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IN THE
COURT OF APPEALS OF INDIANA

ROY ALAN VEATCH,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 82A01-0612-CV-569
	)	
KAREN VEATCH,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Jill R. Marcrum, Magistrate
Cause No. 82D04-0406-DR-610

June 28, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Roy Alan Veatch ("Father") appeals the Vanderburgh Superior Court's order dissolving his marriage to Karen Veatch ("Mother"). He raises two issues, which we reorder and restate as:

I. Whether the trial court abused its discretion in establishing Father's parenting time; and,

II. Whether the trial court abused its discretion in its division of the marital property.

Concluding that the trial court did not abuse its discretion with regard to parenting time, but that the court erred by dividing the marital assets without giving clear consideration to all the relevant statutory elements, we affirm in part and remand for a redetermination of the division and distribution of the parties' marital assets.

Facts and Procedural History

The parties were married on July 16, 1994, and were granted a dissolution of marriage on July 6, 2006. They have three minor children, a son born in 2001 and twins born in 2003. Mother is an elementary school teacher and earns approximately $52,000 per year. Father works at Countrymark Oil Refinery, earning approximately $71,000 per year. Father works a four-week rotating shift: two weeks on the day shift and two weeks on the night shift. He works four twelve-hour days each week, one six-hour day, and has two days off. On one of the two off-days, he is on call. Tr. pp. 43-45.

The trial court ordered that the parties would share joint legal custody of the children with Mother having primary physical custody. The court then noted that "due to Father's unusual work schedule and the fact that he is on call at various times, this Court

cannot order the Indiana Parenting Time Guidelines with respect to parenting time in general." Appellant's App. p. 10.

The court divided the marital estate and awarded approximately 64% of the marital assets to Mother. Father now appeals. Additional facts will be provided as necessary.

Standard of Review

We generally give "considerable deference to the findings of the trial court in family law matters" as a reflection that "the trial judge is in the best position to judge the facts, . . .to get a sense of the parents and their relationship with their children--the kind of qualities that appellate courts would be in a difficult position to assess." MacLafferty v. MacLafferty, 829 N.E.2d 938, 940 (Ind. 2005).

I. Parenting Time

First, Father challenges the trial court's order as it pertains to his parenting time. Indiana Code section 31-17-4-1(a) (2006) provides that a parent "not granted custody of the child is entitled to reasonable parenting time rights unless the court finds, after a hearing, that parenting time by the noncustodial parent might endanger the child's physical health or significantly impair the child's emotional development." We review a trial court's determination of a parenting time issue for abuse of discretion. J.M. v. N.M., 844 N.E.2d 590, 599 (Ind. Ct. App. 2006), trans. denied. No abuse of discretion occurs if there is a rational basis in the record supporting the trial court's determination. Id. We will neither reweigh evidence nor judge the credibility of witnesses. Id. In all parenting

time controversies, courts are required to give foremost consideration to the best interests of the child. Id.

Father contends that the trial court erred by failing to follow the Indiana Parenting Time Guidelines. The Preamble to the Guidelines states that "[t]he purpose of these guidelines is to provide a model which may be adjusted depending upon the unique needs and circumstances of each family." Further, Subsection 2 of the Scope of Application provision in the Guidelines specifies: "There is a presumption that the Indiana Parenting Time Guidelines are applicable in all cases covered by these guidelines. Any deviation from these Guidelines by either the parties or the court must be accompanied by a written explanation indicating why the deviation is necessary or appropriate in the case." See also Shelton v. Shelton, 840 N.E.2d 835, 835 (Ind. 2006).

The trial court provided an explanation for the deviation from the Guidelines in the dissolution decree:

> Due to the nature of Father's job, he cannot take the children with him when he is on call. Father's suggestion is to return the children to Mother if he gets called in. Unfortunately, Father may be called in during the middle of the night. It is not in the best interests of the children to be woken up in the middle of the night and be returned to Mother's home. In order to give Father reasonable parenting time, Father is ordered to provide Mother with his [work] schedule upon his receipt of the schedule. Father will be entitled to an overnight with the children on any evening which he is not on call and does not have to be at work before 7:00 a.m. the following day. Father may also have time with the children on a day on which he is on call as long as there is child care available for the children should he be called in. On days when Father is on call, Father shall return the children no later than 7:30 p.m. unless otherwise agreed to by the parties. Father shall also be entitled to spend time with the children on his day off.

Appellant's App. p. 11.

Father argues that the trial court placed an "unreasonable restriction" on his parenting time. Br. of Appellant at 17. In its ruling on Father's motion to correct error, the court clarified its order with regard to Father's parenting time as follows:

> the Court was in no way attempting to limit the Respondent/Father's contact with his children. However, the babysitter which [Father] proposed to call in the middle of the night if he were called in to work was his mother. The only evidence before the Court with respect to his mother was that she was in a mental health facility in 2003 and [Mother's] testimony as to [Father's] mother's mental condition. As [Father's] mother was present at the time of the hearing, that evidence could have been refuted, but was not. It is the Court's duty to provide for the best interests of the children. It is not in the best interests of the children to be woken up in the middle of the night regardless as to whether it is a school night or a weekend. [Father] is entitled to parenting time with his children. He may exercise that time overnight on nights when he is not on call and does not have to go to work early the next morning. If he is on call, he may still have parenting time with the children, but the children will spend the night at [Mother's] home. [Mother] should be flexible with [Father] as it is in the best interests of the children that they have a consistent and healthy relationship with [Father].

Appellant's App. p. 22.

Father also argues that the trial court erred when it ordered that he "may have extended time during the summer months of up to four weeks on the condition that he is not working. In other words, if Father has four weeks of vacation which he chooses to take during the summer, he may do so." Appellant's App. pp. 10-11. He contends that the restriction that he not be working to exercise his extended parenting time is unreasonable.

The trial court clearly had concerns with Father's choice of childcare provider in the event that he had to work. While we are concerned by the court's apparent requirement that Father have extended parenting time only if he is not working, we

cannot say that the record lacks any rational basis supporting the trial court's determination. Therefore, we cannot conclude that the trial court abused its discretion.

II. Division of Marital Assets

Next, Father asserts that the trial court erred in its division of the marital estate. The division of marital assets lies within the sound discretion of the trial court, and we will reverse only for an abuse of that discretion. J.M. v. N.M., 844 N.E.2d 590, 599 (Ind. Ct. App. 2006), trans. denied (citing Woods v. Woods, 788 N.E.2d 897, 900 (Ind. Ct. App. 2003)). An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances presented. Id. (citing Daugherty v. Daugherty, 816 N.E.2d 1180, 1187 (Ind. Ct. App. 2004)). When we review a challenge to the trial court's division of marital property, we may not reweigh the evidence or assess the credibility of witnesses, and we will consider only the evidence most favorable to the trial court's disposition of marital property. Id. Moreover, the challenger 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.

Where, as here, the trial court sua sponte enters specific findings of fact and conclusions, we review its findings and conclusions to determine whether the evidence supports the findings, and whether the findings support the judgment. Fowler v. Perry, 830 N.E.2d 97, 102 (Ind. Ct. App. 2005). We will set aside the trial court's findings and conclusions only if they are clearly erroneous. Id. A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake was made. Id. We

neither reweigh the evidence nor assess the witnesses' credibility, and consider only the evidence most favorable to the judgment. Id. Further, "findings made sua sponte control only…the issues they cover and a general judgment will control as to the issues upon which there are no findings. A general judgment entered with findings will be affirmed if it can be sustained on any legal theory supported by the evidence." Id.

In a dissolution action, the trial court must divide marital property in a just and reasonable manner, including property owned by either spouse prior to the marriage, acquired by either spouse after the marriage and prior to final separation, or acquired by their joint efforts. Ind. Code § 31-15-7-4 (1998). The trial court's disposition of the marital estate is to be considered as a whole, not item by item. Eye v. Eye, 849 N.E.2d 698, 701 (Ind. Ct. App. 2006) (citing Fobar v. Vonderahe, 771 N.E.2d 57, 59 (Ind. 2002)). Indiana Code section 31-15-7-5 provides:

> The court shall presume that an equal division of the marital property between the parties is just and reasonable. 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.

Ind. Code § 31-15-7-5 (1998). When ordering an unequal division, the trial court must consider all of the factors set out in the statute. Eye, 849 N.E.2d at 701 (quoting Wallace v. Wallace, 714 N.E.2d 774, 780 (Ind. Ct. App. 1999), trans. denied, (emphasis in original)).

Here, the trial court divided the marital estate as follows:

Mother's Assets:	
Marital Residence	$85,250
2003 Chevrolet Tahoe	$24,395
Accounts in Mother's Name	$36,913
Inheritance/Gifts in Mother's Name	$59,523
Half of Assets Held Jointly	$15,073.75
Half of 2005 Income Tax Refund	$3,709
TOTAL	$224,863.75

Father's Assets:	
2004 Chevrolet 1500	$9840
Accounts in Father's Name	$92,870
Half of Assets Held Jointly	$15,073.75
State Street Bank and Trust Account	$5122.22
Half of 2005 Income Tax Refund	$3,709
Citibank Debt	[-$5,631.98]
TOTAL	$120,982.99

See Br. of Appellant at 12; Br. of Appellee at 14. This division resulted in an award of approximately 64% of the marital property to Mother and 36% to Father.

Father argues that the trial court did not adequately take into account all the factors of Indiana Code section 31-15-7-5. He also argues that even if the trial court properly set aside Mother's inherited and gifted accounts, the unequal division of the remaining assets, which resulted in a 57-43 split favoring Mother, was erroneous. In response, Mother points to the trial court's finding that she used $45,000 of her own funds for a down payment on the marital residence as evidence justifying the unequal distribution.

See Appellant's App. p. 5. The trial court found that Mother should "receive credit or have this amount set off to her[,]" but gave no further indication as to how the credit or setoff should be taken into account. Id.

In addition, the trial court did not issue findings addressing the factors other than inheritance included in the property division statute, specifically the contribution of the parties, the conduct of the parties, and the relative earning ability of each party. See Eye, 849 N.E.2d at 703. Setting property aside to Mother based upon the fact of inheritance effected an unequal distribution of the marital estate absent consideration of the other factors necessary for the conclusion that such a distribution would be just and reasonable. See id. at 705.

Consideration of relevant evidence under Indiana Code section 31-15-7-5 may or may not establish that the parties' circumstances merit an unequal distribution. However, without consideration of all the factors required to rebut the presumption of an equal distribution, we cannot conclude that the trial court acted within its discretion. Therefore, we remand to the trial court for a redetermination of the distribution of the marital property pursuant to Indiana Code section 31-15-7-5.

Conclusion

The trial court did not abuse its discretion with respect to Father's parenting time; however, the court did abuse its discretion by unequally dividing the marital property without considering all of the factors required to rebut the presumption that an equal distribution is just and reasonable.

Affirmed in part and remanded in part.

DARDEN, J., and KIRSCH, J., concur.