OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION THREE

MARY E. WILSON,	)	No. ED109202
	)	
Respondent,	)	Appeal from the Circuit Court of
	)	St. Louis County
vs.	)	
	)	Honorable Bruce F. Hilton
THOMAS E. MURAWSKI,	)	
	)	
Appellant.	)	Filed: October 19, 2021

Thomas Murawski ("Husband" or "Father") appeals the trial court's judgment dissolving his marriage with Mary Wilson ("Wife" or "Mother"). In Point I, Husband argues the judgment's division of assets and debts failed to account for the parties' need to amend their 2017 tax return. In Point II, Husband argues the trial court's monthly maintenance award to Wife was excessive. In Point III, Husband argues the trial court incorrectly calculated Wife's net income. In Point IV, Husband argues the trial court incorrectly calculated his income. In Point V, Husband argues the trial court erred in its division of child custody. In Point VI, Husband argues the trial court's child support award was improper. In Point VII, Husband argues the trial court's child support award includes college education expenses he cannot afford. In Point VIII, Husband argues the trial court incorrectly found he owes $5,600 in retroactive child support. In Point IX, Husband argues he is entitled to a credit for overpayment of child support. In Point X, Husband argues the trial court incorrectly found two bank accounts were not marital property. In Point XI, Husband argues Wife squandered and improperly dissipated support payments. In Point XII, Husband argues the trial court's division of assets improperly favored Wife. In Point XIII, Husband argues the trial court incorrectly calculated the value of his retirement accounts. In Point XIV, Husband argues the trial court incorrectly calculated the value of the parties' 2007 GMC Yukon. In Point XV, Husband argues the trial court erred by assigning him a portion of Wife's credit card debt. In Point XVI, Husband argues the trial court's asset equalization judgment must be recalculated given the errors alleged on appeal.

AFFIRMED IN PART AND REVERSED IN PART.

DIVISION III HOLDS:

Point I is denied. The consequences of the parties filing an amended tax return was speculative. Pre-dissolution tax consequences may be properly excluded from a dissolution judgment when there was no evidence of an asset or debt existing at the time of trial. *Pickering v. Pickering*, 314 S.W.3d 822, 833-34 (Mo. App. W.D. 2010).

Point II is granted. Child support and spousal maintenance are separate concepts and "maintenance is not for child support." *In re Marriage of Neu*, 167 S.W.3d 791, 796 (Mo. App.

E.D. 2005). "In determining a spouse's need for maintenance, the trial court 'is not to consider any amounts expended for the direct care and support of a dependent child.'" *Id*. (quoting *Cohen v. Cohen*, 73 S.W.3d 39, 51 (Mo. App. W.D. 2002)). Maintenance awards should exclude "expenses for children's medical and dental insurance, car insurance, vehicle, and college." *Courtney v. Courtney*, 458 S.W.3d 462, 477 (Mo. App. E.D. 2015). Further, maintenance awards may not include the cost of life insurance policies where the children are the beneficiaries. *Arndt v. Arndt*, 519 S.W.3d 890, 902 (Mo. App. E.D. 2017).

Point III is denied. The trial court need not believe or adopt expert calculations of post-tax income. *Cohn v. Cohn*, 841 S.W.2d 782 (Mo. App. E.D. 1992). In awarding maintenance, the trial court need not perform an exact mathematical calculation and may award an amount above the parties' itemized expenses. *Sulkin v. Sulkin*, 619 S.W.3d 155, 159 (Mo. App. E.D. 2021).

Point IV is denied. The judgment is consistent with the trial court's statement it would not use 100% of Husband's business distribution income to calculate total income. The trial court's calculation was based on Husband's net distribution income, not his gross distribution income.

Point V is granted. The trial court modified the parties' stipulated child visitation arrangement but made no findings under RSMo § 452.375(6) "detailing the specific relevant factors resulting in the rejection of such arrangement."

Point VI is denied. Child support stipulations are "advisory only, because the ultimate responsibility for fashioning a decree which reflects the best interests of the child rests with the court." *Arent v. Arent*, 759 S.W.2d 855, 856 (Mo. App. E.D. 1988). The trial court acted within its discretion to reject the parties' stipulated child support arrangement and independently calculate Father's support obligation.

Point VII is denied. Father's claim regarding his obligation to pay for his children's college expenses is unpreserved. "We will not convict a trial court of error for an issue not presented for its determination." *Fouts v. Regency N. Acquisition, LLC*, 569 S.W.3d 463, 466 (Mo. App. W.D. 2018). As explained in Point IV, Father's income was not miscalculated.

Point VIII is granted. The record reveals Father's pre-dissolution support payments were timely and consistent with the parties' *pendente lite* judgment ("PDL"). Father does not owe retroactive support.

Point IX is denied. The parties' PDL's modification language was permissive, not mandatory. The trial court could have awarded Father prospective support credit for past support overpayment but was not *require*d to do so.

Point X is denied. Husband asks this Court to reweigh the credibility of witness testimony, which we will not do. *Sulkin*, 619 S.W.3d at 159.

Point XI is denied. Husband asks this Court to reweigh the credibility of witness testimony, which we will not do. *Sulkin*, 619 S.W.3d at 159.

Point XII is denied. Neither Husband's briefing nor this Court's research reveal a case supporting his contention his bank account is entitled to a different valuation. The trial court's calculation was supported by substantial evidence. *Alabach v. Alabach*, 478 S.W.3d 511, 513 (Mo. App. E.D. 2015).

Point XIII is denied. The trial court did not use stale property valuations when dividing the parties' property; the values were less than one month old when the judgment was entered. This Court has upheld property divisions based on significantly older information. *See, e.g., Fowler v. Fowler*, 504 S.W.3d 790, 801 (Mo. App. E.D. 2016). We will only reverse the trial court's valuation of the parties' property "when the error is material – that is, 'there must be facts in the record from which potential prejudice reasonably could be inferred and each case is therefore fact specific.'" *Schubert v. Schubert*, 366 S.W.3d 55, 73 (Mo. App. E.D. 2012) (quoting *McCallum v. McCallum*, 128 S.W.3d 62, 66-67 (Mo. App. E.D. 2004)).

Point XIV is denied. Husband asks this Court to reweigh the credibility of witness testimony, which we will not do. *Sulkin*, 619 S.W.3d at 159.

Point XV is denied. "Appellate courts will interfere in marital property divisions only where the division is so unduly favorable to one party that it constitutes an abuse of discretion." *Lollar v. Lollar*, 609 S.W.3d 41, 46 (Mo. banc 2020). The trial court has broad discretion to divide marital debt and the division need not be equal. *Petties v. Petties*, 129 S.W.3d 901, 911 (Mo. App. W.D. 2004). Husband's remedy for Wife's PDL violation was to move to cite her for contempt, not to adjust the distribution of debts on appeal of the final judgment. *Dardick v. Dardick*, 661 S.W.2d 538, 540 (Mo. App. E.D. 1983).

Point XVI is denied. Finding no error in Points X-XV, we need not consider Point XVI.

Opinion by: Philip M. Hess, Presiding Judge
Angela T. Quigless, Judge and Colleen Dolan, Judge concur.

Attorney for Appellant: Anthony M. Pezzani

Attorney for Respondent: Allison S. Lee and Alan E. Fred

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.