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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE THE MARRIAGE OF)
KENNETH R. BEAUDOIN,)
)
Appellant-Respondent,)

vs.)

JUDY BEAUDOIN,)

Appellee-Petitioner.)

No. 20A03-0703-CV-115

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable David C. Bonfiglio, Judge
Cause No. 20D06-0310-DR-558

October 31, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Kenneth R. Beaudoin (“Husband”) appeals the trial court’s property division in his dissolution proceedings with Judith Beaudoin (“Wife”). Husband argues that the trial court abused its discretion by including certain assets—a house and three IRA investment accounts—in the marital pot and in its division of the marital property. Finding that the trial court acted within its discretion by including these assets in the marital pot and by equally dividing the marital property, we affirm.

Facts and Procedural History

In 1983, Husband entered into a land contract for a property located at 52780 County Road 9 in Elkhart, Indiana (“County Road 9 property”). In 1986, Husband and Wife, not yet married, began living together at the County Road 9 property. While living at the County Road 9 property, both Husband and Wife contributed to the day-to-day expenses of running the home. Wife helped pay the taxes and insurance, and Husband made payments on the land contract. Husband and Wife together made improvements on the property, which was eventually paid off with money Husband inherited from his father. At the time, Husband was working for a local company and funding three IRA investment accounts. In 1989 and 1992, Wife gave birth to their two sons. In February 1998, Husband and Wife made a down payment on another property located at 52675 York Drive in Middlebury, Indiana (“marital home”), with money Husband inherited from his father. In December 1998, Husband and Wife married and the family moved into the marital home.

During their relationship, Husband was unemployed for approximately “eight to ten years.” Tr. p. 16. During this time, Husband stayed home and cared for their children, and Wife worked as a nurse. In 1999, Husband began renting the County Road 9 property. The title to this property remained in Husband’s name, and any profit gained from the rental income was treated as Husband’s income.

In 2003, Wife filed a petition for dissolution of the marriage. At the evidentiary hearing, the parties presented evidence regarding the value of the marital estate. On February 6, 2007, the trial court entered its Order, which included findings of fact and conclusions thereon. The Order provides, in relevant part:

6. The property at 52780 CR 9, Elkhart, Indiana is valued at \$58,000. This is martial [sic] property. Husband purchased this property in Oct. 1983 on Land Contract with a down payment of \$2,250.00 with monthly payments of \$208.57, such payments extended into the time they were together in 1986, but before they were married in 1998. This property was used as a income producing property through-out the time they were together from 1986 and their marriage. The property was paid off by use of the husband’s inheritance. This property and its rental income were co-mingled to such an extent that it is marital property. This property is awarded to the Husband.

18. IRA’s Chase \$5,341.85; Waterhouse \$10,506.62; First Saving Bank \$4,728.25; all awarded to Husband. Some of these funds were present before the parties started to live together in 1986, but contributions were made after they were together, there has been co-mingling of the parties finances since 1986 and the [sic] are determined to be marital assets. Also see: I.C. § 31-15-2-2 (a) (1).

20. Husband did not work for approximately eight years during the marriage. The husband took care of the children, property they lived in, as well as, rental properties that produced income for the parties.

The Court has considered Indiana Law and in particular . . . [Indiana Code § 31-15-7-4 (Division of property) and Indiana Code § 31-15-7-5 (Presumption of just and reasonable division of property).]

The Court determines the marital assets should be equally divided. The Court now incorporates by reference the attached Excel spreadsheet as the final property division.

Appellant's App. p. 12-15. We summarize the trial court's division of the assets and liabilities as follows:

Husband receives:

1. C.R.9 (\$58,000.00).
2. Chevy 1991 (\$300.00).
3. 76 Pick-up (\$500.00).
4. 2 Wheel Trailer (\$500.00).
5. Fishing Boat (\$350.00).
6. Gun Collection (\$3,000.00).
7. Coin Collection (\$2,000.00).
8. Tools (\$1,500.00).
9. Chase (\$5,341.85).
10. Waterhouse (\$10,506.62).
11. First Savings (\$4,728.25).
12. Household Property (\$2,500).

Total: \$89,226.72

Husband pays:

1. Capital One (\$4,728.25).

Net: \$84, 498.47.

Wife receives:

1. York Property (\$145,500.00).
2. 1993 Pontiac (\$2,000.00).
3. AIG/VALIC (\$2,573.04).
4. Household property (\$2,500.00).

Total: \$152, 573.04

Wife pays:

1. Mortgage (\$90,530.25).
2. Capital One (\$4,728.25).

Net: \$57,314.54

\$57,314.54 plus \$84,498.47 = \$141,813.01 Total Net Assets
\$141,813.01 divided by 2 = \$70,906.50 Value Each Should Receive
\$84,498.47 - \$70,906.50 = \$13,591.97 Amount Husband Owes Wife

Appellant's App. p. 16. Husband now appeals.

Discussion and Decision

On appeal, Husband raises one issue, which we restate as two: (1) whether the trial court erred by including the County Road 9 property and three IRA investment accounts in the marital pot and (2) whether the trial court abused its discretion by equally dividing the marital pot.

I. Marital Pot

Initially, Husband argues that the trial court erred by including the County Road 9 property and three investment accounts in the marital pot. It is well-established that all marital property goes into the marital pot for division, whether it was owned by either spouse prior to the marriage, acquired by either spouse after the marriage and prior to final separation of the parties, or acquired by their joint efforts. Ind. Code § 31-15-7-4(a); *Beard v. Beard*, 758 N.E.2d 1019, 1025 (Ind. Ct. App. 2001), *trans. denied*. This “one-pot” theory ensures that all assets are subject to the trial court’s power to divide and award. *Thompson v. Thompson*, 811 N.E.2d 888, 914 (Ind. Ct. App. 2004), *trans. denied*. 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.* Husband urges, however, that some of the items disposed of by

the trial court in its Order were not “marital property” and should not have been part of the marital pot.

Husband first contends that the County Road 9 property should not have been included in the marital pot. Specifically, he asserts, “The real estate was purchased by [him], remained in his name only, was paid for out of [his] monies, the rental income received belonged to [him] and the couple did not commingle funds. . . . The court . . . should have set it aside as his sole property and not included it as marital property.” Appellant’s Br. p. 15-16. We disagree. Here, Husband purchased the County Road 9 property before marrying Wife. Indiana Code § 31-15-7-4(a) specifically contemplates property purchased by one spouse before marriage and states that the court shall include, as marital property, property “owned by either spouse before the marriage” Therefore, the County Road 9 property is marital property and was properly included in the marital pot.

Next, Husband challenges the trial court’s treatment of his three IRA investment accounts. He notes that these investments “should not have been included as marital assets but should have been set aside as the sole property of the husband.” Appellant’s Br. p. 16. We reiterate that *all* marital property goes into the marital pot for division, even if it was owned by one spouse before the marriage or purchased with funds that one spouse brought into the marriage. *See* I.C. § 31-15-7-4(a); *Beard*, 758 N.E.2d at 1025; *see also Thompson*, 811 N.E.2d at 914. These investments were properly included in the marital pot as well.

II. Division of Marital Pot

Beyond the *makeup* of the marital pot, Husband also challenges the trial court's *division* of the marital pot. The disposition of marital assets is within the sound discretion of the trial court. *Hatten v. Hatten*, 825 N.E.2d 791, 794 (Ind. Ct. App. 2005), *trans. denied*. "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.* (quotation omitted). When we review a claim that the trial court improperly divided marital property, we must decide whether the trial court's decision constitutes an abuse of discretion, considering only the evidence most favorable to the trial court's disposition of the property, without reweighing the evidence or assessing the credibility of witnesses. *Id.* An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court or if the trial court has misinterpreted the law or disregarded evidence of factors listed in the controlling statute. *Id.* Although the facts and reasonable inferences might allow for a different conclusion, we will not substitute our judgment for that of the trial court. *Id.*

By statute, the trial court must divide the property of the parties 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 of the parties, or acquired by their joint efforts. I.C. § 31-15-7-4(a). An equal division of marital property is presumed to be just and reasonable. Ind. Code § 31-15-7-5. This presumption may be

rebutted by a party who presents relevant evidence, including evidence of the following factors:

- (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.

Id. (emphasis added).

Here, Husband claims that because he acquired the County Road 9 property before he married Wife and paid it off with money he received as an inheritance from his father and because he funded the three IRA investment accounts with his own monies, he has presented relevant evidence to rebut the presumption that the marital property should be equally divided. As a result, he argues that the trial court abused its discretion by not awarding him a more favorable distribution. We disagree.

The evidence presented at trial shows that Husband and Wife lived together before marriage and shared in the expenses necessary to maintain the County Road 9 property. Wife helped pay the taxes and insurance, and Husband made payments on the land contract. Husband and Wife together made improvements on the property. Regarding the investment accounts, Husband deposited money into those accounts and “moved it

around to get better interest rates[,]” Appellant’s Br. p. 8, after the couple began living together. Moreover, for approximately eight to ten years during the parties’ relationship, Wife provided most of the financial support, as Husband was unemployed. Husband has failed to persuade us that the trial court abused its discretion in equally dividing the marital property.

Affirmed.

BAKER, C.J., and BAILEY, J., concur.