MEMORANDUM DECISION

ATTORNEYS FOR APPELLANT

Jana E. Banschbach
Seth M. Lahn
Bloomington, Indiana

ATTORNEYS FOR APPELLEE

Kathryn E. DeWeese
Joshua L. Radicke
Bunger & Robertson
Bloomington, Indiana

IN THE COURT OF APPEALS OF INDIANA

Ann T. Collins,
Appellant,

v.

Darryl J. Collins,
Appellee.

July 19, 2021

Court of Appeals Case No. 21A-DC-141

Appeal from the Monroe Circuit Court

The Honorable Judith C. Benckart, Judge

Trial Court Cause No. 53C08-1704-DC-170

Weissmann, Judge.

[1] Ann Collins (Mother) and Darryl J. Collins (Father) married, had three children, divorced in 2005, remarried in 2006, and then divorced again in 2017. Unhappy with the fees paid to attorneys in their first divorce, each proceeded *pro se* in their second. The trial court approved Mother and Father's settlement agreement, which awarded the bulk of their property to Mother and required Father pay $3,000 per month in child support to Mother until their youngest child, then in high school, graduated from college. After Mother became engaged and Father suffered a pandemic-related salary reduction, Father sought to emancipate the youngest child (then 19 years old) and end his agreement to pay support until the child's college graduation. Father agreed to continue paying the child's college costs.

[2] The trial court sua sponte invalidated the parties' earlier, court-approved agreement finding the agreement had not been properly entered. The court then emancipated the child and ended Father's support obligation. Finding the trial court went too far in invalidating the agreement but did not properly consider Father's request for modification of child support, we reverse the trial court's judgment and remand.

Facts

[3] Mother and Father agreed to numerous terms, drafted by Father, when they divorced for the second time in 2017. This appeal concerns only Father's agreement to pay Mother $3,000 per month until the youngest child graduated college.

[4] The agreement was designed to enable Mother to maintain the family home for the couple's youngest child until he graduated from college. The trial court approved the parties' signed dissolution decree and attached that one-page agreement to the final decree.

[5] In 2020, Father's employer reduced his salary by 20% due to the COVID-19 pandemic, while Mother lost her entire income. Father petitioned to emancipate their youngest child, whose 20th birthday then was a few weeks away or, alternatively, to modify the child support order in various ways that would reduce the support that Father would pay to Mother. App. Vol. II, pp. 22-23, 27-28. For instance, Father asked for a credit against the child support for the educational expenses he was paying. *Id.* at 28. He also suggested that he be allowed to pay the child's expenses directly instead of paying support to Mother. *Id.* Mother responded to Father's petition, noting the parties had agreed Father would pay $3,000 per month in child support. Mother argued that Father was bound by that agreement and therefore the court must deny Father's petition.

[6] After a hearing, the trial court granted Father's petition for emancipation and also sua sponte invalidated the parties' prior agreement. The court found the agreement that was attached to the dissolution decree was non-binding because it was not incorporated and merged into the decree. The court further ruled that even if the provision in the agreement calling for Father to pay $3,000 per month in child support was binding, it conflicted with paragraph 8 of the decree specifying support of $750 per week. The trial court found Father never

underpaid or overpaid support, although the $750 per week child support award was greater than the $3,000 Father had paid monthly for several years and the emancipation was retroactive to the youngest child's 19th birthday more than a year earlier. Mother appeals, claiming the trial court abused its discretion in rewriting the decree and eliminating child support in contravention of the parties' agreement.

I. Standard of Review

[7] Decisions about child support typically are reviewed for clear error. *Copple v. Swindle*, 112 N.E.3d 205, 209 (Ind. Ct. App. 2018). But when a trial court's decision on child-support modification is controlled by its interpretation of the parties' settlement agreement, this Court reviews that decision de novo. *Id.* A trial court's judgment is "clothed with a presumption of validity," and the party challenging that judgment bears the burden of establishing trial court error. *Schwartz v. Heeter*, 994 N.E.2d 1102, 1105 (Ind. 2013).

II. Discussion and Decision

[8] Indiana Code § 31-16-6-6(a) provides for termination of child support other than educational expenses when a child who is not incapacitated turns 19 years old. The parties do not dispute that their youngest child was 19 at the time Father's petition was filed or that, absent their 2017 court-approved agreement, Indiana Code § 31-16-6-6 authorized his emancipation. They only part ways as to whether Father must continue to pay support under the agreement.

A. Enforceability of Agreement

[9] Mother first challenges the trial court's ruling that the 2017 agreement is not binding because the court failed to incorporate and merge the agreement into the decree as required by *Meehan v. Meehan*, 425 N.E.2d 157, 159 (Ind. Ct. App. 1981). The Indiana Supreme Court in *Meehan* concluded that when considering a settlement agreement, a trial court "should carefully delineate in express and unequivocal terms those portions which it is incorporating and merging into its order." *Id.* "Absent an effective incorporation and merger . . . a settlement agreement or its unincorporated portions is not binding on the parties." *Id.*

[10] *Meehan* does not dictate any specific language to be used when a trial court incorporates and merges a settlement into its order. In the present case, the second paragraph of the decree specifies that "[t]he parties having submitted this Settlement Agreement and the Court having seen and considered the Verified Petition of Dissolution of Marriage and Verified Waiver of Final Hearing submitted by the parties, now approves the following: . . . [Father] will pay child support in the amount of $750.00 per week . . . ." Appellant's App. Vol. II, p. 13. The trial court also attached the agreement to the decree. Although several differences between the language of the agreement and the decree are evident, the issue here is not whether the trial court erred in deviating from the agreement but whether the trial court properly incorporated the settlement into the decree in accordance with *Meehan*.

[11] The trial court did so by indicating it had considered the parties' settlement agreement, incorporating portions of the provisions in that agreement, and attaching the agreement to the decree. Although the decree specifies child support of $750 per week instead of $3,000 monthly, that discrepancy apparently is the result of the parties' use of a court-approved form for *pro se* litigants that required a weekly child support figure. The parties simply divided the $3,000 monthly figure by four to achieve the $750 weekly amount. Regardless, the record contains no evidence from which the judge in the 2017 divorce proceedings could have calculated child support on any basis other than the parties' agreement, given the lack of any evidentiary hearings prior to the decree and the parties' apparent failure to submit child support worksheets.

[12] The trial court committed clear error in finding that the decree did not incorporate the settlement agreement and that the provision calling for weekly child support of $750 was not binding on the parties. The question remains whether that agreement can be modified to reduce or eliminate Father's support obligation.

B. Modification of Child Support

[13] Mother claims the trial court improperly terminated Father's child support obligations. The gist of her argument is that Father was bound to the agreement, regardless of Indiana law allowing emancipation and termination of child support other than educational expenses when the child turns age 19. *See* I.C. § 31-16-6-6(a). According to Mother, Father has no ability to change his

agreement to pay her $3,000 per month until their youngest child graduates from college. Alternatively, Mother claims that even if child support can be modified, Father failed to prove he was entitled to modification.

i. Modification Is Allowed

[14] Child support orders resulting from agreements are modifiable in the same manner as support orders resulting from contested hearings. *Rolley v. Rolley*, 13 N.E.3d 521, 530 (Ind. Ct. App. 2014), *adopted in part and summarily aff'd in part by* 22 N.E.3d 558, 559 (Ind. 2014). That Father agreed to pay $3,000 per month until the youngest child graduated college does not mean the agreement cannot now be altered. *See id.*

ii. Invited Error Doctrine and Emancipation Statute Do Not Bar Modification

[15] Because Father's modification request was not forbidden by Indiana law, Mother alternatively argues that the doctrine of invited error applies. Invited error is grounded in estoppel and forbids a party to take advantage of an error that same party commits, invites, or that is the nature consequence of neglect or misconduct. *Brewington v. State*, 7 N.E.3d 946, 975 (Ind. 2014). Mother asserts that Father is estopped from seeking modification because he agreed to pay child support until the youngest child graduated from college and that child has yet to graduate.

[16] Father does not directly address Mother's invited error argument. Instead, he argues that termination of his child support obligation was required under the

emancipation statute, which specifies "the duty to support a child [except for educational needs] ceases when the child becomes nineteen (19) years of age." I.C. § 31-16-6-6(a).

[17] We find no fault in Father's basic premise: the emancipation statute, standing alone, removes a trial court's authority to order child support other than educational expenses for a child in college who has reached his 19th birthday and is not incapacitated. *See id.* But the statute cannot be considered in isolation here; it must be construed in conjunction with the parties' court-approved agreement.

[18] "[A] divorcing couple is free to agree to the custody and support of their child in excess of that the divorce court could have ordered had it crafted the decree itself." *In re Marriage of Loeb*, 614 N.E.2d 954, 957 (Ind. Ct. App. 1993). For this reason, the emancipation statute does not apply where, as here, the parents agree to pay support for a child 19 years or older and the trial court approves that agreement. *Id.* The agreement to pay child support past the age of emancipation "may be considered an exception" to the emancipation statute. *Id.* Therefore, once the trial court approved Father and Mother's child support agreement, Father was obligated to pay support in accordance with the agreement "at least until such time as the order [was] modified or set aside." *Id.* at 958.

[19] The emancipation statute does not trump Mother and Father's court-approved agreement. But this does not mean Mother prevails on her invited error claim.

The invited error doctrine does not automatically deprive a parent of the opportunity to seek modification of an agreed child support order. *See, e.g.*, *Rolley*, 13 N.E.3d at 526-30, 22 N.E.3d at 559 (rejecting a father's claim that a mother could not seek modification of a child support order deviating from the Guidelines because she invited the error by simply agreeing to it 10 months earlier). Although *Rolley* involved a claim that the father was underpaying support, the opinion made clear that all agreement-based child support orders are treated the same as other child support orders for purposes of modification—that is, all child support orders may be modified if the petitioning parent meets the requirements for modification found in Indiana Code § 31-16-8-1(b). 13 N.E.3d at 530, 22 N.E.3d at 559; *see also Loeb*, 614 N.E.2d at 959 (finding parents' agreement that father would pay child support beyond the age of emancipation was modifiable).

iii. Trial Court Must Apply the Modification Statute

[20] As invited error does not bar Father's petition to modify support, we turn to Mother's alternative argument that Father failed to prove he was entitled to modification under Indiana Code § 31-16-8-1(b). That statute authorizes modification of a child support order upon a showing of: (1) "changed circumstances so substantial and continuing as to make the terms unreasonable"; or (2) that the party has been ordered at least twelve months prior to the modification petition filing to pay support in an amount more than 20% from the amount that would be ordered by applying the child support guidelines.

[21] Rather than addressing whether Father had proven either prong of Indiana Code § 31-16-8-1(b), the court erroneously invalidated the parties' court-approved child support agreement and emancipated the 20-year-old child, thereby terminating Father's duty to pay child support. The trial court never analyzed Father's petition in accordance with the modification statute, as required. Nor did it determine whether Father had met his burden under that statute. Therefore, we reverse the trial court's judgment and remand for further proceedings consistent with this opinion.[1]

Kirsch, J., and Altice, J., concur.

[1] We express no opinion as to whether Father is entitled to a modification of his child support obligation including termination of his support obligation as of the date of filing of his petition. Our ruling is limited to finding that he was entitled to seek it under Indiana Code § 31-16-8-1(b)