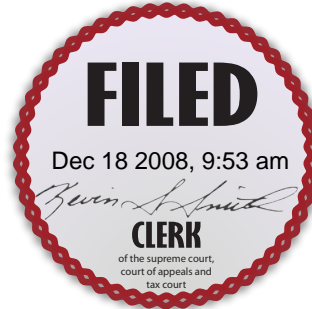


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

MICHAEL POULIMAS,

)

Appellant-Defendant,

)

vs.

)

No. 80A02-0806-CV-479

)

ANGEL EWING,

)

Appellee-Plaintiff.

)

)

APPEAL FROM THE TIPTON CIRCUIT COURT
The Honorable Thomas R. Lett, Judge
Cause No. 80C01-0611-MI-398

December 18, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Michael Poulimas appeals the trial court's decision regarding his personal property and its award to Angel Ewing. We affirm.

Issues

Poulimas raises multiple issues on appeal, which we consolidate and restate as:

- I. whether the trial court properly determined the personal property issues; and
- II. whether the trial court properly awarded Ewing \$12,069.89.

Facts

Shortly before moving in together, Ewing and Poulimas entered into a Joint Cohabitation Agreement ("JCA") on February 6, 2004. The JCA was drafted by Poulimas. Neither party disputes the validity of the JCA or any of its provisions. The couple purchased a home in Sharpsville. The JCA detailed procedures to deal with the home in the event that the couple ended the relationship.

During their relationship, Poulimas temporarily moved out, though the couple disputes the amount of time he was gone from the home. In any event, Poulimas returned in April 2006 in a failed attempt to reconcile. The parties eventually separated again and Poulimas permanently moved out of the home. Ewing left in June 2006. Ewing's teenage children remained in the home and maintained it.

Ewing filed a complaint to quiet title to the property on November 22, 2006. The trial court entered a default judgment against Poulimas on March 27, 2007. He moved to set aside the judgment and the parties agreed to vacate that judgment on July 10, 2007.

Poulimas had agreed to purchase the home if he could obtain financing, but then did not do so by the agreed time. The trial court conducted a hearing on the original complaint on December 20, 2007, following several continuances,¹ and awarded Ewing \$12,060.89 on February 25, 2008. Poulimas was to pay Ewing this amount thus making him the sole owner of the home. The trial court did not make any award for Poulimas's claimed missing personal property. Poulimas filed a motion to correct error, which was denied. This appeal followed.

Analysis

Poulimas contends that the trial court did not have sufficient evidence to make its findings regarding personal property. Although Poulimas makes his argument with a sufficiency of the evidence standard of review, we believe that because the trial court entered detailed findings of fact and conclusions thereon, the standard of review applicable to reviewing findings and conclusions is more appropriate here.

Neither the chronological case summary nor the transcript indicate the parties requested findings and conclusions pursuant to Indiana Trial Rule 52(A). Sua sponte findings control only the issues they cover. Olcott Int'l. & Co., Inc. v. Micro Data Base Sys., Inc., 793 N.E.2d 1063, 1071 (Ind. Ct. App. 2003), trans. denied. We apply the following two-tier standard of review to sua sponte findings and conclusions: whether the evidence supports the findings, and whether the findings support the judgment. Id. Findings and conclusions will be set aside only if they are clearly erroneous, that is, when the record contains no facts or inferences supporting them. Id. "A judgment is clearly

¹ Ewing's original complaint is not included in the record on appeal.

erroneous when a review of the record leaves us with a firm conviction that a mistake has been made.” Id. We consider only the evidence favorable to the judgment and all reasonable inferences flowing therefrom, and we will neither reweigh the evidence nor assess witness credibility. Id. A general judgment standard of review controls as to the issues upon which there are no findings. Id. These will be affirmed if they can be sustained on any legal theory supported by the evidence. Id.

I. Personal Property

Poulimas contends that the trial court erred in not awarding him more personal property and money for the property he contends is missing or unavailable. He argues on appeal that sufficient evidence was presented to support such an award. He points to evidence he presented that lists the personal property he owns and Ewing still allegedly controls. The trial court found: “Neither party met their burden of proof with regard to personal property. The court finds that personal property has been divided.” App. p. 5.

Ewing testified that she was missing some personal property, including diamond earrings, but was not asking for them back during the hearing and instead testified her main concern was to resolve the situation with the home. Ewing also testified that Poulimas took many items from the home without witnesses and without making a list, two conditions imposed by the JCA. Poulimas presented numerous spreadsheets of the property he seeks repayment for, but no accounting of the items he had already removed from the home.

Poulimas argues on appeal that all claims of missing or unavailable property should be assigned a replacement value and he should be reimbursed by Ewing in line

with the JCA. Poulimas did not file a complaint or counterclaim for his personal property, and instead only argued for it during the hearing on Ewing's quiet title action. Regardless of the JCA's applicable provisions, Poulimas must still convince the trial court that the contested property actually existed and is no longer in his possession or unavailable to him. He failed to do so. Ewing testified that she has "not a clue" where Poulimas's claimed missing items are located. Tr. p. 35. There was contradictory testimony regarding the ownership of a lawnmower and four-wheeler and the trial court chose to believe Ewing's testimony. Such credibility determinations are within the province of the trial court. The trial court was unconvinced that Poulimas was entitled payment for the allegedly missing and unavailable property. We agree. The finding and conclusion regarding the personal property is not clearly erroneous.

II. Award

Poulimas contends that the trial court's award of \$12,060.98 to Ewing is not supported by the evidence and is inconsistent with the trial court's findings.² Ewing supports this award with Exhibit 2, detailing the expenses incurred regarding the residence, and following the procedures of the JCA. Ewing's testimony explained the figures and calculations within that exhibit. Poulimas contends the trial court ignored relevant provisions of the JCA in calculating the award. He also argues that certain figures used in making the calculation were incorrect. He contends on appeal that his

² In his brief, Poulimas refers to the negative judgment standard of review as applying to this issue. However, one appeals a negative judgment when he had the burden of proof at trial. *Clark v. Hunter*, 861 N.E.2d 1202, 1206 (Ind. Ct. App. 2007). Here, Ewing brought this action, had burden of proof, and succeeded on her claim.

own calculation, rejected by the trial court, should instead be used. Poulimas calculated that Ewing owed him \$15,335.72, and this calculation was admitted into evidence as respondent's Exhibit H.

Poulimas first argues that the value of the home as listed in Exhibit 2 is incorrect. The trial court heard testimony and reviewed evidence regarding the value of the home and we will not reconsider that evidence. A 2004 appraisal indicated a \$180,000 value and the couple purchased it for \$210,000. Poulimas testified that he believed the home at the time of the hearing was worth \$215,000. Ewing testified that she believed the home appreciated \$14,000 in value by the time of the hearing and \$224,000 was a reasonable number. The JCA stipulated that an appraisal should be performed at the time the parties separate and that was not done here. The trial court's acceptance of \$224,000 as the current value of the home was not in error and is supported by the evidence.

Poulimas's exhibit H lists additional costs associated with various JCA provisions at \$15,125.39. To the extent that these costs include personal property reimbursement, we have already determined that the trial court's conclusion that Ewing does not owe Poulimas anything for personal property is sound. We will not revisit this issue here. Poulimas's \$15,125.39 figure includes un-explained amounts for roof and sewer repairs and even an entry for attorney fees. The listing of these figures prepared by Poulimas is unsupported by additional documentation. Also, Poulimas contends that three sections of the JCA, sections 6(a)(2)(b), 6(a)(4), and 6(a)(6), should be utilized in making the calculation. These sections, however, are not part of section 7 of the JCA—which deals exclusively with the disposition of the residence in the event of separation.

Poulimas contends that the attorney fee provision in the personal property section of the JCA, section 4(a)(4), is applicable because he is making a claim for missing personal property. This section is unclear and its applicability to the division of the home is tenuous at best. In any event, Poulimas did not “make a claim,” as required by 4(a)(4), since Ewing filed the action here and he made no counterclaim or filed any separate action. App. p. 65. The trial court heard the parties’ positions regarding attorney fees and found that none were to be awarded. That finding is supported by the final provision in the JCA that parties will be responsible for their own legal fees.

Poulimas argues the calculation of the reduction in the original mortgage amount is flawed. His position ignores Ewing’s testimony, which explains that she added Poulimas’s missed payments for the months he moved out and did not contribute. The testimony regarding not only which party was paying the monthly expenses during the time Poulimas was not in residence, but also how long Poulimas was not in residence, was at odds. The trial court heard the competing testimony and decided not to award Poulimas any of his requested money and to believe Ewing’s recounting of the situation. The inconsistencies and discrepancies between Ewing and Poulimas’s testimony, valuation, and calculations were matters related to credibility, the determination of which was the prerogative of the trial court. The trial court was in the best position to assess the credibility of witnesses and weigh the evidence. Its findings are supported by the evidence. It determined that Ewing’s calculation was accurate and that finding is supported by the testimony and evidence.

Conclusion

The trial court's findings and conclusions regarding the personal property of the parties and the \$12,060.98 award with respect to the real property are not clearly erroneous. We affirm.

Affirmed.

BAILEY, J., and CRONE, J., concur.