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IN THE  
COURT OF APPEALS OF INDIANA

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In the Matter of the Marriage of:

Olga Sims,

*Appellant-Petitioner,*

v.

John Daniel Sims,

*Appellee-Respondent.*

November 16, 2022

Court of Appeals Case No.  
22A-DN-639

Appeal from the  
Johnson Circuit Court

The Honorable  
Andrew S. Roesener, Judge

Trial Court Cause No.  
41C01-2009-DN-463

**Pyle, Judge.**

### Statement of the Case

- [1] A German court dissolved the marriage of Olga Sims (“Wife”) and John Sims (“Husband”), but it declined to address Wife’s request for a division of marital property. Wife later filed an amended petition to assume jurisdiction in the Johnson Circuit Court (“the trial court”), which included a request for division

of marital property. Finding that the doctrine of res judicata barred her request because the German court had rendered a judgment on the merits of her property division request, the trial court denied Wife's amended petition. The trial court later denied Wife's motion to correct error. Because we find that the German court did not render judgment on the merits of Wife's property division request, we reverse the trial court and remand this matter for further proceedings.

[2] We reverse and remand.

### **Issue**

Whether the trial court erred in denying Wife's motion to correct error on the basis that the doctrine of res judicata barred her request for a division of marital property.

### **Facts**

[3] In 1997, Wife and Husband—both American citizens—were married in Moscow, Russia, and one month later they moved to the United States. Husband worked as a civilian contractor for the United States Department of Defense and private defense contractors, and Wife worked for the United States government. During their marriage, Husband and Wife lived in Virginia, Texas, North Carolina, Nevada, and in 2017, Husband moved to Germany and Wife joined him there in 2018.

- [4] Soon after Wife moved to Germany, she and Husband separated. In 2019, even though Husband and Wife lived in Germany, Husband filed a petition for dissolution in Nevada, but the Nevada court dismissed the petition.
- [5] Later in 2019, Wife filed a petition for dissolution in Germany, requesting, in part, division of marital property, including Husband's pension. Husband argued that the German court lacked jurisdiction to address Wife's request for division of property. In February 2020, Husband moved to Johnson County, Indiana. That same month, the German court dissolved Husband and Wife's marriage but found it lacked jurisdiction to divide the parties' marital property and thus declined to rule on the merits of Wife's request for division of marital property, including Husband's pension. The German court ruled, "In the case of countries . . . such as . . . the USA, the international jurisdiction of German courts to decide on a pension plan is questionable and is largely denied." (App. II at 19). Later in November 2020, the German court again declined to address Wife's property division request, once more determining that it lacked jurisdiction to divide the marital property, including pensions, and that it was unclear about which substantive law should govern such a decision:

On the part of the Court, in this respect, it was pointed out that not only the international and national jurisdiction of the Court is difficult, and it is not evident but also the corresponding applicable substantive rights for the individual assets or because of the various circumstances of the family with relocations and different nationalities it is initially unclear which law is applicable at all in this respect.

(Tr. Vol. III at 49).

[6] In September 2020, Wife filed a petition to assume jurisdiction of dissolution in the trial court and a few weeks later she filed an amended petition to assume jurisdiction, with both petitions asking the trial court to assume jurisdiction over the issue of division of marital property. In February 2021, the trial court denied Wife's amended petition to assume jurisdiction. It found that the doctrine of res judicata barred it from assuming jurisdiction over Wife's petition, concluding that the German court (1) was a court of competent jurisdiction and (2) had rendered a decision on the merits of Wife's request for division of marital property.

[7] In March 2021, Wife filed a motion to correct error. In denying Wife's motion, the trial court expressed frustration that it was "impossible to accurately determine" what occurred in the German court because its rulings were "very difficult to understand" and there was "simply too much that is not known by this court to grant the motion to correct error." (App. II at 93, 103). Thus, the trial court affirmed its earlier ruling that the doctrine of res judicata barred consideration of Wife's request to divide the marital property. Wife now appeals the denial of her motion to correct error.

## **Decision**

[8] Wife argues the trial court erred in denying her motion to correct error because it erroneously concluded that the doctrine of res judicata barred her request to divide marital property. Res judicata does not apply, she contends, because the

German court did not render judgment on the merits of her request for division of marital property. We agree.

[9] We normally review the grant or denial of a motion to correct error for an abuse of discretion, *487 Broadway Co., LLC v. Robinson*, 147 N.E.3d 347, 350 (Ind. Ct. App. 2020), but where, as here, a trial court addresses a pure question of law, our review is de novo. *Sanders Kennels, Inc. v. Lane*, 153 N.E.3d 262, 268 (Ind. Ct. App. 2020). Moreover, because Husband has not filed an appellee’s brief, Wife is entitled to prevail on appeal if she demonstrates prima facie error. *McElvain v. Hite*, 800 N.E.2d 947, 948-49 (Ind. Ct. App. 2003). “Prima facie, in this context, means at first glance or on the face of it.” *Id.*

[10] Wife has demonstrated prima facie error in the trial court’s ruling that her request for division of martial property was barred by the doctrine of res judicata because the record shows the German court did not render a judgment on the merits of that issue. Res judicata bars the litigation of a claim after a final judgment has been rendered in a prior action involving the same claim between the same parties or their privies. *MicroVote Gen. Corp. v. Indiana Election Comm’n*, 924 N.E.2d 184, 191 (Ind. Ct. App. 2010). The goal of this doctrine is to prevent repetitive litigation of the same dispute. *Id.* However, res judicata applies only if: 1) the former judgment was rendered by a court of competent jurisdiction; 2) the former judgment must have been rendered on the merits; 3) the matter now in issue was, or could have been, determined in the prior action; and 4) the controversy adjudicated in the former action must have been between the parties to the present suit or their privies. *Id.* Here, because the

German court declined to address Wife's request for division of property, one necessary element for res judicata to apply here is missing—a former judgment rendered on the merits. *See id.*

[11] We sympathize with the trial court's frustration in interpreting the German court's rulings. But whatever ambiguities may exist in those rulings, they clearly show that the German court did not render a judgment on the merits of Wife's request for division of marital property. Thus, res judicata does not prevent the trial court from considering Wife's request to divide marital property, and Wife has demonstrated prima facie error in the trial court's denial of her motion to correct error. Accordingly, we reverse the trial court and remand this matter for further proceedings.

[12] Reversed and remanded.

Bradford, C.J., and Altice, J., concur.