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IN THE
COURT OF APPEALS OF INDIANA

ADAM G. BAUER,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 29A02-0703-CV-262
	)	
JILL M. BIRK-BAUER,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Katherine M. Varie, Judge Pro Tempore
Cause No. 29D02-0408-DR-687

August 14, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Adam Bauer ("Husband") appeals the trial court's order dissolving his marriage to Jill Birk-Bauer ("Wife").

We affirm.

ISSUES[1]

1. Whether the trial court abused its discretion in establishing the visitation order.

2. Whether the trial court abused its discretion in its distribution of the marital estate.

3. Whether the trial court abused its discretion in awarding temporary maintenance to Wife.

FACTS[2]

The parties were married on June 28, 2003 and resided in Hamilton County. The parties' only child, A.B., was born on April 6, 2004.

Wife filed a petition for legal separation on August 9, 2004. Upon separation, Wife and A.B. moved out of the marital residence while Husband continued to reside in the home. The parties listed the marital residence for sale in September of 2005.

On September 21, 2004, Wife filed a petition for dissolution of the marriage. Subsequently, both parties filed numerous motions. Pursuant to an agreement of the parties, the trial court entered a preliminary order on November 12, 2004 and set the final

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[1] We remind Husband's counsel that pursuant to Appellate Rule 46(A)(4), the statement of issues "shall concisely and particularly describe each issue presented for review." (Emphasis added).

[2] We direct Husband's counsel to Appellate Rule 46(A)(6), which sets forth the proper form for a Statement of Facts.

hearing for April 27, 2005. Pursuant to the agreed preliminary order, Wife obtained legal custody of A.B., with Husband exercising parenting time as agreed to by the parties.

On March 30, 2005, Husband filed an emergency petition for contempt for failure to make A.B. available for visitation. According to the chronological case summary (the "CCS"), Husband filed a second emergency petition for contempt on April 1, 2005. Wife filed a petition to modify the parties' preliminary agreement on April 7, 2005. The trial court set a hearing on the motions filed on April 1 and April 7 and pursuant to the parties' agreement, continued the final hearing.

On May 20, 2005, the trial court heard arguments and evidence on the petition for contempt and the petition to modify the preliminary agreement. On May 26, 2005, the trial court appointed a mediator. On July 11, 2005, and by agreement of the parties, the trial court set the final hearing for August 25, 2005.

On July 27, 2005, the trial court entered its order on Husband's petition for contempt and Wife's petition to modify the preliminary agreement. Among other things, the trial court ordered Husband to pay Wife $250.00 per week "spousal maintenance, effective July 22, 2005." (Wife's App. 100).

On August 23, 2005, Wife, "on behalf of both parties," filed a motion to continue the final hearing. (Husband's App. 30). The trial court granted the motion and set the final hearing for February 8, 2006.

On September 26, 2005, the parties filed a joint petition for the appointment of a parenting coordinator, which the trial court granted on September 28, 2005. The trial court then appointed Allen Rader as the parenting coordinator. Thereafter, on January

11, 2006, Wife filed a petition to appoint a custody and parenting-time coordinator and a motion to continue the final hearing. The trial court entered its order, appointing Jonni Gonso as the custody and parenting time-coordinator, on January 12, 2006. The trial court also continued the final hearing to August 16, 2006.

In March of 2006, Rader sought a discharge as the parenting coordinator. Following a hearing on March 30, 2006, the trial court discharged Rader as the parenting coordinator and appointed Dr. John Ehrmann as the new parenting coordinator.

On June 30, 2006, Husband's parents filed a petition for visitation rights. Also, on June 30, 2006, Husband filed a motion for in-camera conference.

On July 11, 2006, Husband filed a petition for contempt as to visitation, which the trial court set for a hearing on August 18, 2006. On July 26, 2006, Wife filed a response to Husband's petition for contempt and also filed a petition for contempt. On July 21, 2006, Wife filed a petition to consolidate Husband's petition for contempt and hearing on all matters with the final hearing. On July 31, 2006, Husband filed a motion to continue and consolidate all pending hearings to October of 2006.[3]

On August 1, 2006, Husband filed an objection to Wife's response to Husband's petition for contempt and again sought consolidation of the pending hearings. Husband also filed an answer to Wife's petition to consolidate and his response to Wife's petition for contempt. On August 4, 2006, Wife filed an objection to the requested continuance,

[3] Husband sought to consolidate the "August 16, 2006, August 18, 2006, [and] October 5, 2006" hearings and have them reset for trial in October of 2006. (Husband's App. 32). The trial court scheduled the August 18 hearing to hear evidence on Husband's July 11 petition for contempt.

which was followed by Husband's answer on August 7, 2006, followed by Wife's reply on August 8, 2006.

On August 9, 2006, Husband filed a motion to continue the final hearing due to his counsel's illness or injury. Prior to the commencement of the final hearing on August 16, 2006, the trial court denied Husband's motion to continue the hearing. The trial court heard evidence and continued the hearing to September 6, 2006. Wife requested findings of fact and conclusions of law on August 22, 2006.

The parties again appeared for the final hearing on September 6, 2006. The trial court heard evidence, took the matter under advisement and ordered the parties to submit proposed findings.

On October 30, 2006, the trial court entered its findings of fact, conclusions of law and judgment. The trial court found, in pertinent part, as follows:

> 2. For six months prior to the filing of Wife's petition for legal separation, the parties had been residents of Hamilton County, Indiana . . . . Husband continues to reside in the marital residence . . . .
>
> * * *
>
> 6. Pursuant to the agreed preliminary order of November 12, 2004, Wife was granted legal custody of the parties' minor child . . . and Husband was to exercise parenting time as the parties agreed.
>
> 7. The parties filed their joint petition for the appointment of a parenting coordinator and for an order defining the role and responsibilities of the parenting coordinator on September 25, 2005.
>
> 8. The court granted the petition on September 28, 2005, and appointed Allen Rader . . . as the parenting coordinator.

9. Wife petitioned the court on January 11, 2006 to appoint [a] custody/parenting time evaluator which petition was granted January 12, 2006, appointing Jonni L. Gonso . . . .

10. Allen Rader submitted a request for discharge as parenting coordinator on March 2, 2006 . . . , a hearing was held on the request on March 30, 2006 . . . .

11. The court granted Allen Rader's request to withdraw as parenting coordinator on April 6, 2006, and on that date appointed Dr. John Ehrmann . . . as the parenting coordinator.

12. Allen Rader cited Husband's lack of capacity to maintain a cooperative and productive relationship with professionals or authority figures; his refusal to communicate with Allen Rader regarding parenting issues; the direction from Husband's attorney that communication to Husband be through her; that Husband, through tactics of manipulation, avoidance and intimidation, undermined the potential for productive resolutions to disputes; that Husband failed to submit to a full psychological evaluation; that Husband failed to participate in long term counseling . . . .

13. At the Final Hearing, Husband sought joint legal custody and parenting time in accordance with the Indiana Parenting Time Guidelines. Wife sought an award of sole legal custody with parenting time expanded as recommended by the Parenting Coordinator.

14. Husband has a history of alcohol abuse, three arrests for driving under the influence and his license was permanently suspended after conviction on a charge of operating a motor vehicle while intoxicated. Husband served his sentence (primarily work-release) and successfully completed his probation in June 2005. Husband testified that he no longer abuses alcohol and never drinks in the presence of [A.B]. Because Husband has no driver's license, his parents have been responsible for transporting [A.B.] during his parenting time.

15. Wife sought and was granted an Order of Protection against Husband on March 23, 2005.

* * *

17. Dr. Gonso reports that "the custodial parent must respect and trust the other parent; communicate conscientiously about important

developmental, medical, school and activity information; promote the child's relationship with the other parent; and be flexible with the parenting time schedule." The Court finds that neither party has communicated effectively or appropriately with the other in matters of parenting and visitation. The parties do not respect or trust the other. As sole legal and physical custodian of [A.B.], Wife has failed to promote the child's relationship with Husband or his family and has not been flexible with the parenting time schedule.

18. Dr. Gonso recommended in her report that the parties share joint legal custody, and that Dr. Ehrmann, with Level III parenting coordinator authority, make binding decisions regarding parenting time when impasses arise between the parties.

19. Dr. Gonso found "there are no concerns about either Wife or Husband's parenting. [A.B.] feels loved and is thriving from the attention by both parents and their families." The Court finds Dr. Gonso's conclusions regarding the parties[']' parenting to be compelling and persuasive. The Court finds that individually the parties are fit and suitable parents; the child interacts and has a healthy interrelationship with both parents.

20. The Court finds that the nature of the physical and emotional environment in the home of each party is appropriate. [A.B.] is well-adjusted to her home, extended families and community.

21. The Court finds that despite the failure of Husband and Wife to communicate and cooperate, it is in the best interests of [A.B.] to award the parties joint legal custody of [A.B.] with primary physical custody to Wife. The Court does so only with the close supervision of the family by Dr. Ehrmann with Level III parenting coordinator authority. Dr. Ehrmann shall make binding decisions regarding parenting time and parenting decisions as set forth in the Order for Parenting Coordinator dated April 6, 2006.

22. Husband has had parenting time as follows: Tuesdays and Thursdays from 4:00 p.m. to 7:00 p.m. and alternate Saturday or Sunday from noon to 7:00 p.m. The parties disagree whether they agreed to require Husband's mother [to] supervise the visitation. There is no court order requiring supervised visitation; as a matter of practice, Husband's mother did supervise visitation.

23. The Court finds that Husband's visitation shall be extended as recommended and implemented by the parenting coordinator, Dr. Ehrmann,

as determined to be in [A.B.]'s best interest. Until such time, Husband's visitation shall be no less than the current practice.

24. [A.B.]'s paternal grandparents, Gary and Lucinda Bauer, by counsel, filed their Motion for Grandparents' Rights and Visitation on June 30, 2006. Their motion seeks the same amount of visitation as the maternal grandparents who provide childcare for [A.B]. At Final Hearing, Lucinda Bauer testified that she and her husband have visitation with [A.B.] through Husband's parenting time. Because Husband cannot drive, Lucinda Bauer testified that she provides most of the transportation and is with [A.B.] for all of Husband's parenting time with the exception of an occasional errand.

25. The Court finds that the paternal grandparents have a history of meaningful contact with [A.B.] and a positive relationship with her. The Court finds that Wife has limited visitation but has not denied visitation with paternal grandparents. The Court finds that the Motion was filed prior to the dissolution of the parties.

* * *

30. In the Order from Hearing Held May 20, 2005 (entered 7/27/05), the Court ordered Husband to pay $176.68 per week in child support with the effective date to be determined at final hearing. Husband was also ordered to pay temporary maintenance in the amount of $250 per week beginning July 22, 2005.

* * *

35. The Court finds that Husband owes temporary maintenance arrearage in the amount of $13,750.00 ($250.00 per week for 55 weeks (7/22/05 thru 8/11/06)). (The Court notes that the provisional order was for temporary maintenance as contemplated by I.C. 31-15-4-1 and the Indiana Child Support Guideline 2 and not for spousal maintenance as provided by I.C. 31-15-7.)

* * *

36. The Court finds that for ten months (from August 2004 (date of filing) through May 2005)), both parties contributed to the mortgage payments on the marital residence. For the next fourteen months (from June 2005 through September 2006), Husband paid the mortgage payments. His payments totaled $26,600. Husband requests Wife reimburse him for one half the payments, or $13,300.

37. The marital residence was put on the market for sale in September 2005 for a list price of $304,500. In September 2006, an offer was accepted on the home for $285,000. The lengthy time to sell the marital residence was two-fold. Husband's realtor admitted that the home was originally priced too high . . . . Second, Husband placed a "24 hour restriction" on showings for the home. . . . Husband demanded that he be given 24-hour notice prior to a showing. Two realtors . . . testified that such a restriction adversely affected the ability to sell the home.

38. The Court finds that Husband has continuously resided in the marital residence. Wife has not resided in the marital residence since the date of filing. Husband has benefited from the interest deduction on his tax returns. Both parties have benefited from Husband's timely payment of the monthly mortgage. Husband's 24-hour restriction likely delayed the sale of the marital residence, necessitating additional mortgage payments. For all of these reasons, the Court declines to order Wife to pay temporary maintenance to Husband in the form of reimbursement for mortgage payments.

* * *

39. During the marriage, both parties made contributions—both income producing and non-income producing. Husband's income producing contributions were greater and Wife's non-income producing contributions were greater.

40. During the marriage, Husband's payments expended in the defense of his Driving While Intoxicated . . . amount to a dissipation of marital assets. The payments included legal fees ($7,500.00); probation user charges ($332.50); fines, court costs and fees ($1,000.00). Due to the suspension of Husband's license, Wife transported Husband to and from work, to and from probation and to and from meetings he was required to attend. Wife did not dissipate marital assets.

41. Wife and Husband each owned property before the marriage. Each party owned real estate, a car and other tangible and intangible personal property. Wife sold her condominium shortly before the parties married; Husband sold his home shortly after. The proceeds of the sales from both properties were invested in the marital residence . . . . The marital residence initially was purchased by Husband's parents for the sum of $220,000.00 and conveyed to Husband and Wife on or about May 1, 2003. Husband's parents, Gary and Lucinda Bauer, seek no reimbursement from

> the transaction and any equity in the residence is to be divided between Husband and Wife.
>
> 42. Wife's father Henry Birk arranged a loan through Home Bank . . . in the original principal payment of $45,000.00. Initially, Husband and Wife paid the interest on the loan; however, after filing the petition for dissolution, Mr. Birk continued to make the monthly interest payments of $278.62. The present unpaid balance of the note is $45,237.92. Husband, Wife and Henry A. Birk are jointly and severally liable on the note. The loan proceeds were used by Husband and Wife for the payment expenses, credit card expenses, Husband's legal expenses, remodeling and repairs to the marital residence and the parties' general lifestyle expenses.
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> * * *
>
> 47. The Court finds that an equal division of the marital estate is just and reasonable. Neither party rebutted this presumption.

(Husband's App. 2-17) (Internal citations omitted). Thus, the trial court denied the grandparents' motion for visitation; ordered Husband to pay to Wife $35,056.70 in back child support and temporary maintenance; ordered that the proceeds from the sale of the marital residence "be first used to pay the expenses of sale, the unpaid principal balance of the mortgage and accrued interest and the Home Bank loan in the present unpaid balance of $45,238.00" (Husband's App. 22); and awarded Husband visitation "as determined by Dr. John Ehrmann pursuant to the court's parenting coordinator order of September 28, 2005." (Husband's App. 20-21).

Additional facts will be provided as necessary.

DECISION

When a party has requested special findings of fact and conclusions of law pursuant to Indiana Trial Rule 52(A), we may affirm the judgment on any legal theory supported by the findings. *Wenzel v. Hopper & Galliher, P.C.*, 779 N.E.2d 30, 36 (Ind.

Ct. App. 2002), *trans. denied*. In reviewing the judgment, we first must determine whether the evidence supports the findings, and second, whether the findings support the judgment. *Id*. Findings of fact are clearly erroneous when the record lacks any evidence or reasonable inferences from the evidence to support them. *Id*. The judgment will be reversed if it is clearly erroneous. *Id*. To determine whether the findings or judgment are clearly erroneous, we consider only the evidence favorable to the judgment and all reasonable inferences flowing therefrom. *Id*. We will not reweigh the evidence or assess witness credibility. *Id*. Even though there is evidence to support it, a judgment is clearly erroneous if the reviewing court's examination of the record leaves it with the firm conviction that a mistake has been made. *Id*. A judgment is clearly erroneous if it applies the wrong legal standard to properly found facts. *Nienaber v. Nienaber*, 787 N.E.2d 450, 454 (Ind. Ct. App. 2003).

As an initial matter, Husband asserts that "the trial court erred in denying [Husband]'s preliminary motions without hearing on the record prior to the start of the final dissolution hearing held on August 16, 2006." Husband's Br. 6. Specifically, Husband contends that

> [t]he record shows that [Husband]'s counsel repeatedly tried to make record [sic] on various motions prior to the start of the final hearing on August 16, 2006. Counsel was summarily denied argument and hearing on the record several times. This is an abuse of discretion by the trier of fact and law.

Husband's Br. 8 (internal citation omitted).

At the start of the final hearing, the following colloquy took place:

THE COURT: We're here on record in . . . Birk-Bauer v. Bauer. . . . [W]e have several preliminary motions. I think your preliminary motions are a Motion to Continue and—

[HUSBAND'S COUNSEL]: Yes, your Honor.

THE COURT: And your motion is denied. We'll proceed today. This has been pending a long time. It's time to get on with it and get it done. What else preliminarily needs to be taken care of?

[HUSBAND'S COUNSEL]: Well, in order to preserve the record on appeal, I would like to go ahead and renew my motions to continue.

THE COURT: Yeah, it's on the record that you so do. And denied. Anything else?

[WIFE'S COUNSEL]: We have no motions pending, your Honor. There are, however, various other motions that have been filed that—

THE COURT: I saw those.

[WIFE'S COUNSEL]: It occurs to me that if we commence the final hearing and evidence that may come in relevant to other pending motions, the Court can certainly sort out that which is appropriate to the final hearing and that which might be appropriate to the Petition to Revoke Provisional Orders, the Motion for a Contempt Regarding Parenting Time, and Intervenor's Petition, and a Motion for an In-Camera Conference with the Judge. Those are the ones that I believe have been filed but are not yet determined.

THE COURT: Any other motions that you're aware of?

[HUSBAND'S COUNSEL]: Just, I have not got, I mean I assume you're now renewing the Motion to Continue based on my injury and I want it to be said for the record that I may need to take breaks due to—

THE COURT: Absolutely.

* * *

[HUSBAND'S COUNSEL]: . . . I mean I have not had adequate time to prepare for this because I've been infirmed for two weeks, your Honor.

> THE COURT: I'm going to deny your continuance.
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> * * *
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> THE COURT: . . . Now, the only motion that I didn't see was the Intervenor's motion.
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> * * *
>
> THE COURT: . . . This is what I would say about the grandparents' intervention motion. It will likely be resolved through the final hearing of this case in which visitation and custody orders will be set. And so what I would plan on doing is leaving that for the very end to see if in fact we need more hearing. The way it's supposed to work when people are reasonable and all the circumstances are as relatively normal as can be in a divorce is that Dad would give you the visitation when he has the kids. That's the way it's really supposed to work. And I haven't heard the evidence in this case so I don't know how it will end up, but that's why I want to leave it until the end until I hear what the situation is between Mom and Dad. . . . Anything else that you want me to take a look at before?
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> [WIFE'S COUNSEL]: No, Ma'am.
>
> [HUSBAND'S COUNSEL]: No.

(Tr. 4-7).

Generally, "a party may not present an argument or issue to an appellate court unless the party raised that argument or issue to the trial court." *GKC Indiana Theatres, Inc. v. Elk Retail Investors, LLC.*, 764 N.E.2d 647, 651 (Ind. Ct. App. 2002). Failure to raise an issue before the trial court will result in waiver of that issue. *Van Winkle v. Nash*, 761 N.E.2d 856, 859 (Ind. Ct. App. 2002).

Here, Husband only presented the motion for a continuance at the final hearing. Husband did not raise any other motion and did not object to commencing the final hearing. Thus, Husband has waived this issue for appellate review.

Furthermore, on appeal, Father only presents the following argument:

> One of the objections to be made by Appellant and summarily disallowed by the Court was that the timing of the final hearing was not ripe in that the Court's own expert, Dr. Gonso as the Custody/Parenting Time Evaluator, had not yet submitted a report to the Court on August 16, 2006.

Husband's Br. 8. Again, Husband waives this issue as he failed to raise it before the trial court. Waiver not withstanding, Husband's argument must fail.[4]

> The decision whether to grant or deny a continuance lies within the sound discretion of the trial court, and its decision will not be reversed on appeal absent clear abuse of that discretion. The moving party must be free from fault and show that her rights are likely to be prejudiced by the denial.

In re Paternity of M.J.M., 766 N.E.2d 1203, 1206 (Ind. Ct. App. 2002) (internal citations omitted).

Indiana Code section 31-17-2-12(a) provides that "[i]n custody proceedings after evidence is submitted upon the petition, if a parent of the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child." Subsection (c) provides, in relevant part, that "[t]he court shall mail the investigator's report to counsel and to any party not represented by counsel at least ten (10) days before the hearing." Ind. Code § 31-17-2-12(c).

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[4] Regarding the other motions, which Husband does not even identify in his Argument section, Husband fails to develop an argument or support it with citations to authority. Indiana Appellate Rule 46(A)(8) provides, in relevant part, that "[t]he argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on . . . ." A party waives an issue where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record. *Smith v. State*, 822 N.E.2d 193, 202-03 (Ind. Ct. App. 2005), *trans. denied*. Thus, Husband has waived any review of the trial court's failure to hold a hearing on the remaining preliminary motions.

Husband asserts that the trial court abused its discretion in holding the final hearing because Husband was "entitled to review the report ten (10) days before a hearing under I.C. 31-17-2-12." Husband's Br. 8. Again, Indiana Code section 31-17-2-12(a) provides that the trial court may order an investigation and report concerning custodial arrangements "after evidence is submitted upon the petition . . . ." (Emphasis added).

In this case, the trial court appointed Dr. Gonso and ordered a report before the parties submitted evidence regarding custody, and Husband "fails to direct us to evidence in the record indicating that the investigation was ordered pursuant to" Indiana Code section 31-17-2-12. *See M.J.M.*, 766 N.E.2d at 1207. Thus, Indiana Code section 31-17-2-12, including its time for providing a report to the parties, does not apply. *See id.* (finding Indiana Code section 31-17-2-12 inapplicable where "the threshold triggering mechanism to order an investigation and report, that is 'after evidence is submitted upon the petition,' has not been met"). We therefore find no abuse of discretion in denying Husband's motion for a continuance.

1. Visitation

In his Summary of Argument, Husband asserts that "the trial court abused its discretion when relying upon the representations of the first parenting coordinator" and by "ignoring its own second parenting coordinator's recommendations to increase Husband's visitation to 38 hours per week including overnights by maintaining the

current visitation at 13 hours with no overnight visitation." Husband's Br. 6-7.[5] Husband's Argument, however, fails to mention any issue regarding visitation. Husband provides no citation to authority or cogent argument. Accordingly, Husband has waived this issue.[6] *See Smith*, 822 N.E.2d at 202-03.

2. Marital Estate

Husband next asserts that "the trial court abused its discretion by failing to recognize Husband's contribution to the marital estate by maintaining the mortgage payments after [Wife] left the marital residence . . . ." Husband's Br. 7. Husband also asserts that trial court "erroneously diverted from the presumptive equal division of marital assets under IC 31-15-7-5." *Id.*

The division of marital assets is within the trial court's discretion, and we will reverse only for an abuse of discretion. *DeSalle v. Gentry*, 818 N.E.2d 40, 44 (Ind. Ct. App. 2004). A party challenging the trial court's division of marital property must overcome a strong presumption that the trial court "considered and complied with the

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[5] Without citation to the record, Husband, in his Statement of Issues, claims that the trial court found that "'the relationship is dead . . . and (Rader's) prior therapeutic relationship with the parties . . . always gives this Court pause for thought.'" Husband's Br. 4. The trial court's full statement reads as follows:

> I think it appears that the relationship with him is dead. I have some concerns that, although the parties agreed to him in the first place, I think that his prior, ah, therapeutic relationship with Mr. Bauer, although may not be a disqualifying factor I think always gives this Court pause for thought when there is anything in the back of anyone's mind that maybe this isn't quite the ticket. I think that, ah, it's not a good situation in a case that is this high of conflict.

(Ex. N).

[6] Furthermore, Husband provides no evidence regarding Dr. Ehrmann's recommendations. Additionally, Husband's argument that the trial court failed to rely on Dr. Ehrmann's recommendations is without merit. The trial court specifically found that "Husband's visitation shall be extended as recommended and implement by the parenting coordinator, Dr. Ehrmann, as determined to be in [A.B.]'s best interest." (Husband's App. 10-11).

applicable statute, and that presumption is one of the strongest presumptions applicable to our consideration on appeal." *Id*. "We may not reweigh the evidence or assess the credibility of the witnesses, and we will consider only the evidence most favorable to the trial court's disposition of the marital property." *Id*.

"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), *trans. denied*. First, the trial court determines what property must be included in the marital estate. *Id*. "Included within the marital estate is all the property acquired by the joint effort of the parties." *Id*. Second, the trial court must then divide the marital property under the statutory presumption[7] that an equal division of marital property is just and reasonable. *Id*.

Marital property includes both assets and liabilities. *Gard v. Gard*, 825 N.E.2d 907, 910 (Ind. Ct. App. 2005). Thus, "[i]n making a division of marital property, the

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[7] Regarding the division of marital property, 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.

court properly considers the separate property rights of the parties as well as all debts of the parties." *White v. White*, 425 N.E.2d 726, 728 (Ind. Ct. App. 1981).

Here, the trial court determined that the total value of the marital residence's equity was $69,983.00. The trial court set aside to Wife half of the marital residence's equity and personal property valued at $26,847.00. Thus, the trial court awarded Wife assets in the amount of $61,838.50. The trial court, however, also set aside marital debt in the amount of $49,703.50 to Wife. Therefore, Wife received an award of $12,135.00. Husband also received an award of $12,135.00, which included marital assets in the amount of $46,400.50 and marital debts in the amount of $34,265.50.

Contrary to Husband's argument, the division of marital property resulted in neither a "70/30 split of marital properties to the detriment of [Husband," nor a "deviation from the presumed equal split of the marital properties." Husband's Br. 7, 8. Thus, we find no abuse of discretion in the trial court's division of the marital property.

Regarding the trial court's failure to "recognize [Husband]'s contribution to the marital estate by his maintaining the mortgage payments," Husband provides no citation to authority. Thus, he has waived this issue.[8] *See Smith*, 822 N.E.2d at 202-03.

3. Temporary Maintenance

Husband asserts that "the trial court erroneously 'redefined' a previous order by the Magistrate of the Court that ordered 'spousal maintenance' to become 'temporary support.'" Husband's Br. 7. Husband seems to argue that the trial court erred because

[8] We note that a trial court may, in certain circumstances, set aside to one party the value of a marital asset where the other party did not contribute to its acquisition or accumulation, but the trial court is not required to do so. *In re Marriage of Pulley*, 652 N.E.2d 528, 530 (Ind. Ct. App. 1995), *trans. denied*.

the preliminary order failed to "give reasons for the order of spousal maintenance," and the trial court subsequently "'re-form[ed]'" the preliminary order. Husband's Br. 8-9.

Again, Husband fails to develop a cogent argument and fails to provide adequate citation to authority. Thus, Husband has waived this issue. *See Smith*, 822 N.E.2d at 202-03.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.