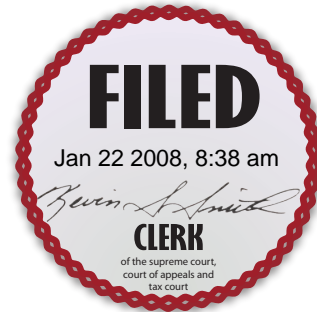


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

CATHERINE ROIANN BROWNING

Mitchell, Indiana

DAVID P. ALLEN

RYAN D. BOWER

Salem, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

RANDALL CARL FREEMAN,)

Appellant-Defendant,)

vs.)

No. 59A04-0609-CV-531

CRYSTAL FREEMAN,)

Appellee-Plaintiff.)

APPEAL FROM THE ORANGE SUPERIOR COURT
The Honorable Larry Blanton, Special Judge
Cause No. 59D01-0508-DR-013

JANUARY 22, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Petitioner-Appellant Randall Carl Freeman appeals the trial court's denial of his motion to correct error following the court's distribution of property in the dissolution of Randall's marriage to Respondent-Appellee Crystal Freeman. We affirm.

ISSUES

Randall raises the following two consolidated and restated issues:

1. Whether the trial court erred in valuing the parties' property; and
2. Whether the trial court erred in distributing the parties' property.

FACTS AND PROCEDURAL HISTORY

The facts most favorable to the distribution reveal that Randall and Crystal were married on May 30, 1998. At the time of the marriage, Randall owned a 70-acre parcel of land that was worth \$70,000.00 and a house and 20-acre parcel of land that were also worth \$70,000.00. The house and 20-acre parcel of land included a \$58,164.00 mortgage and \$11,836.00 in equity. The house itself was in bad condition. There was a hole in the kitchen wall, the washer and dryer were in the hallway on their backsides, the carpet was frayed, the wallpaper was peeling off of the walls, and the house was filthy.

Crystal spent two 40 to 60-hour weeks after the wedding getting the house cleaned up enough to be able to cook and bathe in it. Randall and Crystal continued to work on

the house during the course of their marriage. They added a bedroom and a porch, as well as a tub, a shower, and a sink. They also painted and carpeted the house. Randall and Crystal did all of the work themselves, including framing and pouring concrete for the addition.

Sometime after Randall and Crystal were married, Randall was fired from his job. He did not work outside the home for three years. When he eventually returned to work, he worked for four weeks at one job, and a year and one-half at another. He was subsequently fired from a third job for drinking on the job. At the time of the dissolution hearing, Randall had not worked outside the home for three years. Instead, he sometimes mowed yards or made furniture. While Randall was unemployed, Crystal sometimes worked two jobs. During one two-year period, she worked both at a factory and a liquor store.

In addition, Crystal maintained health insurance on Randall and his daughter from a prior relationship, and paid the parties' debts when Randall was unable to do so. If Crystal's income was not sufficient to cover their debts, Crystal and Randall either borrowed money or took cash draws from their credit cards.

In August 2005, Randall filed a dissolution petition. At a hearing on the petition, Randall asked the court to deviate from the 50/50 marital property distribution presumption and award him property valued at \$232,000.00, including everything he owned prior to the marriage, and to award Crystal property valued at \$4,000.00. He also asked the court to award him the 1999 Ford Explorer that Crystal had been driving since it was new and to award her the 1992 Ford Explorer that he drove.

Following a hearing, and pursuant to Crystal's request for specific findings of fact and conclusions of law pursuant to Ind. Trial Rule 52, the trial court entered an order that distributed 70% of the total marital property to Randall and 30% of it to Crystal. That order provides in relevant part as follows:

PARTIES' FINANCIAL CONDITION - DATE OF SEPARATION

1. The Court has reviewed the accounting documents and the proposals of the parties, as it would reflect the financial status of the Parties. The Court uses [Crystal's] Date of Separation Balance Sheet, reflective of the status of the parties at the date of separation.

JUDGMENT PERTAINING TO PROPERTY

- (1) The Court determines that Mr. Freeman's equity interest in the 70 acres he held prior to the marriage is \$70,000.00. . . . The present valuation, by appraisal, of the property is \$140,000.00. There is a \$70,000.00 marital asset to be equally divided.
- (2) The Petitioner also possessed the marital residence and 20 acres prior to the marriage. This piece of realty had a value of \$70,000.00 appraised at the time of the marriage with a mortgage of \$58,164.00. At the time of separation the residential property was valued at \$159,000.00 and carried a mortgage in the amount of \$128,287.48. The residential property had equity of \$30,712.52 at the time of separation. Randall Freeman had equity in the amount of \$11,836.00 in the property at the time of the marriage. That value is

granted to him leaving a marital asset of \$18,876.52 to be equally divided. . . .

- (3) Randall Carl Freeman owned farm implements, tractors and other tools prior to the marriage. He brought those assets to the marriage. The tools, tractors, and implements that Mr. Freeman brought to the union carried a self proclaimed value of \$36,900.00. . . . Depreciation of farm implements, by custom and practice is generally done over a period of 10-15 years. In the most generous light the eight-year-old equipment would be worth \$19,600.00. Therefore the court ascribes \$19,500.00 to Mr. Freeman as a pre-marital asset, to be deducted from his equitable total.

Appellant's Appendix at 5, 13-14. Randall appeals.

DISCUSSION AND DECISION

When the trial court has entered findings of fact and conclusions of law pursuant to Indiana Trial Rule 52, we apply the following two-tiered standard of review: whether the evidence supports the findings and whether the findings support the judgment. *Staresnick v. Staresnick*, 830 N.E.2d 127, 131 (Ind. Ct. App. 2005). The trial court's findings and conclusions will be set aside only if they are clearly erroneous, that is, if the record contains no facts or inferences supporting them. *Id.* A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has

been made. *Id.* We neither reweigh the evidence nor assess the credibility of witnesses, but consider only the evidence most favorable to the judgment. *Id.* We review conclusions of law de novo. *Id.*

The division of marital assets lies within the sound discretion of the trial court, and we will reverse only for an abuse of discretion. *Sanjari v. Sanjari*, 755 N.E.2d 1186, 1191 (Ind. Ct. App. 2001). 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. *Bartley v. Bartley*, 712 N.E.2d 537, 542 (Ind. Ct. App. 1999). This 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 witnesses, and we will consider only the evidence most favorable to the trial court's disposition of the marital property. *Dall v. Dall*, 681 N.E.2d 718, 720 (Ind. Ct. App. 1997). Although the facts and reasonable inferences might allow for a different conclusion, we will not substitute our judgment for that of the trial court. *Bartley*, 712 N.E.2d at 542.

Indiana Code Section 31-15-7-5 provides that a trial court may consider the following factors in distributing the marital estate between the parties: (1) the contribution of each spouse to property acquisition; (2) the extent to which the property was acquired by each spouse prior to the marriage or through gift or inheritance; (3) the economic circumstances of each spouse at the time of the property disposition; (4) each spouse's conduct in disposing of or dissipating property during the marriage; and (5) the earnings or earning ability of each spouse as related to a final property division.

I. Valuation

Randall first argues that the trial court erred in valuing the property. We review the trial court's decision in ascertaining the value of property in a dissolution action for an abuse of discretion. *Goossens v. Goossens*, 829 N.E.2d 36, 38 (Ind. Ct. App. 2005). Where the trial court's valuation of property is within the range of values supported by the evidence, the court does not abuse its discretion. *Id.*

Here, the trial court's order stated that the court had reviewed the parties' financial documents and chose to use Crystal's Date of Separation Balance Sheet to show the parties' financial status at the date of separation. The trial court's values are within the range of values supported by this evidence. The trial court did not abuse its discretion in valuing the property.

II. Distribution

Randall further argues that the trial court erred in distributing the parties' property. We note that Randall singles out specific items of property in support of his general claim of inequitable distribution. Specifically, he complains that he should have been awarded the entire value of the 70-acre plot. He also complains that the trial court inconsistently awarded him his motorcycle as a premarital asset but did not award him his Ford 250 as a premarital asset. Further, he points out that although the court credited Crystal with bringing \$500.00 worth of assets into the marriage, Crystal's balance sheet does not credit either party with premarital assets.

The Indiana Supreme Court has previously explained that the trial court's disposition is to be considered as a whole, not item by item. *DeSalle v. Gentry*, 818 N.E.2d 40, 45 (Ind. Ct. App. 2004) (citing *Fobar v. Vonderahe*, 771 N.E.2d 57, 59 (Ind.

2002)). In crafting a just and reasonable property distribution, a trial court is required to balance a number of different considerations in arriving at an ultimate disposition. *Id.* The trial court may allocate some assets or debt to one spouse because of its disposition of other items. *Id.* Similarly, the factors identified by the statute as permitting an unequal distribution in favor of one party or the other may cut in different directions. *Id.* As a result, our Supreme Court concluded in *Fobar* that if the appellate court views any of these items in isolation and apart from the total mix, it may upset the balance ultimately struck by the trial court. *Id.*

Here, the court awarded Randall the equity that he had in the 70-acre property and 20-acre property and house prior to the marriage as well as a motorcycle that he owned prior to the marriage. The court also awarded Randall his farm equipment, tools, 1992 Ford Explorer, and other household goods as part of the property division.

Our review of the record of the proceedings reveals that the trial court gave careful consideration to the various contributions made by both parties to the acquisition of the marital property during their eight-year marriage. The court also gave careful consideration to Randall's request for the assets that he owned prior to the marriage. With these contributions and Randall's request in mind, the court awarded Randall 70% of the property. Based upon the facts and circumstances of this case, the trial court's disposition was not clearly against the logic and effect of the facts and circumstances before it. We find no error in the trial court's property distribution.

CONCLUSION

The trial court did not err in either valuing or distributing the property.

Affirmed.

BARNES, J., concurs.

SULLIVAN, S.J., concurring in result with separate opinion.

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COURT OF APPEALS OF INDIANA**

SULLIVAN. Senior Judge, concurring in result with separate opinion.

The phrasing of the distribution order indicates that the trial court excluded certain portions of the real estate marital assets from the marital pot.¹ For instance, as to the seventy-acre parcel, the court stated: “There is a \$70,000 marital asset to be equally divided.” In reality, however, the court set over half of the value of the parcel to husband and then divided the other half equally. In any event, the apportionment of the marital assets remains the same either way. Although it was error for the court to categorize \$70,000 of the value as a “pre-marital asset,” it was permissible for the court to set over to husband the first \$70,000 in value in light of the fact that at the time of the marriage the parcel had a value of \$70,000 and to then apportion the remaining \$70,000 in value equally.²

It is clearly established in the law that “all marital property goes into the marital pot. . . . whether it was owned by either spouse prior to the marriage, acquired by either

¹ Randall’s position upon appeal reiterates his view that certain assets should have been considered “pre-marital assets” and set over to him at their full value. As discussed, *infra*, this position runs counter to the clear law of this state.

² The court used similar terminology in treating the twenty-acre residential parcel and in making distribution of the value of that parcel. Likewise, the court miscategorized the farm implements, tractors and tools as a “pre-marital asset,” but because husband had brought those items into the marriage, it set aside the depreciated value of that property over to husband “to be deducted from his equitable total.”

spouse after the marriage and prior to final separation of the parties, or acquired by their joint efforts.” I.C. 31-15-7-4; Hill v. Hill, 863 N.E.2d 456 (Ind. Ct. App. 2007).

How that marital pot is to be divided between the parties is a separate determination and as noted by the majority decision here, the trial court in making an equitable distribution may consider a number of various factors. Hill, id. The various factors at work in this case render the court’s distribution scheme appropriate.

I find no basis for reversal of the trial court’s evaluation of the marital property or in the distribution made of those assets.