

MEMORANDUM DECISION

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IN THE Court of Appeals of Indiana

Jonathan M. Pratt,
Appellant-Defendant

v.

Jamie L. Pratt,
Appellee-Plaintiff

June 27, 2024

Court of Appeals Case No.
24A-DC-259

Appeal from the Howard Circuit Court
The Honorable Douglas A. Tate, Judge

Trial Court Cause No.
34C01-2009-DC-2108

Memorandum Decision by Judge Bailey
Chief Judge Altice and Judge Mathias concur.

Bailey, Judge.

Case Summary

- [1] Jonathan Pratt (“Husband”) appeals the denial of a motion to correct error which challenged the trial court’s order enforcing an automobile debt provision of the property settlement agreement (“Agreement”) in the dissolution of his marriage to Jamie Pratt (“Wife”), without an offset for mortgage payments or residential clean-up costs. We affirm.

Issues

- [2] Husband presents the following two consolidated and restated issues:
- I. Whether the trial court erred as a matter of law by not equally dividing the responsibility for five mortgage payments, consistent with a joint tenancy in common; and
 - II. Whether the trial court abused its discretion by declining to find that Husband had incurred residential clean-up costs attributable to Wife.

Facts and Procedural History

- [3] On November 5, 2020, in the course of dissolution proceedings, Husband and Wife executed the Agreement; it was adopted by the trial court and incorporated into the dissolution decree. The Agreement states that it is “a full, final, fair and complete settlement of the rights and obligation of the parties attendant upon the dissolution of their marriage.” (App. Vol. II, pg. 17.)

According to its terms, “[n]o modification or waiver of any of the terms of this agreement shall be valid unless in writing and executed by both parties hereto.” (*Id.* at 18.)

[4] Among other things, the Agreement contains the following provisions on real estate and personal property:

The Husband and Wife own the real estate located [at] 4204 Michael Drive, Kokomo IN 46902 which shall be the [sic] sold and the net proceeds divided equally after all realtor fees, closing costs and reasonable costs of repair or preparation for sale divided equally and/or deducted from each parties’ net proceeds of sale.

At the time of the sale of the residence the Husband will pay ½ if [sic] the remaining debt and the Wife will pay ½ of the remaining debt and the Husband shall sign off on the title so that the Wife may own the Jeep free and clear of any lien[.]

(*Id.* at 21.) The Agreement is silent on liability for mortgage payments prior to sale. Husband individually made five months of mortgage payments, three before the Agreement was executed and two thereafter.¹

[5] On December 1, 2020, Husband filed a Motion for Relief from Judgment, alleging fraud. Husband alleged that Wife was allowing trash and animal waste to accumulate in the marital residence, interfering with a potential sale by

¹ The parties’ very brief testimony at the hearing did not specifically address the mortgage payments; however, the arguments of their respective counsel indicated that the parties did not dispute that Husband made the mortgage payments reflected on his Exhibit 1.

denying Husband access to make repairs, and refusing to make monthly payments on the Jeep. On December 12, the trial court entered an order, which did not grant Husband relief from the Agreement for fraud, but clarified that Husband had the right to access the marital residence upon two-hour notice. Wife was ordered to continue making monthly payments on the Jeep. The order was not appealed. The marital residence was sold, with the closing taking place on February 21, 2021.

[6] Over two years later, in March of 2023, Wife filed an affidavit and rule to show cause, alleging that Husband was in contempt of court for failing to pay $\frac{1}{2}$ of the Jeep debt remaining at the time of the marital residence sale. On May 15, Husband responded and filed a counterclaim for “damages for breach of the settlement agreement.” (*Id.* at 39.) Husband alleged that Wife had left the marital residence in a “deplorable” condition, causing him to incur labor and costs of clean-up. (*Id.* at 40.) Husband also alleged that Wife had “tacitly” agreed at the house closing to forego his payment on the Jeep debt in exchange for his clean-up of the residence. Husband asked that the trial court formalize the offset arrangement.

[7] On November 28, the trial court conducted a hearing. Husband submitted into evidence photographs and a written summary. The summary reflected his payment of mortgage payments for September of 2020 through January of 2021, and indicated that he had incurred an unspecified “dumpster fee” for “23 loads to dumpter [sic].” (Ex. 1.) Husband also requested offset for twenty-two

hours of labor at \$25.00 per hour and \$250 for broken sunglasses.² Husband's position was that Wife had left numerous items of personal property in the marital residence when she moved out; Wife was a co-obligor on the mortgage; and she would be unjustly enriched absent the requested set-off. Wife argued that Husband's attorney had drafted the agreement; there was no requirement therein that Wife contribute to the mortgage payments; and the personal property left behind when she vacated the marital residence was Husband's property.

[8] On December 1, the trial court entered an order providing in relevant part:

This matter comes before the court on Respondent's Motion to Enforce the Property Settlement Agreement. Specifically, the agreement provided that the Petitioner would pay to the Respondent one-half of the remaining debt on a 2013 Jeep Wrangler at the time of the sale of the residence.

The house has been sold and the Petitioner has not paid his portion of the debt on the Jeep. The Petitioner claims that the Respondent left the house in such a condition prior to the sale such that he should receive consideration for having to clean the house prior to delivering possession to the new owners. He also claims that the Respondent owes for one-half of the mortgage payments prior to the sale of the house.

The Property Settlement Agreement did not have a provision for the Respondent to maintain the house in any certain condition.

² In his 2020 Motion for Relief from Judgment, Husband alleged that Wife broke his sunglasses when he tried to enter the marital residence.

It merely provides that the Petitioner should have access to the house “to supervise repairs and retrieve tools and the like.” There was also no provision with regards to splitting the mortgage payment prior to the sale of the house.

As such the Petitioner owes the Respondent the sum of \$4,369.23 plus reasonable attorney fees of \$500.00 incurred in pursuing this claim.

(App. Vol. II, pg. 16.) On December 27, Husband filed a motion to correct error. He argued that the parties, upon their divorce, held the real estate as tenants in common and that the common law doctrines of waste and contribution between joint obligors should be applicable. On January 3, 2024, the trial court summarily denied the motion to correct error. Husband now appeals.

Discussion and Decision

Standard of Review

- [9] We generally review a trial court’s ruling on a motion to correct error for an abuse of discretion. *Santelli v. Rahmatullah*, 993 N.E.2d 167, 173 (Ind. 2013). In so doing, we afford the trial court’s decision “a strong presumption of correctness.” *Id.* “An abuse of discretion occurs when the decision misinterprets the law or clearly contravenes the logic and effect of the facts and circumstances before the court.” *Smith v. Franklin Twp. Cmty. Sch. Corp.*, 151 N.E.3d 271, 273 (Ind. 2020).

[10] We observe that Wife has not filed an appellee’s brief. “Under that circumstance, we do not undertake to develop an argument on the appellee’s behalf, but rather may reverse upon an appellant’s prima facie showing of reversible error.” *Morton v. Ivacic*, 898 N.E.2d 1196, 1199 (Ind. 2008). “Prima facie error in this context is defined as, ‘at first sight, on first appearance, or on the face it.’” *Id.* (citation omitted).

Mortgage Payments

[11] Husband argues that the trial court misapplied the law. More specifically, Husband contends: he and Wife “became owners as tenants-in-common of the marital residence upon their dissolution of marriage;” they were co-obligors on the mortgage; “the trial court committed a fundamental error of law in interpreting the property settlement agreement so as to thrust the entire joint marital obligations to pay the joint mortgages and costs of preparing the marital residence for sale upon [Husband] because the agreement did not explicitly require [Wife] to pay her share;” and Wife would be unjustly enriched if Husband were not reimbursed. Appellant’s Brief at 11.

[12] Here, Husband and Wife’s rights and obligations as co-owners and co-obligors with respect to the marital property were settled by their agreement. Indiana Code Section 31-15-2-17(a)(2) provides: “To promote the amicable settlements of disputes that have arisen or may arise between the parties to a marriage attendant upon the dissolution of their marriage, the parties may agree in writing to provisions for: the disposition of any property owned by either or both of the parties[.]” Subsection (b)(1) provides that “the terms of the

agreement, if approved by the court, shall be incorporated and merged into the decree and the parties shall be ordered to perform the terms.” Subsection (c) provides that such an agreement merged into the decree “is not subject to subsequent modification by the court, except as the agreement prescribes or the parties subsequently consent.” Accordingly, property distribution settlements approved as part of a dissolution may be modified only where both parties consent or where there is fraud, undue influence, or duress. *Johnson v. Johnson*, 920 N.E.2d 253, 258 (Ind. 2010).

[13] Although dissolution courts may not simply modify a settlement agreement, the courts may “interpret the terms of their property settlement agreements and ... enforce them.” *Fackler v. Powell*, 839 N.E.2d 165, 167-68 (Ind. 2005). In this case, the trial court enforced the specific requirement that Husband pay one-half of the Jeep debt remaining upon sale of the marital residence. And there is, as the trial court observed, no provision to be enforced with respect to the mortgage payments (three of which were made before the Agreement was signed). The trial court did not misinterpret the law.

Clean up Costs

[14] The Agreement provides for the equal division of net proceeds of the residence sale “after all realtor fees, closing costs and reasonable costs of repair or preparation for sale.” (App. Vol. II, pg. 21.) At the hearing, the parties did not dispute that Husband exerted labor and took loads of property to a dumpster. However, Wife disputed that the photographs had been taken near or at the time of sale. The parties also disputed whether the property requiring disposal

after Wife moved out was Husband's property or Wife's abandoned property. Moreover, Husband did not testify that he incurred a specific dumpster cost, and his summary does not assign a cost. The trial court was not persuaded by Husband's evidence that he had incurred a reasonable cost of preparation for sale. Husband's argument is an invitation to this Court to reweigh the evidence, which we cannot do. *See Julie C. v. Andrew C.*, 924 N.E.2d 1249, 1256 (Ind. Ct. App. 2010) (observing that an appellate court cannot reweigh evidence or judge the credibility of witnesses).

Conclusion

[15] Husband has not shown, prima facie, that the dissolution court abused its discretion under the facts and circumstances before it or misinterpreted the law. Accordingly, the denial of Husband's motion to correct error does not constitute an abuse of discretion.

[16] Affirmed.

Altice, C.J., and Mathias, J., concur.

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