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IN THE
COURT OF APPEALS OF INDIANA

Srinivasulu Kakollu,
Appellant-Respondent,

v.

Sraina Sowmya Vadlamudi,
Appellee-Petitioner.

July 26, 2021

Court of Appeals Case No. 21A-DC-96

Appeal from the Hamilton Superior Court

The Honorable William J. Hughes, Judge

Trial Court Cause No. 29D03-1806-DC-5598

Najam, Judge.

Statement of the Case

[1] Srinivasulu Kakollu ("Husband") appeals the trial court's final decree dissolving his marriage to Sraina Sowmya Vadlamudi ("Wife"). Husband presents three issues for our review:

1. Whether the trial court erred when it awarded Wife sole legal custody of the parties' only child, L.K.

2. Whether the trial court erred when it excluded from the marital pot $50,000 that Husband had agreed to pay to Wife for her attorney's fees and litigation costs.

3. Whether the trial court erred when it valued Husband's business.

[2] We affirm.

Facts and Procedural History

[3] Husband and Wife were married on December 22, 2010, and they have one child together, L.K. ("Child"), who was born on December 11, 2011. In March 2013, Husband, a dentist, opened Lakewood Family Dental in Bloomington, Illinois. Wife helped Husband with the opening and initial operation of that business. Husband subsequently expanded the business and opened additional locations in five Indiana cities.

[4] In June 2018, after the parties had moved to Carmel, Indiana, Wife filed a petition for dissolution of the marriage. In November, the parties entered into an agreed preliminary entry, which provided in relevant part that: the parties would share legal custody of Child; Mother would have primary physical custody of Child with Father exercising parenting time; and Father would pay Mother $50,000 "for payment of provisional attorneys' fees and litigation costs[.]" Appellant's App. Vol. 2 at 90.

[5] In 2019, Wife filed, in another court, a petition for a personal order of protection due to "incidents of domestic violence perpetrated by [Husband] against [Wife]." *Id.* at 23. Pursuant to Indiana Code Section 34-26-5-6, that petition was transferred to the trial court. Following a hearing in October, the court found that Wife had proven "several instances of violence," the most recent being "a threat to physically abuse [Wife] if she did not do as [Husband] wanted her to do." *Id.* Accordingly, the court entered an order of protection against Husband.

[6] The trial court held a final hearing on Wife's petition for dissolution of the marriage in October 2020. On December 31, the court entered the final decree and found and concluded in relevant part as follows:

> 15. For slightly more than one calendar year, [Husband] is prohibited from communicating directly with [Wife] about any matter including issues regarding the parenting of the minor child [Child]. This order does not modify [the] existing protection order.
>
> * * *
>
> 17. These parties have agreed to joint legal custody of the minor child. The parties each appear to [be] fit and suitable parents for [Child] based upon the findings of [the custody evaluator,] Dr. [Michael] Jenuwine[,] as to their ability to perceive and address the child's needs. While neither may be perfect in this regard each appear willing and able to try.
>
> However, during the period from the entry of the agreed preliminary order until the date of the final hearing, *these parties have displayed neither the willingness nor the ability to communicate*

and cooperate for the best interests of [Child]. [Wife] and [Husband] communicate through their attorneys and at times have used a housekeeper to communicate. Their interpersonal communication was strained prior to the entry of the protection order in 2019 and is severely limited by the terms of the current protection order. . . .

The nature of the physical and emotional environment in each household . . . is a problem from two standpoints. These parties appear unable to separate their differences with each other from their relationship with their child and their obligation to parent [Child]. [Child] knows far too much about the adult matters existing between her parents. [Child] is suffering stress due to the angry relationship of her parents. There are significant issues in these parties' ability to permit their bright and charming little girl from growing up as a strong, confident, and capable individual loving and being loved by both her parents. This is further complicated by the involvement of maternal and paternal grandparents in this process. Neither party appeared capable of understanding, recognizing, or rectifying this circumstance. It is difficult to see how joint custody which requires interaction between the parties to jointly parent can occur without further chaos surrounding [Child] due to her parents and her grandparent[s'] conflictual relationships.

Lastly, this is a family with an established pattern of domestic violence. There have [been] two separate personal protection orders issued on behalf of the [Wife] against [Husband]. One of these remains in effect today, and that order is based upon a judicial finding after both parties had the opportunity to offer evidence that there was domestic violence in the relationship between [Wife] and [Husband]. This is an established fact. It is unlikely that the parties can resolve this issue of violence in their relationship on their own. It was not resolved by either of the protection orders. There have been promises made and a hope on the part of an evaluator that things will change. However, even after this dissolution is over, the protection order will

remain in place and [Wife] is still pursuing her additional civil tort lawsuit against [Husband] for injuries she alleges she received at his hands. *These parties have a history of war, a current presentation of being at war, and another battlefield after this one is concluded upon which to make war*.

* * *

21. [Wife] and [Husband] communicate through their attorneys and have previously used a jointly employed housekeeper to communicate at times.

* * *

26. Pursuant to the Agreed Preliminary Entry the parties shared legal custody. Going forward, the parties desire joint legal custody[;] however, the Court is concerned about the parties' ability to communicate effectively in positive manner to a degree sufficient to permit the joint parenting of [Child] without exposing [Child] to the stress of dealing with parents constantly at war. These parties are at war and apparently have been throughout much of this marriage. It is short-sighted and naïve to believe that this does not and has not affected [Child]. Although they would likely disagree, the parties with their warring attitude and their penchant for permitting [Child] to see and hear their angry interactions, risks [sic] violating one of [Child]'s most fundamental rights as a child of divorcing parents - the right to love and be loved by each parent separate and apart from the influence of the other parent.

* * *

33. Dr. Michael J. Jenuwine, Ph.D., J.D., was retained herein to perform a custody evaluation. Dr. Jenuwine's written custody evaluation was admitted herein. Based on extensive testing and evaluations, Dr. Jenuwine, in what he believes to be [Child]'s best interest, recommended:

> a. The parties share joint legal custody in a manner that promotes each parent's relationship with [Child] and supports a goal of protecting [Child] from exposure to animosity between the parties.
>
> b. [Husband] and [Wife] should each engage in personal counseling targeted to parents engaged in conflictual relationships.
>
> c. A Parenting Coordinator should be employed to assist the parties in crafting a parenting plan that works for the parties and [Child], and if the Parenting Coordinator observes power differences consequent to the past allegations of interpersonal violence in the home, a recommendation should be made to the Court to return to court and revisit the issue of joint legal custody.
>
> d. [Husband] should be afforded ample parenting time opportunities including but not limited to opportunities to transport [Child] to and from school; encouragement to attend [Child]'s extracurricular activities, and opportunities for additional parenting time as provided by the IPTG. . . .

34. Dr Jenuwine is an expert well known to this court and in whom the Court has a great deal of confidence in his ability to systematically investigate and recommend custody solutions for parties. The Court is aware that Dr. Jenuwine understands the devastation which can, and unfortunately often does, occur to family relationships where there is domestic violence in the family. His recommendations are consistent with his concern that a power difference between joint parents arising from past domestic violence is not permitted to influence future custody situations. His recommendations are based on sound scientific findings that parents and children do better post-divorce when

the parents can and do put aside past hurts and injuries and move forward to craft a new co-parenting relationship based upon mutual respect, mutual support, and a desire to decide for the best interest of the child and not to "Win" in a contest of wills.

35. However, *the ultimate decision on the best interests of [Child] and the custodial situation for her remains with this Court*. In this instance the Court finds that it is NOT in [Child]'s best interest to award joint custody to these parties. This Court must make a decision in the best interest of [Child] based on the facts that exist today and will not in good conscience rely on the potential for improvement in behavior and changes in attitudes of these parties. The Court makes this decision only after a great deal of soul searching and careful consideration of the record herein. Thus, even though the parties agree that they should exercise joint legal custody, the Court finds that it would not be in the best interest of [Child] to order joint legal custody. Therefore, the Court finds and will order that [Wife] shall be the sole legal custodian and primary physical custodian of [Child], until further order of this court.

* * *

37. Dr. Jenuwine has recommended that the Indiana Parenting Time Guidelines be applied to parenting time in this case. However, those guidelines specifically provide that they are "not applicable to situations involving family violence, . . . risk of flight with a child, or any other circumstance that the court reasonably believes endanger the child's physical health or safety, significantly impair the child's emotional development. Because there is evidence in this cause that physical violence has existed and there is evidence that there was aberrant behaviors by the [Husband] in his most recent trip with the Child to India which clearly raises concerns of the potential intention to flee with the child, and because there is substantial evidence that [Husband] has been stockpiling money in India for a substantial period of

time, the Court finds that the guidelines should modified in their application to this cause.

* * *

47. In Paragraph 5 of the Agreed Preliminary Entry the parties reserved for later agreement or adjudication . . . how the $50,000 advanced to [Wife] by [Husband] would be treated in the final decree. *The Court finds that said $50,000 was to pay attorney fees and that is how it will be treated as a payment toward the attorney fees. As a result, this $50,000 will not be listed as a marital asset or liability* and shall not be advancement [sic] toward the ultimate property settlement of the parties.

48. [Husband] is a dentist who owns Lakewood Family Dental, started after the parties' marriage. He has several offices including offices in Bloomington, Illinois, Fort Wayne, Indiana, Lafayette, Indiana, Anderson, Indiana, Kokomo, Indiana, and Carmel, Indiana. [Wife] was actively involved with the original startup of this business. The practice was very successful and able to quickly expand. Income and revenues were high. Today [Husband] has several dentists working for him and his role is primarily managing the clinics rather than seeing patients. However, he does fill in for other dentists who are away from work from time to time.

49. The Court has compiled a Marital Estate Summary from the submissions of the parties. . . . Where values differ, except for minor rounding differences, the Court has set forth the methodology adopted by the Court for valuing that item of the marital estate in these findings.

* * *

60. The parties differed substantially on the values of the Lakewood Family Dental Companies. Wife submitted her opinion of value of six Lakewood entities. Those entities with their respective values listed in [Wife]'s Exhibit 1 are:

Lakewood Family Dental, Inc. $1,181,000.00
Lakewood Family Dental of Lafayette, Inc. $ 782,000.00
Lakewood Family Dental PC $ 681,000.00
Lakewood Family Dental of Anderson PC $ 68,000.00
Lakewood Family Dental of Carmel, LLC $ 192,587.00
Lakewood Family Dental of Kokomo, LLC $ 129,344.00
TOTAL $3,033,391.00

[Husband] simply listed the entire Lakewood Family Dental in his summary as Lakewood Family Dental with a value of $1,560,000.00.

There are two primary differences in the respective . . . methodologies used by the parties in arriving at their respective values. Each hired an expert. Both experts are well qualified and knowledgeable individuals. Both considered the same valuation approaches, Asset, Market, and Income.

[Wife]'s Expert, Penny Lutocka of Houlihan Valuation Advisors, valued the entities based on the "fair market value of each company on a control basis, implying no discounts for lack of control or lack of marketability form pro-rata value." Houlihan did not provide a valuation for two of the six entities, Lakewood Family Dental of Carmel, PC (Lakewood Carmel) and Lakewood Family Dental of Kokomo, LLC (Lakewood Kokomo) because no financial information was provided to them for these two entities. Her opinion of combined value of the four entities she valued was $2,712,000.00.

On June 18, 2018, Lakewood Carmel, and Lakewood Kokomo were preparing to open for business. The business entities for each had been created and equipment had been purchased and was in [the] process of being installed on the date of filing. The value of these two entities were treated differently by the parties. [Wife] testified that equipment and assets had been purchased for each entity on the date of filing and she used this value to arrive

at a value for each of those entities – Lakewood Carmel, $192,587.00 and Lakewood Kokomo, $129,344.00. [Husband] did not include this value in his valuation at all.

[Husband] retained the services of Howard Gross, of BGBC CPA's and Advisors. Mr. Gross was engaged to value only four of the six entities comprising Lakewood Family Dentistry on June 18, 2018 as of June 18, 2018. He was requested to use Fair Market Value as the standard of value, with Control and Nonmarketable as the basis of value with 100% of Common Equity as the interest valued. After completing the initial marketing analysis and removing personal goodwill attributable to [Husband] but BEFORE any discounts for Marketability, Mr. Gross arrived at a combined value for the same four entities valued by Ms. Lutocka of $2,835,600.00 or $123,600 more than the valuation of [Wife]'s expert.

However, Mr. Gross then applied a marketability discount of 45% to arrive at his final opinion of $1,560,000.00. *The difference in the values arrived at by the experts is primarily in this marketability discount applied by Mr. Gross*. The Court finds that a marketability discount is normally applied to compensate for the difficulty of selling an investment which is not traded on a public exchange and may also be used when the sale of an investment is subject to legal, regulatory, or contractual restrictions. (See [Husband]'s Exhibit H, BCBG Valuation Report, page 11 of 28.) In his testimony Mr. Gross admitted that the use of a Discount for Lack of Marketability more than 35% would draw the scrutiny of the IRS but he was not concerned by this. He also noted in his report that the sale of a controlling interest may be easier to market and would support a smaller discount. ([Husband]'s Exhibit H, BCBG Valuation Report, page 11 of 28). Mr. Gross also opined in his report ([Husband]'s Exhibit H, page 8 of 28) that "dental practices are easily tradeable as they have a ready market of purchasers (new dentists) graduating each year . . . . While they may take time to sell, they can generally be sold on the open market." If these are true, why then is there a lack of

marketability discount of any amount applied let alone one that is 160% of the highest rate generally approved by the IRS. Mr. Gross opines that it is because 65% of the revenues generated by Lakewood Family Dentistry are Medicaid based. The Court finds several deficiencies in the premises behind this conclusion by Mr. Gross.

> a. In this case[,] there is no indication that [Husband] has any plan to sell Lakewood Family Dentistry or any part thereof. One must question why under these circumstances a discount would be applied because the entity might be hard to sell.
>
> b. Mr. Gross based his assumption that 65% of the revenues from these entities were Medicaid based, on the undocumented statements of [Husband].
>
> c. Mr. Gross's estimate of percentage of Revenues being based on Medicaid patients contains a logical defect. Based on the unverified statements of [Husband], he assumed that 61% of patients in Illinois were Medicaid, 79% of patients in Fort Wayne were Medicaid, 32% of patients in Lafayette were Medicaid, and 58% of patients in Anderson were Medicaid. He then applied these percentage of patients to the total revenue from each of these entities to conclude that 65% of Revenues were Medicaid based. All of this while noting in his report that Medicaid procedures were less profitable than private pay procedures due to limitations imposed in billing by Medicaid and restrictions on procedures approved for payment. If that is true, and the Court finds it generally is true, then a conclusion that because 65% of the Patients are Medicaid, they necessarily comprise 65% of the revenues is illogical.

> Having considered these factors the Court finds that the Valuation of Houlihan Valuation Advisors, by Penny Lutocka is more credible and accurate and adopts her opinion as to the value of the four of entities she opined a value for and adopts the costs of assets purchased for the other two entities, Carmel, and Kokomo for a combined value of $3,033,931 for the business interest owned by the parties and known as Lakewood Family Dentistry.
>
> * * *
>
> 69. . . . [Wife] has rebutted the presumption of an equal division of the marital estate[, which has a net value of $3,806,267.86]. The Court finds that an equitable division of the estate would be a division equal to 58.12% to [Wife] and 41.88% to [Husband].

Id. at 24-65 (emphases added). Also in the final decree, the trial court ordered Husband to pay an "additional contribution to payment" of Wife's attorney's fees of $60,000. *Id.* at 79. This appeal ensued.

Discussion and Decision

Standard of Review

[7] In our review of the trial court's dissolution decree, which includes extensive findings and conclusions, our Supreme Court has explained that we

> will "not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." *D.C. v. J.A.C.*, 977 N.E.2d 951, 953 (Ind. 2012) (internal quotation and citations omitted). Where a trial court enters findings *sua sponte*, the appellate court reviews issues covered by the findings with a two-tiered standard of review that asks whether the evidence

> supports the findings, and whether the findings support the judgment. *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014) (citation omitted). Any issue not covered by the findings is reviewed under the general judgment standard, meaning a reviewing court should affirm based on any legal theory supported by the evidence. *Id.*
>
> Additionally, there is a well-established preference in Indiana "for granting latitude and deference to our trial judges in family law matters." *In re Marriage of Richardson*, 622 N.E.2d 178 (Ind. 1993). Appellate courts "are in a poor position to look at a cold transcript of the record, and conclude that the trial judge, who saw the witnesses, observed their demeanor, and scrutinized their testimony as it came from the witness stand, did not properly understand the significance of the evidence." *Kirk v. Kirk*, 770 N.E.2d 304, 307 (Ind. 2002) (quoting *Brickley v. Brickley*, 247 Ind. 201, 204, 210 N.E.2d 850, 852 (1965)). "On appeal it is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by appellant before there is a basis for reversal." *Id.* "Appellate judges are not to reweigh the evidence nor reassess witness credibility, and the evidence should be viewed most favorably to the judgment." *Best v. Best*, 941 N.E.2d 499, 502 (Ind. 2011) (citations omitted).

Steele-Giri v. Steele, 51 N.E.3d 119, 123-24 (Ind. 2016).

Issue One: Legal Custody

[8] Husband first contends that the trial court erred when it granted Wife sole legal custody of Child. Determinations regarding child custody fall within the trial court's sound discretion. *Swadner v. Swadner*, 897 N.E.2d 966, 973 (Ind. Ct. App. 2008). We will affirm unless we determine that the trial court abused this discretion. *Id.*

[9] As Husband points out, both the parties and Dr. Jenuwine agreed that Husband and Wife should share joint legal custody of Child. He asserts that "it is clear that the [p]arties are able to communicate on major decisions concerning . . . Child's upbringing, which is critical in determining whether to award joint legal custody." Appellant's Br. at 12. Husband maintains that it is not in Child's best interests to award Wife sole legal custody and that the trial court erroneously "put much focus on" the parties' "general resentment towards one another." *Id.* at 13.

[10] Indiana Code Section 31-17-2-15 (2021) provides as follows:

> In determining whether an award of joint legal custody under section 13 of this chapter would be in the best interest of the child, the court shall consider it a matter of primary, *but not determinative*, importance that the persons awarded joint custody have agreed to an award of joint legal custody. The court shall also consider:
>
> (1) the fitness and suitability of each of the persons awarded joint custody;
>
> (2) whether the persons awarded joint custody are willing and able to communicate and cooperate in advancing the child's welfare;
>
> (3) the wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age;
>
> (4) whether the child has established a close and beneficial relationship with both of the persons awarded joint custody;
>
> (5) whether the persons awarded joint custody:

(A) live in close proximity to each other; and

(B) plan to continue to do so; and

(6) the nature of the physical and emotional environment in the home of each of the persons awarded joint custody.

(Emphasis added).

[11] The trial court carefully and thoroughly analyzed the evidence relevant to each of these factors and found that joint legal custody was not in Child's best interests. The court correctly stated that "the ultimate decision on the best interests of [Child] and the custodial situation for her remains" with the trial court. Appellant's App. Vol. 2 at 40. The trial court found that "these parties have displayed neither the willingness nor the ability to communicate and cooperate for the best interests of [Child]." *Id.* at 25-26. The evidence supports the trial court's findings that the parties share a "warring attitude" and a "penchant for permitting [Child] to see and hear their angry interactions[.]" *Id.* at 33. The trial court was not obliged to accept the joint legal custody recommendation of Dr. Jenuwine, whom the court described as "an expert well known to this court and in whom the Court has a great deal of confidence." *Id.* at 39. Neither was the court required to enter a joint legal custody order merely because the parties agreed that they should exercise joint legal custody. Husband's contentions on appeal are merely a request that we reweigh the evidence, which we cannot do. The trial court did not abuse its discretion when

it found that joint legal custody was not in Child's best interests and awarded Wife sole legal custody of Child.

Issue Two: Attorney's Fees

[12] Husband next contends that the trial court erred as a matter of law when it excluded from the marital pot the $50,000 he paid for Wife's provisional attorney's fees because, Husband alleges, the payment was marital property. As Husband points out,

> [i]t is well-settled that in a dissolution action, all marital property, whether owned by either spouse before the marriage, acquired by either spouse after the marriage and before final separation of the parties, or acquired by their joint efforts, goes into the marital pot for division. Ind. Code § 31-15-7-4(a); *Falatovics v. Falatovics*, 15 N.E.3d 108, 110 (Ind. Ct. App. 2014). For purposes of dissolution, property means "all the assets of either party or both parties[.]" I.C. § 31-9-2-98. This "one pot" theory ensures that all assets are subject to the trial court's power to divide and award. *Hill v. Hill*, 863 N.E.2d 456, 460 (Ind. Ct. App. 2007).

Tyagi v. Tyagi, 142 N.E.3d 960, 964 (Ind. Ct. App. 2020), *trans. denied*.

[13] In the parties' November 2018 agreed preliminary entry, Husband agreed to pay $50,000 to Wife "on or before January 15, 2019" for payment of her provisional attorney's fees, and the parties deferred to final hearing "whether all or any of [that] amount [should] be deemed an advance of [Wife's] property settlement, non-taxable, non-deductible spousal maintenance, or some combination thereof." Appellant's App. Vol. 2 at 90. In the final decree, the trial court found that,

> [i]n Paragraph 5 of the Agreed Preliminary Entry the parties reserved for later agreement or adjudication at final how the $50,000 advanced to [Wife] by [Husband] would be treated in the final decree. The Court finds that said $50,000 was to pay attorney fees and that is how it will be treated as a payment toward the attorney fees. As a result, *this $50,000 will not be listed as a marital asset or liability* and shall not be [an] advancement toward the ultimate property settlement of the parties.

Id. at 47 (emphasis added). Husband asserts that the trial court's exclusion from the marital pot of the money that was paid for Wife's attorney's fees "is erroneous because the fifty thousand dollars ($50,000.00) was marital property, regardless of what the $50,000.00 was subsequently used for." Appellant's Br. at 16. Wife counters that there is no evidence that Husband "use[d] marital assets for this payment[,]" which he made after the parties executed their November 2018 agreed preliminary entry.[1] Appellee's Br. at 18. We agree with Wife.

[14] Generally, the marital pot closes on the day the petition for dissolution is filed. *Goodman v. Goodman*, 94 N.E.3d 733, 747 (Ind. Ct. App. 2018), *trans. denied*. The date of filing is defined by statute as the date of "final separation." *Id.* (citing I.C. § 31-9-2-46). And, generally, debts incurred by one party after that point are not to be included in the marital estate. *Thompson v. Thompson*, 811

[1] At the final hearing, Wife asked the trial court to exclude the $50,000 payment of her provisional attorney's fees and litigation costs from the marital estate balance sheet. Husband then testified that he disagreed and had included the $50,000 payment as part of his request for distribution of the marital estate, as shown on Husband's Exhibit H. However, that exhibit does not include any reference to provisional attorney's fees or litigation costs.

N.E.2d 888, 913 (Ind. Ct. App. 2004), *trans. denied*. Here, the marital estate closed when Wife filed the dissolution petition on June 18, 2018, Husband's obligation to pay the $50,000 in Wife's provisional attorney's fees was not incurred until November, and it was not due until January 2019.

[15] Marital property includes both assets and liabilities. *Capehart v. Capehart*, 705 N.E.2d 533, 536 (Ind. Ct. App. 1999). The trial court found that the $50,000 payment would not be listed as either a marital asset or liability. That finding is consistent with the evidence that that obligation was not incurred until well after the petition for dissolution was filed. *See* I.C. § 31-9-2-46. Indeed, Husband has not shown that he paid the $50,000 from marital assets acquired prior to the date of final separation rather than from his own considerable income.[2]

[16] Again, the parties' Agreed Preliminary Entry, which was approved and made an order by the trial court, required Husband to pay $50,000 to Wife for provisional attorney fees and litigation costs, but it deferred to a future agreement or adjudication what, if any, portion of that sum would be attributed to an advance on the division of property or spousal maintenance. In its final decree, the court made that determination and ordered that this payment would be treated as a payment toward attorney's fees. As such, the court found that

[2] Wife presented evidence that Husband earned over $1 million in 2017 and over $800,000 in 2018.

the $50,000 would be chargeable directly to Husband and not included in the marital estate.

[17] The statutes providing for a division of marital property and for the payment of attorney's fees serve different purposes and operate independently of each other. *See* I.C. §§ 31-15-7-4 and 31-15-10-1. A trial court's order that one party in a dissolution proceeding shall pay all or some of the other party's attorney's fees is a determination made to assure procedural fairness and is collateral to the other, substantive issues before the court. In other words, an attorney's fee award in a dissolution is ancillary to the main action. *See Pry v. Pry*, 225 Ind. 458, 75 N.E.2d 909, 914 (1947). Of course, when balancing the equities and determining what is a just and reasonable division of marital property, a court may take into account whether an order for the payment of provisional or final attorney's fees is appropriate. And a court may, but is not required to, include attorney's fees on the marital balance sheet. Both whether attorney's fees should be awarded and whether such fees should be included on the marital balance sheet are matters entrusted to the sound discretion of the trial court.

[18] In sum, because Husband's obligation to pay the $50,000 in Wife's provisional attorney's fees was incurred after the marital estate was closed, and Husband has not shown that he made the payment from marital assets, the trial court did

not err when it excluded that payment as neither an asset nor a liability of the marital estate.[3]

Issue Three: Valuation of Husband's Business

[19] Finally, Husband contends that the trial court erred when it adopted Wife's expert's valuation of his dental businesses. Again, Husband presented testimony of his expert witness, Howard Gross, and Wife presented testimony of her expert witness, Penny Lutocka.

> When reviewing valuation decisions of trial courts in dissolution actions, [our] standard of review [is as follows]: that the trial court has broad discretion in ascertaining the value of property in a dissolution action, and its valuation will not be disturbed absent an abuse of that discretion. *Cleary v. Cleary*, 582 N.E.2d 851, 852 (Ind. Ct. App. 1991). The trial court does not abuse its discretion if there is sufficient evidence and reasonable inferences therefrom to support the result. *Id.* In other words, we will not reverse the trial court unless the decision is clearly against the logic and effect of the facts and circumstances before it. *Porter v. Porter*, 526 N.E.2d 219, 222 (Ind. Ct. App. 1988), *trans. denied*. A reviewing court will not weigh evidence, but will consider the evidence in a light most favorable to the judgment. *Skinner v. Skinner*, 644 N.E.2d 141, 143 (Ind. Ct. App. 1994).

Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996). Further, this Court has held that "'[a] valuation submitted by one of the parties is competent evidence of the value of property in a dissolution action and may alone support the trial court's

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[3] Notably, Husband does not contend that the additional $60,000 the trial court ordered him to pay for Wife's attorney's fees should have been included in the marital estate.

determination in that regard.'" *Alexander v. Alexander*, 927 N.E.2d 926, 935 (Ind. Ct. App. 2010) (quoting *Houchens v. Boschert*, 758 N.E.2d 585, 590 (Ind. Ct. App. 2001), *trans. denied*), *trans. denied*.

[20] Husband asserts that the trial court "erred in its valuation of Lakewood Family Dentistry by failing to apply a marketability discount to the four (4) Lakewood Family Dentistry locations that were operational at the time of separation." Appellant's Br. at 17. Husband maintains that,

> Mother's expert, who had no prior experience valuing a dental practice with multiple locations, did not apply a marketability discount. Conversely, Father's expert applied a marketability discount due to the fact that Lakewood Family Dentistry is a Medicaid based practice. Father's expert, an individual with thirty-five (35) years' experience who has valued over fifty (50) dental practices over his career, discussed the importance of applying a marketability discount due to [the] high percentage of Medicaid based clients.
>
> Father's expert, who taught business finance at the Indiana University dental school, provided ten (10) different reasons why a marketability discount should be applied to a dental practice that receives a majority of [its] revenue from Medicaid. These reasons included the inability to obtain loans due to the fact that an individual cannot collateralize governmental receivables, and the low reimbursement rate associated with Medicaid, to name a few.

Id. at 18. Husband concludes that the trial court's valuation "is clearly against the logic and effect of the facts and circumstances before it as it was clear that

Mother's expert failed to properly consider a marketability discount in arriving at said valuation." *Id.* at 19. We cannot agree.

[21] The trial court found that "[b]oth experts are well qualified and knowledgeable individuals." Appellant's App. Vol. 2 at 55. And, on appeal, Husband does not challenge Lutocka's qualifications as an expert under Indiana Evidence Rule 702(a). Rather, he merely contends that the trial court erred, as a matter of law, when it adopted Lutocka's testimony over Gross's testimony. However, it is well settled that the trial court, as the factfinder, had discretion to credit Lutocka's testimony, and we will not reassess the witnesses' credibility on appeal. Further, Husband does not challenge the bases for the trial court's explanation as to why it did not believe the marketability discount should be applied to the valuation, namely, the "several deficiencies in the premises behind" Gross's marketability discount.[4] *Id.* at 58.

[22] We hold that the trial court's valuation of Husband's businesses is within the scope of the evidence and not clearly against the logic and effect of the facts and circumstances. As the trial court found, the combined value of the four operating locations before the marketability discount were close, with Lutocka's valuation actually higher than Gross's valuation. The trial court was not

[4] For example, the trial court questioned the appraiser's methodology and conclusions, including his reliance on the undocumented and unverified statements of Husband concerning the percentage of revenues from Medicaid patients, noted the appraiser's statement that "dental practices are easily tradeable," and found that "there is no indication [Husband] has any plan to sell Lakewood Family Dentistry or any part thereof." Ex. Vol. 6 at 7; Appellant's App. Vol. 2 at 58.

required to apply a marketability discount to the businesses. *Frazier v. Frazier*, 737 N.E.2d 1220, 1225 (Ind. Ct. App. 2000). The trial court did not err when it valued Husband's businesses.

[23] Affirmed.

Pyle, J., and Tavitas, J., concur.