

**STATE OF INDIANA
COURT OF APPEALS**



LAWRENCE E. KELLOGG
Appellant(s),
v.
MARY C REYNARD
Appellee(s).

Cause No. 21A-DN-01466

CERTIFICATION

STATE OF INDIANA)
) SS:
Court of Appeals)

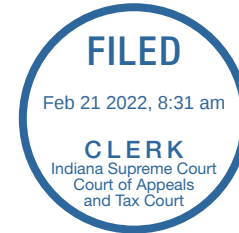
I, Gregory R. Pachmayr, Clerk of the Supreme Court, Court of Appeals and Tax Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the Opinion of said Court in the above entitled case.

IN WITNESS WHEREOF, I hereto set my hand and affix the seal of THE CLERK of said Court, at the City of Indianapolis, this on this the 19th day of April, 2022.

Gregory R. Pachmayr,
Clerk of the Supreme Court

MEMORANDUM DECISION

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

Lawrence E. Kellogg,
Appellant-Respondent,

v.

Mary C. Reynard,
Appellee-Petitioner

February 21, 2022

Court of Appeals Case No.
21A-DN-1466

Appeal from the
Jay Circuit Court

The Honorable
Brian D. Hutchison, Judge

Trial Court Cause No.
38C01-1812-DN-88

Vaidik, Judge.

Case Summary

- [1] Lawrence E. Kellogg (“Husband”) appeals the trial court’s division of the marital estate following the dissolution of his marriage to Mary C. Reynard (“Wife”). Specifically, Husband argues the trial court erred in concluding he did not rebut the presumption of an equal division of marital assets. We affirm.

Facts and Procedural History

- [2] Husband and Wife were married in August 2005. They did not have any children. Husband had been married before, and his former wife died in 2002. From her, Husband inherited two pieces of real property, a 12.02-acre plot and a one-third interest in a 28.33-acre plot. The 28.33-acre plot contains farmland and a house, which Husband and Wife used as the marital residence. The couple farmed some of the land themselves but rented out the majority.
- [3] When the parties married, they combined all finances into a joint account. Wife brought approximately \$10,000 into the marriage. The couple used the joint account to pay all bills, including the mortgage on the marital residence. Husband sustained “lower spine injuries” in 1985 as a member of the armed services. Tr. Vol. II p. 44. These injuries make it “difficult” for him to do “any kind of physical activity,” and he is unable to work. *Id.* Wife worked until 2008, when she had a series of strokes. The couple lived on Husband’s disability income and income from the 28.33-acre plot.

- [4] During the marriage, Wife maintained the home and took care of Husband, including doing all the driving, cooking, and helping Husband move around and use the restroom. Wife also took care of the many animals on the farm—chickens, dogs, goats, and pigs—including doing the daily feeding and watering and cleaning the pens. Due to Husband’s injuries, she also did most of the heavy-lifting outdoor jobs, including mowing grass, chopping wood, and loading and unloading supplies.
- [5] Wife filed for divorce in December 2018. Husband was ordered to pay temporary spousal maintenance—\$235 a week from January 2019 to August 2019, when it was reduced to \$100 a week after Wife got a job. The final dissolution hearing occurred in June 2021. The hearing focused on the division of the real property. Wife requested the property be split evenly and she continue to receive spousal maintenance. She testified she could not work for a long period of time in the marriage due to her medical issues and because Husband needed a caretaker. Wife also stated she suffered from post-traumatic stress disorder (PTSD), which affected her ability to work. However, Wife stated that she was employed at a home-healthcare facility making \$11.20 an hour. Husband testified and requested the court grant him both parcels of real property. He acknowledged Wife’s work in the home and on the farm but argued any money she is “entitled to” from these contributions was already given through the spousal maintenance. *Id.* at 53.
- [6] The trial court issued its dissolution decree that month. In the decree, the trial court equally divided the marital assets, including the two parcels of real

property. Husband was given his one-third interest in the 28.33 acres, valued at \$96,000, and Wife was given the 12.02 acres, valued at \$60,100. The court further ordered Husband to make a property-equalization payment of \$24,950 to Wife. The court denied Wife's request for continued spousal maintenance.

[7] Husband now appeals.

Discussion and Decision

[8] Husband argues the trial court erred in ordering an equal division of the marital estate. The division of marital property is within the sound discretion of the trial court, and we will reverse only for an abuse of discretion. *In re Marriage of Marek*, 47 N.E.3d 1283, 1287 (Ind. Ct. App. 2016), *trans. denied*. “We will reverse a trial court’s division of marital property only if there is no rational basis for the award; that is, if the result is clearly against the logic and effect of the facts and circumstances, including the reasonable inferences to be drawn therefrom.” *Id.* When we review a claim that the trial court improperly divided marital property, we consider only the evidence most favorable to the trial court’s disposition of the property without reweighing evidence or assessing witness credibility. *Id.* at 1288-89. “Although the facts and reasonable inferences might allow for a conclusion different from that reached by the trial court, we will not substitute our judgment for that of the trial court.” *Id.* at 1289. Such a case turns on “whether the trial court’s division of the marital property was just and reasonable.” *Morgal-Henrich v. Henrich*, 970 N.E.2d 207, 210-11 (Ind. Ct. App. 2012).

[9] Indiana law requires that marital property be divided “in a just and reasonable manner,” Ind. Code § 31-15-7-4(b), and provides for the statutory presumption that “an equal division of the marital property between the parties is just and reasonable,” I.C. § 31-15-7-5. This presumption, however, 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.

[10] Husband argues the trial court abused its discretion “in failing to deviate from the presumption in favor of equal division when awarding the real property” because he inherited that property from his former wife. Appellant’s Br. p. 11. But a “party’s inheritance alone does not necessarily dictate how property should be divided.” *Marek*, 47 N.E.3d at 1291. Instead, “inherited property must be considered 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.” *Id.* at 1291-92.

[11] Considering the other statutory factors, the trial court did not err in concluding Husband did not rebut the presumption that an equal division is just and reasonable. At the beginning of the marriage, Wife contributed \$10,000 to the parties’ joint account and worked for several years. This money was used to pay marital bills, including the mortgage on the real property. Wife also made non-monetary contributions through her work in the home and on the farm. Husband has a significant disability, so Wife not only took care of the housework and him, including helping him bathe and use the restroom, but also worked on the farm by taking care of many animals, chopping wood, and unloading supplies. Moreover, throughout their marriage, the parties treated the property and the income it generated as a joint asset and comingled it with

other marital assets. As for the parties' earning abilities, both have significant setbacks. Husband is disabled and relies on disability income and income from renting the land, while Wife also suffered from several strokes during the marriage and was diagnosed with PTSD, affecting her ability to work. Wife recently got a job in home healthcare making \$11.20 an hour. There is no evidence in the record as to the amount of income Husband receives from disability and the land. But presumably it is more than or similar to Wife's, considering he was ordered to pay temporary spousal maintenance even after she was employed. This evidence is sufficient to support the trial court's equal division. *See Webb v. Schleutker*, 891 N.E.2d 1144, 1154 (Ind. Ct. App. 2008) (affirming trial court's equal division of land inherited by husband where parties treated it as marital property, wife contributed to farming and housekeeping, and wife had lower earning capacity than husband).

- [12] Husband argues this case is analogous to *Marek*, in which this Court held the wife had rebutted the presumption that funds she inherited during the marriage should be divided equally. 47 N.E.3d at 1292. But in *Marek*, there was evidence that the husband "did not contribute to the maintenance or accumulation of the inheritance accounts," the couple did not commingle the inheritance funds with other marital assets or otherwise treat the funds as marital property, and the wife's earning ability was significantly less than the husband's. *Id.* As explained above, that is not the case here.

[13] Given these circumstances, the trial court did not abuse its discretion in finding Husband has not rebutted the presumption of an equal division of marital property.

[14] Affirmed.

Najam, J., and Weissmann, J., concur.