



Appellant/Respondent Donald J. Zellers appeals from the trial court's distribution of marital property following his divorce from Appellee/Petitioner Sharon Zellers, arguing that the trial court abused its discretion in failing to award him any portion of the marital residence. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

Sharon and Donald Zellers were married on October 21, 1995. Throughout their marriage, the Zellers lived in a house on land at 3966 East 300 North in Kosciusko County, which was, at first, owned by Sharon's mother Martha Mayer. In 1998, Mayer conveyed the real estate to herself and Sharon as joint tenants with full rights of survivorship. Neither Sharon nor Donald gave any consideration for the real estate, and no attempt was ever made to grant Donald any interest in it. Mayer always paid property tax on the real estate, paid for fire and liability insurance for several years, and never charged the Zellers rent. During the Zellers' residence at 3966 East 300 North, "Mayer paid for roofing and other improvements[; Donald] did expend energy in remodeling bathrooms, painting and refinishing floors, and the like[;]" and the Zellers remodeled the house's kitchen with money inherited from Sharon's grandmother. Appellant's App. p. 7. On December 17, 2008, Sharon filed for dissolution of her marriage to Donald.

On July 30, 2009, the trial court issued its "Decree Dissolving Marriage and Restoring Former Name" and its "Supplemental Decree of Dissolution of Marriage" in which it disposed of the marital assets. The trial court found that the marital estate contained the following assets and debts:

1. The property of the marriage is as follows:

	<u>Item of Property</u>	<u>Value</u>
a.	1983 Chevrolet Camaro	\$ 1,000.00
b.	1995 GMC Z71	\$ 2,700.00
c.	2001 Chevrolet Conversion Van	\$ 5,000.00
d.	Snap-on Tools	\$ 500.00
e.	Two (2) Canoes	\$ 900.00
f.	Undivided one-half interest in real estate at 3966 East 300 North, Warsaw, Indiana	\$ 140,000.00

2. During the parties' marriage, the following debts were incurred:

	<u>Debt</u>	<u>Amount</u>
a.	Lake City Bank, home equity loan	\$ 25,000.00
b.	WAMU credit card	\$ 1,000.00
c.	VISA BP credit card	\$ 1,200.00
d.	Discover credit card	\$ 4,625.00
e.	Mastercard credit card	\$ 873.00
f.	Martha E. Mayer	\$ 7,671.00

Appellant's App. pp. 6-7.

The trial court apportioned to Sharon the interest in the real estate, the GMC Z71, home equity loan, debt to Mayer, WAMU credit card, and \$437.00 of the Mastercard credit card, for a net balance of \$108,592.00. The trial court apportioned to Ronald the Chevrolet Camaro, van, tools, canoes, VISA BP credit card, Discover credit card, and \$436.00 of the Mastercard credit card for a net balance of \$1139.00. The trial court noted that the Zellers had divided their household goods and furnishings themselves.

### **DISCUSSION AND DECISION**

Donald contends only that the trial court abused its discretion in failing to apportion half of Sharon's interest in the real estate at 3966 East 300 North to him, arguing that the trial court did not properly take into account the amount of work he put into improving the property, that he was the sole wage earner of the couple, and the time

Sharon devoted to bowling. Where, as here, the trial court *sua sponte* enters specific findings of fact and conclusions, we review its findings and conclusions to determine whether the evidence supports the findings, and whether the findings support the judgment. *Fowler v. Perry*, 830 N.E.2d 97, 102 (Ind. Ct. App. 2005). We will set aside the trial court’s findings and conclusions only if they are clearly erroneous. *Id.* A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake was made. *Id.* We neither reweigh the evidence nor assess the witnesses’ credibility, and consider only the evidence most favorable to the judgment. *Id.* Further, “findings made *sua sponte* control only ... the issues they cover and a general judgment will control as to the issues upon which there are no findings. A general judgment entered with findings will be affirmed if it can be sustained on any legal theory supported by the evidence.” *Id.*

Indiana Code section 31-15-7-5 provides as follows:

The court shall presume that an equal division of the marital property between the parties is just and reasonable. However, this presumption may be rebutted by a party who presents relevant evidence, including evidence concerning the following factors, that an equal division would not be just and reasonable:

- (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.

“Subject to the statutory presumption that an equal distribution of marital property is just and reasonable, the disposition of marital assets is committed to the sound discretion of the trial court.” *Augspurger v. Hudson*, 802 N.E.2d 503, 512 (Ind. Ct. App. 2004).

An abuse of discretion occurs if the trial court’s decision is clearly against the logic and effect of the facts and circumstances, or the reasonable, probable, and actual deductions to be drawn therefrom. An abuse of discretion also occurs when the trial court misinterprets the law or disregards evidence of factors listed in the controlling statute. The presumption that a dissolution court correctly followed the law and made all the proper considerations in crafting its property distribution is one of the strongest presumptions applicable to our consideration on appeal. Thus, we will reverse a property distribution only if there is no rational basis for the award and, although the circumstances may have justified a different property distribution, we may not substitute our judgment for that of the dissolution court.

*Id.* (citations, quotation marks, and brackets omitted).

A trial court, however, generally may not rely on just one of the factors listed in Indiana Code section 31-15-7-5 in determining that an unequal division would be warranted, but must consider the factors “in conjunction with relevant evidence regarding other statutorily prescribed factors, and with any evidence demonstrating additional reasons that an unequal distribution would be just and reasonable.” *Eye v. Eye*, 849 N.E.2d 698, 702 (Ind. Ct. App. 2006). This is not to say, however, that a trial court is required to explicitly address all statutory factors in all cases. A trial court would not be

required, for example, to consider findings regarding statutory factors not implicated by the evidence.

Moreover, “[t]he trial court’s exclusion of [statutory] factors from its written findings does not mean that it did not consider them.” *Shumaker v. Shumaker*, 559 N.E.2d 315, 318 (Ind. Ct. App. 1990). “We presume the trial court considered all the evidence of record and properly applied the statutory factors.” *Id.* “The statute does not require the trial court to list those factors that do not justify the unequal division of property.” *Id.* “The trial court need only ‘state its reasons for deviating from the presumption of an equal division.’” *Id.* (quoting *In re Marriage of Davidson*, 540 N.E.2d 641, 646 (Ind. Ct. App. 1989)).

As previously mentioned, the only item at issue is the real estate at 3966 East 300 North. First, Donald contends that the trial court minimized his efforts to improve the real estate before and during the marriage. Although Donald testified to a long list of alleged improvements made by him, the trial court was under no obligation to credit any of this testimony and apparently did not credit much of it. Moreover, this evidence was contradicted in large part by Sharon, who testified that Donald’s improvements were limited to two uncompleted bathroom renovations and the installation of a fence with materials provided by Mayer. In any event, the trial court was free to conclude that Donald, as a resident, had already reaped the benefit of any improvements that he did make. Donald has failed to convince us that the trial court abused its discretion in failing to award him “sweat equity” in the real estate.

Second, Donald argues that the trial court improperly ignored the fact that he was the sole wage earner during the marriage. While this may be true, the trial court also heard evidence that Sharon received insurance payments of \$1087.00 per month for much of the marriage and received social security benefits for both of her children. Sharon may not have had a paying job during the marriage, but there is no evidence that Donald was solely responsible for all household expenses. We cannot say that the trial court abused its discretion in this regard.

Third, it is undisputed that Sharon participated in five bowling leagues throughout the marriage, and Donald argues that the trial court gave no consideration to the “excessive” amount of time Sharon devoted to bowling, suggesting that she pursued her hobby while he worked on the house. While we express no opinion as to whether Sharon’s dedication to bowling during the marriage was excessive, there is no evidence whatsoever that Donald worked on the house while she bowled or that it prevented her from fully participating in maintaining the household. Donald has failed to establish an abuse of discretion in this regard.

Donald observes that the entirety of the real estate at 3966 East 300 North would have been part of the marital estate if Mayer had died before he and Sharon divorced and argues that an “unexpected divorce is no statutory ground to deviate from the 50/50 split.” Appellant’s Br. p. 9. Donald, however, does not explain how the timing of Mayer’s death would change anything of significance. While Sharon’s interest in the real estate would be 100 instead of fifty percent, his would still be zero percent. Moreover, the facts that Donald never paid any consideration, rent, or property taxes and, in the trial

court's estimation, made only modest improvements, would not change either. We see no indication that the "unexpected" nature of Donald and Sharon's divorce played any part in the trial court's judgment. The trial court did not abuse its discretion in its disposition of the marital estate.

The judgment of the trial court is affirmed.

RILEY, J., and BAILEY, J., concur.