



## Case Summary

Thomas Gangloff appeals the trial court's order dissolving his twenty-five-year marriage to Karen Gangloff and providing for the custody, parenting time, and child support of his nineteen-year-old daughter. We conclude that the trial court did not abuse its discretion in not including an asset in the marital pot because the asset did not exist when the marital pot closed and in giving no value to another asset because there was testimony that it had no value. We also conclude that the trial court did not abuse its discretion in issuing an order with respect to the parties' unemancipated child because the parties did not submit an agreement to the trial court; thus, the court was given the issue, and it resolved the issue within the evidence. We therefore affirm.

## Facts and Procedural History

Thomas and Karen Gangloff married on August 27, 1983. Three children were born during the marriage. Only one of the children, Daisy, was not emancipated at the time of these proceedings.

Karen filed a petition for legal separation on July 20, 2006. Thomas filed a counter-petition for dissolution on August 10, 2006. The trial court held a provisional hearing and then entered provisional orders, including that Thomas pay child support in the amount of \$37 per week for Daisy.<sup>1</sup>

---

<sup>1</sup> We observe that the Appellant's Appendix does not include copies of the petition for legal separation, the counter-petition for dissolution, or any of the trial court's provisional orders. Indiana Appellate Rule 50(A)(2)(f) provides that the Appellant's Appendix shall contain "pleadings and other documents from the Clerk's Record in chronological order that are necessary for resolution of the issues raised on appeal." Because of the absence of these important documents, we take most of the procedural information from the CCS. According to the dissolution decree, though, "The parties stipulated prior to the hearing that the Petition for Legal Separation is converted to a Petition for Dissolution of Marriage and that the final hearing be held without the necessity of filing a new Petition." Appellant's App. p. 12.

As for the parties' alleged assets, Thomas and Karen owned a home, two vacant lots, and a rental property. Each of them had their own retirement accounts and vehicles. In addition, in the early 1990s, Karen, along with her sister and four cousins, formed Titus Inc., a welding and fabricating company, and Read Enterprises Inc., a holding company for Titus Inc. Karen owned 1/6 of the stock in each corporation. In December 2004 Karen sold her stock in Titus Inc. to her father, Jay Read, for \$1.00 because of concerns about the corporation's financial health, which she and Thomas had discussed. However, the corporation did not get the sale on its books until sometime in 2005. Karen, however, still owned 1/6 of an interest in Read Enterprises Inc. at the time of final separation in this case. Although Read Enterprises Inc. had assets that consisted of real estate assessed at \$232,500, according to Karen the corporation owed more than one million dollars in promissory notes.

The final hearing, which was contested, was held on March 2, 2009. At the hearing, Karen submitted Exhibits 4 and 6, which listed the marital property she proposed be taken by each party and her values for each item. Specifically, Karen requested a cash settlement payment from Thomas in the amount of \$44,819, which would result in a 50-50 property distribution. Thomas disagreed that some of the property listed in Karen's exhibits still existed and did not submit his own values for some of the property that did exist. In addition, the parties did not submit an agreement as to Daisy, who was nineteen years old at the time, living in Kokomo, and attending Indiana University-Kokomo. Thomas, however, testified that he was not asking for any type of order with respect to Daisy because "[s]he's being taken care of." Appellant's App. p. 75. Karen responded

that the arrangement with Daisy has “worked out fairly well” and that they are both “tak[ing] care of her needs.” *Id.* at 100. That is, Karen has “given some things to her and Tom has given some things to her[.]” *Id.*

On July 16, 2009, the trial court entered the decree of dissolution of marriage, which provides in pertinent part:

4. The care of Daisy shall continue pursuant to the Provisional Order and its modification. Those Orders include:

- (a) The parties shall share legal custody.
- (b) Physical custody shall be in accordance with their current schedule and otherwise by agreement.
- (c) [Thomas] shall continue to pay support of \$37 per week.

5. All support arrearage is preserved.

6. [Thomas] shall claim Daisy as an exemption for tax purposes in all odd numbered years and [Karen] in all even numbered years.

7. All property and debts are divided in accordance with [Karen’s] Exhibit 4 and 6 attached. Those exhibits are attached for purposes of property identification and not adoption of their values.

8. [Thomas] claims that the values attributed to items of personal property which he is to receive are too high or that some of the property no longer exists. I agree with his assertion on some of the values but have no way to determine the correct value nor which items now exist. However, the amount of cash settlement awarded to [Karen] is done so taking the overvaluations into account.

9. [Karen] shall have judgment [against] [Thomas] and [Thomas] shall pay [Karen] the sum of \$40,000. That sum carries interest at the legal rate from this date if it is not paid in full by October 1, 2009.

\* \* \* \* \*

12. [Thomas] shall pay \$3,250 of [Karen’s] attorney fees by October 1, 2009.

*Id.* at 12-13. Thomas filed a motion to correct errors, which the trial court denied. Thomas now appeals.

### **Discussion and Decision**

Thomas raises several issues on appeal, which we restate as two. First, Thomas contends that the trial court abused its discretion in determining what property must be included in the marital estate and in valuing it. Second, Thomas contends that the trial court abused its discretion in issuing an order as to Daisy because the parties implicitly agreed that no order should issue.

#### **I. Marital Property**

The division of marital property in Indiana is a two-step process. *Thompson v. Thompson*, 811 N.E.2d 888, 912 (Ind. Ct. App. 2004), *reh'g denied, trans. denied*. First, the trial court determines what property must be included in the marital estate. *Id.* It is well-established 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); *Webb v. Schleutker*, 891 N.E.2d 1144, 1149 (Ind. Ct. App. 2008). This “one-pot” theory ensures that all assets are subject to the trial court’s power to divide and award. *Thompson*, 811 N.E.2d at 914. 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 determinative date when identifying marital property subject to division is the date of final separation, which generally means the date the petition for dissolution was filed.

*Granzow v. Granzow*, 855 N.E.2d 680, 684 (Ind. Ct. App. 2006). However, if a legal separation proceeding involving the parties was pending when the petition for dissolution was filed, then the date of final separation is the date the petition for legal separation was filed. Ind. Code § 31-9-2-46.

After determining what constitutes marital property, the trial court must then divide the marital property under the presumption that an equal split is just and reasonable. *Id.* at 912; *see also* Ind. Code § 31-15-7-5. The division of marital assets is a matter 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, he 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.*

Thomas first argues that the trial court abused its discretion in failing to include the Titus Inc. stock in the marital pot. Here, the marital pot closed in July 2006 when Karen filed her petition for legal separation. At this time, Karen no longer owned any Titus Inc. stock; therefore, the trial court did not abuse its discretion in failing to include it in the marital pot. Nevertheless, Thomas points out that Karen's 1/6 ownership in the corporation was reflected in the couple's 2005 joint federal tax return, which casts doubt on her testimony that she actually sold the stock in 2004 and presumably proves that she still owned the stock at the time of final separation. However, as Karen explained at the final hearing, she sold the stock to her father in December 2004, but the sale did not get reflected on the corporation's books until sometime in 2005. Appellant's App. p. 121;

*see also id.* at 248 (testimony from president of Titus Inc., Tom Read). Thomas and Karen's joint federal tax return for 2005, which had to be amended, also reflects the sale of Titus Inc. stock at a loss. *Id.* at 175; *see also id.* at 217 (Titus Inc. 2005 tax return listing Jay Read as shareholder). The trial court was entitled to believe Karen, and this is a credibility determination we will not reweigh on appeal.

Thomas next argues that the trial court abused its discretion in giving the Read Enterprises Inc. stock no value. Specifically, he asserts that the corporation owned real estate assessed at \$232,500 and that Karen, who did not testify in her capacity as an expert or officer of the corporation, was not qualified to testify that the corporation owed more than a million dollars. Thus, Thomas claims that Read Enterprises Inc. actually had value. A trial court abuses its discretion when there is no evidence in the record to support its decision to assign a particular value to a marital asset. *Thompson*, 811 N.E.2d at 917.

The following exchange occurred at the final hearing between Karen, a shareholder in Read Enterprises Inc., and her attorney:

Q: And to your knowledge, is Titus supposed to be paying rent to Read Enterprises?

A: Yes.

Q: And is there a significant arrearage in that rent?

A: Yes.

Q: And are there promissory notes due from Read Enterprises to previous owners or investors?

A: Yes. Large amounts because they had to pay the bank off.

Q: The investors had to pay the bank off?

A: Well, they made the loan to the families so that the loan would be to the relatives instead of to the bank.

Q: And those monies have to be paid back?

A: Yes.

Q: To your knowledge, does that exceed a million dollars?

A: Yes.

Q: So do you feel that . . . Read Enterprises in the last six (6) years has had any significant equity value?

A: No, I do not.

Appellant's App. p. 113-14. Karen's oral testimony provided sufficient evidence upon which the trial court could value the corporation at zero, and Thomas provides no authority to support his position that it is not correctly valued at zero. Accordingly, the trial court did not abuse its discretion in assigning Read Enterprises Inc. no value.<sup>2</sup>

## **II. Custody, Parenting Time, and Child Support of Daisy**

As a final matter, Thomas contends that the trial court erred by entering an order concerning Daisy because the parties implicitly agreed that no order should issue. "By *not* presenting issues of custody, parenting time, or child support, Karen and Thomas both implicitly agreed that these issues were not contested." Appellant's Br. p. 21. Thus, Thomas asks us to "remand this issue to the trial court with orders to enter an order that the parties are to continue to co-operate and agree on parenting time with Daisy, with no child support obligation for with [sic] parent, and that Thomas be reimbursed the money he has paid under the existing order." *Id.* at 22-23. Karen has a different take on the issue. She points out that the parties did not present an agreement to the trial court regarding Daisy. In addition, by not presenting additional evidence, the parties were merely proposing to the court that they continue with the present arrangement, which included Thomas paying \$37 per week in child support.

During Karen's direct examination, the following colloquy occurred:

---

<sup>2</sup> Because we find in favor of Karen on these issues, we do not need to address Thomas's request for attorney fees and costs against Karen for the necessity of a new hearing.

Q: . . . The *arrangement* for Daisy is okay? If we just say that the two (2) of you will assist her as you can?

A: Yes. However, there was a dispute over the taxes on claiming her.

Q: That was going to be my next question. Okay. So with respect to Daisy, if the Court just *orders* that both of you will assist her as you can, that should get the job done for Daisy; right?

A: I feel that it will.

Tr. p. 77 (emphases added). We first note that Karen’s attorney’s use of the word “orders” contemplates that Karen thought that the trial court would in fact issue an order regarding Daisy. Given that the parties did not present the trial court with an agreement concerning Daisy, the issue was before the trial court. Furthermore, it was within the evidence for the trial court to continue the present arrangement, especially considering the evidence presented at the final hearing concerning their current job situations, that is, Thomas’s full-time job as foreman of the Marshall County Highway Department and Karen’s part-time janitorial job. The trial court did not abuse its discretion in ordering the parties to share legal custody of Daisy, that physical custody was to be in accordance with their current schedule and otherwise by agreement, and that Thomas was to continue to pay \$37 per week in child support.

Affirmed.

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