



In the Missouri Court of Appeals Eastern District

DIVISION THREE

MICHAEL J. BARBIERI,	)	No. ED108457
	)	
Respondent/Cross Appellant,	)	Appeal from the Circuit Court of
	)	St. Louis County
vs.	)	17SL-DR04435
	)	
JESSICA A. BARBIERI,	)	Honorable John R. Essner
	)	
Appellant.	)	Filed: August 31, 2021

Angela T. Quigless, P.J., Kurt S. Odenwald, J., and James M. Dowd, J.

Opinion

Appellant Jessica A. Barbieri (Wife) and Respondent/Cross-Appellant Michael J. Barbieri (Husband) both appeal the trial court's July 10, 2019 judgment dissolving their marriage. In a combined 13 points of error, the parties claim that the trial court erred in numerous respects including in connection with the division of the marital estate, the amount awarded to Wife in retroactive child support, retroactive maintenance, and monthly maintenance, and the amount of marital property both parties squandered during their ill-fated marriage. The parties also dispute whether or not the court had lost jurisdiction before it issued its purported amended judgment. We affirm in part and reverse and remand in part.

Background

The parties were married on August 4, 1996, and had one child (Daughter) who is now 21 years old. In 1989, Husband had started a private investigation firm, PDI Investigations, Inc., (PDI) and in June 1996, he transferred ownership of the business to Wife purportedly as an early wedding present. During the marriage, the parties ran PDI together, Wife as the owner-manager, and Husband as an employee-investigator. In July 2012, the parties separated. On August 11, 2017, this dissolution action was filed.

The case was tried over six days in October 2018 and January 2019. On July 10, 2019, the trial court entered its judgment finding, *inter alia*, that both parties contributed to the acquisition of marital property, that both parties squandered marital assets and created substantial marital debt, and that both parties engaged in significant marital misconduct. In consideration of the relevant statutory factors set forth in section 452.330,¹ the court divided the parties' marital property equally.²

The court found that Wife squandered a significant amount of marital assets by gambling them away and that Wife was required to reimburse Husband \$481,424 through distributions from PDI earnings pursuant to a 2015 consent *pendente lite* order (PDL) entered in the parties'

¹ All statutory references are to the Revised Statutes of Missouri (2019).

² Section 452.330.1 provides that "[i]n a proceeding for dissolution of the marriage or legal separation [...] the court shall set apart to each spouse such spouse's nonmarital property and shall divide the marital property and marital debts in such proportions as the court deems just after considering all relevant factors including:

- (1) The economic circumstances of each spouse at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to the spouse having custody of any children;
- (2) The contribution of each spouse to the acquisition of the marital property, including the contribution of a spouse as homemaker;
- (3) The value of the nonmarital property set apart to each spouse;
- (4) The conduct of the parties during the marriage; and
- (5) Custodial arrangements for minor children.

first dissolution case which was filed on June 26, 2015, and dismissed by the parties on March 23, 2017. The court then offset this amount with the amount of marital assets Husband squandered in gifts to his paramour, and the amounts Husband owed Wife for retroactive maintenance, retroactive child support, and owed college expenses, which left Wife owing Husband \$426,965. Finally, pursuant to section 452.355.1, the court ordered Husband to pay \$50,000 of Wife's attorney's fees.

On August 9, 2019, each party filed an authorized post-trial motion challenging various aspects of the judgment. On September 11, 2019, the trial court heard argument on those motions, took them under submission, and ordered each party to submit a consent memorandum setting forth any agreed-upon amendments to the judgment by October 11, 2019. Neither party did so and the trial court did not rule on the post-trial motions within 90 days as contemplated by Rule 81.05(a)(2)(A).³ Instead, on November 12, 2019, 95 days after the post-trial motions were filed, and 5 days after those motions were deemed overruled by operation of Rule 81.05(a)(2)(A), the trial court purported to enter an amended judgment.⁴

Wife filed a timely notice of appeal on November 14, 2019, and Husband filed a notice of cross-appeal on November 22, 2019. On December 23, 2019, this Court ordered the parties' appeals consolidated and directed Wife to file the initial brief. Additional facts are set forth herein as they become relevant to the points addressed below.

³ All rule references are to the Missouri Supreme Court Rules (2016).

⁴ This document contained (1) the court's ruling on the parties' post-trial motions, (2) certain amendments to the division of property set forth in the July 10, 2019 judgment, (3) a reduction of Wife's equalization payment to Husband of \$8,946, (4) reductions in the amounts Husband owed in retroactive child support, retroactive maintenance, and monthly maintenance awarded to Wife, and (5) Husband was no longer responsible to pay for any of Wife's attorney's fees.

1. Summary of Wife's appeal.

In her appeal, Wife brings six points of error: (1) That because the trial court failed to rule on the post-trial motions within 90 days after the last such motion was filed, the judgment became final on November 7, 2019, whereupon the trial court lost jurisdiction thus rendering its November 12, 2019 amended judgment a nullity; (2) That the trial court abused its discretion by miscalculating the division of the profits from the sale of the marital home; (3) That the trial court erred in its findings regarding Wife's squandering of marital assets, subjecting her to the potential for double liability; (4) That the trial court abused its discretion in connection with the amount of the PDI distributions she owed Husband; (5) That the trial court abused its discretion in connection with the length of time Husband owed Wife retroactive child support; and (6) That the judgment's disposition of certain items of marital property was in conflict with certain entries on Attachment A to the judgment. Wife also seeks this Court's order that Husband pay half the cost of the transcript for this appeal pursuant to Rule 81.12(h).

2. Summary of Husband's cross-appeal.⁵

In his cross-appeal, Husband claims the court erred in six instances: (1) In granting any amount of maintenance to Wife whether current or retroactive; (2) In its computation of the amount of retroactive child support and in its determination that Husband is responsible for any portion of Daughter's college expenses; (3) In failing to consider several matters, including the testimony of witness Kevin Meyer, resulting in its erroneous calculation of the amount of Wife's

⁵ Wife filed a motion to strike the portion of Husband's second brief entitled "Reply to Wife's Responsive-Arguments as Appellant" on the grounds that Husband exceeded the scope of argument allowed in a reply brief which a respondent may file in a cross-appeal situation pursuant to Rule 84.04(i). We agree and grant Wife's motion.

gambling losses; (4) By deviating from the parties' agreed-upon PDL when calculating the profits of PDI that were meant to be split evenly between them; (5) In its determinations as to the parties' tax liability, including its determination that Husband did not have a legitimate claim to "innocent spouse status" in connection with the parties' state tax liability; (6) In ordering Husband to pay \$50,000 of Wife's attorney's fees; and (7) In ordering a 50-50 division of the marital estate when Wife's egregious marital misconduct warranted a 70-30 division in his favor.

Standard of Review

Rule 73.01(c), as interpreted by *Murphy v. Carron*, 536 S.W.2d 30 (Mo. banc 1976), governs our review. *Romkema v. Romkema*, 918 S.W.2d 294, 296 (Mo. App. E.D. 1996). Thus, in dissolution proceedings, the judgment of the trial court will be affirmed on appeal unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law. *Overstreet v. Overstreet*, 214 S.W.3d 347, 348 (Mo. App. E.D. 2007) (citing *Murphy*, 536 S.W.2d at 32.)

In dissolution cases the trial court has broad discretion in connection with the division of property, and the appellate court will interfere only when the division is so unduly weighted in favor of one party as to constitute an abuse of discretion. *Rawlings v. Rawlings*, 36 S.W.3d 795, 797 (Mo. App. W.D. 2001) (citing *Silcox v. Silcox*, 6 S.W.3d 899, 904-5 (Mo. banc 1999)). "An abuse of discretion will be found only if the award is so arbitrary or unreasonable that it indicates indifference and lack of proper judicial consideration." *Id.* The party challenging the divorce decree has the burden of demonstrating such error. *Id.*

We consider the evidence and the permissible inferences therefrom in the light most favorable to the trial court's decision, and disregard all contrary evidence and inferences. *Mehra*

v. Mehra, 819 S.W.2d 351, 353 (Mo. banc 1991); *Pruitt v. Pruitt*, 94 S.W.3d 429, 431 (Mo. App. E.D. 2003) (citing *Chen v. Li*, 986 S.W.2d 927, 931 (Mo. App. E.D. 1999)).

Discussion - Wife's Appeal

1. Wife's Point I: The amended judgment was a nullity.

Wife asserts that since the trial court did not rule on the post-trial motions by November 7, 2019, which was 90 days after the last post-trial motion was filed, those motions were deemed overruled and the July 10, 2019 judgment became final by operation of Rule 81.05 such that the trial court lost jurisdiction over the case rendering its November 12, 2019 attempt to amend the judgment a nullity. We agree.

Any authorized post-trial motion filed within thirty days after a judgment is entered extends the circuit court's control over its judgment for up to 90 days from the date such motion was filed. Rules 78.04 and 81.05(a)(2)(A); *C.R.S. v. C.M.H.*, 539 S.W.3d 54, 56 (Mo. App. E.D. 2017). In circumstances like here, where the court has not ruled on the after-trial motions, Rule 81.05 provides that "[i]f a party timely files an authorized after-trial motion, the judgment becomes final ... [n]inety days from the date the last timely motion was filed, on which date all motions not ruled shall be deemed overruled...." Rule 81.05(a)(2)(A). The judgment becomes final for purpose of appeal on the 90th day, at which time the court is divested of jurisdiction and loses its authority over the judgment. *Hanna v. Hanna*, 446 S.W.3d 753, 755 (Mo. App. W.D. 2014) (citing *Spicer v. Donald N. Spicer Revocable Living Trust*, 336 S.W.3d 466, 469 (Mo. banc 2011)). An amended judgment entered after the expiration of the 90-day period is a nullity. *Id.*; *C.R.S.*, 539 S.W.3d at 56.

Wife's point is well-taken. The judgment became final on November 7, 2019, since the court failed to rule on the post-trial motions and that date was 90 days after the latest post-trial

motion had been filed. So, the purported amended judgment issued five days later was a nullity because the trial court had already lost jurisdiction.

Husband's contends that the July 10, 2019 judgment was not final because it did not determine each party's liability as co-trustees of the Orazio J. Gianino Revocable Living Trust (the Trust) for the alleged misuse of over \$170,000 of trust funds. Husband argues therefore that the court failed to identify and divide all the parties' assets and debts as marital or nonmarital and thus the judgment was not final.

In *Gipson v. Fox*, 248 S.W.3d 641, 643-44 (Mo. App. E.D. 2008), this Court ruled that the time limits of Rule 78.06 did not apply because there was no final judgment since the court failed to address all of the pending issues. *See Archdekin v. Archdekin*, 562 S.W.3d 298, 304 (Mo. banc 2018) (citing *Gibson v. Brewer*, 952 S.W.2d 239, 244 (Mo. banc 1997)).

This authority is fatal to Husband's argument because here the trial court addressed all of the pending issues in this case. As far as the Trust funds are concerned, the trial court correctly and reasonably decided to defer to the probate division the determination of each party's liability with respect to the misuse of the trust money and that, we find, does not impact the finality of the July 10, 2019 judgment.⁶ Point sustained.

2. Wife's Point II: The record does not support the trial court's calculations with respect to the division of the proceeds from the sale of the marital home.

In her second point, Wife contends that the trial court made certain miscalculations which rendered the court's division of the proceeds from the sale of the parties' marital residence against the weight of the evidence. We agree.

⁶ In July 2017, Husband, as trustee of the Trust, sued Wife in the Probate Division of the St. Louis County Circuit Court (Cause No. 17SL-PR02307) alleging she misused trust funds. Wife filed an answer and counterclaim against Husband. That case is still pending.

As a general rule, this Court reviews the division of a marital estate for an abuse of discretion. *Rawlings*, 36 S.W.3d at 798. However, we may reverse or modify a dissolution judgment if the trial court makes mistakes, such as miscalculations, in the division of marital property. *See e.g., Maurer v. Maurer*, 383 S.W.3d 21 (Mo. App. E.D. 2012) (abrogated on other grounds by *Rallo v. Rallo*, 477 S.W.3d 29 (Mo. App. E.D. 2015)). Additionally, we will only reverse the trial court's decision if the error is not *de minimis* in that it materially impacts the overall distribution of marital property. *Miller v. Miller*, 184 S.W.3d 174, 185 (Mo. App. S.D. 2006) (citing *Franke v. Franke*, 913 S.W.2d 846, 850-51 (Mo. App. E.D. 1995)).

Wife claims the trial court made certain miscalculations which impacted to her prejudice the amount she was credited from the sale of the marital home. The bank statements in evidence substantiate that Wife made tax payments from the parties' joint account in 2016 and 2017. The 2016 payments included a \$26,494 check payable to the IRS and a \$5,412 check payable to the Missouri Department of Revenue. In 2017, Wife made two more payments to the IRS for the parties' 2014 federal taxes in the amounts of \$61,856 and \$79,176. The court then stated that the total amount paid to the IRS by Wife was \$143,681, but this conclusion is not supported by the record.

The trial court seems to have made a mathematical error in its calculations regarding the amount of credit it gave Wife for taxes paid out of the proceeds of the marital home. Assuming that the court intended to credit Wife for all the amounts it included in the judgment, the total amount should be \$172,938. Alternatively, if the court only meant to credit Wife for the payments she made in 2017, the amount based on the figures set forth in the judgment should be \$141,032. Either way, these discrepancies are not *de minimis* and therefore require remand so the trial court may correctly determine the division of the house sale proceeds.

Wife also contends that the court erroneously failed to credit her for a \$3,827 payment she made to the Department of Revenue. We disagree. It is well-settled in Missouri that in a court-tried case, the trial court is allowed wide latitude in the examination of evidence. *Maurer*, 383 S.W.3d at 28. The trial court is free to believe any, all, or none of the testimony and other evidence presented, and may discount or disbelieve even uncontradicted testimony or other evidence. *L.R.S. v. C.A.S.*, 525 S.W.3d 172, 183 (Mo. App. E.D. 2017).

The trial court's determinations are entitled to deference even if some of the evidence supports a different conclusion, and we assume that the trial court does not consider incompetent evidence. *Id.*; *Maurer*, 383 S.W.3d at 28. While Wife's testimony regarding the fifth check she wrote the IRS may have been uncontradicted, it was within the discretion of the trial court whether or not to include it in the judgment.

In light of these principles, our review of the record demonstrates the trial court carefully considered the matter of Wife's tax payments. We defer to the trial court's discretion in excluding the \$3,827 payment while noting that the court included in its consideration to Wife's benefit the substantial payments we have outlined above.

We reverse and remand on this question for the trial court to clarify which tax payments, and their total sum, it intended to credit Wife and to then recalculate the division.

3. Wife's Point III: The trial court did not err in finding that Wife squandered \$395,097 in marital assets through gambling.

In her third point, Wife challenges the trial court's finding that she squandered \$395,097 in marital assets arguing that the court abused its discretion by including money she improperly obtained from the Trust in its calculation. Wife claims that by doing so, the court subjected her

to the risk of double liability given that those Trust funds are also the subject of the aforementioned probate litigation that has yet to be resolved. We agree.

From 2004 to 2017, the parties were co-trustees of the Trust, the beneficiaries of which were the five children of Husband's late cousin. Husband and Wife each received about \$28,000 annually in trustee fees. After Husband learned that Wife had made numerous unauthorized wire-transfers from the Trust account into her personal checking account, Husband notified the beneficiaries of the Trust, the Trust's attorneys, and its accountant. Shortly after, the parties were removed as trustees.⁷

In the judgment, the trial court found that "since the actual amount of funds taken and the respective liability of the parties as co-trustees has not yet been determined, it would be appropriate to also leave those issues to the Probate Court so as not to create the possibility of inconsistent judgments concerning those issues and any findings by this court in the dissolution case that would impact the parties in the probate case who are not parties to this litigation." Thus, the trial court excluded from its property division any debts allegedly owed to the Trust.

Wife's argument in this regard pertains to two promissory notes payable to the Trust; one in the amount of \$100,000 which was endorsed by Wife without Husband's knowledge, and another in the amount of \$70,000 which was purportedly endorsed by both parties, although Husband claims his signature was forged.

On January 31, 2019, the parties stipulated that the issue of their respective liability for the \$70,000 promissory note would be left to the probate division's decision and that its omission from the division of the marital estate would not impact the finality of the judgment as undivided

⁷ Over the objection of Wife and with the consent of the beneficiaries of the Trust, Husband was reappointed as trustee of the Trust by the probate division on October 9, 2020.

marital debt. Wife subsequently argued that the \$100,000 promissory note should be treated in the same manner and the trial court agreed.

Wife's complaint now is that the trial court still included these amounts in its determination of how much Wife squandered. We agree. If the \$170,000 was misappropriated from the Trust, then it likely never became marital property. In fact, the parties agreed it should not be considered part of the marital estate. So, including it when totaling the amount of marital property Wife squandered is factually incorrect and inconsistent with the court's order that matters related to the Trust would be left up to the probate division in that litigation.

Therefore, we remand for the trial court to recalculate the amount of marital assets that Wife had squandered and to amend the judgment accordingly.

4. Wife's Point IV: The trial court did not err in finding that Wife owed Husband \$98,556 in PDI distributions.

In her fourth point, Wife asserts the trial court erred in connection with its finding that Wife owed Husband \$98,556 representing half of the distributions from PDI that Wife took for the years 2016 and 2017. The trial court found that Husband was entitled to this amount under the parties' PDL. Wife argues that the trial court should have considered Wife's tax burden as the legal owner of PDI in connection with those distributions. We disagree.

The court found that since Wife had taken disbursements in 2016 and 2017 totaling \$197,112, Husband was entitled to half of that figure or \$98,556. Wife argues that the court failed to reduce that amount by certain business expenses and by failing to consider the tax consequences to Wife of the court's order. We disagree and find that not only has Wife failed to demonstrate that the trial court abused its considerable discretion, but that Wife has failed to preserve any error with respect to the tax consequences issue.

A trial court has the responsibility to consider the tax consequences of its division of marital assets so long as the court has sufficient facts before it to determine those consequences. *Schneider v. Schneider*, 824 S.W.2d 942, 949 (Mo. App. E.D. 1992) (citing *In re Marriage of Lewis*, 808 S.W.2d 919, 924 (Mo. App. S.D. 1991); *Hernandez v. Hernandez*, 249 S.W.3d 885, 892 (Mo. App. W.D. 2008).

Moreover, the party complaining about the adverse tax consequences of the decree has the burden to establish those consequences with some particularity at trial in order for that issue to be considered on appeal. *Linton v. Linton*, 117 S.W.3d 198, 206-7 (Mo. App. S.D. 2003). If a party fails to meet this burden, then he or she is precluded from raising the issue as an error on appeal. *Calhoun v. Calhoun*, 156 S.W.3d 410, 418 (Mo. App. S.D. 2005). In *Calhoun*, the court held that in order to preserve the issue of the tax consequences for appeal, a party must do more than introduce evidence that the party has or will have to pay taxes on marital assets. *Id.* at 417-18. After the *Calhoun* respondent's financial expert stated that the appellant "will have to pay ordinary income taxes on this money," the court suggested that greater particularity was required to preserve the issue for appeal:

There was no testimony relating to the applicable tax rate, whether the amount would change from year to year, how the court should evaluate the tax consequences, whether the court should award a credit for the tax consequences in the future and reduce that to present value, or a host of other considerations. *Id.*

The record here demonstrates that Wife failed to raise the tax consequences issue with the required particularity outlined in *Calhoun*. The trial court noted in its judgment that "[n]either party presented evidence to establish what the tax impact would be to each of them if the PDI income was divided between them equally." We find therefore that Wife failed to carry her

burden to establish her claim that the court erred by failing to consider the tax consequences of the PDI distributions the court ordered Wife to pay Husband. Point denied.

5. Wife's Point V: The trial court did not err in concluding that Wife's award of retroactive child support started in October 2017, not July 2015, as she asserts.

In her fifth point, Wife challenges as arbitrary and unsupported by substantial evidence the trial court's determination that the period of retroactive child support started in October 2017.⁸ Wife asserts that it should have started in July 2015. We disagree.

Based on its Form 14 calculations,⁹ the trial court determined that the presumed amounts of child support owed retroactively were as follows: (1) \$769 per month from October 2017 through December 2017; (2) \$1,035 per month from January 2018 through September 2018; and (3) \$835 per month from October 2018 through May 2019. The sum of these figures is \$18,302. After deducting \$2,353 for loan payments Husband made on Daughter's car and other money he gave Daughter directly during this period of time, the court ordered Husband to pay Wife \$15,949 in retroactive child support.

The trial court's determination of the effective date of the retroactive child support should not be disturbed or substituted by an appellate court absent a manifest abuse of discretion; and we will not disturb an award of child support unless the evidence is 'palpably insufficient' to support it. *Garner v. Garner*, 973 S.W.2d 513, 514-15 (Mo. App. E.D. 1998); *Laubinger v. Laubinger*, 5 S.W.3d 166, 180 (Mo. App. W.D. 1999).

⁸ Because Daughter was emancipated by age at the time of the judgment, the issue of current child support was not before the court.

⁹ The court rejected the Form 14s each party submitted because neither included the correct figures required to be considered.

While section 452.340.1¹⁰ authorizes the trial court to order retroactive child support “to the date of filing the petition,” it does not require it. *Overstreet*, 214 S.W.3d at 348 (citing *Smetana v. Smetana*, 963 S.W.2d 1, 2 (Mo. App. W.D. 1998) (“It is within the discretion of the trial court to order the effective date of a decree, at a time subsequent to the date of filing.”)). Although the trial court is not required to use the filing date as the retroactive date, it should be clear from the record that the date chosen by the trial court is not arbitrary. *Mistler v. Mistler*, 816 S.W.2d 241, 255 (Mo. App. S.D. 1991) (citing *Laubinger*, 5 S.W.3d at 180).

We find in the record ample support for the trial court’s decisions (1) to reject Wife’s claim that the period of retroactive child support should start in July 2015, and (2) to instead commence the calculation in October 2017. The court found that until September 2017, Wife financed her and Daughter’s living expenses in large part from (1) the income from PDI deposited in the parties’ joint bank account, and (2) funds withdrawn from a Wells Fargo IRA belonging to the parties. We find that this evidence alone sufficiently supported the trial court’s decision with respect to the start date of the retroactive child support award. Point denied.

6. Wife’s Point VI: The inconsistencies between the judgment and Attachment A to the judgment requires remand for correction by the trial court.

In her sixth point, Wife challenges several inconsistencies between entries on Attachment A to the judgment, which designated certain marital property to each party, and the specific disposition of that same property in the judgment itself. Specifically, Wife identifies three inconsistencies: (1) Attachment A assigned a value of \$5,900 to the 2007 Mercedes awarded to

¹⁰ Section 452.340.1 states that “[i]n a proceeding for dissolution of marriage, legal separation or child support, the court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable or necessary for the support of the child, *including an award retroactive to the date of filing the petition*, without regard to marital misconduct. (emphasis added).

Husband, but the judgment assigned the same vehicle a value of only \$2,680; (2) Attachment A awarded the Harley Davidson to Wife, but the judgment awarded it to Husband; and (3) Attachment A awarded the balance of the Busey Bank account ending in 2951 with a value of \$3,630 to Wife, while the judgment awarded the same funds to Husband.

Wife has accurately identified these inconsistencies and they must be rectified. Therefore, upon remand, the trial court shall remedy these inconsistencies and be guided by the following principles. When a court is faced with inconsistencies in a judgment, the decretal portion of the judgment controls. *See Gipson*, 248 S.W.3d at 643-44. In *Gipson*, the court observed: "A judgment does not reside in its recitals, but in the decretal portion, which adjudicates and determines the issues in the case and defines and settles the rights and interests of the parties as far as they relate to the subject matter of the controversy." *Id.*; *see also Casper v. Lee*, 245 S.W.2d 132, 141 (1952).

Wife's sixth point is sustained. Upon remand, the trial court shall amend Attachment A because the judgment controls and the inconsistencies in Attachment A must be changed to jibe with the judgment.

7. The cost of the transcript on appeal.

Wife asks this Court to order Husband to pay for half the cost of the transcript of this consolidated appeal pursuant to Rule 81.12(h). The trial court failed to rule on Wife's motion in this regard. And while we have the authority to do so now, we decline because the cost of the transcript is a taxable cost under Rule 84.18 which we will assess upon the issuance of the mandate in this case.

Discussion - Husband's Cross-Appeal

1. Husband's Point I: The trial court did not err in its award to Wife of both current and retroactive maintenance.

Husband claims that the trial court erred in granting Wife any amount of maintenance. Husband relies on three substantive arguments: (1) the court erred because Wife was able to meet her own reasonable needs without maintenance; (2) the court erred in granting Wife maintenance in light of her marital misconduct; and (3) the court erred by basing its maintenance calculations on Husband's gross income instead of his after-tax income. We are unpersuaded.

Section 452.335 permits the award of maintenance to a spouse who "(1) [l]acks sufficient property, including marital property apportioned to [her], to provide for [her] reasonable needs; and (2) [i]s unable to support [her]self through appropriate employment...." In *Dubrovenskiy v. Vakula*, 621 S.W.3d 196, 201 (Mo. App. E.D. 2021), we observed that "[a]ppellate courts must affirm the award of maintenance unless there is no substantial evidence to support it." *Id.* We grant the trial court significant discretion in awarding maintenance, and to prevail, the appellant must show an abuse of that discretion. *Id.*

First, we find that the court's award of current, on-going maintenance in the amount of \$3,000 per month is supported by the record and does not represent an abuse of discretion. The court considered the relevant statutory factors including the financial resources of the parties, their comparative earning capacities, the standard of living established during the marriage, the financial obligations imposed on each party by the judgment, the age and physical and emotional condition of the party seeking maintenance, and the conduct of the parties. Section 452.355.2. The court found that Husband's \$6,453 monthly earnings were significantly more than Wife's and that he was capable of earning even more. The court found Wife's reasonable needs to be approximately \$6,500 per month and that her net income was \$2,300 per month. The court

concluded, therefore, that Wife had demonstrated the need for maintenance of at least \$4,000 per month. After considering in detail the statutory factors under section 452.355.2 including Husband's income and reasonable needs, the court concluded that Wife was entitled to \$3,000 in monthly maintenance.

Turning now to the retroactive maintenance question, we first note that under the maintenance statute, section 452.335, retroactive maintenance is not permitted unless the party has sought temporary maintenance during the pendency of the litigation pursuant to section 452.315.5. *Archdekin*, 562 S.W.3d at 306-7; *Laubinger*, 5 S.W.3d at 180 n.3. Here, Wife indeed sought temporary maintenance.

Simply put, Husband has failed to demonstrate the court abused its discretion in awarding Wife \$21,000 in retroactive maintenance for the period from January 2018 through the date of the judgment, and \$3,000 in monthly maintenance going forward from the date of the judgment. The record amply shows the court weighed all the statutory factors in the context of the extraordinarily difficult and combative fact scenario these parties presented to reach its conclusion. Two decisions of the court demonstrate for us its considered exercise of discretion which inured to Husband's significant benefit. First, the court awarded Wife \$3,000 per month, not the \$4,000 that Wife proved she needed. And second, the court rejected Wife's claim that the retroactive maintenance period should have gone back to July 2015 because (1) the evidence showed that during most of the 2015 – 2017 time period, Wife's income was greater than Husband's, and (2) Wife failed to establish she made substantial efforts to find employment prior to 2018, as statutorily required.

So, Husband's point is denied.

2. Husband's Point II: The retroactive child support award.

Husband's specific complaints here are (1) that Wife is not entitled to retroactive child support under section 452.340.1 because she voluntarily chose to be unemployed when she shut down her business, PDI, and then failed to seek alternative employment, and (2) that Husband should not have been ordered to pay Wife 50% of Daughter's college expenses because he was not provided with the information relating to Daughter's college status and expenses required by section 452.340.5.

However, Husband's second point is multifarious in violation of Rule 84.04(d). A multifarious point is one that groups together multiple, independent claims rather than a single claim of error. *Ivie v. Smith*, 439 S.W.3d 189, 199 n.11 (Mo. banc 2014) (citing Rule 84.04). Generally, multifarious claims of error preserve nothing for appeal and are subject to dismissal. *Id.*; see also *In re Marriage of Cochran*, 340 S.W.3d 638, 647 (Mo. App. S.D. 2011).

Husband's point preserves nothing for review because it claims on the one hand that the court erred with respect to its award of retroactive child support, which requires our analysis of the record in the context of section 452.340.1 and its six factors for the determination of Husband's child support obligation for the period of time in question. And on the other hand, his point that the court erred by finding him responsible for 50% of Daughter's college expenses requires a wholly separate analysis under an entirely different subsection of the statute.

Given Husband's brief's repeated violations of Rule 84.04, we decline to indulge his violation with respect to this point and we dismiss it. We note, however, that with respect to the retroactive child support award, we have already affirmed that award on the merits in Wife's fifth point. Therefore, we affirm the judgment with respect to the award of retroactive child support and the order that Husband pay Wife \$17,500 representing his share of the college expenses.

3. Husband's Point III: The trial court did not err in calculating the amount of marital assets Wife squandered gambling.

Husband contends: (1) that the court erred in failing to properly consider the testimony of Hollywood Casino's record custodian Kevin Meyer; (2) that the court erred by considering in its calculation amounts deposited in the parties' joint bank account from January 13, 2014, and June 24, 2015; and (3) that the court erred by considering other deposits made by Wife into three separate bank accounts.

We are unpersuaded that any error occurred. We defer to the trial court's credibility determinations and assessments of the proper weight to be given to witness testimony and documentary evidence at trial. *S.M.S. v. J.B.S.*, 588 S.W.3d 473, 507-8 (Mo. App. E.D. 2019). Matters such as the weight of evidence, the credibility of witnesses, and the resolution of conflicting evidence are for the trial court to resolve and will not be reviewed by this Court. *L.R.S.*, 525 S.W.3d at 183. The trial court is free to utilize all, none, or part of a witness's testimony, and may disbelieve even uncontradicted testimony. *Id.*

The court found Wife's gambling squandered \$395,079 in marital assets. Husband claims the figure is \$811,371. We commend the trial court's diligent effort to wade through numerous bank account records of withdrawals and deposits, casino records, and testimony concerning many years of Wife's murky and wasteful conduct.

As far as Meyer's testimony is concerned, the record shows that the court adequately considered his testimony but ultimately concluded that while Meyer provided some helpful data to the court's calculation, Meyer testified that "to tell how much money came from winnings and how much came from original wagers is impossible...." The court correctly concluded therefore that Husband had not proved that Wife lost \$811,371.

As far as Husband's claim that the court erred by crediting Wife with deposits made before the original divorce petition was filed, we are unpersuaded. Specifically, Husband claims the two deposits into the parties' 3588 account on January 13, 2014, and June 24, 2015, totaling \$126,500 and deposits into three other accounts should not have been considered. Husband's argument is belied by the specific record the court made of the matter. In its judgment, the court acknowledged that "[s]ince Husband's recovery of squandered funds is limited to the period of time after the divorce was filed, Wife's entitlement to offsets should be limited to that same period. If the amounts deposited are reduced to deposits after June of 2015 (when the original divorce petition was filed), the total of deposits is \$326,167." It is manifest, therefore, that the court in fact did what Husband claims it didn't. Point denied.

4. **Husband's Point IV: The trial court's interpretation of the consent PDL, that the "proceeds" from the parties' business to be divided between them were meant to be divided after the deduction of business expenses incurred in generating those proceeds, was not error.**

Since the consent PDL order at issue here is essentially a contract, we review the trial court's interpretation of it *de novo*. *Belton Chopper 58, LLC v. N.Cass. Dev., LLC*, 496 S.W.3d 529, 532 (Mo. App. W.D. 2016). Having done so, we conclude that we agree with the trial court's finding that the parties' intent was to divide the proceeds from PDI after the deduction of the relevant business expenses so that the distribution was of "net" proceeds, not "gross" proceeds. The trial court's review included the parties' salaries and distributions over several years and relied significantly on the references in the PDL to "net" when referring to the parties' base salaries and its reference to the deduction of certain expenses in that context. While the PDL does not use the magic words "net proceeds," the record is sufficient to support the

conclusion that the parties' intent was for the proceeds to be distributed after the deduction of applicable business expenses. Point denied.

5. Husband's Point V is multifarious in violation of Rule 84.04.

In this point, Husband raises numerous and independent assertions of error on the part of the trial court including that (1) the court erred in calculating fees incurred in a 2014 – 2015 IRS audit, (2) the court erred in giving Wife an offset in connection with her 2016 and 2017 tax payments, and (3) the court erred in finding that Husband on numerous occasions instructed wife to misrepresent the nature of certain expenses for tax purposes.

While all of Husband's points are multifarious in violation of Rule 84.04, we have largely indulged these in order to get to the merits as much as possible. This point, however, is particularly egregious and we therefore strike it *sua sponte*.

6. Husband's Point VI: The trial court did not err in ordering Husband to pay \$50,000 of Wife's attorney's fees.

Husband argues there was ample evidence that he had already contributed to Wife's attorney's fees including Wife's acknowledgment that she withdrew substantial amounts from the parties' marital IRA to cover her attorney's fees and that, as a result, he should not be responsible for any more of her fees. We disagree.

Section 452.355.1 grants the trial court the authority to order a party in a dissolution action to pay for the reasonable attorney's fees of the other party. "The trial court's award of attorneys' fees is reviewed for an abuse of discretion." *Calabrese v. Dwyer*, 616 S.W.3d 517, 528 (Mo. App. E.D. 2021) (quoting *Berry v. Volkswagen Grp. of Am., Inc.*, 397 S.W.3d 425, 430 (Mo. banc 2013)). "The trial court is deemed an expert at fashioning an award of attorneys' fees and may do so at its discretion." *Id.*

The court considered (1) that Wife incurred \$166,090 in attorney's fees and costs and still owed \$72,087 at the time of the judgment, (2) that Husband's counsel represented him at no charge, (3) that while both parties' marital misconduct and litigation conduct "greatly increased" the cost of the litigation, Husband in particular took "positions and actions ... on some of the issues [that] also substantially increased the cost of the litigation...." We find no abuse of discretion, particularly since the court's award was less than one-third of Wife's total attorney's fees. Point denied.

7. Husband's Point VII: The trial court did not err in ordering an equal division of the parties' marital estate.

Husband claims the trial court erred in ordering an equal division of the parties' marital property because Wife's marital misconduct was so egregious it warranted a 70-30 division in his favor. We disagree.

The division of marital property is governed by section 452.330.1 which requires a fair and equitable division of the marital property. *Welsh v. Welsh*, 869 S.W.2d 802, 809 (Mo. App. E.D. 1994). We will interfere with the trial court's considerable discretion in dividing marital property only if the division is so heavily and unduly weighted in favor of one party as to amount to an abuse of discretion. *Id.* An equal division of property pursuant to the statutory requirement that the division be equitable is not required, but equality in apportionment is certainly not an abuse of discretion. *Id.*

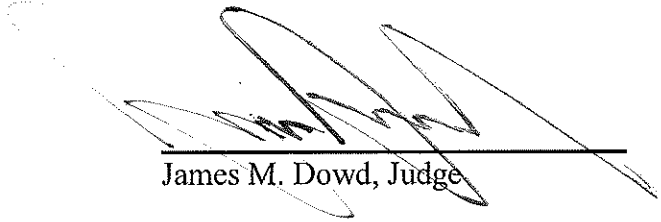
The following summary of the trial court's reasoning for dividing the marital estate equally demonstrates that this was no abuse of discretion:

"The credible evidence at trial that both parties had a role in the acquisition of any marital property but also in the actions that created the marital debt. Wife drank and gambled

excessively. Husband squandered marital funds by buying gifts for a girlfriend. Husband involved both parties in an inappropriate relationship with Phyllis Lieberman due to his criminal history prior to the marriage. Both parties were guilty of marital misconduct including the use of illegal drugs; extramarital sex; and their scheme to defraud the IRS and the State of Missouri for taxes in 2014 and 2015. At the end of the day, the parties have limited property and substantial debt. They have no one to blame other than themselves for their current financial circumstances or any future legal actions they may face."

Conclusion

For the reasons set forth above, the judgment of the trial court is affirmed in part and reversed and remanded in part with instructions to amend the judgment according to this opinion and the instructions herein.



James M. Dowd, Judge

Angela T. Quigless, P.J. and
Kurt S. Odenwald, J., concur.