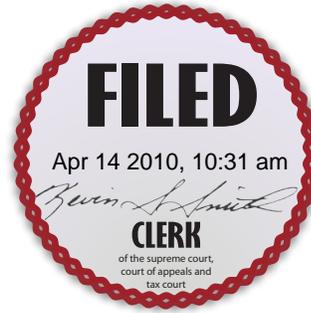


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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STEPHANIE CAMPBELL,  
Appellant-Respondent,

vs.

STEVEN PHILLIP KELSO,  
Appellee-Petitioner.

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No. 42A05-0912-CV-748

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APPEAL FROM THE KNOX CIRCUIT COURT  
The Honorable Sherry L. Biddinger Gregg, Judge  
Cause No. 42C01-0905-DR-314

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**April 14, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## **Case Summary**

Stephanie Campbell appeals the dissolution court's order dividing the marital property she shared with Steven Kelso. Specifically, Stephanie contends that the court abused its discretion in ordering her to pay Steven \$2500 of the couple's federal tax refund because in doing so it created an unequal division of the marital property. Finding the court did not abuse its discretion in dividing the property, we affirm.

## **Facts and Procedural History**

In May 2008 Steven moved in with Stephanie. They lived in the home that Stephanie had purchased by herself. Stephanie and Steven then married in October 2008. During the time that Stephanie and Steven were married, Steven paid Stephanie approximately \$400 a month to help with bills. One month after they were married, in November 2008, Stephanie told Steven that she was behind on the mortgage payments for the home. However, there was no change in the amount of money Steven paid Stephanie. In 2009 Stephanie and Steven filed a joint federal tax return. The tax refund that they received in April was approximately \$7583. This refund was deposited directly into Stephanie's bank account. When Steven realized the entire check had been placed in Stephanie's account, he asked Stephanie for half of the refund. However, she replied that she had already used the entire check to pay the mortgage, which at that point was substantially in arrears.

On May 14, 2009, Stephanie filed a petition for dissolution of marriage. At the time of filing, Stephanie had approximately \$300 in her personal checking account and Steven had \$42 in his personal checking account. Two days later, Steven received a

paycheck in the amount of \$1700 which was deposited directly into his checking account. At the final dissolution hearing, both Steven and Stephanie testified regarding the couple's marital debts and assets. Stephanie testified that there was no equity in the home, and when asked how much money she put down on the house she replied, "I don't recall. I don't recall at this time." Tr. p. 18. When she was asked a second time she said, "Ten. Maybe ten [thousand]." *Id.* Steven testified that he did not think Stephanie paid any money down on the house. *Id.* at 26. Notably, neither Stephanie nor Steven introduced any evidence regarding the value of the house or the balance owed on the mortgage at the time the petition for dissolution was filed.

In the dissolution decree, the trial court divided most of the assets equally, awarding Stephanie and Steven their respective bank accounts, retirement accounts, vehicles, and the personal property in their possession. Included in this division, Stephanie received a bed, valued at approximately \$2500, for which Steven was ordered to pay the loan. The trial court also found "[t]estimony established that there may be \$10,000 in equity in the home, largely from the \$10,000 down payment" and that "Petitioner shall maintain ownership of the property." Appellant's App. p. 15-16. Furthermore, the court found,

Petitioner testified that she applied the entire tax refund to the house mortgage, as it was several months in arrears. Even though the house mortgage payments would be considered a debt of the marriage and the tax refund was applied to "catch up" the mortgage, this refund was the only asset that was truly accumulated during the course of the marriage. In addition, the Petitioner will be receiving the marital home as her individual property pursuant to this court order, as well as the equity in the home. In light of these facts, and in the interest of a fair division of marital property, while still considering marital debt, the Respondent is entitled to an award

of a portion of the tax refund. Therefore, the Petitioner is hereby ordered to pay the sum of \$2,500.00 to Respondent . . . .

*Id.* at 16-17. Stephanie filed a motion to correct errors, which the trial court denied. Stephanie now appeals.

### **Discussion and Decision**

Stephanie first contends that the trial court erred by failing to include as a marital asset a \$1700 paycheck received by Steven two days after the filing of the dissolution petition. All property, whether acquired before or during the marriage, is included in the marital estate for property division. *Webb v. Schleutker*, 891 N.E.2d 1144, 1149 (Ind. Ct. App. 2008). The marital pot usually closes on the date the dissolution petition is filed. *Sanjari v. Sanjari*, 755 N.E.2d 1186, 1192 (Ind. Ct. App. 2001). Even if the trial court erred by failing to include this paycheck in the marital pot because it was earned—but not received—before the marital pot closed, we find any error to be harmless in light of the assets Stephanie did receive, as described below.

Stephanie next contends that the trial court abused its discretion in awarding Steven \$2500 from their \$7538 tax refund because it creates an unequal division of property. Trial courts must divide marital property in a dissolution action in a just and reasonable manner. Ind. Code § 31-15-7-4. An equal division of marital property is presumed to be just and equitable. Ind. Code § 31-15-7-5. Trial courts may deviate from an equal distribution, provided that they consider the following statutory factors delineated in Indiana Code section 31-15-7-5: (1) the contribution of each spouse in the acquisition of the property, regardless of whether the contribution was income-producing; (2) the extent to which the property was acquired before the marriage or through

inheritance or gift; (3) the economic circumstances of each spouse at the time the disposition of the property is to become effective; (4) the conduct of the parties during the marriage regarding their use of the property; and (5) the earning abilities of each party. *Id.* If the trial court deviates from an equal division, it must state the reasons for doing so. *Helm v. Helm*, 873 N.E.2d 83, 91 (Ind. Ct. App. 2007).

The division of marital property lies within the sound discretion of the trial court. *Webb*, 891 N.E.2d at 1153. 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. *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 when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, including the reasonable inferences to be drawn therefrom. *Daugherty v. Daugherty*, 816 N.E.2d 1180, 1187 (Ind. Ct. App. 2004). "We will reverse a property distribution only if there is no rational basis for the award, and, although the circumstances may have justified a different property distribution, we may not substitute our judgment for that of the dissolution court." *Helm*, 873 N.E.2d at 90-91 (quoting *Augspurger v. Hudson*, 802 N.E.2d 503, 512 (Ind. Ct. App. 2004)).

Citing no case law, Stephanie claims that ordering her to pay Steven \$2500 from their tax refund is error because the tax refund was a marital asset that was used to pay

down a marital debt before the filing of the petition and that awarding Steven \$2500 from this asset resulted in an unequal division of the marital assets. However, the trial court noted in its decree of dissolution that it was awarding Stephanie the marital residence and was including in its assessment that she probably had \$10,000 in equity in the home due to her \$10,000 down payment. The trial court also awarded her a bed valued at \$2500 that Steven bought using a loan from his parents, a loan which the court ordered Steven to continue paying. Steven, on the other hand, was awarded only \$2500 of the tax refund. The trial court was careful to note that this division of property was done in light of the facts and “in the interest of a fair division of marital property, while still considering marital debt.” Appellant’s App. p. 17. Because the trial court adequately stated the reason for the division of the property, we find no abuse of discretion.

Affirmed.

NAJAM, J., and BROWN, J., concur.