

Anna Galuoppo (Anna) appeals from the trial court's supplemental decree and order denying her motion to correct error in the dissolution of her marriage to Richard Galuoppo (Richard). Anna raises the following consolidated and restated issue for our review: Did the trial court abuse its discretion in the division of the marital estate?

We affirm.

Anna and Richard were married in 1989 and lived together in the marital residence until Richard's incarceration. The parties separated in 2007 shortly after Richard's release from prison. Richard filed a petition for dissolution of marriage in June of 2008. The trial court granted the dissolution on October 27, 2009, but took the division of marital property under advisement. On November 12, 2009, the trial court issued its supplemental decree of dissolution dividing the marital assets. Anna filed a motion to correct error, which the trial court denied. Anna now appeals challenging the trial court's division of the marital property.

The division of marital assets lies within a trial court's sound discretion, and we will reverse only for an abuse of that discretion. *J.M. v. N.M.*, 844 N.E.2d 590 (Ind. Ct. App. 2006), *trans. denied*. An abuse of discretion occurs when a trial court's decision is clearly against the logic and effect of the facts and circumstances before it. *Id.* When we review a challenge to the trial court's division of a marital estate, we may not reweigh the evidence or reassess the witnesses' credibility, and we will consider only the evidence most favorable to the trial court's disposition of the marital property. *Id.* Moreover, the party seeking an alteration of the trial court's decision must overcome a strong presumption that the trial court considered and complied with the applicable statute, and that presumption is one of the strongest presumptions upon appeal. *Id.*

The trial court entered findings of fact and conclusions thereon when dividing the marital property. On appeal, we will 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. *Elkins v. Elkins*, 763 N.E.2d 482 (Ind. Ct. App. 2002). Findings are clearly erroneous when the record contains no facts to support them either directly or by inference. *Id.* The judgment is clearly erroneous if the findings do not support the conclusions or the conclusions do not support the judgment. *Id.*

Indiana law requires that marital property be divided in a “just and reasonable manner” and provides for the statutory presumption that “an equal division of the marital property between the parties is just and reasonable.” Ind. Code Ann. § 31-15-7-5 (West, Westlaw through 2010 2nd Regular Sess.).

This presumption may be rebutted, however, by evidence of each spouse’s contribution to the acquisition of the property, the extent to which the property was acquired before the marriage or by inheritance, the economic circumstances of each spouse, the conduct of the parties relating to the disposition or dissipation of assets, and each spouse’s earning ability.

Fobar v. Vonderahe, 771 N.E.2d 57, 59 (Ind. 2002).

The evidence presented at the final hearing established that Anna was purchasing the real estate upon which the marital residence was located from her family prior to the marriage and acquired title to the property by quitclaim deed on March 18, 1995. Although Richard’s name was never listed on the title to the property, he paid taxes, maintained insurance, and made improvements to the real estate. There was no evidence presented as to the value of the improvements made to the property. One of the improvements was a garage Richard built in which the two kept various items of personal property. The garage burned

down during Richard's incarceration and the insurance proceeds of \$25,000 were paid to Anna for the structure and the contents.

On October 31, 1997, Anna gifted the real estate to her daughter and son-in-law by quitclaim deed with the oral agreement that Anna could live on the property for the remainder of her life. There was no evidence to suggest a value for what the trial court labeled Anna's "life-remainder" interest in the property. Further, the evidence reflects that Anna and Richard did not pay rent to live in the marital residence located on the property.

The other major asset of the marital estate was Richard's pension through the Sheet Metal Worker's National Pension Fund. Richard's pension is vested based upon 25 years of service from April of 1978 through May of 2009. When Richard reaches 65 years of age, he will be eligible to receive approximately \$2,200 per month from the pension. There was no evidence presented to the court to indicate what percentage of the pension was earned during the marriage.

Anna had no source of income other than social security benefits. She testified that her attorney fees associated with the dissolution amounted to \$1,755.50. Richard's earning ability was between \$40,000 and \$60,000 per year.

The trial court concluded that there was a dearth of evidence of the value of the major assets of the marital estate, *i.e.*, the pension earned during the marriage, the improvements to the real estate, and the "life-remainder" interest in the real estate. The trial court awarded the "life-remainder" interest in the real estate to Anna, as well as the improvements thereon, and any personal property in her possession. Richard was awarded his pension and any personal

property in his possession. Because of Richard's greater earning capacity, he was ordered to pay Anna's attorney fees.

Anna argues that the trial court erred by including the "life-remainder" interest in the real estate in the marital pot because the real estate was no longer owned by her at the time of the dissolution. Anna also argues that the trial court erroneously awarded to Richard the entire value of his pension. Anna claims that the trial court also failed to include a provision for the division of the parties' personal property.

Given the unique facts of this case, we find that the trial court did not err in dividing the marital estate. It has been repeatedly held that I. C. § 31-15-7-4(a) (West, Westlaw through 2010 2nd Regular Sess.) requires the inclusion all property owned by the parties before separation, including inherited property, in the marital estate. *Gratwohl v. Garrity*, 871 N.E.2d 297 (Ind. Ct. App. 2007). Title to the real estate, although solely in Anna's name, was acquired by her after the marriage and before the final separation of the parties. Richard made improvements to the property and paid taxes assessed on the property. Anna unilaterally transferred title to the real estate during the marriage to her daughter and son-in-law in exchange for the promise that Anna could live there for the rest of her life. In addition, Richard paid insurance premiums on the marital property during the course of the marriage, yet saw none of the proceeds from the insurance claim for the burned garage. The trial court did not compel Anna to compensate Richard for his share of the proceeds, which she alone collected. Richard was entitled to his equal share of the value of the real estate when the trial court divided the marital estate. Likewise, Anna was entitled to her equal share of the value of Richard's pension. Property in dissolution actions includes the right to

receive pension or retirement benefits that are vested. Ind. Code Ann. § 31-9-2-98(b)(2) (West, Westlaw through 2010 2nd Regular Sess.). Although there was evidence of the amount of pension Richard would be entitled to at age 65 based upon 25 years of service, there was no evidence introduced regarding the number of months or years of Richard's service during the marriage in order to calculate Anna's share. *See Marriage of Nickels*, 834 N.E.2d 1091 (Ind. Ct. App. 2005) (coverture fraction formula may be used to distribute pension accrued during marriage).

Although Anna claims the trial court abused its discretion by failing to provide for the division of their personal property, we observe that the trial court did award each party the personal property currently in their possession. Anna offered evidence as to the replacement value of property she claimed Richard took. Richard testified about and contested, in some instances, the number of items taken, and in other instances, their value. Anna's argument is essentially a request that we reweigh the evidence, a task we will not undertake. *Galloway v. Galloway*, 855 N.E.2d 302 (Ind. Ct. App. 2006).

Examining only the evidence most favorable to the trial court's disposition of the property and without assessing witness credibility, we have considered the division of marital property as a whole. *See Eye v. Eye*, 849 N.E.2d 698 (Ind. Ct. App. 2006) (disposition of marital estate is to be considered as a whole, not item by item). Applying the appropriate standard, we cannot say the court abused its discretion or misapplied the law. It appears that each party received something of value and the trial court attempted to effectuate an even split. The parties have failed to establish a valuation of the assets sufficient to show that the trial court abused its discretion. *See Galloway v. Galloway*, 855 N.E.2d 302 (Ind. Ct. App.

2006) (burden of producing evidence of value of marital property rests on the shoulders of the parties and their attorneys).

Judgment affirmed.

BARNES, J., and CRONE, J., concur.