MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Angela Sue (Ehle) Ely,
Appellant-Petitioner,

v.

Jack Ehle, II,
Appellee-Respondent

February 24, 2023

Court of Appeals Case No. 22A-DR-2050

Appeal from the Decatur Circuit Court

The Honorable Timothy B. Day, Judge

Trial Court Cause No. 16C01-9502-DR-45

Memorandum Decision by Judge Crone
Judges Robb and Kenworthy concur.

Crone, Judge.

Case Summary

[1] Angela Sue (Ehle) Ely (Wife) appeals the amount of the money judgment awarded to her in the trial court's order on her petition for rule to show cause against her ex-husband Jack Ehle, II (Husband). We affirm.

Facts and Procedural History

[2] The relevant facts are undisputed. Wife petitioned to dissolve her marriage to Husband, and the parties submitted an agreed dissolution decree with the following relevant provision:

> 14. FINDING AND JUDGMENT that [Wife] is adjudged the owner of $12,000.00 of [Husband's] pension plan under the National Electrical Annuity Plan [NEAP]. [Wife] shall prepare a QDRO [qualified domestic relations order] or whatever documents are necessary to effectuate the transfer of that sum from [Husband] to [Wife].

Appellant's App. Vol. 2 at 11. The trial court accepted and entered the decree on January 23, 1996. Not until August 2005 did Wife's counsel prepare a QDRO, which described NEAP as "a defined benefit pension plan" and directed NEAP to pay Wife, when eligible, "the Actuarial Equivalent of $12,000.00 of [Husband's] actual accrued benefits under the fund as of January 23rd, 1996[,]" in the form of a monthly annuity for life. *Id*. at 14.

[3] In October 2020, Husband and Wife each received a letter from NEAP stating that NEAP had "recently received" the QDRO. *Id*. at 21. The letter noted that the QDRO "was not submitted to NEAP for preapproval before entered by the

Court and was received for the first time in connection with [Husband's] application for retirement benefits." *Id*. The letter further stated that NEAP "is a defined *contribution*, or individual account, plan[,]" and that the QDRO was "not qualified for NEAP purposes because it mischaracterizes NEAP as a defined *benefit* plan and contemplates a type of division … that is only applicable to defined benefit plans." *Id*. The letter concluded, "[U]nless this office receives notice within 30 days … that the parties intend to seek entry of an appropriate domestic relations order, NEAP intends to make payment to [Husband] free and clear of any interest of [Wife]." *Id*. Neither party provided such notice.

[4] On January 31, 2021, Husband withdrew all funds from his pension plan and deposited them in another account. On February 24, 2022, Wife filed a petition for rule to show cause alleging that she had "made multiple requests to Husband to deliver to her the funds [specified in the decree], along with the growth that the original $12,000 has had since 1996, but he has refused." *Id*. at 17. She also requested attorney's fees.

[5] On August 2, 2022, after a hearing, the trial court entered an order that reads in pertinent part as follows:

> 1. Wife is entitled to [the] sum of Twelve Thousand Dollars ($12,000) of funds received by Husband upon the withdrawal of his NEAP benefit plan ("Benefit Amount").
>
> 2. Wife is also entitled to interest on the Benefit Amount at the rate of eight [percent] (8%) from January 31, 2021 through the

> date of payment ("Interest Amount").[1]
>
> 3. The Court takes Wife's request for a finding of contempt and applicable attorney's fees under advisement. Husband may purge any contempt in this matter by paying to Wife the Benefit Amount and the Interest Amount in full within thirty (30) days of the hearing date in this matter.

Appealed Order at 1. Wife now appeals.

Discussion and Decision

[6] Wife argues that the trial court erred in not awarding her the "growth" that accrued on the $12,000 in Husband's pension plan after the date of the dissolution decree as a result of investment gains. Appellant's Br. at 6. Resolving this issue requires us to interpret the agreed dissolution decree, which, "as with any other contract, presents a question of law and is reviewed de novo." *Bailey v. Mann*, 895 N.E.2d 1215, 1217 (Ind. 2008). "The first rule in the interpretation of contracts is to give meaning and effect to the intention of the parties as expressed in the language of the contract." *Young v. S. Bend Common Council*, 192 N.E.3d 176, 192 (Ind. Ct. App. 2022), *trans. denied* (2023). "Unless the terms of the agreement are ambiguous, they will be given their plain and ordinary meaning." *Bailey,* 895 N.E.2d at 1217. "Where the terms of a contract are clear and unambiguous, the terms are conclusive and we will not

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[1] At the hearing, the trial court explained that it imposed the statutory "judgment rate interest" as of January 31, 2021, because it was on that date that Husband "did something to make [Wife] unable to collect" the $12,000 to which she was entitled. Tr. Vol. 2 at 20.

construe the contract or look at extrinsic evidence." *Magee v. Garry-Magee*, 833 N.E.2d 1083, 1087 (Ind. Ct. App. 2005). Courts "will not add terms that were not agreed upon by the parties." *Coates v. Jaye*, 633 N.E.2d 334, 337 (Ind. Ct. App. 1994), *trans. denied*.

[7] As indicated above, the parties agreed that Wife was "adjudged the owner of $12,000.00 of [Husband's] pension plan" and was responsible for preparing a QDRO "to effectuate the transfer of *that sum* from [Husband] to [Wife]." Appellant's App. Vol. 2 at 11 (emphasis added). In other words, the decree unambiguously provides that Wife is entitled to a sum certain from Husband's pension plan, no more and no less, upon Wife's preparation of the documents necessary to effectuate the transfer, which she failed to do.[2] Wife cites no pertinent authority that would justify overriding the plain language of the decree.[3] Therefore, we affirm the trial court's order, pursuant to which Wife is entitled to 8% interest on the $12,000 from January 31, 2021, until Husband pays the entire amount in full.

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[2] Consequently, we are unpersuaded by the factually dissimilar cases cited in Wife's brief. Notably, Wife did not argue below and does not argue on appeal that she is entitled to an award of statutory post-judgment interest dating from January 23, 1996, when the decree was entered, until January 31, 2021, when Husband withdrew the funds from his pension plan.

[3] Wife also cites no pertinent authority for the proposition that we may consider the extrinsic (and invalid) QDRO in our analysis.

[8] Affirmed.

Robb, J., and Kenworthy, J., concur.