final hearing in March 2009. The dissolution proceedings had been pending since November 2007. Husband had been granted two continuances, one continuance had been granted by agreement of the parties, and Wife had been granted three continuances. We also observe that although Wife complains she had only one week to review Husband's discovery responses, Wife never responded to Husband's discovery requests. To the extent she argues that she needed Husband's discovery responses in order to prepare her own discovery responses, we note that she never filed a motion to compel discovery.

With regard to the fact that Wife was unrepresented at the time of her request, it is well settled that *pro se* litigants are held to the same standard as are trained legal counsel. *Goossens v. Goossens*, 829 N.E.2d 36, 43 (Ind. Ct. App. 2005). To the extent Wife argues that her request for a continuance should have been granted to allow her to obtain new counsel, this was not the basis of her request. And even if it were, the withdrawal of an attorney does not automatically entitle a party to a continuance. *Thompson*, 811 N.E.2d at 908. Although we acknowledge that Wife's attorney withdrew five weeks before the hearing, Wife provides no citations to the record indicating that she was diligent in trying to engage new counsel. *See Gunashekar*, 915 N.E.2d at 955 ("If any inference can be drawn from the unexplained passage of six weeks from the time their attorney withdrew, it is that they were not *forced* to proceed without an attorney.").

Furthermore, Wife fails to show prejudice. She states generally that she was "unprepared to rebut the evidence submitted by [Husband] regarding the assets and liabilities of the parties." Appellant's Br. p. 9. A subject of the dissolution proceedings,

however, was the distribution of the marital property. She was aware that she should have had her own assets and liabilities list available at the hearing:

> Q . . . [A]re you familiar with a Local Rule in Miami County which requires the filing of an asset and liability list prior to the final hearing?
> A No.
> Q Hadn't had any familiar[ity] with that with the other divorce - -
> A I didn't know there was a rule.
> Q That you had that's been pending? Okay. You knew you were supposed to though or you just didn't know it was a rule?
> A I didn't know there was a rule. I knew it was customary to - -
> Q Do that?
> A Yeah.
> Q File an asset and liability list prior to the hearing?
> A Not to file it, but to you know, have one available, yes.
> Q Okay. And you didn't do that did you?
> A No, sir.

Tr. Apr. 1, 2010, p. 24. Significantly, she fails to specify any item on Husband's list of assets and liabilities for which she needed more time to gather information that could not have been gathered during her general preparation for the hearing. Because Wife has the burden of showing that the trial court abused its discretion by denying her request for a continuance, we will not presume prejudice where she has provided no particularized information from which we could conclude that she was indeed prejudiced.

This case has been pending since November 2007. The March 26, 2009 hearing date had been set for almost three months. Although Wife's attorney withdrew five weeks before the hearing, Wife has not demonstrated that she did anything to prepare in those five weeks or pointed to any item on Husband's list of assets and liabilities that she was unable to refute. We conclude that the trial court did not abuse its discretion in denying Wife's request for a continuance. *See Gunashekar*, 915 N.E.2d at 956 ("In

ruling on the request to postpone, the trial court was entitled to consider how long the trial had been scheduled, the lack of explanation for eight weeks of apparent inaction, the relative simplicity of a three-witness bench trial, and the potential that the request was a conscious gaming of the system.”).

II. Recusal

Wife next contends that Judge Grund erred in not recusing himself earlier in the proceedings.

The Indiana Code of Judicial Conduct provides, “A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to the following circumstances: (1) The judge has a personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge of facts that are in dispute in the proceeding.” Ind. Judicial Conduct Canon 2.11(A). “A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.” Jud. Canon 2.11, cmt. 5.

A judge is presumed by law to be unbiased and unprejudiced. *Hite v. Haase*, 729 N.E.2d 170, 176 (Ind. Ct. App. 2000). To overcome this presumption, the party seeking to disqualify a judge must establish actual personal bias. *Id.* A mere allegation of bias, without a specific factual showing in support, is insufficient to require disqualification. *Id.* Adverse rulings are insufficient to show bias per se. *Id.* Upon review of a judge’s failure to recuse, we will assume that the judge would have complied with the obligation

to withdraw had there been any reasonable question concerning impartiality, unless we discern circumstances which support a contrary conclusion. *Id.*

Here, Judge Grund remembered during the hearing that his court administrator had informed him that she had a cousin involved in a dissolution proceeding before the court. He disclosed this to the parties and stated that he had no personal knowledge of Husband or the case. When he asked the parties whether they were comfortable with him presiding over the case, both parties answered affirmatively. Although Wife argues that "the details of the relationship were not disclosed" to her at the time of the hearing, Appellant's Br. p. 9, the record clearly establishes that Judge Grund informed Wife that the court administrator was Husband's cousin. Because Wife failed to object or move for recusal after Judge Grund indicated his court administrator's familial relationship with Husband, she has waived this issue.

Further, even if we were to ignore Wife's explicit consent after Judge Grund's disclosure, Wife testified that she realized in April 2009 that the court administrator was Debbie, who apparently is "very close" with Husband and worked for Judge Grund when he was a practicing attorney. Wife did not request recusal, however, until after the trial court issued its final order in June 2009. Timeliness is important in recusal issues. *Southwood v. Carlson*, 704 N.E.2d 163, 167 (Ind. Ct. App. 1999) (citing *Tyson v. State*, 622 N.E.2d 457, 460 (Ind. 1993)). A party may not lie in wait and raise the recusal issue only after receiving an adverse decision. *Id.* Wife has raised the issue too late. *See id.* (recusal issue waived in medical malpractice lawsuit where judge disclosed at hearing that he or a family member had been treated by defendant-doctor and plaintiff argued

only after summary judgment had been granted for defendant-doctor that judge should have disqualified himself).

Waiver notwithstanding, Wife has failed to point to any evidence showing actual bias, and we find none. Judge Grund's order awarding Wife 58% of the marital property alone is insufficient to show bias. We conclude that Judge Grund did not err in not recusing himself.

III. Marital Property

A. Marital Pot

Wife next contends that the trial court erred in excluding an alleged debt from the marital property.

It is well-established in Indiana that all marital property goes into the marital pot for division, whether it was 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); *Beard v. Beard*, 758 N.E.2d 1019, 1025 (Ind. Ct. App. 2001), *trans. denied*. This "one-pot" theory ensures that all assets are subject to the trial court's power to divide and award. *Webb v. Schleutker*, 891 N.E.2d 1144, 1149 (Ind. Ct. App. 2008). While the trial court may ultimately determine that a particular asset should be awarded solely to one spouse, it must first include the asset in its consideration of the marital estate to be divided. *Id.* The marital estate includes assets as well as liabilities. *Keown v. Keown*, 883 N.E.2d 865, 871 (Ind. Ct. App. 2008).

Specifically, Wife argues that the trial court improperly excluded a debt on the marital residence owed to Wife's mother. At the dissolution hearing, there was dispute

over whether a debt was owed on the marital residence. Husband testified that there is no official mortgage on the property:

> Q Uh … okay at the time that you moved into the property as you're saying there was not a mortgage on it that you know of, you have since investigated whether there's a mortgage on the property is that right?
> A Right there is no official mortgage. I was told at the time …
> Q Who told you?
> A [Wife], by [Wife].
> Q Okay.
> A That there is a mortgage on the house taken out on her mother's house … and that she made payments to her mother.
> Q Okay.
> A Now I never, I've never seen evidence of that, I've asked for evidence before but, and that time I was assuming and trusting that it was true.

Tr. Mar. 26, 2009, p. 21. Wife cross-examined Husband about payments to her mother:

> Q . . . [I]s it not true that I had bought that house … end of July, first of August, 1999 with my mother?
> A Yes.
> Q And you keep saying that you are not aware of any money owed on it yet when we filed bankruptcy you stated that she was in fact a creditor for that address that we owe her $40,000.00 on a home that at that time was worth $25,000.00. Do you remember this?
> A I don't really remember specifics about it. All I know as far as you've told me …
> Q And you said …
> A … that there's this loan with your mom.
> Q And …
> A That it's mixed in with your brother.
> Q Do you not remember every two weeks on the 7th and the 14th, or the 7th and the 22nd, I'm sorry, I would write her a check? Write it and send it over from account to accounts to make the house payments?
> A I know, I know you did.
> Q Do you recall that?
> A I know you paid her yeah.
> Q Okay.

A But I do not know for sure what it was for. I believed for a long time that's what it was. But I really don't know. Anytime I asked you what's the balance, you know, and you …

Q You could go to the computer …

A … would never … provide anything.

Q So you are admitting that you knew that I was paying my mother bi-weekly?

A Yes I never denied that.

Q Okay. And you do admit that at the time of filing … we had an outstanding loan with her which was originally the $40,000.00?

A I don't know what the … the beginning amount was but.

Id. at 94-95. Later, Wife testified regarding the alleged debt and the bankruptcy filing:

Q . . . [O]n the bankruptcy you had a house that was worth $25,000.00?

A Yes.

Q And you had a debt that you claim was owed to your mother of $40,000.00?

A Yes.

Q And you, this was a Chapter 7 bankruptcy?

A Yes.

Q Okay so you recognize that the balance that was over and above the amount of the security, that is $40,000.00 minus $25,000.00 was discharged in the bankruptcy is that correct?

A No. No actually I didn't. I thought I still had to pay it to her.

Q Okay well thing is you've only got security that's worth $25,000.00 in bankruptcy and you owe $40,000.00 on it. You don't have to continue to pay the balance on it, that's part of the reason you're going through the bankruptcy. Your attorney didn't tell you that?

A No sir. He told me to reaffirm and continue paying and that's what I did.

Q He told you to reaffirm a debt that was worth twice as much, almost twice as much as what the asset was worth?

A I …

Q And you did it?

A Might be because it was my mother. I mean she's very old and …

Q Okay.

A If I don't pay her then she can't pay her house payment.

Q So you do it as part of taking care of your mother is that correct?

A I would consider it yes.

Q Okay. And you'd do that even if you didn't owe the money you'd make sure she had a place to stay wouldn't you?

A Well yes but I would not be giving her such large amounts every two weeks.

Id. at 105-07. Thus, the trial court heard evidence that there was no official mortgage on the marital residence and that, although Wife pays her mother twice a month and asserted the payments were for a debt on the marital residence, there was no evidence the payments were mortgage payments. The trial court also heard evidence that even if there was a debt on the marital residence, it may have been partially discharged in bankruptcy, and even if the debt was reaffirmed, Wife may have done so to take care of her mother. Given that the record is unclear as to the existence of this alleged debt, we cannot say the trial court erred by excluding it from the marital property.

Wife also argues that "[t]here were also other debts completely excluded from the distribution." Appellant's Br. p. 10. Because Wife fails to specify these debts, we find the issue waived for failure to present a cogent argument. *See* App. R. 46(A)(8)(a); *Spaulding*, 914 N.E.2d at 833.

B. Value of Property

Wife next contends that the trial court abused its discretion in valuing the marital property.

A trial court has broad discretion in valuing marital assets, and its valuation will only be disturbed for an abuse of that discretion. *Webb*, 891 N.E.2d at 1151. A trial court does not abuse its discretion as long as sufficient evidence and reasonable inferences exist to support the valuation. *Id.* If the trial court's valuation is within the scope of the evidence, the result is not clearly against the logic and effect of the facts and reasonable inferences before the court. *Id.*

Wife argues that some of the valuations presented by Husband and adopted by the court were different from the appraised values in that they were extremely exaggerated. Although the Argument section of her brief does not specify which items she contests, her Statement of Facts identifies the Longaberger baskets, Cookie Lee jewelry, Boyds Bears, fifties collectibles, Tupperware, and a leather sectional. The values submitted by Husband and adopted by the trial court for these items are $15,170, $2,338, $6,628, $3,022, $2,390, and $2,000, respectively.

Wife's argument fails. At the dissolution hearing, Husband submitted his list of assets and liabilities, which included Longaberger baskets, Cookie Lee jewelry, Boyds Bears, fifties collectibles, Tupperware, and a leather sectional, and testified as to the values therein. Wife submitted no evidence as to the values of these items. The appraiser's report was not submitted into evidence. Neither party called the appraiser to testify. Although Wife submitted the appraiser's report at the hearing on her post-judgment motions, the report was not before the trial court at the time the court made its order. Thus, the values adopted by the trial court were the only values the court had before it. We cannot say the trial court abused its discretion.

C. Division of Property

Wife finally contends that the trial court abused its discretion in dividing the marital property. Specifically, Wife argues that because the marriage lasted less than three years and Husband brought few assets into the marriage, the trial court abused its discretion in awarding him 42% of the marital property.

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). An equal division of marital property is presumed to be just and reasonable. Ind. Code § 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. *England v. England*, 865 N.E.2d 644, 648 (Ind. Ct. App. 2007), *trans. denied*. When a party challenges the trial court's division of marital property, he or 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. *Hatten v. Hatten*, 825 N.E.2d 791, 794 (Ind. Ct. App. 2005), *trans. denied*. 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 trial court's disposition of the property, without reweighing the evidence or assessing the credibility of witnesses. *Hill v. Hill*, 863 N.E.2d 456, 462-63 (Ind. Ct. App. 2007). 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. *Id.* at 463. 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.*

Although Wife brought more assets into the short marriage, the trial court found that Husband consistently contributed his paycheck each week to the payment of obligations incurred on behalf of the parties. The court also found that items last seen in possession of Wife are missing and that Wife had no explanation as to where they went. Moreover, the court found that Wife resided in the marital residence during the pendency of the dissolution while Husband had to secure new living arrangements. These findings are all supported by the evidence and support the trial court's decision to award Husband 42% of the marital property. The trial court did not abuse its discretion in dividing the marital property.

Affirmed.

MAY, J., and ROBB, J., concur.