

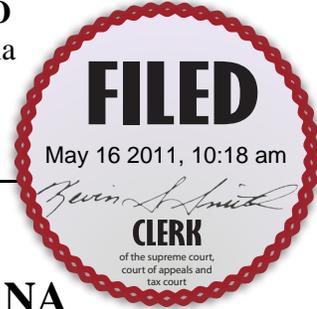
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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE THE MARRIAGE OF:
JOSEPH J. PAJOT,

Appellant-Respondent,

vs.

MARYANN A. PAJOT,

Appellee-Petitioner.

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No. 71A03-1006-DR-394

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Margot F. Reagan, Judge
Cause No. 71D04-0905-DR-270

May 16, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Joseph Pajot (Husband) appeals the trial court's order dissolving his marriage with MaryAnn Pajot (Wife). He raises the following two issues:

1. Did the trial court abuse its discretion by dividing the marital estate equally between the parties; and
2. Did the trial court abuse its discretion when it ordered Husband to reimburse Wife for medical costs?

We affirm in part, reverse in part, and remand.

FACTS AND PROCEDURAL HISTORY

Husband and Wife were married in 1980, and they had three children. On May 7, 2009, Wife filed for dissolution of the marriage. At that time, only one of their children, K.P., was not emancipated.

After the parties were unable to resolve their differences through mediation, the trial court heard evidence regarding their current and past financial statuses and other marital assets and liabilities. On May 26, the trial court dissolved the marriage and divided the marital estate equally between the parties.

DISCUSSION AND DECISION

The trial court issued specific findings at the request of the parties pursuant to Ind. Trial Rule 52(A). Thus, our standard of review is two-tiered. *Bloodgood v. Bloodgood*, 679 N.E.2d 953, 956 (Ind. Ct. App. 1997). First, we must determine whether the evidence supports the findings and then whether the findings support the judgment. *Id.* We will reverse the judgment only when it is clearly erroneous. *Id.* Findings are clearly erroneous

when the record lacks any evidence to support them. *Id.* Upon review, we will neither reweigh the evidence nor assess witness credibility. *Id.*

1. Distribution of Inheritance Account

Husband first challenges the court's division of marital assets equally between the parties. Division of the assets between divorcing parties is left to the trial court's discretion. *Akers v. Akers*, 729 N.E.2d 1029, 1031-32 (Ind. Ct. App. 2000). Even if the facts and reasonable inferences might allow us to reach a conclusion different than did the trial court, we will not substitute our judgment for that of the trial court unless its decision is clearly against the logic and effect of the facts and circumstances before it. *Id.* We consider only the evidence favorable to the judgment. *Goodman v. Goodman*, 754 N.E.2d 595, 599 (Ind. Ct. App. 2001), *reh'g denied*. We may not reweigh the evidence or reassess the credibility of the witnesses. *Akers*, 729 N.E.2d at 1032.

A party challenging a property division must “overcome a strong presumption that the court considered and complied with the applicable statute.” *Id.* (quoting *In re Marriage of Bartley*, 712 N.E.2d 537, 542 (Ind. Ct. App. 1999)). We consider the court's disposition of marital property “as a whole, not item by item.” *Krasowski v. Krasowski*, 691 N.E.2d 469, 473 (Ind. Ct. App. 1998). When we review the division, our focus is on what the court did, not what the court could have done. *Akers*, 729 N.E.2d at 1032.

The court's goal is to divide the marital property in a just and equitable manner, Ind. Code § 31-15-7-4(b), and we presume just and equitable division is synonymous with equal division between the parties. Ind. Code § 31-15-7-5. If one party feels equal division is not

just and equitable, that party may rebut the presumption of equal division by presenting evidence regarding 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.

Husband argues the trial court abused its discretion in equally dividing an account funded by money he inherited from his parents.¹ Regarding inheritances, we have held the trial court may deviate from an equal distribution of marital property when one party proves he or she is the sole owner of the account, the other spouse did not contribute to or benefit from the funds in the account, the inherited funds were not commingled with other marital assets, and the funds were not used as if they were marital property. *Castaneda v. Castaneda*, 615 N.E.2d 467, 470-71 (Ind. Ct. App. 1993).

The trial court found:

Wife and Husband should divide the net marital estate equally. Factors supporting this conclusion include the length of the parties['] marriage (thirty

¹ Husband explicitly acknowledges the account is a marital asset, (see Appellant's Br. at 8), and should have been included in the estate being divided by the court.

years), the gifts and inheritance received from both sides of the family meant for the married Couple and their children, Husband's far greater earnings, Husband's advanced degree earned during the marriage of the parties while Wife cared for the children, Wife's devotion to Husband's career, Wife's devotion to the educational and social enrichment of the children during the marriage and Wife's mental health issues which has [sic] affected her ability to work full-time hours.

(App. at 6.)

During the hearing, both parties testified their respective parents gave the family money, furnishings, and vehicles throughout the marriage. Evidence indicated Husband earned close to two million dollars in his working life, while Wife earned a little over six hundred thousand dollars due to a mutual agreement that she stay home and raise the couple's children in lieu of employment as a pharmacist. Both parties testified Wife had recently suffered a nervous breakdown that affected her ability to sustain full-time employment, though Husband opined Wife should be able to be employed full-time after the dissolution proceedings because she was receiving therapy and taking medication.

The inheritance account in the instant case was in Husband's name only and contained funds only from Husband's family. However, when asked how the money in that account was used, Husband testified: "we wouldn't have had then the money for vacations, for new cars, for piano lessons, for violin lessons, gifts to parents. Those things wouldn't have been possible. Something would of (sic) had to give. So essentially, our financial standing was significantly upgraded by virtue of this generosity." (Tr. at 43.) The use of the funds throughout the years to benefit the family indicates the funds had been used to benefit the family over the years and had been "used as if they were marital property." *Cf. Castaneda,*

615 N.E.2d at 470-71 (unequal distribution of inheritance upheld when money kept separate from marital funds could not be used as marital funds). Therefore, the trial court did not abuse its discretion when dividing Husband's inheritance account equally. *See, e.g., Bloodgood*, 679 N.E.2d at 957-58 (trial court did not abuse discretion when equally distributing marital estate, which included Husband's inheritance account).

2. Husband's Reimbursement of Wife's Medical Expenses

The trial court ordered Husband to reimburse Wife for \$2,920 in medical bills. Husband argues he should not be responsible for the majority of that amount, because the bills were incurred after Wife filed for dissolution, and thus they are not liabilities of the marital estate. *See, e.g., Thompson v. Thompson*, 811 N.E.2d 888, 913 (Ind. Ct. App. 2004) (debt incurred after dissolution petition filed is not marital debt). However, Husband did not raise this issue before the trial court and, thus, he may not assert it here. *See Cavens v. Zaberdac*, 849 N.E.2d 526, 533 (Ind. 2006) ("Issues not raised at the trial court are waived on appeal.").

In the alternative, Husband claims the trial court ordered him to pay the wrong amount for Wife's medical expenses. He argues the amount should be \$2,570, because Wife accidentally included some charges twice in her exhibit. During cross-examination, Wife acquiesced to having committed this oversight when she calculated her medical expenses. Where, as here, the trial court's findings are not supported by evidence, we must reverse. *See Bloodgood*, 679 N.E.2d at 956 (reversing for lack of evidence to support trial court's finding). Because the trial court's award of \$2,920 in medical fees for Wife was not

supported by the evidence, and we reverse and remand to the trial court to reduce that amount from \$2,920 to \$2,570.

CONCLUSION

We hold the trial court did not abuse its discretion by dividing equally an account comprised of Husband's inheritance from his parents because the money was used during the marriage to benefit the family. However, the trial court erred when it ordered Husband to reimburse Wife for \$2,920 in medical expenses when the amount was actually \$2,570, and we reverse and remand for correction of that amount in the final order.

Affirmed in part, reversed in part, and remanded.

FRIEDLANDER, J., and MATHIAS, J., concur.