

Larry and Lisa Haynes's marriage was dissolved in Madison Superior Court. Larry appeals and raises three issues; however, we find the following issues to be dispositive: whether the trial court abused its discretion when it found that Larry's alcohol use constituted dissipation of marital assets, but that Lisa did not dissipate marital assets when she transferred a three-quarters interest in the marital residence to her children. Concluding that the trial court's finding that Larry dissipated marital assets is not supported by the evidence, we affirm in part, reverse in part, and remand this case to the trial court with instructions to recalculate its division of the marital estate.¹

Facts and Procedural History

Lisa and Larry were married on February 22, 2001. One child was born to the marriage and Lisa has two children from a prior marriage. On January 18, 2006, Lisa filed a petition for dissolution.

Before Lisa and Larry married, Lisa's mother purchased a home situated on over forty acres of land. She then deeded it to herself and Lisa as joint tenants with rights of survivorship. Lisa's mother died in 2004, but before her death, the family had moved into the home. Shortly after her mother's death, Lisa quit claimed the home to herself and her three children jointly with rights of survivorship. Lisa paid all real estate taxes on the property. Tr. p. 38. Throughout the marriage, the parties generally did not commingle their assets.

The trial court issued its decree of dissolution on August 10, 2006, and entered the following findings, which are pertinent to the issue presented in this appeal:

¹Consequently, we do not address Larry's final argument that the trial court abused its discretion when it deviated from an equal division of the marital assets.

15. After [Lisa's mother] moved to Florida, Larry sold his home netting approximately \$20,000. The family moved into the home owned by [Lisa's mother] and Lisa.

26. During their marriage, Larry spent his earnings as he chose; Likewise, Lisa spent her earnings and later her inheritance as she chose.

27. Once Larry's home was sold he no longer had a mortgage to pay. He spent his \$20,000 home sale proceeds as he chose. For over a year and a half Larry's housing expenses were utilities and trash removal only. According to Larry's check recording, he stopped paying the utility bills in November, 2005.

33. In this marriage, each party worked outside the home and each paid the obligations he or she had assumed. . .

36. Lisa was a joint owner of the home and acreage before she married Larry. Lisa acquired sole ownership of the real estate at her mother's death.

. .

37. The investment accounts held by Lisa were all acquired through inheritance from her mother. The funds were never commingled and remained separate and distinct. Larry did nothing to contribute to the accumulation of these funds.

45. Given the parties' hazardous hobby –skydiving– and Larry's alcohol consumption, holding the real estate jointly with her children may well have been a cautious act. Although these are disposition of property none of these acts constitute dissipation.

46. Larry drank several beers most days of the week. Over a twenty (20) month period he went through over thirty thousand dollars (\$30,000) in cash withdrawals from his checking account. Certainly part of these funds were used for gasoline and food. For some period of time Larry gave Lisa's youngest daughter a twenty dollar (\$20) weekly allowance. Some of these funds were not dissipated. However, drinking to the point of drunkenness is dissipation of assets.

48. According to their most recent pay information, Lisa earns approximately \$39,000 annually. Larry earns in excess of \$57,000 per year. There is a substantial difference between the parties' income. Larry's employment provides him and [S.H.] with health insurance at no cost to Larry. There are four people in Lisa's household. Since early February, Larry has had only himself to support.

Appellant's App. pp. 6-11.

The court found that “Larry has not proven dissipation of assets by Lisa and that Lisa has proven some dissipation of assets by Larry.” Id. at 13. After considering all statutory factors, including dissipation of assets, the court concluded that “Lisa has rebutted the presumption that an equal division of assets is just and reasonable.” Id. Lisa received approximately 86% of the marital estate. Larry now appeals. Additional facts will be provided as necessary.

Discussion and Decision

Larry requested findings of fact and conclusions of law. “[T]he court of appeal shall not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” Ind. Trial Rule 52(A) (2007). “A finding or conclusion is clearly erroneous when a review of the evidence leaves us with the firm conviction that a mistake has been made.” In re Z.T.H., 839 N.E.2d 246, 249 (Ind. Ct. App. 2005). We review the judgment by determining whether the evidence supports the findings and whether the findings support the judgment. Nowels v. Nowels, 836 N.E.2d 481, 484 (Ind. Ct. App. 2005). We consider only the evidence favorable to the judgment and all reasonable inferences to be drawn from that evidence. Id.

Larry argues that the trial court abused its discretion when it found that he dissipated marital assets.

“Our court reviews findings of dissipation in various contexts under an abuse of discretion standard.” Thus, “[w]e will reverse only if the trial court’s judgment is clearly against the logic and effect of the facts and the reasonable inferences to be drawn from those facts.” The dissipation of marital assets involves frivolous, unjustified spending of marital assets.

“The test for dissipation of marital assets is ‘whether the assets were actually wasted or misused.’”

Kondamuri v. Kondamuri, 852 N.E.2d 939, 951 (Ind. Ct. App. 2006) (internal citations omitted). See also Pitman v. Pitman, 721 N.E.2d 260, 264 (Ind. Ct. App. 1999), trans. denied (“Waste and misuse are the hallmarks of dissipation.”).

We consider the following factors to determine whether dissipation has occurred:

1. Whether the expenditure benefited the marriage or was made for a purpose entirely unrelated to the marriage;
2. The timing of the transaction;
3. Whether the expenditure was excessive or de minimis; and
4. Whether the dissipating party intended to hide, deplete, or divert the marital asset.

Kondamuri, 852 N.E.2d at 952.

The trial court made the following finding with regard to Larry’s dissipation of marital assets.

46. Larry drank several beers most days of the week. Over a twenty (20) month period he went through over thirty thousand (\$30,000) in cash withdrawals from his checking account. Certainly part of these funds were used for gasoline and food. For some period of time Larry gave Lisa’s younger daughter a twenty dollar (\$20) weekly allowance. Some of these funds were not dissipated. However, drinking to the point of drunkenness is dissipation of assets.

Appellant’s App. p. 11.

At the hearing on the dissolution petition, Lisa testified that Larry drank Bud Light beer approximately five days a week, but that he never drank in the house so she did not know how much he drank. Tr. pp. 42-43. When asked how many Bud Light cans she saw in the garbage, she stated, [h]e would take the garbage out but when I did see it, it was a drum barrel. It’s usually at least half full.” Tr. p. 44.

Although we can infer from Lisa's testimony that Larry drank several cans of beer most days of the week, there is no evidence of the actual dollar amount Larry spent on beer during the course of the marriage. Assuming for the sake of argument that Larry spent approximately \$50 per week on beer, we cannot conclude that \$50 is an excessive amount in light of the fact that Larry's annual salary was approximately \$57,000, and the parties' combined income was approximately \$95,000. Moreover, while we acknowledge Lisa's testimony regarding the amount of cans in the drum barrel, the record does not disclose the length of time between garbage pickups, the size of the barrel or the number of cans observed. Moreover, we note that Lisa was well aware of Larry's drinking habits and would on occasion provide him with free beer from her place of employment. For these reasons, we conclude that the trial court's finding that Larry dissipated marital assets is not supported by the evidence.

Next, we address Larry's argument that Lisa dissipated marital assets by transferring a three-quarters interest in the marital residence to her children. Prior to her marriage to Larry, Lisa and her mother owned the marital residence as joint tenants with rights of survivorship. After her mother died, Lisa became the sole owner of the marital residence. Shortly after her mother's death, Lisa quit claimed the residence to herself and her three children jointly with rights of survivorship. Lisa did so because she "wanted her children to have the home" if something were to happen to her. Appellant's App. p.

7. The trial court found:

Given the parties' hazardous hobby –skydiving– and Larry's alcohol consumption, holding the real estate jointly with her children may well have been a cautious act. Although these are dispositions of property, none of these acts constitute dissipation.

Appellant's App. p. 11.

In addressing this issue, it is important to note that the parties generally did not commingle their assets during their marriage. In fact, after Larry sold his residence and realized a \$20,000 gain, he spent those proceeds "as he chose." Appellant's App. p. 7. Lisa had an interest in the marital residence prior to her marriage to Larry, and after her mother's death, she transferred an interest in the property to each of her three children because that is what her mother had done. Tr. p. 71. Her reason for doing so was "to protect [her] daughters and [S.H.]." Id. Although Lisa did not specifically discuss the transfer with Larry, we cannot agree with Larry's claim that Lisa "surreptitiously convey[ed] $\frac{3}{4}$ of the marital residence to her children[.]" See Br. of Appellant at 13. For all of these reasons, we conclude that the trial court's finding that Lisa did not dissipate marital assets is supported by the evidence.

Conclusion

The trial court's finding that Larry dissipated marital assets is not supported by the evidence. Because the trial court relied on this finding at least in part in issuing its judgment, we remand this case to the trial court with instructions to recalculate its division of the marital estate.

Affirmed in part, reversed in part and remanded for proceedings consistent with this opinion.

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